



SOUTHWEST BORDER

CBP Could Take Additional Steps to Strengthen Its Response to Incidents Involving Its Personnel

Report to Congressional Requesters

May 2024

GAO-24-106148

United States Government Accountability Office

Accessible Version

GAO Highlights

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May 2024

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CBP Could Take Additional Steps to Strengthen Its Response to Incidents Involving Its Personnel

Why GAO Did This Study

With more than 60,000 employees, CBP is the nation's largest federal law enforcement agency and is responsible for securing U.S. borders while facilitating legitimate travel and trade. When conducting their duties, CBP law enforcement personnel may be involved in critical incidents. For example, in 2023, critical incidents occurred when a vehicle struck and injured Border Patrol agents and when a child died in CBP custody. CBP personnel may also be involved in noncritical incidents.

GAO was asked to review CBP's approach in responding to incidents. This report assesses how Border Patrol CITs operated before they were disbanded in 2022, Border Patrol's response to noncritical incidents since that time, and how OPR has developed capacity and implemented investigative standards for critical incident response. GAO analyzed Border Patrol documents on CIT operations from fiscal years 2010 through 2022. GAO interviewed Border Patrol officials from headquarters and the nine southwest border sectors. GAO also analyzed OPR documents and data and interviewed OPR officials. GAO conducted site visits to three southwest border locations.

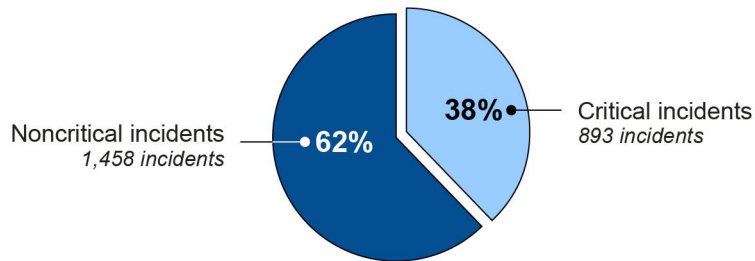
What GAO Recommends

GAO recommends that Border Patrol implement guidance that standardizes sector approaches to noncritical incident response and monitor adherence to the guidance, and that OPR develop guidance for investigators on identifying potential impairments to their independence and train investigators on how to apply the guidance. CBP concurred.

What GAO Found

Within U.S. Customs and Border Protection (CBP), seven of nine U.S. Border Patrol sectors on the southwest border independently operated critical incident teams (CIT) that responded to and investigated critical incidents. CBP defines a critical incident as an incident involving CBP personnel that results in a serious injury, a death, a use of deadly or excessive force, or widespread media attention. The teams also responded to noncritical incidents, such as a vehicle crash with no injuries. From fiscal years 2010 through 2022, CITs responded to an estimated 2,351 incidents (see figure).

Estimated Border Patrol Critical Incident Team Responses, Fiscal Years 2010–2022



Source: GAO analysis of U.S. Border Patrol documentation. | GAO-24-106148

Accessible Data for Estimated Border Patrol Critical Incident Team Responses, Fiscal Years 2010–2022

	Incidents	Percentage
Critical incidents	893	38%
Noncritical incidents	1458	62%

Source: GAO analysis of U.S. Border Patrol documentation. | GAO-24-106148

Before 2022, CBP did not have a unified approach to critical incident response. Border Patrol headquarters did not create the CITs or oversee their operations. In 2022, CBP directed Border Patrol to disband the CITs and assigned critical incident response to CBP's Office of Professional Responsibility (OPR). Border Patrol sectors disbanded their CITs and continue to respond to noncritical incidents, which they approach inconsistently. Some sectors collect limited information about these incidents, which, according to Border Patrol officials, the agency needs to assess liability for associated property damage. One sector created a specialized team to respond to these incidents, but OPR officials raised concern that its activities may infringe on OPR's critical incident responses. Implementing standardized guidance for noncritical incident response and monitoring adherence to it would help Border Patrol ensure sectors' activities align with their responsibilities for noncritical incidents.

While OPR became solely responsible for CBP critical incident response in October 2022, it did not have sufficient resources to carry out these activities. OPR has since increased its capacity to respond to critical incidents by, for example, initiating a hiring surge to nearly double its investigator workforce.

OPR has made significant progress implementing investigative standards—which it adopted in 2020—but it could strengthen its efforts regarding investigator independence. OPR has limited guidance or formal training regarding independence. Further, its significant number of new hires, of which more than half are from Border Patrol, present increased risks for impairments to independence to arise. Developing guidance and training to help investigators identify such potential impairments could provide OPR and CBP leadership with further assurance that critical incident investigations are objective and unbiased.

Contents

<hr/>	
GAO Highlights	ii
Why GAO Did This Study	ii
What GAO Recommends	ii
What GAO Found	ii
<hr/>	
Letter	1
Background	4
Border Patrol Sectors Operated Their Own Critical Incident Teams and Continue to Respond to Noncritical Incidents, Which They Approach Inconsistently	13
OPR Assumed Responsibility and Is Building Capacity for Critical Incident Response	28
OPR Has Made Progress, but Has Not Yet Fully Implemented Investigative Standards for Critical Incident Response	41
Conclusions	53
Recommendations for Executive Action	54
Agency Comments	54
<hr/>	
Appendix I	Objectives, Scope, and Methodology 58
Appendix II	Examples of Incidents Involving CBP Personnel and How OPR is to Respond 65
Appendix III	Comments from the Department of Homeland Security 67
Accessible Text for Appendix III	Comments from the Department of Homeland Security 71
Appendix IV	GAO Contact and Staff Acknowledgments 74
<hr/>	
Tables	
Table 1:	Council of the Inspectors General on Integrity and Efficiency’s Investigative Standards 12
Table 2:	Characteristics of Critical Incident Teams (CIT) in Border Patrol’s Southwest Border Sectors 19
Table 3:	CBP Office of Professional Responsibility’s (OPR) Critical Incident Responsibilities and Examples of Challenges Implementing Them, 2010–2020 29
Table 4:	Areas Addressed in OPR’s June 2023 Report Writing Guide 46
Table 5:	Available Reports of Investigation for Critical Incident Teams (CIT) in Border Patrol’s Southwest Border Sectors 59
<hr/>	
Figures	
Estimated Border Patrol Critical Incident Team Responses, Fiscal Years 2010–2022	iii
Accessible Data for Estimated Border Patrol Critical Incident Team Responses, Fiscal Years 2010–2022	iii

