



April 2015

# SOUTHWEST BORDER

## Issues Related to Private Property Damage

Accessible Version

# GAO Highlights

Highlights of [GAO-15-399](#), a report to congressional requesters

## Why GAO Did This Study

Persons illegally crossing the United States' southwest border and corresponding law enforcement activity may, at times, result in private property damage. Such damage that persists over extended periods of time can result in expensive repairs for landowners. GAO was asked to identify the types of private property damage experienced along the southwest border, as well as the extent to which the federal government addresses such damage.

This report (1) describes the types of private property damage landowners along the southwest border are experiencing and the steps taken by CBP to collect information on such damage, and (2) examines the extent to which CBP addresses private property damage suspected to be caused by illegal border crossers and enforcement activities. GAO analyzed documentation, including administrative tort claims and memos implementing the Border Community Liaison Program; conducted a visit to south Texas; and interviewed Border Patrol officials, as well as landowners living along the southwest border, regarding private property damage that occurs and how, if at all, it is addressed.

## What GAO Recommends

GAO recommends that Border Patrol ensure that agents serving in the BCL role receive training and track the receipt of such training. DHS concurred with this recommendation.

View [GAO-15-399](#). For more information, contact Rebecca Gambler at (202) 512-8777 or [gambler@gao.gov](mailto:gambler@gao.gov).

April 2015

## SOUTHWEST BORDER

### Issues Related to Private Property Damage

## What GAO Found

Landowners GAO spoke with reported that damage occurs to private properties along the southwest border on a regular basis. The most prevalent types of damage reported include broken fences and gates (see picture below), which can result in destroyed crops and injured livestock. According to 33 landowners GAO spoke with, the majority of damage is caused by illegal border crossers; however, 21 of these landowners said they had also experienced damage that may have resulted from Border Patrol as well as state law enforcement activities or were aware of such occurrences in their community. Landowners may file a Standard Form 95 (SF 95) administrative tort claim to seek compensation for private property damage allegedly caused by the negligent or wrongful conduct of an employee of any U.S. Customs and Border Protection (CBP) component, including Border Patrol while acting within the scope of their office or employment, but few landowners have filed such claims. Of the 821 SF 95s filed during fiscal year 2013, 16 were related to private property damage along the southwest border, with a total of \$11,622 paid to 7 of the 16 claimants.

#### Mangled Gate in South Texas Potentially Caused by Illegal Border Crossers



Source: GAO. | GAO-15-399

According to Border Patrol officials, agents generally adhere to ranch etiquette, which entails treating private property and its owners respectfully while conducting enforcement efforts. To further promote this concept, CBP established a Border Community Liaison (BCL) Program within Border Patrol in 2011, in which designated agents serve as the conduit between Border Patrol and the community. To enhance relationships with the community, liaisons work with landowners to address, when appropriate, damage allegedly caused by illegal border crossers or their pursuit by Border Patrol. The BCL Program has helped foster community relationships. However, new BCL agents have not received training specific to their role, such as those agents who assumed the BCL role in 2014. Moreover, a mechanism does not exist to track which or how many BCL agents have received training specific to their role. Given that CBP has stated that there is frequent turnover of agents in this position, providing BCL agents with training specific to their role and tracking the receipt of such training could help better ensure that BCL agents have the necessary skills to meet the goals of the BCL Program, including facilitating information sharing between Border Patrol and the community on border security issues.

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# Contents

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Letter	1
Background	5
Landowners Experience Property Damage Potentially as a Result of Illegal Border Crossers and Corresponding Enforcement Activity; the Extent of Such Damage Is Unknown	13
CBP Has Taken Action to Address Property Damage along the Southwest Border, but Border Community Liaison Agents Lack Training Specific to Their Responsibilities	17
Conclusions	25
Recommendation for Executive Action	26
Agency Comments and Our Evaluation	26

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Appendix I: Objectives, Scope, and Methodology	28
Appendix II: Comments from the Department of Homeland Security	32
Appendix III: GAO Contact and Staff Acknowledgments	34
GAO Contact	34
Staff Acknowledgments	34

---

Figures	
Figure 1: Map of Southwest Border Lands with Border Patrol Sectors and Stations	6
Figure 2: Damaged Fence Suspected to Have Been Caused by Illegal Border Crossers along Highway 281 in Brooks County, Texas	7
Figure 3: Mangled Gate Suspected to Have Been Caused by Illegal Border Crossers along Highway 281 in Brooks County, Texas	8
Figure 4: Tree Covered in Clothing Suspected to Have Been Left by Illegal Border Crossers along the Rio Grande in Laredo, Texas	9
Figure 5: U.S. Customs and Border Protection Administrative Tort Claims Process	12
Figure 6: Ladder Reportedly Propped on Fence by Private Landowner to Discourage Damage in Brooks County, Texas	14
Figure 7: Red Tape on Landowner's Fence Reminding Border Patrol Agents to Close and Lock the Gate	18

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## Abbreviations

BCL Program	Border Community Liaison Program
CBP	U.S. Customs and Border Protection
DHS	Department of Homeland Security
FTCA	Federal Tort Claims Act
NFC	National Finance Center
OCC	Office of Chief Counsel
RGV	Rio Grande Valley
SCA	Small Claims Act
SF 95	Standard Form 95

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April 30, 2015

The Honorable Michael T. McCaul  
Chairman  
Committee on Homeland Security  
House of Representatives

The Honorable Henry Cuellar  
House of Representatives

Persons illegally crossing or attempting to cross the United States' southwest border with Mexico and corresponding law enforcement activity by federal agents may, at times, result in private property damage.<sup>1</sup> Landowners in this region have reported various types of private property damage including broken gates, destroyed crops, and injured or lost livestock. According to landowners we spoke with, repairing these types of damage has proven to be both expensive and time-consuming, placing a heavy burden on landowners in this area. In particular, this population of landowners has expressed frustration over damage that persists over extended periods of time, resulting in expensive repairs.

Securing U.S. borders is the responsibility of the Department of Homeland Security (DHS), in collaboration with other federal, state, local, and tribal entities. U.S. Customs and Border Protection (CBP), a component within DHS, is the lead agency for border security, and one of its top priorities is preventing, detecting, and apprehending illegal border crossers. The U.S. Border Patrol is the CBP component charged with ensuring security along border areas between ports of entry, which are the officially designated ports or places at which a person may apply for admission into the United States.<sup>2</sup>

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<sup>1</sup>For the purpose of this report, the term "private property damage" is defined as property damage that occurs on or to land that is privately owned or managed by individuals or commercial entities, which is suspected to have been caused by illegal border crossers and Border Patrol's enforcement efforts. For example, rammed gates, bent or broken fences, damaged piping systems, killing of livestock, and damaged crops occurring on such properties are all considered private property damage.

<sup>2</sup>See 8 C.F.R. §§ 100.4, 286.1(g).

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To better understand the impact of illegal activity on landowners along the southwest border, you asked us to review the types of damage experienced, as well as the extent to which the federal government provides avenues for compensation or otherwise addresses such damage. This report addresses the following two questions:

- What types of private property damage are landowners along the southwest border experiencing potentially as a result of illegal border crossers and enforcement activities, and what steps, if any, has CBP or other entities taken to collect information on such damage?
- To what extent does CBP take action to address private property damage suspected to have been caused by illegal border crossers and related enforcement activities?

To describe the types of private property damage landowners along the southwest border are experiencing potentially as a result of illegal border crossers and enforcement activities, we interviewed officials from Border Patrol headquarters, <sup>3</sup> as well as officials from five associations representing landowners along the southwest border, the Texas Department of Public Safety, and relevant local government officials. These officials were selected based on their jurisdiction and areas of responsibility related to our review. Information we obtained from the associations, the Texas Department of Public Safety, and local government officials cannot be generalized, but provided us with perspectives on the types and frequency of private property damage occurring along the southwest border and the extent to which information is collected and maintained on such damage.

