

The San Diego
Union-Tribune

Disciplinary and performance problems plague Border Patrol

Alex Nowrasteh

November 24, 2017

A new report by federal watchdogs at the U.S. Government Accountability Office found that more U.S. Border Patrol agents are leaving than can be hired. This should concern President Donald Trump, who in January signed an executive order to hire 5,000 more agents. The hires will likely come in the form of a bill introduced in Congress by Rep. Michael McCaul, R-Texas, last month, the Border Security for America Act.

However, Border Patrol agents have significant disciplinary, performance and even corruption problems that should be resolved before hiring more agents.

Border Patrol is the second-largest federal law enforcement agency in the country, with nearly 20,000 agents. They have extraordinary powers to enter property close to the Mexican border without a warrant and run checkpoints within 100 miles of any land or sea border, yet without the oversight that is common in even small-city police departments.

James Tomscheck, the former head of an internal affairs department that oversaw Border Patrol, recently said that it is “conservative to estimate that 5 percent of the [Border Patrol] force” is corrupt. This corruption and misconduct ranges from the brutal to the commonplace. Border Patrol agent Esteban Manzanares assaulted, kidnapped and raped three illegal immigrants he apprehended while on the job and later committed suicide when the police surrounded his apartment. The youngest of his victims was still bound in his home at the time. Oscar Ortiz was convicted of conspiring to bring at least 100 illegal immigrants into the United States and, oddly enough, being an illegal immigrant himself with a false claim to U.S. citizenship.

These problems exist because Border Patrol isn’t monitored properly. After 9/11, Congress created a new agency called Customs and Border Protection (CBP) inside of the new Department of Homeland Security, which eventually came to house Border Patrol. Congress forgot to transfer Border Patrol’s old internal affairs department and didn’t create a new one. Only in August 2014 did Tomscheck’s internal affairs department finally get the authority to investigate criminal misconduct.

Confusing and contradictory data make it difficult to gauge the extent of corruption and misconduct problems at CBP. According to one source, 158 CBP employees (which includes Border Patrol agents) were convicted or charged with corruption from 2005 to 2016. Another

source claims there were 358 such convictions, but it doesn't distinguish between CBP employees and non-CBP persons who conspired with them.

Fortunately, the Office of Personnel Management does report data showing how many agents are terminated for disciplinary and performance reasons. To be clear, not all of those terminations represent corruption, but they do indicate performance issues — at minimum. A new Cato Institute study analyzed OPM data from 2006 through 2016 and found that Border Patrol agents had the highest termination rate of any large federal law enforcement agency. Border Patrol agents were 49 percent more likely than other CBP officers to be terminated for such reasons. They were 54 percent more likely to be terminated than guards at the Bureau of Prisons, six times as likely as FBI agents, 7.1 times as likely as Drug Enforcement Administration agents and 12.9 times as likely as Secret Service agents.

A good first step to fixing these personnel problems is implementing the Homeland Security Advisory Council's recommendations to speed investigations and streamlining internal affairs. One particularly important recommendation is bringing the number of internal affairs officers up to 729, which would give Border Patrol as least as much internal affairs oversight as the New York City Police Department. Arizona Republican Rep. Martha McSally's amendment to McCaul's border bill that guarantees 550 full-time internal affairs investigators for CBP is a good start.

Congress should go further and not authorize any additional net-hires at Border Patrol until adequate oversight brings the termination rate down to that of other large federal law enforcement agencies.

The GAO should audit internal affairs at Border Patrol and use its forensic audits and investigative services to conduct undercover investigations to insure compliance. Communities should also be able to form civilian review boards to oversee all complaints made against agents, because law enforcement functions better with local trust and cooperation.

President Trump said that hiring 5,000 additional Border Patrol agents will help “restore the rule of law in the United States” – but such a laudable goal is impossible if law enforcement officers are themselves riven by corruption, misconduct, poor performance and a lack of discipline. Restoring the rule of law starts by holding law enforcement officers accountable to the law before expanding their numbers.

***Nowrasteh** is an immigration policy analyst at the Cato Institute's Center for Global Liberty and Prosperity.*