Figure 1: Examples of U.S. Customs and Border Protection (CBP) Critical and Noncritical Incidents 6

Figure 2: U.S. Customs and Border Protection (CBP) Entities That May Be Involved in Critical Incidents 7

Figure 3: Map of Border Patrol Sectors and CBP Office of Professional Responsibility Field and Satellite Offices, Southwest Border 10

Figure 4: Estimated Border Patrol Critical Incident Team Incident Responses, Fiscal Years 2010–2022 14

Accessible Data for Figure 4: Estimated Border Patrol Critical Incident Team Incident Responses, Fiscal Years 2010–2022 14

Figure 5: Estimated Border Patrol Responses to Critical Incidents by Sector, Fiscal Years 2010–2022 15

Accessible Data for Figure 5: Estimated Border Patrol Responses to Critical Incidents by Sector, Fiscal Years 2010–2022 15

Figure 6: Estimated Border Patrol Responses to Critical Incidents by Fiscal Year, 2010–2022 16

Accessible Data for Figure 6: Estimated Border Patrol Responses to Critical Incidents by Fiscal Year, 2010–2022 16

Figure 7: Estimated Border Patrol Responses to Noncritical Incidents by Sector, Fiscal Years 2010–2022 18

Accessible Data for Figure 7: Estimated Border Patrol Responses to Noncritical Incidents by Sector, Fiscal Years 2010–2022 18

Figure 8: CBP Office of Professional Responsibility’s (OPR) Assigned Role in Critical Incident Response, 2010–2023 29

Figure 9: Office of Professional Responsibility (OPR) Assessment of its Critical Incident Response Capabilities in Southwest Border Locations as of September 2022 31

Figure 10: OPR Southwest Border Criminal Investigator Positions, Fiscal Years (FY) 2020–2023 33

Accessible Data for Figure 10: OPR Southwest Border Criminal Investigator Positions, Fiscal Years (FY) 2020–2023 33

Figure 11: OPR Responses to Critical Incident Notifications in Southwest Border Locations, July 2022–June 2023 36

Accessible Data for Figure 11: OPR Responses to Critical Incident Notifications in Southwest Border Locations, July 2022–June 2023 37

Figure 12: OPR Southwest Border Office Investigator Staffing Levels, End of Fiscal Year (FY) 2022 and 2023 39

Accessible Data for Figure 12: OPR Southwest Border Office Investigator Staffing Levels, End of Fiscal Year (FY) 2022 and 2023 39

Figure 13: Most Recent Prior Employment for Investigators Hired for OPR Southwest Border Locations, as of October 2023 52

Accessible Data for Figure 13: Most Recent Prior Employment for Investigators Hired for OPR Southwest Border Locations, as of October 2023 52

Figure 14: Examples of Critical and Noncritical Incidents Involving CBP Personnel and How OPR is to Respond 65

Abbreviations

CBP	U.S. Customs and Border Protection
CIT	critical incident team
DHS	Department of Homeland Security
FBI	Federal Bureau of Investigation
OPR	Office of Professional Responsibility

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May 13, 2024

Congressional Requesters

While conducting border security and other duties, U.S. Customs and Border Protection (CBP) law enforcement personnel may be involved in critical incidents. In 2023, critical incidents occurred when a vehicle crashed into a U.S. Border Patrol checkpoint near Yuma, Arizona, and seriously injured two Border Patrol agents and others; a child died while in Border Patrol custody in Harlingen, Texas; and Border Patrol agents shot and killed a man while responding to a scene on the Tohono O’odham Nation reservation near Ajo, Arizona.¹

CBP is the nation’s largest federal law enforcement agency and has more than 60,000 employees, the majority of whom are law enforcement personnel. CBP is part of the Department of Homeland Security (DHS) and is responsible for securing U.S. borders while facilitating legitimate travel and trade. Within CBP, Border Patrol has about 19,000 law enforcement agents responsible for securing the U.S. border between ports of entry.² Over the years, most Border Patrol sectors along the southwest border have operated local, “homegrown” critical incident teams (CIT) that responded to and investigated some incidents involving Border Patrol personnel in their sector.³

In October 2021, a coalition of nongovernmental organizations wrote to Congress with concerns about CITs and their activities. The letter expressed concerns that these teams acted outside CBP authority, had little oversight, and lacked independence because they conducted investigations on behalf of Border Patrol after incidents involving their own agents. It also raised questions about the quality of CIT investigations.

In 2022, CBP announced that CITs were to be disbanded. Instead, CBP assigned critical incident response and investigation activities to its Office of Professional Responsibility (OPR). As of October 1, 2022, OPR was to respond to all critical incidents involving CBP personnel.

You asked us to review CBP’s approach in responding to incidents. This report assesses how (1) Border Patrol CITs operated and Border Patrol’s responses to noncritical incidents since disbanding them; (2) OPR has assumed responsibility and developed its capacity for critical incident response; and (3) OPR has taken steps to implement investigative standards for critical incident response.

To address all three objectives, we focused our audit work on critical incidents as defined by CBP. According to CBP’s definition, a critical incident is any incident that involves CBP personnel that results in, or is intended

¹According to CBP, a critical incident is any incident that involves CBP personnel that results in, or is intended or likely to result in, serious bodily injury or death; a use of force; or widespread media attention. CBP personnel may also be involved in noncritical incidents, which we defined to include any incidents that did not meet CBP’s definition of a critical incident, but for which the agency might need information about what occurred.

²Ports of entry are officially designated facilities (seaports, airports, or land border locations) that provide for the controlled entry into, or departure from, the U.S.