In September 2014, we conducted a visit to south Texas—specifically the Laredo and Rio Grande Valley (RGV) Border Patrol sectors—where we interviewed 33 selected landowners living along the southwest border to obtain information on the types of property damage they have

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<sup>3</sup>Border Patrol is organized into nine sectors along the southwest border. Within each sector, there are stations with responsibility for defined geographic areas. During our visit to south Texas, we met with officials in the Laredo and Rio Grande Valley sectors. We also met with officials from Del Rio, Big Bend, El Paso, Tucson, San Diego, El Centro, and Yuma sectors via teleconference.

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experienced.<sup>4</sup> The landowners interviewed were identified by the South Texans' Property Rights Association and Border Patrol sector officials as having experienced private property damage.<sup>5</sup> The information obtained during these interviews is not generalizable to all landowners living along the southwest border. We also toured ranches, farms, and other private property along the southwest border to view how such property could be damaged and to observe actual damage. We reviewed relevant documentation outlining CBP's roles and responsibilities in accordance with the applicable statutes, including the Federal Tort Claims Act (FTCA), which permits individuals injured by the wrongful or negligent acts or omissions of federal employees to seek and receive compensation from the federal government through an administrative process and, ultimately, through the federal courts.<sup>6</sup> We interviewed officials from other CBP offices, including the Office of Administration and the Office of Chief Counsel (OCC)—the offices that receive, review, and process the administrative tort claims—to obtain a full description of the tort claims process from commencement to, where applicable, payment. During our interviews with the 33 selected landowners, we also gathered information on their experiences filing administrative tort claims against CBP. We also reviewed OCC documentation on all administrative tort

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<sup>4</sup>While we collected information on private property damage along the southwest border—Texas, Arizona, New Mexico, and California—we primarily focused our efforts on south Texas, where there is the largest amount of privately owned land, and where CBP data indicate the highest level of apprehensions of illegal border crossers.

<sup>5</sup>According to its mission statement, the South Texans' Property Rights Association educates the public on the rights of property owners to enjoy the use of their lands as guaranteed by federal, state, and local laws. The association supports and actively participates in the resolution of various issues pertaining to eminent domain, water rights, indemnity, government regulation, and trespassing.

<sup>6</sup>See 28 U.S.C. §§ 1346(b), 2671-2680. The FTCA provides a limited waiver of the federal government's sovereign immunity—that is, the common law doctrine that a government cannot be sued in its own courts without its consent. The FTCA, with few exceptions, provides the exclusive means by which individuals can seek compensation when injured by federal employees acting within the scope of their work for the federal government, under circumstances where the United States, if a private person, would be liable under the law of the place where the act or omission occurred. Many states including Arizona, California, New Mexico, and Texas, also have tort claims provisions that provide for liability of a state public entity under statutorily defined circumstances. See, e.g., Ariz. Rev. Stat. Ann. §§ 12-820 to 12-826; Cal. Gov't Code §§ 810-998.3; N.M. Stat. Ann. §§ 41-4-1 to 41-4-27; Tex. Civ. Prac. & Rem. Code Ann. §§ 101.001-101.109. States such as California and Texas also have laws that specifically address the issue of compensation for those whose property is damaged as a result of state law enforcement involvement. See Cal. Gov't Code §§ 29631, 29632; Tex. Transp. Code § 683.015.

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claims for \$10,000 or less to identify the number of claims filed, approved, and denied related to private property damage along the southwest border during fiscal year 2013.<sup>7</sup> We selected fiscal year 2013 because that was the most recent full fiscal year for which claims data were available. We also obtained a listing of all claims citing incidents related to private property damage along the southwest border over \$10,000 from CBP's OCC field offices from fiscal years 2009 through 2014. We selected fiscal years 2009 through 2014 to provide a 6-year range for claims given our initial conversations with OCC about the small number of claims for more than \$10,000 received. We assessed the reliability of this information by consulting with CBP officials and conducting an independent analysis of the data, and determined that the administrative tort claims documents were reliable for the purpose of reporting the number of administrative tort claims for \$10,000 or less filed, paid, and denied in fiscal year 2013, as well as reporting the number of claims over \$10,000 from fiscal years 2009 through 2014.

To determine the extent to which CBP takes action to address private property damage along the southwest border that is suspected to have been caused by illegal border crossers and corresponding enforcement activities related to the interdiction or apprehension of such individuals, we analyzed documentation, such as training videos and materials, and interviewed headquarters and field Border Patrol officials on Border Patrol's efforts in this regard. We also interviewed selected landowners and Border Patrol officials to obtain their perspectives on Border Patrol's efforts to address private property damage and what, if any, improvements could be made to these efforts. Further, we analyzed documentation, such as CBP and Border Patrol implementation plans, and interviewed CBP and Border Patrol officials about the Border Community Liaison (BCL) Program to gather information on the efforts under way to enhance relationships with local communities and to ascertain how Border Patrol agents are trained to interact with the public. We compared Border Patrol's efforts to train its BCL agents against standards in *Standards for Internal Control in the Federal Government* as

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<sup>7</sup>Documentation on claims filed against CBP during fiscal year 2013 included follow-up letters and appeals that were given separate claim numbers by CBP. In calculating the total number of claims filed against CBP in fiscal year 2013, we did not count these as separate claims.



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well as GAO's guide for assessing federal training programs.<sup>8</sup> Additional details on our scope and methodology are contained in appendix I.

We conducted this performance audit from June 2014 to April 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

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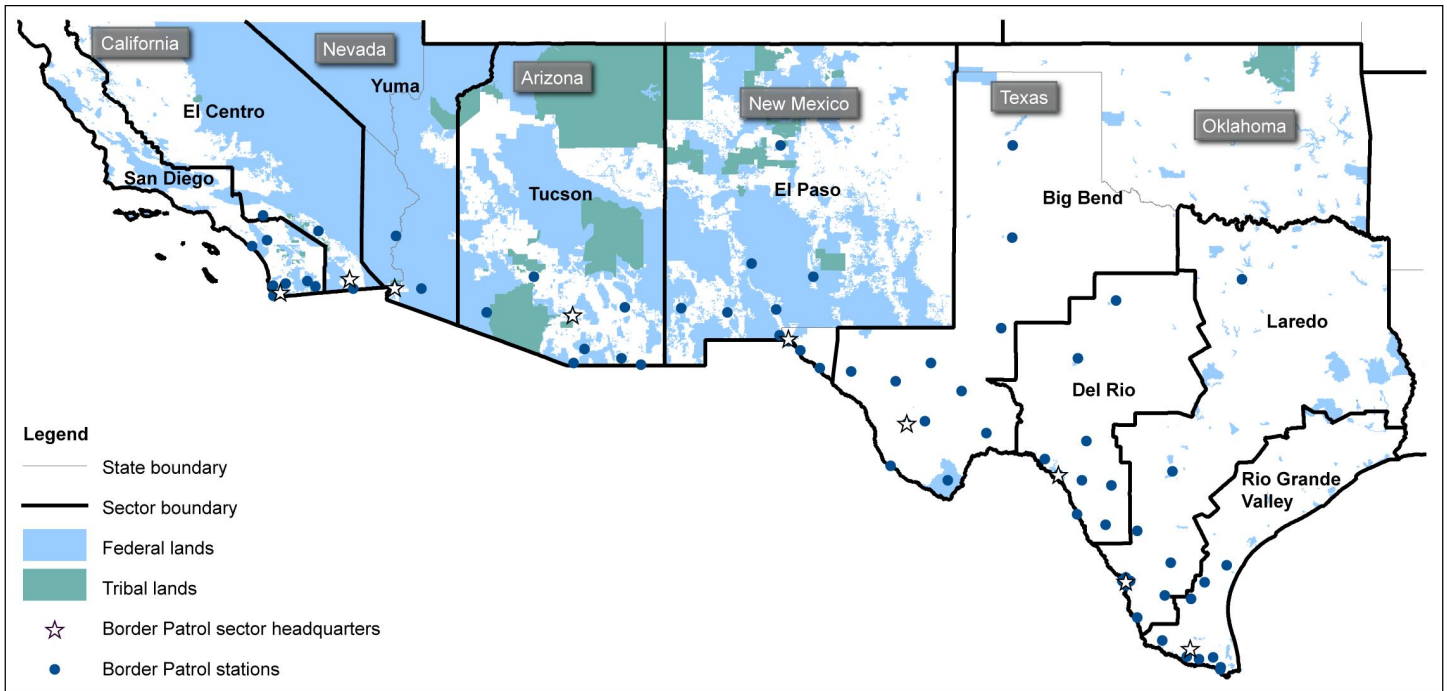
### Southwest Border Terrain and Land Ownership

