

## **U.S. Customs and Border Protection Releases Findings of its Investigation of the Response to the Mass Shooting at Robb Elementary School in Uvalde, Texas**

*Findings reveal need for clarity in legal authorities and agency policy, training*

*Leadership commits to take immediate action in commitment to supporting workforce and community resilience*

WASHINGTON -- Today, U.S. Customs and Border Protection (CBP) published the findings of the Office of Professional Responsibility's (OPR) Critical Incident Review ("investigation") of the CBP response to the mass shooting at Robb Elementary School in Uvalde, Texas, on May 24, 2022.

"The active shooter incident at Robb Elementary School was a profound tragedy and deeply traumatic event. The loss of innocent lives and the enduring emotional scars borne by the survivors, families, community, and first responders are immeasurable," said CBP Senior Official Performing the Duties of the Commissioner Troy A. Miller. "As our report indicates, we are committed to, and working with our federal, state, and local partners to ensure that our brave officers and agents have effective training, policy guidance, equipment, and legal authority to respond to critical incidents."

On May 24, 2022, CBP personnel stationed in the area responded immediately to the incident, together with local law enforcement. Many CBP personnel live in Uvalde; and they work to protect their community, families, friends, and neighbors every single day. The investigation concluded none of the CBP personnel operating at the scene were found to have violated any rule, regulation, or law, and no CBP personnel were referred for disciplinary action. This investigation was conducted by dozens of OPR special agents, who reviewed thousands of hours of video and conducted over 200 interviews.

Separately, in accordance with agency policy, CBP's National Use of Force Review Board (NUFRB) held a special session in July to evaluate the compliance with agency policy and procedures of the USBP agents who utilized force to eliminate the threat at Robb Elementary School. The NUFRB Board, which consists of senior officials from CBP's law enforcement component offices, as well as senior representatives from Homeland Security Investigations (HSI), the Department of Homeland Security (DHS) Office of Civil Rights and Civil Liberties (CRCL), and the Department of Justice Civil Rights Division, determined that the agents acted within CBP policy for use of force and also did not identify any misconduct by CBP personnel.

The CBP OPR investigation identified several key issues:

- A lack of clear federal authority that appropriately addresses CBP personnel intervening or engaging in a state-level or local-level emergency response to a mass-casualty criminal or critical incident.
- A lack of command and control, with multiple law enforcement agencies responding to the scene but no established command and control framework.
- Gaps in current training that do not address scenarios in which breaching tactics were required in cases involving locked doors to engage an armed suspect.

Following an internal assessment in advance of the OPR report, as well as the recommendations being released today, CBP leadership has initiated a series of actions to identify remedies for the issues raised in the report. These include:

- Changing policies to address CBP interactions with local and state law enforcement agencies during critical incident responses;
- Reevaluating training standards to reflect lessons learned; and
- Improving operational methods to better address the command-and-control issues that occurred during the incident.

***Set forth below is a more detailed overview of the investigative process, the investigative results, and the actions U.S. Customs and Border Protection is taking in response to the investigative report.***

### **Investigative Process**

CBP's Office of Professional Responsibility is an independent office within CBP that reports directly to the Commissioner and is responsible for conducting criminal and administrative investigations, responding to and reviewing use of force and critical incidents, reviewing in-custody and other deaths, and producing analysis to identify and mitigate threats to CBP. The Commissioner is not involved in the fact-finding investigative process.

CBP OPR began its investigation of what occurred in Uvalde in the immediate aftermath of the incident. The investigation documented the facts and circumstances of the incident; assessed whether CBP personnel complied with all relevant policies, regulations, and laws; and identified factors that could mitigate future similar incidents. Consistent with CBP OPR's investigative

procedures, investigators first notified the Department of Homeland Security (DHS) Office of Inspector General (OIG) and subsequently coordinated with the U.S. Department of Justice (DOJ).

## **Investigative Results**

The CBP OPR investigation identified several organizational and scene management issues with respect to lack of command and control, insufficient policy guidance, and training of CBP officers and agents.

The OPR investigation into the Uvalde incident established the following findings:

### **1. Legal Authorities**

- CBP personnel had an inconsistent understanding of their legal authorities to respond alongside state and local law enforcement agencies to non-federal emergencies, including active shooter situations. Addressing the issue of vague and misunderstood law enforcement authorities could lead to more effective incident responses in the future.
- Under existing statutes, the legal authority for CBP personnel to either unilaterally initiate, or otherwise assist, a law enforcement response to a life-threatening local, non-federal, mass-casualty or active threat critical incident – such as an active shooter – could be no more than that of a private citizen.