³Border Patrol divides responsibility for border security operations geographically among sectors, each with its own sector headquarters. There are nine southwest border sectors, which span Arizona, California, New Mexico, and Texas. The sectors are Big Bend, Del Rio, El Centro, El Paso, Laredo, Rio Grande Valley, San Diego, Tucson, and Yuma.

or likely to result in, serious bodily injury or death; a use of force; or widespread media attention.⁴ We defined noncritical incidents to include any incidents that did not meet CBP's definition of a critical incident, but for which the agency might need information about what occurred.⁵

We visited and interviewed officials at Border Patrol sectors and OPR field offices in three southwest border locations: San Diego, California; Tucson, Arizona; and El Paso, Texas. We selected these locations to include geographic diversity and places where CBP documentation indicated a variety of critical incidents had occurred, among other factors. We collected information about the critical incident response and investigation activities CITs and OPR field offices performed, how they coordinated these activities with other law enforcement agencies, and how these activities changed over time. We also interviewed federal, state, and local law enforcement agencies in these locations about their responses to CBP critical incidents and how they coordinated with CITs and OPR field offices. The information we obtained from our site visits cannot be generalized to CBP critical incident response in all southwest border locations but offers insight into how CITs and OPR field offices responded to and investigated CBP critical incidents over time.

To address our first objective, we analyzed available Border Patrol documentation that described the operations of CITs until their disbandment in 2022 and incidents CITs responded to. Individual Border Patrol sectors on the southwest border developed this documentation. In all seven sectors that had a CIT, the teams documented their incident response activities in some form of report of investigation.

We analyzed available reports of investigation for incidents that occurred from fiscal years 2010 through 2022—the period for which reports were generally available at the time of our review—to estimate the number of critical and noncritical incidents the teams responded to by sector and over time. Specifically, we used a statistical model on a sample of reports to derive from the overall data estimates of the number of critical incidents for each sector and year.⁶ We manually reviewed the model results to ensure they were valid. In total, our analysis included 2,351 reports of investigation.

To understand how CITs operated, we interviewed Border Patrol officials in all nine southwest border sectors. For the seven sectors that had a team, we interviewed officials knowledgeable about the team's leadership, oversight, operating guidance, and activities. In the two sectors that did not have a team, we interviewed officials about how the sector addressed incidents in the absence of a CIT. Further, we interviewed

⁴CBP adopted this definition of critical incident in February 2022. Subsequent September 2022 CBP guidance clarified that the following types of use of force by CBP personnel are critical incidents: a use of deadly force, any use of force that results in serious injury or death, and any allegation of excessive force. CBP defines a serious injury as an injury that requires treatment at a medical facility.

⁵For example, noncritical incidents include incidents involving minor or major property damage, such as to CBP or civilian vehicles or property, and unintentional firearm discharges by CBP personnel that do not result in injuries or death. CBP may need such information to adjudicate a claim of civil liability or to determine whether the actions of CBP personnel aligned with policy.

⁶In two sectors (El Centro and Del Rio), we analyzed the entire population; as such, the results for the two sectors should be interpreted as population totals.

representatives from nongovernmental organizations that have researched or expressed perspectives about CITs to obtain their views on the past activities of the teams and their disbandment.⁷

To assess how Border Patrol responds to noncritical incidents since disbanding the CITs, we analyzed Border Patrol headquarters and sector guidance and interviewed officials about sectors' noncritical incident response activities and oversight of those activities. Finally, we interviewed officials from CBP's Office of Chief Counsel about how they use information that Border Patrol sectors collect to adjudicate any resulting claims of civil liability. We also compared the information we gathered about Border Patrol's noncritical incident response activities against the principles related to implementing control activities through policies and monitoring the internal control system in *Standards for Internal Control in the Federal Government*.⁸

To address the second objective, we analyzed CBP documentation describing OPR's involvement in, and capacity for, critical incident response over time. Specifically, we analyzed guidance describing OPR's roles and responsibilities for responding to and investigating critical incidents from 2010 through 2023.⁹ We also reviewed OPR assessments of its capacity and analyzed documentation of OPR's efforts to build capacity with respect to acquiring the necessary equipment and facilities, training investigators, and increasing the size of its investigator workforce. Finally, we interviewed officials from OPR headquarters and the southwest border field office locations we visited regarding OPR's critical incident-related responsibilities over time, implementation of those responsibilities, efforts to build capacity, and impacts of assuming critical incident responsibility while building this capacity.

To assess OPR's progress increasing the size of its investigator workforce, we analyzed OPR workforce data from fiscal years 2020 through 2023. We also analyzed data OPR had collected for its hiring initiative, which began in 2022. We assessed the reliability of these data by reviewing related documentation and interviewing OPR officials, among other things. We found the workforce and hiring initiative data sufficiently reliable for the purpose of describing OPR's progress in increasing the size of its investigator workforce.

Additionally, we analyzed OPR critical incident response data to describe the office's response activities leading up to, and after, assuming full responsibility for critical incident response. We found discrepancies in the critical incident response data, brought them to the attention of OPR, and worked to correct them before conducting our analyses. We subsequently determined that the data were sufficiently reliable for the purpose of describing the number of critical incidents OPR responded to by southwest border field office, month, and CBP component involved for July 2022 through June 2023, the time period we analyzed.

To address our third objective, we analyzed documentation and interviewed OPR officials about the office's efforts to implement the Council of the Inspectors General on Integrity and Efficiency investigative standards

⁷Specifically, we interviewed representatives from eight organizations that are members of the Southern Border Communities Coalition. This coalition includes 60 organizations from across the southern border and aims to promote policies and solutions that improve the quality of life of border residents. The coalition has written various communications about CITs, including letters and press releases, that include its perspectives and research about the teams.

⁸GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014).

⁹We selected this time period for our analysis to include when CITs were operating concurrently with OPR—prior to their disbandment—through the most recent information available at the time of our review.

since adopting them in December 2020.¹⁰ For each of the seven standards, we analyzed available documentation of the steps OPR had taken to adhere to the standard and its intended approach to implementing remaining steps.