The United States' border with Mexico spans almost 2,000 miles, with Arizona and Texas sharing 387 and 697 miles of that border respectively. The U.S. border with Mexico comprises different types of terrain, a fact that presents a significant challenge to border security efforts. For example, in Arizona, the border is characterized by desert and rugged mountains; in Texas, the border is divided by the Rio Grande. Southern California comprises coastal beaches, inland mountains, rugged canyons, and high desert, whereas in New Mexico the border is mountainous. Additionally, the area along the southwest border is composed of federal, state, tribal, and private lands; federal and tribal lands make up 632 miles, or approximately 33 percent, of the nearly 2,000 total border miles. Private and state-owned lands constitute the remaining 67 percent of the border, most of which is located in Texas. See figure 1 for a map of the southwest border.

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<sup>8</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD00-21.3.1](#) (Washington, D.C.: November 1999), and *Human Capital: A Guide for Assessing Strategic Training and Development Efforts in the Federal Government*, [GAO-04-546G](#) (Washington, D.C.: March 2004). The guide was created to, among other things, provide a framework for evaluating training. It was developed through consultations with government officials and private sector expert examinations of laws and regulations and literature reviews.

**Figure 1: Map of Southwest Border Lands with Border Patrol Sectors and Stations**



Source: CBP (data); MapInfo (map). | GAO-15-399

In Texas, farms and ranches, sometimes passed down from generation to generation, are commonplace. According to the Texas Department of Agriculture, Texas has 248,800 farms and ranches covering 130.2 million acres. Texas is also the nation's leading cattle and cotton producer, with cattle sales earning \$10.5 billion in 2012, and is the leading exporter of beef with \$855 million in exports. The top crops grown in south Texas include cotton, sugarcane, grain sorghum, and citrus.

Damage to privately owned property in south Texas could negatively affect business and the safety of the farms and ranches on or near the border. The damage can include bent and cut fences; rammed and battered gates; stolen and destroyed vehicles; broken irrigation pipes; and discarded garbage, including empty water jugs, clothing, and backpacks. See figures 2, 3, and 4 for examples of private property damage experienced by landowners in south Texas.

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**Figure 2: Damaged Fence Suspected to Have Been Caused by Illegal Border Crossers along Highway 281 in Brooks County, Texas**



Source: GAO. | GAO-15-399

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**Figure 3: Mangled Gate Suspected to Have Been Caused by Illegal Border Crossers along Highway 281 in Brooks County, Texas**



Source: GAO. | GAO-15-399

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**Figure 4: Tree Covered in Clothing Suspected to Have Been Left by Illegal Border Crossers along the Rio Grande in Laredo, Texas**



Source: GAO. | GAO-15-399

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## Border Patrol Efforts

Threats along the southwest border include illegal border crossers and the smuggling of drugs, firearms, and currency by criminal networks. Along the southwest border, Border Patrol has 9 sectors and 73 stations, and Border Patrol reported that about 79 percent of apprehensions and almost 90 percent of drug seizures in this region occurred in the Laredo, Tucson, and RGV sectors during fiscal year 2013.<sup>9</sup> Additionally, according to Border Patrol data, agents apprehended a total of 821,308 illegal border crossers in these 3 sectors from fiscal years 2011 to 2013, with yearly increases in Laredo and RGV.

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<sup>9</sup>Seized drugs reported by Border Patrol include marijuana and cocaine, calculated in pounds.

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To enhance partnerships and interactions with the community along the northern and southern borders, CBP implemented the Border Community Liaison (BCL) Program within Border Patrol in 2011 and expanded this program to all CBP components in 2012. Within Border Patrol, BCL agents conduct outreach and educate the community on the role and responsibilities of CBP and its offices.<sup>10</sup> BCL agents are located within each of Border Patrol's 20 sectors across the United States and many of its stations. In addition, as part of the BCL Program, the ranch liaison position has been created in some sectors and stations along the southwest border to specifically work with the ranching community. Among other things, BCL agents and ranch liaisons serve as a direct line for landowners to report property damage that allegedly resulted from illegal border crossers or law enforcement activity to Border Patrol.

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## CBP Administrative Tort Claims Process

CBP has a tort claims process, pursuant to which individuals may make a claim for compensation by submitting a completed Standard Form 95 (SF 95), which sets forth allegations of property damage or loss, personal injury, or death caused by the negligent acts or omissions of an employee of CBP.<sup>11</sup> As part of this process, CBP's OCC is to review the submitted claim to determine whether an individual is eligible for compensation under the FTCA, and where the claim cannot be settled under the FTCA, then under 19 U.S.C. § 1630 or the Small Claims Act (SCA).<sup>12</sup> Upon its review of the claim and applicable legal standards, OCC is to make a recommendation to the appropriate deciding official as to (1) whether to grant or deny the claim, and (2) the amount, if any, to be offered in

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<sup>10</sup>For the purposes of this report, we are using the term "BCL agent" to refer to the liaisons located in each of Border Patrol's sectors, as well as the agents located in Border Patrol stations serving as the liaisons between Border Patrol and the community.

<sup>11</sup>An individual may submit a SF 95 or a written claim meeting the requirements of the FTCA and 28 C.F.R. pt. 14, along with supporting documentation within the time prescribed by 28 U.S.C. § 2401(b).

<sup>12</sup>See 28 U.S.C. §§ 1346(b), 2671-2680 (FTCA); 19 U.S.C. § 1630; and 31 U.S.C. § 3723 (SCA). Under 19 U.S.C. § 1630, claims may be settled for not more than \$50,000 in any one case for damage to, or loss of, privately owned property caused by an investigative or law enforcement officer (as defined in 28 U.S.C. § 2680(h)) who is acting within the scope of his or her employment, except that, among other limitations, a claim concerning commercial property may not be paid. Under the SCA, a claim may be settled for not more than \$1,000 for damage to, or loss of, privately owned property, subject to certain other limitations.

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settlement of a claim that is either fully or partially granted.<sup>13</sup> Generally, under the FTCA, a claimant may be eligible for compensation where such claimant suffers injury or loss of property or personal injury or death caused by a CBP employee's negligent or wrongful act or omission committed within the scope of his or her official duties, subject to certain exceptions.<sup>14</sup> The claimant must submit a claim meeting the applicable legal requirements, and also provide sufficient evidence and documentation in support of the claim. Granted claims can be paid from CBP's Salaries and Expenses account or the Department of the Treasury's Judgment Fund, depending on the dollar amount and statutory basis pursuant to which the claim was granted.<sup>15</sup> See figure 5 for a flowchart of the steps CBP is to take during the administrative tort claims process.

