



**One Hundred Sixteenth Congress**  
**Committee on Homeland Security**  
**U.S. House of Representatives**  
**Washington, DC 20515**

October 30, 2020

Mr. Mark A. Morgan  
Senior Official Performing the Duties of the Commissioner  
U.S. Customs and Border Protection  
1300 Pennsylvania Avenue, NW  
Washington, D.C. 20229

Dear Mr. Morgan:

In July, the Committee wrote to you to request documents regarding the circumstances surrounding the death of Border Patrol Agent Johan Mordan. Agent Mordan died on duty on June 11, 2020, at the age of 26 while “in the remote boot heel area of New Mexico.”<sup>1</sup> The Committee seeks to understand the facts of his death as well as the actions taken by Customs and Border Protection (CBP) both the night of Agent Mordan’s death and subsequent to his death.

On October 6, 2020, CBP provided 21 pages of written statements and documents to the Committee. In an email to Committee staff, a CBP employee stated that these pages contained “the responsive information requested” in the Committee’s July letter.<sup>2</sup> The majority of the documents provided on October 6 pertain to publicly available weather information. Further, while CBP has provided additional information both orally and in written form to the Committee, it has been, at best, selectively incomplete—and it has been utterly unresponsive to the specific document requests the Committee made.

The Committee is also concerned about the extent to which the review of Agent Mordan’s death by CBP’s Office of Professional Responsibility (OPR) has relied on any unverified information provided by other CBP units, as well as whether OPR has undertaken any type of review of what appear to be disturbing trends regarding emergency incidents affecting the health of Border Patrol agents.

The Committee notes that CBP has indiscriminately and unjustifiably applied the “Law Enforcement Sensitive” label to the few documents it has provided to the Committee. For example, CBP applied the “Law Enforcement Sensitive” label even to the basic weather information it provided—including data on temperatures, humidity levels, wind speeds, and the phase of the moon—even though such information is obviously publicly available.

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<sup>1</sup> U.S. Customs and Border Protection, Statement—Passing of U.S. Border Patrol Agent Johan Mordan (June 13, 2020) (online at [www.cbp.gov/newsroom/speeches-and-statements/statement-passing-us-border-patrol-agent-johan-mordan](http://www.cbp.gov/newsroom/speeches-and-statements/statement-passing-us-border-patrol-agent-johan-mordan)).

<sup>2</sup> Email from Staff, U.S. Customs and Border Protection, to staff, Committee on Homeland Security (Oct. 6, 2020).

In addition to the requests pertaining to Agent Mordan's death, the Committee requested two categories of documents pertaining to a CBP Air and Marine Operations unit. CBP has refused to produce one of these categories of documents, claiming that gathering the records would be burdensome *and* that the records do not bear any relation to the questions posed by the Committee about the circumstances surrounding Agent Mordan's death. The agency's uninformed assessments of the existence or absence of a nexus among a Committee's document requests have no bearing on the agency's obligation to provide the documents requested by the Committee.

The Committee will continue to seek all of the facts and circumstances surrounding the death of Agent Mordan. I therefore write today to renew the Committee's previous document requests and to add additional requests based on the limited information the Committee has learned.

### **CBP Has Failed To Provide Documents Requested by the Committee**

According to a statement released by CBP, prior to Agent Mordan's death, "agents lost communications with him," and he was eventually found "unresponsive lying on a trail." CBP's statement explains that, "Agents immediately began CPR (chest compressions) and air support was requested for extraction," but "BPA Mordan could not be revived."<sup>3</sup>

On July 17, 2020, the Committee wrote to you seeking documents regarding Agent Mordan's final duty assignment as well as the actions taken by CBP after it became clear that Agent Mordan was unwell. The Committee requested, "copies of all investigatory reviews referring or relating to his death produced by CBP or provided to CBP by any other Federal, state, or local agency at the time such reviews are completed by or provided to CBP."<sup>4</sup> To date, no such reports have been provided to the Committee. It is unclear if OPR—or any other entity—has completed any type of written report on Agent Mordan's death aside from the New Mexico medical examiner, which has provided to the Committee a copy of Agent Mordan's autopsy report. The Committee requests to be informed immediately of the anticipated date of completion of any report on Agent Mordan's death by OPR and/or any other entity, and the Committee requests to receive an unredacted copy of any such report as soon as it is available to CBP.