Further, we interviewed OPR headquarters officials regarding their approach to implementing the standards, progress made and work remaining, and steps headquarters is taking to support and oversee field offices in adhering to the standards. During our visits to OPR southwest border field office locations, we interviewed officials about their experiences using guidance provided by headquarters. We compared OPR's efforts to align its critical incident work with each investigative standard to requirements and practices described by the Council of the Inspectors General on Integrity and Efficiency.¹¹ We also compared OPR's efforts to implement the investigative standards against the principles related to (1) implementing control activities through policies and (2) demonstrating a commitment to recruit, develop, and retain competent individuals in *Standards for Internal Control in the Federal Government*.¹² We assessed OPR's efforts to implement policies and develop competent investigators for critical incident response to determine whether they support adherence to the investigative standards.

For additional details on our scope and methodology, see appendix I.

We conducted this performance audit from August 2022 to May 2024 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.

Background

CBP Critical and Noncritical Incidents

As previously discussed, CBP defines a critical incident as any incident that involves CBP personnel that results in, or is intended or likely to result in, serious bodily injury or death; a use of force; or widespread media

¹⁰The seven investigative standards are due professional care, planning, executing investigations, reporting, qualifications, information management, and independence. According to OPR, one reason for adopting them was to ensure that its work was carried out in a thorough and objective manner and documented in well-written reports. Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Investigations* (Washington, D.C.: Nov. 15, 2011).

¹¹Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Investigations*.

¹²[GAO-14-704G](#).

attention.¹³ Critical incidents include deaths in custody, shootings involving CBP personnel, and vehicle pursuits that result in a crash with a serious injury, among other types of incidents.¹⁴

CBP personnel may also be involved in noncritical incidents—something that does not meet the definition of a critical incident but for which CBP might need information about what occurred. Noncritical incidents include incidents involving minor or major property damage, such as to a CBP or civilian vehicle or property, and unintentional firearm discharges by CBP personnel that do not result in injuries or death.

CBP may need such information to adjudicate a claim of civil liability or to determine whether the actions of CBP personnel aligned with policy. CBP’s Office of Chief Counsel adjudicates claims of civil liability (tort claims) against CBP.¹⁵

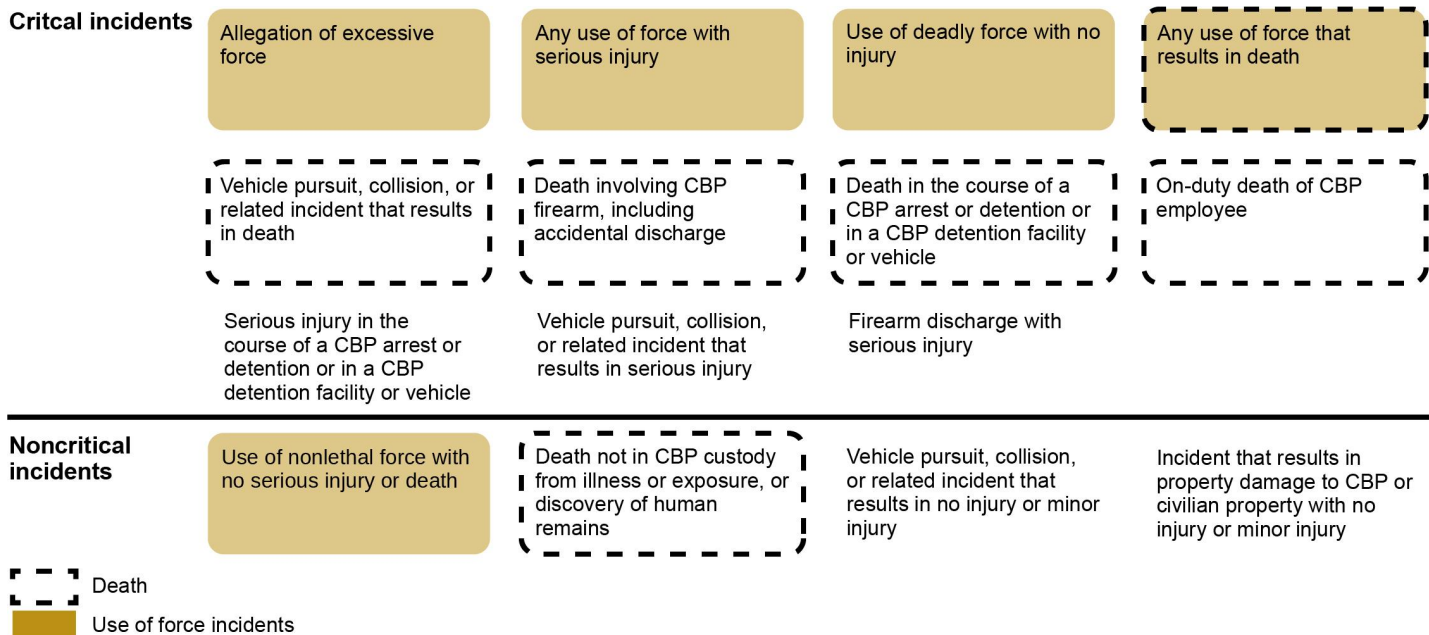
Figure 1 shows examples of CBP critical and noncritical incidents, including incidents involving deaths and uses of force.

¹³CBP adopted this definition of critical incident in February 2022. Subsequent September 2022 CBP guidance clarified that the following types of use of force by CBP personnel are critical incidents: a use of deadly force, any use of force that results in serious injury or death, and any allegation of excessive force. We use the term “critical incident” to refer to incidents that align with this definition, even though many of the incidents we discuss in this report predate the February 2022 definition. Other law enforcement entities may define critical incidents differently or may not use the term.

¹⁴According to CBP, a vehicle pursuit is an active attempt by CBP personnel to apprehend the occupants of a moving vehicle in which the vehicle’s driver is aware of and actively resisting apprehension by maintaining or increasing speed, disobeying traffic laws, or otherwise attempting to elude CBP personnel.