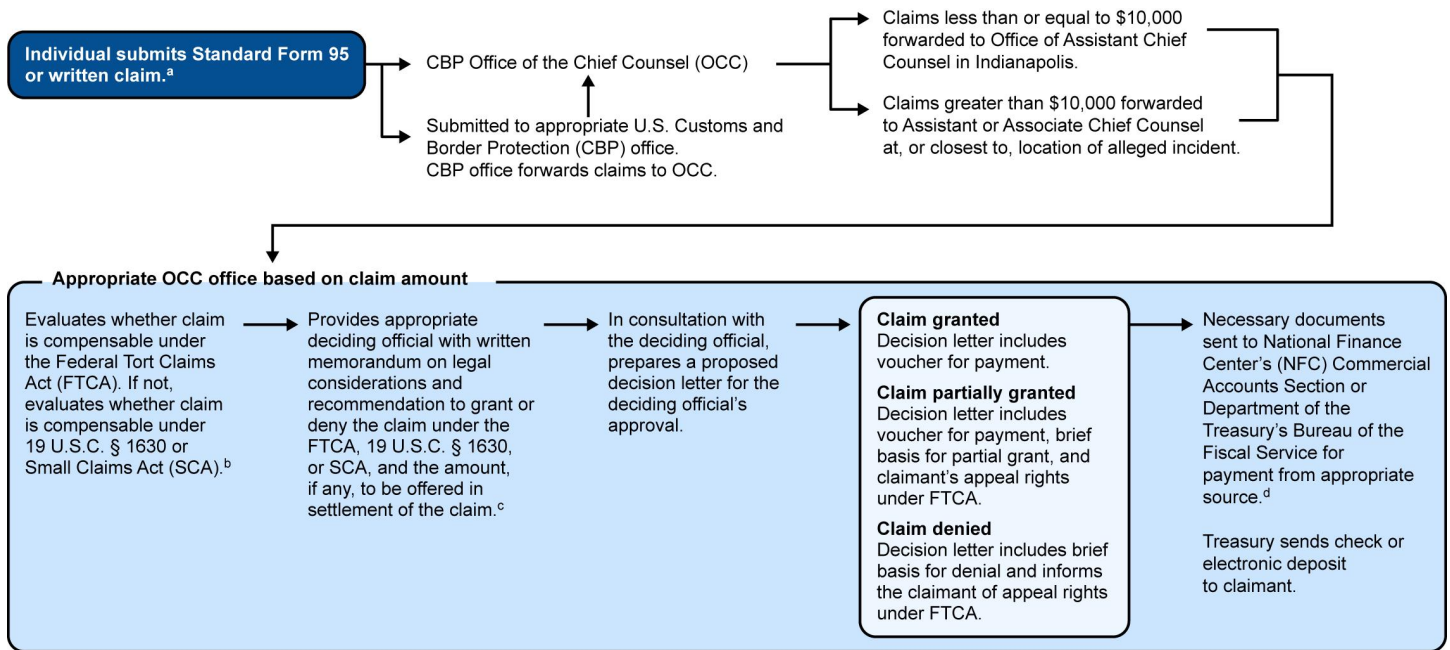
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<sup>13</sup>Pursuant to CBP Claims Delegation Order No. 05-001, which delegated to the Director of the National Finance Center (NFC) decisional authority as to certain claims arising under the FTCA, SCA, or 19 U.S.C. § 1630, and subsequent redelegation by the NFC Director, the NFC's Chief of Program Management has the authority to consider, ascertain, adjust, determine, deny, or settle and pay a claim arising under the FTCA, SCA, or 19 U.S.C. § 1630 for not more than \$10,000 (\$1,000 for SCA claims). To the extent claims arising under these statutes exceed the authority of the NFC's Chief of Program Management, the aforementioned authority is delegated to the Deputy Commissioner, Assistant Commissioners, Chief Counsel, and Chief of the Office of Border Patrol for payments not more than \$50,000 (\$25,000 for noncommercial claims under 19 U.S.C. § 1630). Under the FTCA, disposition of any claim shall not be competent evidence of liability or amount of damages. See 28 U.S.C. § 2675(c). In addition, the acceptance by the claimant of any award, compromise, or settlement offer is final and conclusive on the claimant, and constitutes a complete release of any claim against the United States and against the employee of the government whose act or omission gave rise to the claim. See 28 U.S.C. § 2672. Under 19 U.S.C. § 1630, and the SCA, a claim payable under either section may be paid only if the claimant accepts the amount of settlement in complete satisfaction of the claim. See 19 U.S.C. § 1630(c); 31 U.S.C. § 3723(c).

<sup>14</sup>Under 28 U.S.C. § 2680, there are various exceptions that render the FTCA inapplicable to certain claims. For example, the FTCA does not apply where a claim is based upon an act or omission of an employee of the government, exercising due care, in the execution of a statute or regulation, or the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the government, whether or not the discretion involved be abused. See 28 U.S.C. § 2680(a).

<sup>15</sup>Approved FTCA claims up to \$2,500 and all claims granted under 19 U.S.C. § 1630 are paid out of CBP's Salaries and Expenses account. Approved FTCA claims for more than \$2,500 and all claims granted under the SCA are paid out of the Department of the Treasury's Judgment Fund. See 28 U.S.C. § 2672; 31 U.S.C. §§ 1304, 3723(c).

**Figure 5: U.S. Customs and Border Protection Administrative Tort Claims Process**



Source: GAO analysis of OCC documentation. | GAO-15-399

<sup>a</sup>Claims must meet the requirements of the FTCA (28 U.S.C. §§ 1346(b), 2671-2680); 28 U.S.C. § 2401(b); and 28 C.F.R. pt. 14.

<sup>b</sup>31 U.S.C. § 3723.

<sup>c</sup>Decisional authority as to certain claims arising under the FTCA, SCA, or 19 U.S.C. § 1630 has been delegated to the Director of the NFC and the NFC's Chief of Program Management, and authority over claims arising under these statutes that exceeds such decisional authority is delegated to the Deputy Commissioner, Assistant Commissioners, Chief Counsel, and Chief of the Office of Border Patrol.

<sup>d</sup>FTCA approved claims up to \$2,500 and all claims granted under 19 U.S.C. § 1630 are paid out of CBP's Salaries and Expenses account. Approved FTCA claims more than \$2,500 and all claims granted under the SCA are paid out of the Department of the Treasury's Judgment Fund. See 28 U.S.C. § 2672; 31 U.S.C. §§ 1304, 3723(c).



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## Landowners Experience Property Damage Potentially as a Result of Illegal Border Crossers and Corresponding Enforcement Activity; the Extent of Such Damage Is Unknown

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### Landowners Reported Experiencing Private Property Damage on a Regular Basis in Certain Southwest Border Sectors

Landowners we spoke with reported that damage occurs to private properties in south Texas on a regular basis, the majority of which affects fencing as a result of individuals trying to illegally cross the border. Damage reported by landowners includes broken gates, destroyed crops, and injured or lost livestock. For example, suspected illegal border crossers cutting directly through private fields have resulted in bent or broken crops, ultimately diminishing the crop yield. Additionally, landowners reported livestock falling ill as a result of eating trash left behind by illegal border crossers, as well as cattle being severely injured by speeding vehicles. Property damage is particularly problematic when it occurs in the middle of the night and landowners are not alerted until the morning, or depending on the type and size of the ranch, until days or weeks later, according to the landowners we interviewed. This type of damage can lead to the escape of livestock, which could result in injury not only to the animal, but also to area drivers.

Although the 33 landowners we spoke to stated that most damage they experienced is caused by illegal border crossers, 21 of these landowners have also experienced damage that may have resulted from Border Patrol as well as state law enforcement activities or were aware of such events occurring in their community. Examples of such damage reported by landowners include agents accidentally setting fire to grass with catalytic converters, speeding on and damaging unpaved roads, and crashing into fences and pipelines. A farm manager told us that despite putting up a sign prohibiting Border Patrol's use of dragging tires, a process used to clear footprints and other signs left by illegal border crossers, dragging was still occurring on this property, resulting in damaged crops. This farm manager explained that dust caused by

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dragging can be particularly harmful to grapefruit trees, which are plentiful in south Texas. Some landowners in south Texas installed ladders along their fences to discourage illegal border crossers from damaging the fences in an attempt to circumvent Border Patrol. However, landowners told us that illegal border crossers are not using the provided ladders, and as a result, they are continuing to experience fence damage. See figure 6 for an example of a ladder along a fence we observed during our visit to south Texas.

