



Prompt, thorough, and unbiased investigation of all allegations of misconduct relating to use of force to determine whether misconduct occurred and whether any remedial and/or disciplinary action is warranted; all such investigations should be made public, appropriately redacted to protect the privacy of alleged subjects and witness; and

Protocols for the collection, maintenance, and regular analysis of use of force data.

Revisions to the CBP Use of Force Policy Handbook also should make clear that:

Non-force techniques, including advisements, warnings, and verbal persuasion, should be used to effect compliance whenever feasible;

De-escalation techniques and deployment of additional officers and/or protective equipment by officers should be used at the earliest possible moment;

Force may only be used when objectively reasonable and proportional to the risk presented, never as a means of interrogation or punishment, and must end or de-escalate as soon as force is no longer necessary;

Lethal force may be used only when there is an imminent threat of serious injury or death to officer/agent or another person and no alternative is feasible; lethal force may not be used to prevent the escape of a

Use of force training should not be limited to training in use of lethal and less-lethal force. Training should be consistent with the revisions detailed above and, at a minimum, include:

Proper use of force decision-making, including the following situational responses as options even

APPENDIX

General Standards for Misconduct Investigations

Prompt, thorough, unbiased investigations:

In general, misconduct investigations should be completed within 30 to 90 days, with exceptions only for particularly complex investigations;

Misconduct investigations should be conducted by trained, impartial investigators outside the chain of command.

Interviews with complainant, officer, and all witnesses at a minimum should be audiotaped.

Witnesses and other relevant evidence should be identified, collected, and analyzed promptly using all reasonable investigative techniques. Depending on the nature and severity of the misconduct allegations, these techniques may include scene examination, review of dispatch tapes, police reports, supervisor Use of Force reports, review of photographic and video evidence, medical evidence, re-enactment, surveys and diagrams, ballistics and other forensic analyses, communications records, equipment examination, searches, chemical tests, line-ups, review of financial records, and use of covert evidence-collection techniques.

Officers' statements should not automatically be deemed more credible than complainant

only for the purpose of the investigation.

Follow-up interviews should be conducted in order to resolve discrepancies and clarify any material ambiguities

Patterns of officer conduct should be considered (e.g., past complaints of excessive force).

Resolution:

All issues identified during misconduct investigations should be assessed and resolved, not simply the misconduct alleged by the complainant.

Preponderance of evidence standard should be used to resolve complaints.

Complaints should be resolved with one of the following findings: not sustained (investigation failed to produce a preponderance of evidence to either prove or disprove the allegations); exonerated (the allegation occurred but the conduct was legal, justified, proper, and consistent with agency policy and training); unfounded (a preponderance of the evidence proves the allegation did not occur); or

committed a crime. The administrative/internal investigation should be handled by Internal Affairs or a critical-incident investigative team focused on policy, training, tactics, and risk-management issues.

Christi, TX (Nov. 3, 2011); Byron Sosa Orellana, 28, shot and killed near Sells, AZ (Dec. 6, 2011); Alexander Martin, 24, died in car explosion that may have been caused by Border Patrol tasers (March 15, 2012); Charles Robinson, 75, shot and killed, Jackman, ME (June 23, 2012); Juan Pablo Perez Santillán, 30, shot and killed on the banks of the Rio Grande, near Matamoros, Mexico (July 7, 2012); Guillermo Arévalo Pedroza, 36, shot and killed, Nuevo Laredo, Mexico (Sept. 3, 2012); Valerie Tachiquin-Alvarado, 32, shot and killed, Chula Vista, CA (Sept. 28, 2012); José Antonio Elena Rodriguez, shot and killed, Nogales, Sonora (Oct. 11, 2012); Margarito Lopez Morelos, 19, shot and killed in the Baboquivari Mountains, AZ (Dec. 3, 2012); Matthew Simmons, 27, shot and killed just south of Hebronville, TX (March 21, 2013); Ernesto Gutierrez Cortez, 38, shot and killed in Otay Mesa, CA (Oct. 19, 2013); Keith J. Martin, 35, shot and killed near Hondo, TX (Jan. 2, 2014); Gabriel Sanchez Velazquez, late 20s, shot and killed near Apache and Portal, AZ (Jan. 16, 2014); Name not released, shot and killed in Otay Mountains, southeast of San Diego (Feb. 18, 2014).

² ACLU of New Mexico Regional Center for Border Rights; analysis of information gathered from newspaper articles on deaths noted in footnote above (Dec. 2012).

³ Complaint and request for investigation of abuse of power, excessive force, coercion, and unlawful confiscation of property by Customs and Border Protection at ports of entry along the U.S.-Mexico border, American Civil Liberties Union, May 9, 2012, available at https://www.aclu.org/files/assets/aclu_2012_cbp_abuse_complaint_2.pdf

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