¹⁵Tort claims could include allegations of property damage or loss, personal injury, or death resulting from the negligent or wrongful acts or omissions of a CBP employee. According to CBP, it is the claimant’s responsibility to provide documentation supporting the allegations made in a submitted claim, such as witness statements and police reports. Any claim exceeding \$10,000 is to be investigated and reviewed by CBP’s legal counsel office nearest the geographic location where the incident occurred. A claimant must first present their tort claims to the appropriate federal agency before an action in federal court under the Federal Tort Claims Act can be filed. See 28 U.S.C. § 2675(a). The Department of Justice’s Federal Tort Claims Act Litigation Section defends the United States in suits filed under the Federal Tort Claims Act.

Figure 1: Examples of U.S. Customs and Border Protection (CBP) Critical and Noncritical Incidents



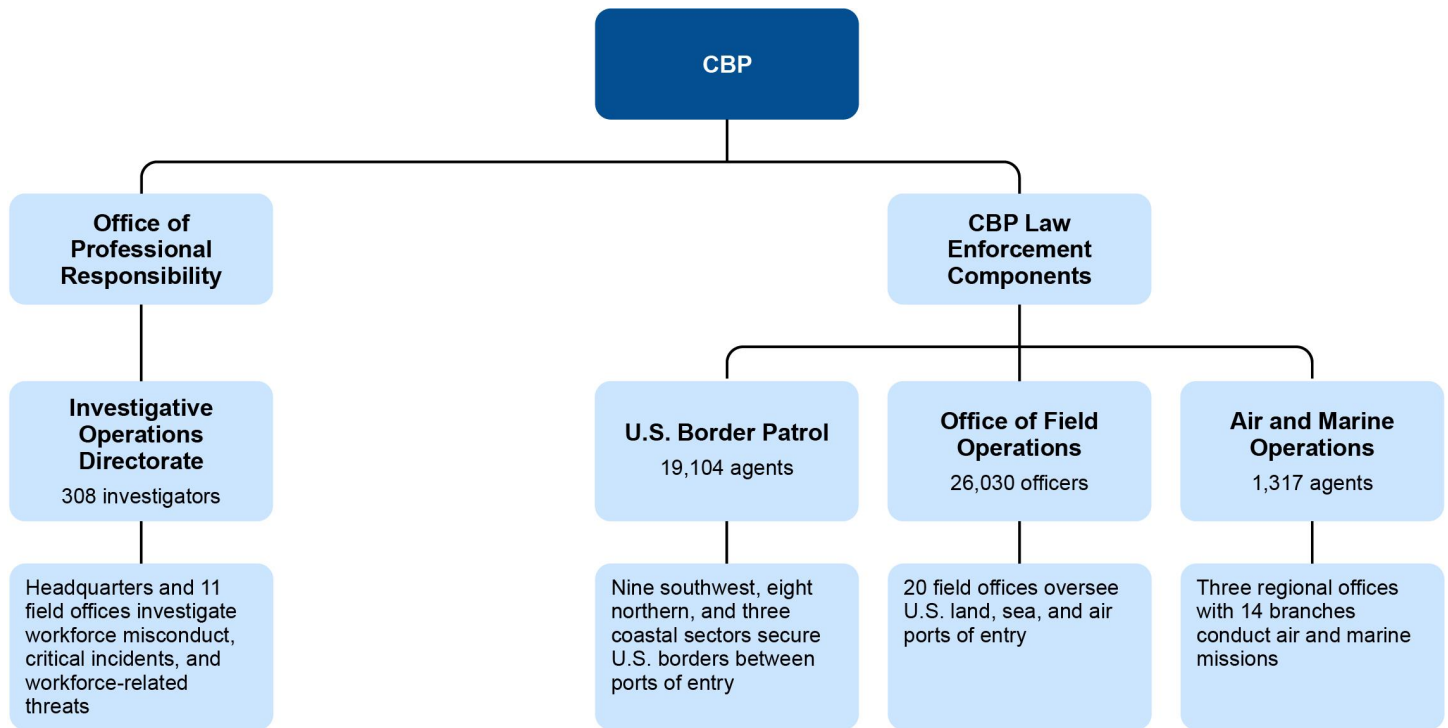
Source: GAO analysis of U.S. Customs and Border Protection information. | GAO-24-106148

Note: CBP defines a critical incident as any incident that involves CBP personnel that results in, or is intended or likely to result in, serious bodily injury or death; a use of force; or widespread media attention. According to CBP guidance, the following types of use of force by CBP personnel are critical incidents: a use of deadly force, any use of force that results in serious injury or death, and any allegation of excessive force. A serious injury is an injury that requires treatment at a medical facility.

CBP and Component Roles and Responsibilities Related to Critical Incidents

CBP component personnel may be involved in critical incidents while carrying out their border security and travel and trade facilitation duties. Figure 2 shows CBP entities, including its components, that may be involved in critical incidents.

Figure 2: U.S. Customs and Border Protection (CBP) Entities That May Be Involved in Critical Incidents



Source: GAO analysis of CBP information. | GAO-24-106148

Notes: Numbers of personnel for each entity are as of the end of fiscal year 2023. CBP defines a critical incident as any incident that involves CBP personnel that results in, or is intended or likely to result in, serious bodily injury or death; a use of force; or widespread media attention. Other CBP entities may also be involved in critical incidents if, for example, an employee dies while on duty. Ports of entry are officially designated facilities (seaports, airports or land border locations) that provide for the controlled entry into, or departure from, the U.S.

Before 2022, there was no unified CBP response to critical incidents. During this time, Border Patrol and OPR responded to critical incidents to varying degrees, as discussed in more detail later in this report. Subsequently

- In February 2022, OPR and Border Patrol jointly issued a memorandum that defined CBP critical incidents and described OPR’s primary responsibility and Border Patrol’s support role in investigating them.¹⁶
- In May 2022, CBP issued a memorandum directing Border Patrol to disband its CITs by the end of fiscal year 2022 and assigning OPR to respond to all critical incidents by October 2022.¹⁷

As a result, Border Patrol had disbanded all CITs by September 2022, and OPR assumed primary response and investigative responsibility for all CBP critical incidents in October 2022.