**Figure 6: Ladder Reportedly Propped on Fence by Private Landowner to Discourage Damage in Brooks County, Texas**



Source: GAO. | GAO-15-399

Some landowners keep records of the property damage they experience potentially as a result of illegal border crossers and corresponding enforcement activities. For example, local landowners and law enforcement collected information on an ad hoc basis on private property damage from 2011 to 2014 in Kleburg, Jim Wells, Brooks, Duval, and Kenedy Counties in Texas, citing over \$120,000 of fence and gate damage during that time period. Some landowners reported that fence damage could cost up to about \$30,000 per mile to replace depending on

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the type and height of fence. A ranch could have multiple layers of fence around the property of varying types, a fact that may increase potential repair costs. Damage to fencing can also lead to additional costs to the landowner in the form of escaped livestock. One ranch manager stated that a lost or killed cow can cost between \$1,000 and \$1,500. In addition, ranch managers explained that cattle are separated for various reasons, including breeding and disease quarantine, and a cut fence could allow the cattle to merge, resulting in the potential loss of revenue. For example, another ranch manager stated that if 20 cows were not able to be bred, this could result in lost revenue of approximately \$26,000. This ranch manager also stated that it cost about \$500 per incident to repair fence damage, and in 2013, the ranch spent about \$31,000 on such repairs. Another ranch manager stated that the world record class White-tail buck on the property cost up to \$30,000 each and even one displaced or lost buck resulting from a cut or bent fence would be a major financial loss.

Border Patrol sector officials have cited damaged fencing as the most common type of damage as well, but the extent to which private property damage occurs is unknown. According to CBP officials, collecting such information would be resource-intensive and would not change the administrative tort claims process or agents' responsibilities related to securing the border. BCL agents in stations within five of the nine southwest border sectors are collecting some information on private property damage and corresponding repairs. For example, one sector independently keeps a log of each SF 95 filed and whether the claim was granted or denied, wherever possible. BCL agents in another sector log how many times they have spoken to ranchers, any complaints or comments the ranchers might have, and if the ranchers have made any types of repairs, but there is no specific log for reported private property damage. One station keeps a log of damage suspected to be caused by persons illegally crossing the border and Border Patrol agents, and the cost of temporary repairs made on the property to address the reported damage. Border Patrol sector officials expressed mixed opinions on the benefits of collecting data on property damage. Officials from one sector told us that collecting data related to property damage would assist them in managing their resources; however, officials from the other eight sectors, as well as CBP headquarters officials we met with did not cite a need for collecting such information.

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## Few Landowners Sought Compensation from CBP in Fiscal Year 2013 for Private Property Damage through the Administrative Tort Claims Process

Landowners may file a SF 95 administrative tort claim seeking compensation for private property damage allegedly caused by the negligent or wrongful conduct of an employee of Border Patrol or any CBP component, where such employee acted within the scope of his or her official duties. We found that few landowners have filed such claims and of the 33 landowners we spoke with during our visit to south Texas, 30 landowners were unaware that they could seek compensation for property damage from CBP, as discussed later in this report. The 3 landowners who did know about the SF 95 stated that they were uninterested in filing such a claim either because the process seemed overly complicated or because most of the damage they experienced was not a result of Border Patrol's actions, but rather a result of individuals attempting to illegally cross the border. Landowners told us that they repair and pay for property damage themselves and do not file insurance claims to pay for the repairs or seek redress at the state or local level, where available.<sup>16</sup>

CBP maintains some information on claims filed against the agency. Specifically, claims documentation including, but not limited to, the claim; communications between OCC and the deciding official; the decision letter; and voucher for payment, if applicable, is retained at the appropriate OCC location. OCC has a case file tracking system that is used to track the status of its cases, including administrative tort claims filed against the agency. In our review of all 821 SF 95s from fiscal year 2013, 16 were related to private property damage along the southwest border, as we have defined this term for the purposes of this report.<sup>17</sup> Ten of these claims involved allegations of incidents that occurred in south Texas. Of the 16 related claims submitted in fiscal year 2013, a total of

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<sup>16</sup>As an example of a potential avenue for redress at the state level, in Texas, a law enforcement agency is entitled to reimbursement from the proceeds of the sale of certain abandoned vehicles, and if the remaining proceeds are unclaimed by the owner or lien holder, they are deposited in an account from which a municipality or county may transfer funds in excess of \$1,000 to the municipality's or county's general revenue account for use by a law enforcement agency or attorney representing the state to compensate property owners whose property was damaged as a result of a pursuit involving a law enforcement agency. See Tex. Transp. Code § 683.015. According to landowners, they are not seeking compensation potentially available to them under this law because they are unlikely to receive much money.

<sup>17</sup>The other 805 fiscal year 2013 claims were related to, among other things, collisions with CBP vehicles on public roads, damage to vehicles during inspections at ports of entry, and lost property after an arrest.

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\$27,383 in claims for \$10,000 or less was submitted to CBP for property damage, averaging \$1,700 per incident, and a total of \$11,622 was paid out to claimants. On average, claims cases were closed in approximately 3.6 months from opening. Of the 16 related claims, 3 claims were granted in full, 4 were partially granted, and 9 were denied. Examples from the claims that were submitted include CBP vehicles crashing through properties and damaging fences, gates, irrigation pipes, and crops. One claim alleged that a CBP agent caused fence damage, allowing two bulls to wander onto the road and be hit by oncoming traffic. Another claim alleged that a CBP vehicle collided with the vehicle it was pursuing and started a fire in a sugarcane field. Reasons for claims filed in fiscal year 2013 being denied include insufficient evidence of negligence or wrongful conduct on the part of the CBP agent, or damage known to have been caused by a third party. For example, 1 claim stated that a CBP agent struck a cow and crippled it, but was denied on the basis of insufficient evidence because the cow could not be located. Another claim, in which a CBP vehicle in a pursuit tore through a barbed wire gate, was denied because the vehicle being pursued struck the gate first. CBP provided us with a total listing of 6 claims over \$10,000 involving incidents along the southwest border from fiscal years 2009 to 2014. Of the 6 claims, 3 were settled, 3 were denied, and none were granted in full. The claims over \$10,000 sought compensation based on allegations of roads damaged by government vehicles, killed livestock, damaged fencing, and structural damage to buildings.

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## CBP Has Taken Action to Address Property Damage along the Southwest Border, but Border Community Liaison Agents Lack Training Specific to Their Responsibilities

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## Ranch Etiquette and the Border Community Liaison Program Have Helped Foster Community Relationships

According to Border Patrol officials, Border Patrol agents generally adhere to what is referred to as ranch etiquette when working with the community and crossing onto private property. This entails treating private property and its owners and operators with respect and dignity while on patrol and conducting enforcement efforts. For example, agents are expected to stay on established roads, drive within established speed limits, seek oral permission from landowners before entering their property when appropriate, and close gates when leaving a property. In the Laredo sector, agents are to mark gates with red tape as a reminder to close gates when departing private property. See figure 7 for a picture of a gate with red tape in the Laredo sector.

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**Figure 7: Red Tape on Landowner’s Fence Reminding Border Patrol Agents to Close and Lock the Gate**



Source: GAO. | GAO-15-399

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New recruits are to receive training on ranch etiquette as part of their post-Border Patrol Academy curriculum.<sup>18</sup> The training is web-based and includes information on agents' legal authority to pursue, question, or apprehend suspected illegal border crossers they track or follow onto farm or ranch properties within 25 miles of the border.<sup>19</sup> This training also stresses the importance of developing and maintaining positive relationships within the community.

In an effort to enhance Border Patrol's relationships with landowners and the community as a whole, Border Patrol initiated the BCL Program in April 2011 in all Border Patrol sectors.<sup>20</sup> According to the July 2012 CBP BCL implementation memo, the term "border community liaison" means the person who facilitates the exchange of information between a CBP operational component office and the border community while fostering resolution of issues at a local level.<sup>21</sup> This memo further states that formalization of the BCL Program function and associated positions will enhance CBP's interaction with communities and provide a fact-based understanding of community views, concerns, and issues as they relate to CBP.<sup>22</sup> It also notes that the program will assist the community in gaining knowledge of the CBP mission, functions, authorities, and responsibilities as a way of easing the path to a better understanding of the complex

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<sup>18</sup>Basic training for new Border Patrol agents consists of three components: (1) basic training at the academy, (2) postacademy classroom training administered by the academy but conducted in the sectors, and (3) field training conducted on the job in the sectors. After graduating from the academy, new Border Patrol agents are required to attend classroom instruction at their respective sectors in Spanish and law/operations 1 day a week for a total of 20 weeks.