### **2. Command and Control**

- CBP personnel received no instructions from state or local law enforcement leaders on scene.
- No arriving federal, state, or local law enforcement personnel established an identifiable incident command and control framework, which ultimately resulted in delays, inaction, and potential further loss of life.
- None of the first responders or CBP personnel who were in a position to take action against the assailant had access to an accurate school layout or understanding of where to locate the necessary keys for entry to critical areas of the school, which may have been mitigated by a functioning command and control system.
- CBP personnel established a medical triage area to provide lifesaving care for victims. However, the overall confusion at the scene, exacerbated by the lack of an established command and control system, contributed to a breakdown of adherence to established mass-casualty medical protocols.

### 3. Active Shooter and Incident Management Training

- The CBP OPR investigation determined that existing CBP training on active shooter response procedures was insufficient for the active shooter incident at Robb Elementary School. Training and curricula available at the time of the review focused on incidents on federal property, and did not include the proper application of National Incident Management System (NIMS) or Incident Command System (ICS) protocols. ICS is FEMA's nationally-recognized, standardized approach to incident management that is trained and used by states and localities as well as the federal government to respond to incidents small and large, planned and unplanned. ICS enables a coordinated response among different jurisdictions and agencies that covers facilities, equipment, and personnel.
- The training did not prepare CBP personnel for incidents in which they would be responding to a situation at a school, where an active shooter would be engaged behind a locked door, and where local authorities had not established a command and control framework. It also insufficiently covered using a ballistic shield, legal authorities, leadership responsibilities, and agency interoperability.

## **Recommendations**

In response to the investigation's findings, the CBP Office of Professional Responsibility is issuing the following recommendations:

### 1. Legal Authorities

- a. CBP must ensure its law enforcement personnel have a clear understanding of their legal authorities to engage with state, local, tribal, and territorial law enforcement agencies on non-federal issues.
- b. CBP must act to generate policies with respect to cases of non-federal mass-casualty, or active threat scenes, and pursue statutory changes to clearly define federal law enforcement authority to act in such cases.

### 2. Training

- a. All CBP personnel assigned to specialized units who are tasked with responding to dynamic incidents such as the active shooter at Robb Elementary School should be properly trained, and also familiarized with NIMS and ICS protocols. Existing training curricula should be revised and continuously adapted to emerging best practices and lessons learned.
- b. CBP should establish procedures for following medical triage best practices in mass-casualty incidents, and provide the necessary training to CBP personnel that may be tasked with responding to these types of critical incidents.

## **Actions Taken**

CBP has proactively taken significant internal actions to address issues pertaining to legal authorities and relevant policy well in advance of this report. These initiatives reflect CBP's steadfast commitment to responsibility, continuous evaluation and improvement, and effective law enforcement collaboration. CBP will take additional steps to address the report's findings and recommendations.

1. CBP has reviewed the varying Peace Officer status levels conveyed by the 50 states and U.S. territories to federal law enforcement personnel. CBP issued a comprehensive, agency-wide policy directive to CBP agents, officers, and managers to ensure its uniformed personnel fully understand their legal authorities and expected actions concerning mass-casualty or active threat critical incidents in state, local, tribal, and territorial jurisdictions. This information will be added to CBP use of force instructor training programs and will be disseminated to agents and officers as part of their regular use of force proficiency and training requirements.
2. CBP is actively pursuing legislative action to address its authority to respond to non-federal mass-casualty or active threat situations.
3. CBP has already begun delivering wider training on ICS directed towards personnel assigned to specialized units who are tasked with responding to dynamic incidents. CBP is developing the expansion of this training to include all CBP Supervisory personnel. CBP is assessing the requirements needed to expand the upward propagation of ICS fundamentals beginning at the basic academies, to be conjoined as employees progress into leadership roles.
4. CBP has updated its active shooter training, in concert with the Federal Law Enforcement Training Centers (FLETC), and expects to make additional refinements in the months ahead.
5. CBP is assessing the need for additional tools, like breaching equipment.
6. CBP is reviewing uniforms and insignia to more easily identify medically trained personnel.
7. CBP is reviewing medical training, credentialing, and equipment.

## **Conclusion**

As a professional law enforcement agency, CBP is committed to learning from the incident in Uvalde and improving at all levels. CBP is initiating Agency corrective actions to address the identified vulnerabilities identified in this report, including strengthening incident command practices, improving training, and updating policies governing CBP personnel interactions with state, local, tribal, and territorial law enforcement agencies. CBP is a major part of the Uvalde community and in addition to the agents assigned to the USBP Uvalde Station, many CBP families from across this region call the city home. The incident at Robb Elementary School was more than just another law enforcement operation for the CBP personnel who responded – many had a direct, personal connection to the community.