Border Patrol. Within CBP, Border Patrol is responsible for patrolling the areas between ports of entry to detect and prevent the illegal entry of individuals and contraband into the U.S. Beginning in the late 1980s and

¹⁶Border Patrol Chief and OPR Assistant Commissioner, *Interim Critical Incident Response Guidance* (Feb. 2, 2022).

¹⁷CBP Commissioner, *Critical Incident Response Transition and Support* (May 3, 2022). The memorandum stated that, after that time, Border Patrol personnel should no longer respond to critical incidents for the purpose of scene processing or evidence collection.

through the early 2000s, seven of the nine Border Patrol sectors on the southwest border established CITs.¹⁸ In general, sector-level guidance directed that CITs were to respond when there was a critical or noncritical incident involving a Border Patrol agent in the sector. Team members who responded were to secure the scene, collect evidence, investigate the incident on behalf of Border Patrol, and coordinate with or support other agencies. According to CBP Office of Chief Counsel officials, CIT evidence collection and investigative activities fell under the general authority that the Chief of the Border Patrol could assign personnel to carry out activities in support of the agency's mission.¹⁹ As previously mentioned, Border Patrol disbanded all CITs by September 2022.

OPR. Within CBP, OPR was established by statute in 2016 to conduct investigations into criminal and other serious misconduct by CBP personnel, among other things.²⁰ OPR is the only CBP entity authorized to conduct criminal investigations involving CBP employee misconduct. OPR's Investigative Operations Directorate, which is responsible for its critical incident activities, has a headquarters presence and 11 field offices nationwide. These include five field offices and six satellite offices on the southwest border, for a total of 11 OPR southwest border locations.²¹

Criminal investigators from these 11 field and satellite offices respond to and investigate critical incidents that occur on the southwest border. When incidents occur, CBP component personnel are to notify OPR by calling a CBP nationwide hotline and asking to speak with the local OPR agent on call.²² According to OPR, the purpose of its investigations of critical incidents is to

- document the facts and circumstances surrounding an incident;
- determine whether involved CBP personnel complied with relevant rules, regulations, and laws;
- identify any potential gaps in training, policy, or procedure to mitigate future incidents; and
- initiate a misconduct case, if warranted.

According to CBP guidance, OPR is to act as a liaison between any external investigating authority and CBP and will assist other law enforcement entities with jurisdiction over an incident. OPR is also to share information about the incident and its investigation with CBP field and headquarters personnel, as it deems appropriate.

¹⁸Border Patrol sectors responsible for securing the northern and coastal borders did not have CITs.

¹⁹The Office of Chief Counsel officials noted that this general "housekeeping" authority, codified at 5 U.S.C. § 301, applied because CIT members were not conducting criminal investigations or carrying out arrests or searches with regard to their CIT evidence collection or investigative duties.

²⁰Pub. L. No. 114-125, tit. VIII, § 802(a), 130 Stat. 122, 205 (2016) (codified at 6 U.S.C. § 211(j)). Criminal misconduct includes conduct that would violate state or federal laws, such as bribery, smuggling drugs or people, or excessive use of force. Before OPR was established, CBP's Office of Internal Affairs was responsible for administrative investigations of misconduct by CBP personnel.

²¹The five OPR field offices on the southwest border are in El Paso, Texas; Laredo, Texas; McAllen, Texas; San Diego, California; and Tucson, Arizona. According to OPR, Laredo and McAllen became field offices in 2023; previously, they were satellite offices of the Houston, Texas field office. The six OPR satellite offices on the southwest border include two offices in Arizona (Yuma and Sierra Vista); one in California (El Centro); and three in Texas (Alpine, Del Rio, and Brownsville).

²²According to OPR guidance, this CBP hotline is to be used for incident notifications nationwide and is staffed 24 hours a day, 7 days per week.

CBP has reported that, although critical incidents may not involve misconduct by CBP personnel, such incidents need careful oversight and review to support a culture of transparency and accountability.²³ CBP provides information to Congress and the public about the outcomes of some OPR critical incident investigations. For example, CBP notifies Congress of OPR's findings for in-custody deaths and issues a statement describing OPR's findings for a range of critical incident investigations on CBP's public website.²⁴