<sup>19</sup>See 8 U.S.C. § 1357(a)(3).

<sup>20</sup>As of January 2015, there were 99 BCL agents located across the United States in Border Patrol's 20 sectors and 137 stations, as reported by Border Patrol sector officials.

<sup>21</sup>The July 2012 CBP BCL implementation memo expanded the BCL Program to all CBP components.

<sup>22</sup>According to an October 2012 memo from the Chief of Border Patrol, no new positions were created for the BCL Program, and program functions and activities were to come from available resources previously allocated to community relations and outreach programs.

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policymaking and operational environments related to border security and the facilitation of travel and trade.<sup>23</sup>

While the direction for the BCL Program as implemented by Border Patrol is to come from its headquarters in Washington, D.C., each sector is responsible for the implementation of the program, including designating a program manager and BCL agents.<sup>24</sup> According to the BCL Program training manual, developed in May 2011, the efforts of BCL agents will vary by location based on the community and specific threats to that area. Under the BCL Program, some sectors, including Laredo, RGV, and Yuma, have also designated agents to serve as ranch and farm liaisons to work directly with local ranchers and farmers. Although the implementation plan does not specify the duration of the period in which agents will serve as BCL agents, Border Patrol sector officials we met with stated that agents typically serve in this role for about 1 to 2 years. In November 2014, the former BCL national program manager stated that the term lengths for BCL agents are based on the individual needs of Border Patrol sectors and stations. Officials from six of the nine sectors we met with reported that BCL agents communicate with landowners on a regular basis to help foster and maintain positive relationships. When we discussed the BCL Program with landowners during our visit to south Texas, 21 of the 33 landowners stated that their relationship with Border Patrol has improved in recent years.

To foster community relationships, some BCL agents located in sectors and stations along the southwest border have taken steps to repair or otherwise address property damage that may have resulted from illegal border crossers and their pursuit by law enforcement. In particular, officials from seven of the nine sectors we met with stated that agents will try to provide a temporary repair to property damage that they either come across during their patrol or may have been involved in, such as mending fences. For example, in the Laredo sector, BCL agents told us that landowners will call their local BCL agent and report illegal border crossers and any damage they may have caused in their attempt to cross

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<sup>23</sup>In January 2015, national BCL Program officials stated that BCL Program goals are consistently reevaluated to reflect the direction set by the CBP Commissioner for the program.

<sup>24</sup>According to Border Patrol, it coordinates with other CBP offices, including CBP's State, Local, and Tribal Liaison Office, to set the direction for its BCL Program.



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the border and circumvent Border Patrol. When they become aware of such damage, Laredo BCL agents reported they will, depending on the circumstances, attempt to temporarily repair the damage regardless of whether Border Patrol may have been involved in the incident that caused the damage. Specifically, Laredo BCL agents told us that they will make an effort to provide temporary fence repairs when they come across new damage at night to prevent livestock from wandering before the landowners have a chance to fix the damage themselves. According to the Laredo BCL agents, these repairs are usually temporary fixes until the landowner can make more permanent repairs. The liaisons explained that by temporarily repairing the fences, they are alleviating the concern that cattle or other wildlife will roam the ranch and potentially stray onto highways, injuring themselves and others, and they are facilitating positive relationships with the community. All of the 33 landowners we met with stated that they typically repair any damage potentially resulting from illegal border crossers and their pursuit themselves.

One station in the RGV sector began a pilot program in August 2014 to repair some of the more severely damaged fencing within the station's area of responsibility. Specifically, the station allocated funds to hire someone to temporarily repair fencing, and for the materials needed to make the repairs. BCL agents at this station stated that these repairs will likely provide temporary fixes until the landowner has the time and money to make more permanent repairs. According to the Patrol Agent in Charge at this station, this program has been well received by ranchers and even cited by landowners as a best practice during ranchers' meetings with RGV and Laredo sector officials. BCL agents from the Laredo sector and a station within the RGV sector stated that repairing damaged fencing is a worthwhile effort; however, there is no funding earmarked for such repairs and stations must use funding from their operational budgets to pay for the materials. BCL agents from a station in the Laredo sector stated that they have tracked the funding spent on repairing fences for about 2 years and their stations spends about \$500 per year. Border Patrol headquarters officials responsible for overseeing Border Patrol's BCL Program stated that they are not in favor of agents repairing property damage, for a variety of reasons. According to these officials, agents should be spending their time executing their primary mission of securing the border and landowners seeking redress for any damage allegedly caused by Border Patrol should utilize the administrative tort claim process. They also noted that because agents are not trained to make repairs, they do not know if BCL agents have the skill set to make fence repairs and that the agency could potentially be exposed to liability if repairs are made improperly and further damage to property or persons

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occurs as a result. For example, if the fence fails because a repair made by a BCL agent was insufficient, the agency may be liable to the property owner or any injured third party for the subsequent damage, according to a Border Patrol official. In February 2015, Border Patrol headquarters officials stated that they are reviewing the programs in place at the sector and station levels to temporarily repair private property damage and may instruct the field not to make such repairs.

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### Border Patrol Agents Lack Training Specific to Their Border Community Liaison Role and Responsibilities

In 2012, CBP established a national training program for the BCL program to provide training and information to CBP staff serving as BCLs, including those within Border Patrol. However, CBP did not provide this training in fiscal year 2014, does not have documented plans to provide the training in future years, and does not have a mechanism to track whether CBP staff serving as BCL agents have received the training. The BCL training developed in 2012 includes documentation on the BCL Program operations plan that focuses on the mission, goals, and execution of the program. This training also covers the importance of being familiar with the local community, tips for dealing with challenging situations, and details how to achieve an effective working relationship between a Border Patrol station and its local community. CBP established this training program to ensure standard program operations.

The BCL training was initially provided to border community liaisons after the program was first implemented in 2012 over a 3-day period, according to the former national BCL program manager. In 2013, BCL training was shared with border community liaisons, including those within Border Patrol, via CBP's intranet system. However, BCL training was not offered in fiscal year 2014 because of resource constraints, including the fiscal year 2013 sequestration, according to the former BCL program manager.<sup>25</sup> According to officials overseeing the BCL Program within Border Patrol, funding for BCL training in fiscal year 2015 has been approved internally and in April 2015 DHS reported that this training would be conducted in fiscal year 2015. However, as of February 2015, Border Patrol did not know whether the training will be offered in future years. Moreover, as of March 2015, CBP did not have documented plans

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<sup>25</sup>According to the former national BCL program manager, BCL agents are encouraged to attend training related to tribal and cultural awareness and interdicting human trafficking.

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to provide BCL training in fiscal year 2015 or future years, according to the acting national program manager.

In the absence of the national BCL training, some sectors have developed their own training for BCL agents. Specifically, officials from five sectors we met with told us that because national BCL training has not been recently offered, they are conducting their own training specific to their own needs that covers ranch etiquette, as well as BCL agent roles and responsibilities. For example, in the El Paso sector, Border Patrol agents developed a course specific to the sector's BCL agents that addresses the goals of the BCL Program, the benefits of the program, and the responsibilities of the BCL agents, among other things. The training also includes a video in which landowners discuss how they would like to interact with Border Patrol and how their property should be treated. BCL agents from one station within the RGV sector stated that, about quarterly, they ask ranchers to speak to agents about ranch etiquette and the respect they expect for their property. Another station within the RGV sector worked with local ranchers to develop ranch etiquette rules for its agents. Among other things, these rules include abiding by posted speed limits, traveling on established roads, locking all ranch entry gates, and leaving all the gates inside a ranch the way they were found. These rules also state that agents will report any damage to fences, locks, gates, or other property that they observe or witness to a supervisor. RGV sector officials stated that they may implement these or similar rules sector-wide. Additionally, the former national program manager noted that all BCL training materials are available via CBP's internal website to BCL program officials in the field and can be accessed at any time.