In addition, the Committee requested "all documents referring or relating to:

1. The nature and purpose of BPA Mordan's duty assignment at the time he died, including the time at which he commenced the duty assignment, the specific tasks he was undertaking at the time of his death, the job titles of all CBP personnel who were with him while he undertook his final duty assignment and who were with him at the time he died, the time when he first reported feeling unwell, and the time he died;
2. The nature and timing of all medical assistance rendered to BPA Mordan from the time CBP personnel became aware he was in distress until the time that he passed away, including whether such medical assistance was provided solely by CBP personnel or by

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<sup>3</sup> *Id.*

<sup>4</sup> Letter from Chairman Bennie G. Thompson, Committee on Homeland Security, to Senior Official Performing the Duties of Commissioner Mark A. Morgan, U.S. Customs and Border Protection (July 17, 2020).

any non-CBP first responders, and the medical qualifications of all CBP personnel who rendered assistance to BPA Mordan;

3. The request for, dispatch of, and in-flight communications of CBP air support to assist BPA Mordan, including but not limited to all communications involving the Command Duty Agent who dispatched air support to assist BPA Mordan;
4. The medical qualifications of the personnel who were on board the air support dispatched to assist BPA Mordan as well as the medical equipment available on the aircraft; and
5. Whether the air support reached BPA Mordan and rendered aid to him or, if the air support was unable to reach his location, why it was unable to do so.”<sup>5</sup>

The Committee requested that these documents be provided by August 14, 2020. However, continuing its unprecedented practice of impeding Committee oversight, CBP has still not produced the documents.

On August 27, 2020, Committee staff received a briefing from OPR, during which officials discussed some of OPR’s findings resulting from its review of Agent Mordan’s death. Information was also provided by senior CBP officials. The Committee has since received a copy of the slide deck (numbering just over 20 pages) OPR utilized during that briefing; the slide deck is labeled “For Official Use Only.”

### **CBP Indiscriminately Uses the Term “Law Enforcement Sensitive” to Obstruct Public Discussion**

Instead of providing the documents the Committee requested, CBP has provided limited written statements regarding the document categories set forth by the Committee even though the document requests were clearly not questions. CBP attached to its written information the following documents, which are all labeled “Law Enforcement Sensitive”:

1. Two pages from CBP’s “Aviation Operations Handbook” which is separately marked “For Official Use Only;”
2. One page from an unidentified “Flight Manual” which has no other marking;
3. One page that appears to have been taken from a computer database of personnel schedules and that is separately labeled “Law Enforcement Sensitive”; and
4. Eleven pages of weather data from two locations in New Mexico—possibly from the Weather Channel—that have no other marking.<sup>6</sup>

The “Law Enforcement Sensitive” label does not appear to have been applied to the information provided to the Committee after any type of detailed review for the purpose of protecting sensitive

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<sup>5</sup> *Id.*

<sup>6</sup> Email from Staff, U.S. Customs and Border Protection, to staff, Committee on Homeland Security (Oct. 6, 2020).

information. Instead, it appears that this label has been indiscriminately applied even to information that does not appear to be in any way critical to a law enforcement purpose. The Committee therefore presumes that the use of the label is intended largely to obstruct public discussion of these topics.

### **Information Provided by CBP is Incomplete**

As noted, in my July letter, the Committee asked for documents pertaining to the request for and dispatch of air assets to assist Agent Mordan. In the information provided to the Committee, CBP stated that air support was unavailable on the night of June 11 from certain locations on the basis of numerous factors. One of the stated factors was weather.

The Committee asked the National Oceanic and Atmospheric Administration (NOAA) to provide weather information for the night of June 11, 2020, from several locations. Data provided by NOAA indicate the following:

- At 10:53 p.m. on June 11, 2020, at the Deming Municipal Airport (US WBAN: 72272523078), the wind speed was 15 miles per hour and no gusts were recorded. No precipitation was recorded, and the skies were clear. At 11:53, at the Deming Municipal Airport, the wind speed was 15 miles per hour, and gusts of 23 miles per hour were recorded. Of note, in Deming, at 7:11 p.m., peak winds of 43 knots were recorded, and at 7:33 p.m., peak winds of 51 knots were reported. The peak wind was reported to be 37 knots at 9:00 p.m., and a peak wind of 29 knots was reported at 9:19 p.m. No other peak wind reports were recorded later on the night of June 11, meaning that the wind did not exceed 25 knots for the rest of that night. According to the NOAA data, the very high winds observed in the evening in Deming before sunset had slowly died back after sunset.<sup>7</sup>
- At 10:51 p.m. on June 11, 2020 at the El Paso, Texas International Airport (US WBAN: 72270023044), the wind speed was recorded as 25 miles per hour with gusts of 38 miles per hour and it was raining. At 10:27 p.m., the peak wind speed was recorded as 39 knots, coming from 40 degrees east of true north. At 10:56 p.m., peak winds were recorded as 31 knots. At 11:51 p.m., the wind speed was 18 miles per hour with gusts of 28 miles per hour.<sup>8</sup>

The Committee notes that it appears from the NOAA weather data that the conditions in Deming late on the night of June 11 were quite similar to—and perhaps even marginally better than—the conditions in El Paso. As such, the Committee continues to have questions about the impact of weather on CBP’s air operations the night of Agent Mordan’s death.

The Committee also has numerous additional questions about the other assertions made by CBP in the information CBP provided in response to what were document requests. For example, CBP

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<sup>7</sup> U.S. Department of Commerce, National Oceanic & Atmospheric Administration, Local Climatological Data-Hourly Remarks for June 2020, Deming Municipal Airport, US WBAN: 72272523078 (KDMN) (Oct. 8, 2020).

<sup>8</sup> U.S. Department of Commerce, National Oceanic & Atmospheric Administration, Local Climatological Data-Hourly Remarks for June 2020, El Paso, Texas International Airport, US WBAN: 72270023044 (KELP) (Oct. 8, 2020).

asserted that maintenance issues also contributed to the decisions that were made regarding the launch of air support to respond to Agent Mordan, but no details were provided about what these unspecified maintenance issues were.

Assertions were also made about hanger measurements, as well as duty schedules, including the knowledge that would have been immediately available to officials responsible for dispatching aircraft. Without limited or no documentation, it is impossible to assess these assertions. The Committee therefore seeks to understand the information and documents on which CBP's OPR relied in its assessments of CBP's dispatch of air support on the night of Agent Mordan's death, including whether and how OPR conducted independent assessments of the information provided by other units within CBP.

### **Disturbing Patterns of Health Incidents**

Finally, information provided to the Committee indicates that there has been a disturbing pattern of incidents in which several Border Patrol agents in at least one sector have had to be rescued in separate incidents due to the severe effects of exposure and dehydration. The Committee seeks additional information about these incidents, including any reviews of these incidents conducted by OPR; specific requests are set forth below.

### **Committee Document Requests**

The Committee renews all outstanding document requests from its letter of July 17. In addition, the Committee requests the following:

1. All documents referring or relating to OPR's review of the availability and dispatch of air assets to respond to Agent Mordan, including but not limited to all documents that OPR reviewed during its examination of the availability and dispatch of air assets, as well as all notes from all interviews conducted by OPR regarding this issue;
2. All documents referring or relating to any Border Patrol agent who has experienced hyperthermia, dehydration, and/or exposure requiring the provision of any type of emergency support or assistance in any sector in each of the past two calendar years, including but not limited to all documents referring or relating to the incident, agency investigation of the incident, and any changes implemented in any CBP policy or procedure as a result of the incident;
3. All documents referring or relating to any type of review conducted by CBP's OPR of incidents of hyperthermia, dehydration, or exposure among Border Patrol agents in any sector in each of the last two calendar years;
4. All documents referring or relating to any non-disclosure agreements CBP has asked any employees to sign regarding any injuries to Border Patrol agents in the line of duty during the past two years; and

5. All documents referring or relating to CBP policies regarding actions to be taken upon notification that a Border Patrol agent is in distress.

All documents responsive to these requests should be provided no later than November 13, 2020. Should CBP again fail to provide all requested documents, the Committee will consider the use of compulsory process to obtain compliance.

Thank you for your immediate attention to these matters.

Sincerely,

A handwritten signature in blue ink, reading "Bennie G. Thompson", enclosed in a thin blue rectangular box.

BENNIE G. THOMPSON  
Chairman