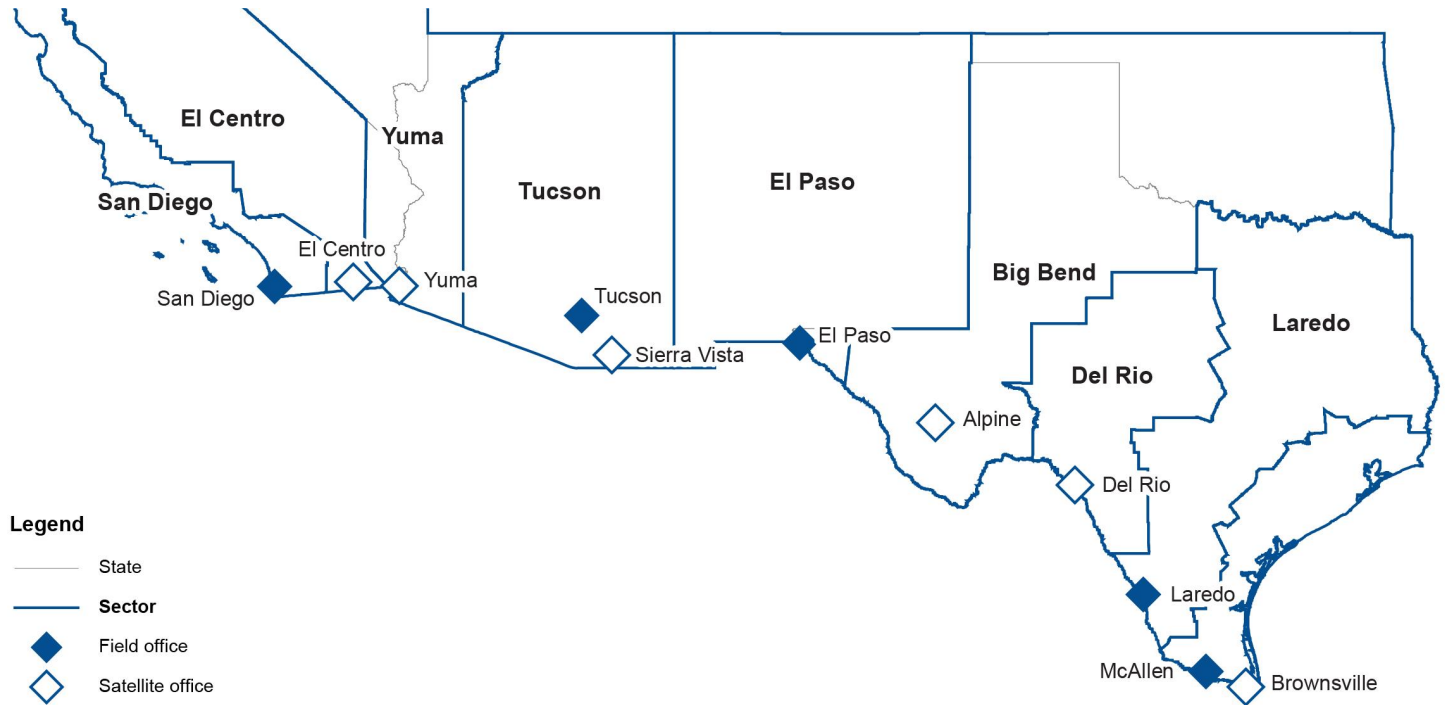
Other CBP law enforcement components. Within CBP, Air and Marine Operations is responsible for securing U.S. borders between ports of entry in the air, marine, and land domains. The Office of Field Operations is responsible for operating ports of entry through which travelers are inspected for admission to the U.S. As discussed later in this report, CBP data indicate that critical incidents involving personnel from Air and Marine Operations and Office of Field Operations are less common than those involving Border Patrol. These components do not, and have not, collected evidence related to or investigated such incidents involving their own personnel, according to officials from Air and Marine Operations and Office of Field Operations.

While critical incidents involving CBP personnel occur all over the U.S., according to OPR documentation, the frequency and concentration of them is higher in southwest border locations than in other parts of the country. Figure 3 shows Border Patrol sectors and OPR office locations along the southwest border.

²³U.S. Customs and Border Protection, *Report on Internal Investigations and Employee Accountability: Fiscal Year 2022* (Washington, D.C.: June 2023).

²⁴CBP, *Newsroom: Accountability and Transparency*, Accessed Feb. 14, 2024. <https://www.cbp.gov/newsroom/accountability-and-transparency>.

Figure 3: Map of Border Patrol Sectors and CBP Office of Professional Responsibility Field and Satellite Offices, Southwest Border



Source: GAO analysis of U.S. Customs and Border Protection (CBP) information. | GAO-24-106148

Other Law Enforcement Response to CBP Critical Incidents

When CBP personnel are involved in a critical incident, federal, state, and local law enforcement entities with jurisdiction may respond to the scene. Federal entities other than CBP that could respond include the following:

- Federal Bureau of Investigation (FBI), to investigate if the incident involved an allegation of a federal crime. These could include allegations of an assault on a Border Patrol agent or a civil rights violation;²⁵ and

²⁵It is a federal crime to assault or resist federal officers performing their duties. 18 U.S.C. § 111. FBI officials in southwest border offices we visited told us that FBI has a long-standing memorandum of understanding with Border Patrol stating that FBI is the federal law enforcement responder for any assault on a Border Patrol agent. According to FBI officials, the Department of Justice's *Justice Manual* and corresponding FBI guidance establish FBI's investigative jurisdiction of assaults on federal officers and predate the 2002 creation of DHS. It is also a federal crime for one or more persons acting under color of law willfully to deprive or conspire to deprive another person of any right protected by the Constitution or laws of the United States. Persons act under color of law when they wield power vested by a government entity. 18 U.S.C. §§ 241, 242.

- DHS's Office of Inspector General, to investigate whether an incident involved serious criminal or administrative misconduct by CBP.²⁶

In addition, state and local entities with jurisdiction may respond to the scene of a critical incident. These entities investigate to determine whether the incident involved a potential violation of state or local law. For example, a county sheriff or local police department may respond to a use of deadly force by CBP law enforcement personnel if the incident includes the serious injury or death of a civilian. The state highway patrol may respond to the scene of a vehicle crash involving a death or serious injury on an interstate or county road, and a local police department may respond to the same incident if the highway patrol and local police jurisdictions overlap.

In general, decisions about which entity will lead the investigation into which elements of potential crimes are agreed to at the scene, according to officials from multiple law enforcement entities we interviewed. The decisions may vary based on the (1) circumstances of the incident and (2) resources and investigative priorities of each responding entity.

According to OPR officials, some federal law enforcement entities are working at the headquarters level to establish a standardized approach to their investigations of federal officer-involved shootings.²⁷ However, such an approach would not apply to all critical incidents or to nonfederal law enforcement investigating entities, according to OPR officials.

Investigative Standards

There is no broadly adopted guidance or standards addressing how federal law enforcement entities should respond to and investigate incidents involving their own personnel. In general, law enforcement entities have internal affairs departments or other similar units to conduct such work. According to OPR, its investigative work—including its response to and investigation of critical incidents—is to align with the Council of the Inspectors General on Integrity and Efficiency's investigative standards.²⁸ These standards provide the inspector general community with a framework for conducting quality investigations and are designed to be

²⁶DHS's Office of Inspector General is to provide independent and objective oversight of DHS and to promote excellence, integrity, and accountability within DHS. According to OPR, DHS's Office of Inspector General retains right of first refusal to investigate all allegations involving CBP employee misconduct, though it typically only investigates serious misconduct. According to OPR guidance, OPR coordinates all investigative activities with DHS's Office of Inspector General. In some cases, OPR could investigate an incident jointly with DHS's Office of Inspector General.