Although some sectors have developed their own training for border community liaisons and the national training materials are accessible via CBP's internal website, CBP headquarters and field officials identified the importance of liaisons receiving the national training for various reasons. For example, the former national BCL program manager, as well as officials overseeing the BCL Program within Border Patrol, stated that it is important for BCL agents to take the national training because of the high turnover in the BCL agent role. Specifically, officials told us that, in most cases, Border Patrol agents serve in the BCL role for 1- to 2-year periods. Thus, officials stated that it is important for agents to receive the national training so they can effectively carry out their BCL duties while serving in the role. Further, Border Patrol agents we met with from six of the nine southwest border sectors told us that their BCL agents do not receive routine training on their roles and responsibilities, and officials from three

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of these six sectors stated that additional training is needed for BCL agents. Officials from one sector noted that it would be beneficial if CBP headquarters offered BCL national training to ensure sectors and stations were all operating in a coordinated fashion to address the goals of the national BCL program. Moreover, two BCL agents we interviewed told us that they had not received instruction, beyond on-the-job training, on their role and responsibilities, including responding to and addressing private property damage. These BCL agents, for example, were not aware that landowners could file a SF 95 to seek compensation for property damage allegedly caused by the negligent or wrongful conduct of an employee of Border Patrol or any CBP component, where such employee acted within the scope of his or her official duties. As stated previously, of the 33 landowners we spoke with during our visit to south Texas, 30 landowners were unaware that they could seek compensation for property damage from CBP. Within Border Patrol, BCL agents are to serve as the focal point for landowners to report suspected illegal border crossers, as well as to report potentially related damage sustained to private property.

In addition, CBP does not have a mechanism to track whether Border Patrol agents serving as BCLs have received the national training. Border Patrol officials told us that because of high turnover rates in the BCL agent position and that most agents serve in the BCL role for 1 to 2 years, it is likely that most current BCL agents, including those who assumed their role in 2014, have not received the national training. However, in the absence of a mechanism for tracking completion of the national training, CBP could not provide us with information on the number or percentage of current BCL agents who have received training. According to the former and acting national BCL program managers, Border Patrol is responsible for ensuring that its BCL agents receive training. They explained that when national BCL training was last held, in 2013, CBP headquarters relied on Border Patrol sectors and stations to identify which BCL agents were in need of this training and would likely follow that approach again for any future training. In addition, there has also been turnover in the positions that oversee the BCL Program both in headquarters, as well as in Border Patrol, which limits the agency's knowledge of which current BCL agents have or have not received BCL training.

*Standards for Internal Control in the Federal Government* calls for management to identify appropriate knowledge and skills needed for

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various jobs and provide needed training.<sup>26</sup> The standards also state that only when the right personnel for the job are on board and are provided the right training, tools, structure, incentives, and responsibilities is operational success possible. GAO's guide for assessing federal training programs states that effectively implementing training and development programs provides agencies with the opportunity to empower employees and improve performance.<sup>27</sup> GAO's guide also states that agencies should use tracking or other control mechanisms to ensure that all employees receive appropriate training. Given the frequent turnover of agents in the BCL role, providing these liaisons with training specific to their responsibilities and tracking the receipt of such training could help better ensure that BCL agents have the necessary skills to meet the established goals of the BCL Program, including facilitating information sharing between Border Patrol and the community on border security issues.

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## Conclusions

Landowners we spoke to living along the U.S. southwest border report experiencing private property damage on a regular basis, suspected to be caused, in large part, by individuals illegally attempting to cross the border. Landowners reported that, to a lesser degree, Border Patrol may, in the course of its law enforcement activities, potentially bear responsibility for property damage experienced by the private landowners, in certain instances. While the extent of private property damage along the southwest border is unknown, the impact on those living in the region can be substantial. Positive working relationships with local communities are an essential aspect of Border Patrol's efforts along the southwest border, and according to the July 2012 CBP BCL implementation memo, the main responsibility of those serving in the BCL role is to help foster and maintain those relationships. Landowners can contribute to Border Patrol's situational awareness and increase agents' ability to more quickly and appropriately respond to illegal activity along the border with help from BCL agents. Ensuring that BCL agents receive national training specific to their role and tracking the receipt of such training could help better position BCL agents to meet the established goals of the BCL Program, including facilitating information sharing between Border Patrol and the community on border security issues. BCL

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<sup>26</sup> [GAO/AIMD00-21.3.1](#).

<sup>27</sup> [GAO-04-546G](#).

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training could also help BCL agents assist landowners in mitigating the negative effects of property damage.

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## Recommendation for Executive Action

To help strengthen the knowledge and experience of agents serving as BCLs, we recommend that the Chief of the Border Patrol ensure that agents serving in the BCL role receive training and track the receipt of such training.

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## Agency Comments and Our Evaluation

We provided a draft of this report to DHS for comment. DHS agreed with our recommendation. The department's response is reprinted in appendix II. DHS also provided technical comments, which we incorporated as appropriate. In its response, DHS provided information about planned corrective action in response to our recommendation. DHS stated that Border Patrol is in the process of planning a training course for BCL agents who have yet to receive BCL training and sector program managers are soliciting and submitting names of those agents who require such training. Border Patrol's Law Enforcement Operations Directorate's Liaison Division included one class of 20 students in its fiscal year 2015 budget proposal and based on funding received, will conduct a BCL training class in fiscal year 2015. DHS also stated that Border Patrol submitted a Training Records and Enrollment Network code request form to CBP's Office of Training and Development, which is to enable CBP to track which agents attend this course. The Office of Training and Development approved this request on March 24, 2015, and the estimated completion date is September 30, 2015.

Conducting BCL training in fiscal year 2015 and completing efforts to track the receipt of such training are positive steps toward addressing our recommendation. However, we continue to believe that given the typical 1- to 2-year term lengths of agents serving in the BCL role, it will be important for Border Patrol to take steps to ensure BCL training is held in future years as well to help better ensure that all BCL agents have the necessary skills to meet the established goals of the BCL Program, including facilitating information sharing between Border Patrol and the community on border security issues.

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We are sending copies of this report to the Secretary of Homeland Security and interested congressional committees. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

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If you or your staff have any questions about this report, please contact me at (202) 512-8777 or [gablerr@gao.gov](mailto:gablerr@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.



Rebecca Gambler  
Director, Homeland Security and Justice

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# Appendix I: Objectives, Scope, and Methodology

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This report addresses (1) the types of private property damage landowners along the southwest border are experiencing, potentially as a result of illegal border crossers and corresponding enforcement activities, and what steps, if any, the U.S. Customs and Border Protection (CBP) or other entities have taken to collect information on such damage and (2) the extent to which CBP takes action to address private property damage suspected to have been caused by illegal border crossers and related enforcement activity. While we collected information on private property damage along the southwest border—Texas, Arizona, New Mexico, and California—we primarily focused our efforts on south Texas, where there is the largest amount of privately owned land, and where CBP data currently indicate the highest level of apprehensions of illegal border crossers.

For the purpose of this report, the term “private property damage” is defined as property damage that occurs on or to land that is privately owned or managed by individuals or commercial entities. For example, rammed gates, bent or broken fences, damaged piping systems, killing of livestock, and damaged crops occurring on such properties are all considered private property damage. For our reporting purposes, we reviewed private property damage suspected to have been caused by illegal border crossers and Border Patrol’s enforcement efforts.

To describe the types of private property damage landowners along the southwest border are experiencing potentially as a result of illegal border crossers and corresponding enforcement activities, we interviewed officials from Border Patrol headquarters and all nine southwest sectors, as well as officials from five associations representing landowners along the southwest border, the Texas Department of Public Safety, and relevant local government officials. These officials were selected based on their jurisdiction and areas of responsibility related to our review. We obtained their perspectives on the types and frequency of private property damage occurring along the southwest border and the extent to which information is collected and maintained on such damage.<sup>1</sup> Information we obtained from the associations, the Texas Department of Public Safety,

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<sup>1</sup>Border Patrol is organized into nine sectors along the southwest border. Within each sector, there are stations with responsibility for defined geographic areas. During our visit to south Texas, we met with officials from the Laredo and Rio Grande Valley sectors. We also met with officials from Del Rio, Big Bend, El Paso, Tucson, San Diego, El Centro, and Yuma sectors via teleconference.



and local government officials cannot be generalized, but provided us with perspectives on the types and frequency of private property damage occurring along the southwest border and the extent to which information is collected and maintained on such damage.

In September 2014, we conducted a visit to south Texas—Laredo and RGV sectors—where we interviewed 33 selected landowners, including ranchers and farmers, living along the southwest border to obtain information on the types of property damage they have experienced. The landowners interviewed were identified by the South Texans' Property Rights Association and Border Patrol sector officials as having experienced private property damage.<sup>2</sup> The information obtained during these interviews is not generalizable to all landowners living along the southwest border. We also toured ranches, farms, and other private property along the southwest border to view how such property could be damaged and to observe actual damage.

In addition, we reviewed relevant documentation outlining CBP's role and responsibilities in accordance with the Federal Tort Claims Act (FTCA), which enables landowners to seek compensation from CBP for property damage allegedly caused by the negligent or wrongful conduct of an employee of Border Patrol or any CBP component, where such employee acted within the scope of his or her official duties.<sup>3</sup> We interviewed officials from other CBP offices, including the Office of Chief Counsel (OCC) and the Office of Administration—the offices that receive, review, and process the administrative tort claims—to obtain a full description of CBP's administrative tort claims process from commencement to, where applicable, payment. We also interviewed selected landowners to collect information on their experiences filing administrative tort claims against

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<sup>2</sup>According to its mission statement, the South Texans' Property Rights Association educates the public on the rights of property owners to enjoy the use of their lands as guaranteed by federal, state, and local laws. The association supports and actively participates in the resolution of various issues pertaining to eminent domain, water rights, indemnity, government regulation, and trespassing.

<sup>3</sup>See 28 USC §§ 1346(b), 2671-2680. The FTCA provides a limited waiver of the federal government's sovereign immunity—that is, the common law doctrine that a government cannot be sued in its own courts without its consent. The FTCA, with few exceptions, provides the exclusive means by which individuals can seek compensation when injured by federal employees acting within the scope of their work for the federal government, under circumstances where the United States, if a private person, would be liable under the law of the place where the act or omission occurred.

CBP. We reviewed all 821 CBP administrative tort claims for \$10,000 or less to identify the number of claims filed, approved, and denied related to landowner damage along the southwest border during fiscal year 2013.<sup>4</sup> Of these 821 claims, we identified 16 that sought compensation for private property damage, as defined for the purposes of our report, along the southwest border, and 10 of these involved incidents that took place in south Texas. We selected fiscal year 2013 because that was the most recent full fiscal year for which claims data were available. Claims data were not available electronically; therefore, we manually sorted through documentation on all 821 claims. In particular, we reviewed the claim form and decision letter for each claim filed with CBP in fiscal year 2013. When necessary, we followed up with CBP to obtain further clarification on claims to confirm whether they concerned private property damage along the southwest border. We also obtained a listing of all claims related to private property damage along the southwest border more than \$10,000 from CBP's OCC field offices from fiscal years 2009 through 2014. We selected fiscal years 2009 through 2014 to provide us a 6-year range for claims given our initial conversations with OCC about the small number of claims for more than \$10,000 received. We assessed the reliability of this information by consulting with internal experts and conducting an independent analysis of the data, and determined that the administrative tort claims documents were reliable for the purpose of reporting the number of administrative tort claims filed, paid, and denied in fiscal year 2013, as well as reporting the number of claims for more than \$10,000 filed from fiscal years 2009 through 2014.

To determine the extent to which CBP takes action to address private property damage suspected to have been caused by illegal border crossers and corresponding enforcement activities, we gathered documentation such as training videos and materials, and interviewed headquarters and field Border Patrol officials on Border Patrol's efforts to address property damage along the southwest border. We also interviewed the 33 selected landowners and Border Patrol officials to obtain their perspective on Border Patrol's efforts to address damage and what, if any, improvements could be made to these efforts. Further, we collected documentation, such as CBP and Border Patrol implementation

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<sup>4</sup>Documentation on claims filed against CBP during fiscal year 2013 included follow-up letters and appeals that were given separate claim numbers by CBP. In calculating the total number of claims filed against CBP in fiscal year 2013, we did not count these as separate claims.

plans, and interviewed CBP and Border Patrol officials on the Border Community Liaison (BCL) Program to ascertain how Border Patrol agents are trained to interact with the public. We compared Border Patrol's efforts to train its BCL agents against standards in *Standards for Internal Control in the Federal Government*, as well as in GAO's guide for assessing federal training programs.<sup>5</sup>

We conducted this performance audit from June 2014 to April 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>5</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD00-21.3.1](#) (Washington, D.C.: November 1999), and *Human Capital: A Guide for Assessing Strategic Training and Development Efforts in the Federal Government*, [GAO-04-546G](#) (Washington, D.C.: March 2004). The guide was created to, among other things, provide a framework for evaluating training. It was developed through consultations with government officials and private sector expert examinations of laws and regulations and literature reviews, and, among other things, it provides a framework for evaluating training.

# Appendix II: Comments from the Department of Homeland Security

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

April 16, 2015

Rebecca Gambler  
Director, Homeland Security and Justice  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Re: Draft Report GAO-15-399, "SOUTHWEST BORDER: Issues Related to Private Property Damage"

Dear Ms. Gambler:

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the U.S. Government Accountability Office's (GAO's) work in planning and conducting its review and issuing this report.

The Department is pleased with GAO's recognition that the Border Community Liaison (BCL) Program has helped foster community relationships and that some BCL representatives located in sectors and stations along the southwest border have taken steps to address property damage that may have resulted from illegal border crossers and their pursuit by law enforcement.

DHS is committed to securing the U.S. border while promoting economic vitality through international travel and trade. This includes encouraging communication and expanding Agency relationships between the Border Patrol and its border community partners.

The draft report contained one recommendation with which the Department concurs. Specifically, GAO recommended that the Chief of the Border Patrol:

**Recommendation:** Ensure that agents serving in the BCL role receive training and track the receipt of such training.

**Response:** Concur. The U.S. Border Patrol (USBP) is in the process of planning a training course for BCL agents who did not attend the previous courses. Sector Program Managers are soliciting and submitting names of personnel who require

training. Border Patrol Headquarters, the Office of Training and Development (OTD), and CBP's State, Local and Tribal Office are coordinating to implement the training. USBP's Law Enforcement Operations Directorate's Liaison Division included one class of 20 students in the Fiscal Year 2015 budget proposal. USBP received funding and will be conducting a BCL training class this fiscal year.

USBP submitted a Training Records and Enrollment Network (TRAEN) code request form to OTD. OTD approved this request (TRAEN code G0213001-35) on March 24, 2015. Assigning a TRAEN code to BCL training allows for comprehensive tracking of personnel who have attended classes. The standard for future classes will be to enter attendance data in TRAEN at the conclusion of each course. Previous class rosters will also be entered in to the TRAEN database. Estimated Completion Date: September 30, 2015.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Sincerely,



Jim H. Crumacker, CIA, CFE

Director

Departmental GAO-OIG Liaison Office

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# Appendix III: GAO Contact and Staff Acknowledgments

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## GAO Contact

Rebecca Gambler, at (202) 512-8777 or GamblerR@gao.gov

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## Staff Acknowledgments

In addition to the contact named above, Jeanette Espinola, Assistant Director; Meg Ullengren; and Nada Raof made key contributions to this report. Also contributing to the report were David Alexander, Frances Cook, Dominick Dale, Eric Hauswirth, Stanley Kostyla, Thomas Lombardi, Jan Montgomery, and Jon Najmi.

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## GAO's Mission

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