²⁷OPR officials said that the effort to establish a standard approach began, in part, in response to a 2022 executive order. This order directed the FBI and U.S. Attorney's Offices to work closely to ensure that federal law enforcement agencies take steps to implement standard practices after an officer-involved shooting and gather information about (1) the actions of the officer and (2) details of the underlying crime the officer was investigating at the time of the shooting. See Exec. Order No. 14074, *Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety*, 87 Fed. Reg. 32,945 (May 25, 2022).

²⁸Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Investigations*.

both comprehensive and sufficiently broad to accommodate a range of investigative activities. Table 1 describes the seven standards, which OPR adopted for its work in December 2020.²⁹

Table 1: Council of the Inspectors General on Integrity and Efficiency’s Investigative Standards

Standard	Description of standard
Due professional care	Due professional care—which includes adherence to legal requirements, use of appropriate techniques, and documented policies and procedures—must be used in conducting investigations and preparing reports.
Planning	Organizational and case priorities must be established and objectives developed to ensure that case tasks are performed efficiently and effectively.
Execution	Investigations must be conducted in a timely, efficient, thorough, and objective manner.
Reporting	Reports must thoroughly address all relevant aspects of the investigation and be accurate, clear, complete, concise, timely, and objective.
Qualifications	Individuals assigned to conduct investigative activities must collectively possess necessary knowledge, skills, and abilities for the tasks required. Organizations should establish criteria to be used in recruiting and selecting qualified applicants to include education and experience, character, physical capabilities, and age.
Information management	Investigative data must be stored in a manner that allows effective retrieval, reference, and analysis.
Independence	In all matters relating to investigative work, the organization and investigators must be free in fact and appearance from impairments to independence.

Source: GAO analysis of Council of the Inspectors General on Integrity and Efficiency *Quality Standards for Investigations* (2011). | GAO-24-106148

²⁹According to OPR, one reason for adopting these standards was to ensure that its work was carried out in a thorough and objective manner and documented in well-written reports. The memorandum adopting these standards said that OPR planned to use the standards to update and standardize investigative and report-writing protocols and, subsequently, to establish a quality assurance mechanism to ensure that work adhered to them. OPR Investigative Operations Division, *Memorandum on Investigative Sufficiency and Report Quality* (Dec. 4, 2020).

Border Patrol Sectors Operated Their Own Critical Incident Teams and Continue to Respond to Noncritical Incidents, Which They Approach Inconsistently

Critical Incident Teams Responded to About 2,350 Incidents from Fiscal Years 2010 through 2022, of Which More than 60 Percent Were Noncritical

From fiscal years 2010 through 2022, Border Patrol sector CITs responded to an estimated 2,351 critical and noncritical incidents.³⁰ We estimate that 38 percent (893) of these incidents were critical incidents.³¹ Of these 893 critical incidents, we estimate that 17 percent (149) involved a death.³² The circumstances surrounding the critical incidents varied. For example, they included situations in which Border Patrol agents pursued a civilian vehicle and there was a crash, a civilian assaulted a Border Patrol agent, and individuals fell from the border barrier while trying to evade Border Patrol.

Most of the incidents that CITs responded to (an estimated 62 percent, or 1,458) were noncritical incidents (see fig. 4).³³ These noncritical incidents included, for example, vehicle collisions involving Border Patrol agents with no associated injuries and Border Patrol agents unintentionally discharging a firearm without causing injuries.

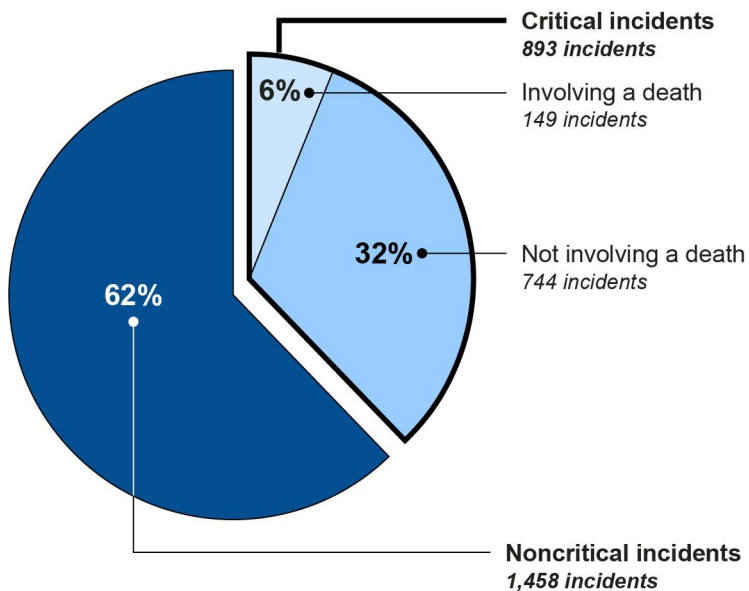
³⁰We estimated the number of incident responses by analyzing reports of investigation CITs used to document their incident response activities. The extent of information in these reports varied by sector. We used a statistical model to aggregate the contents of the reports of investigation—by sector and over time—and analyze a sample of them. In some sectors, we analyzed the entire population of reports. CITs did not categorize incidents they responded to as critical or noncritical. We created these categories by applying CBP's definition of a critical incident in our statistical model. We manually reviewed the model results to ensure they were valid. The margin of error for the 2,351 estimated incidents is plus or minus 3.1 percent, or 73 incidents. For more detailed information about our methodology, see appendix I.

³¹Our estimate has a lower bound of 820 and an upper bound of 966 critical incidents.

³²CITs did not specifically track whether the incidents they responded to involved a death. We used our statistical model to estimate the number of critical incidents involving a death. Our estimate has a lower bound of 138 and an upper bound of 179 critical incidents involving a death.

³³Although most CITs had the phrase "critical incident" in their name, sector leaders directed each team's activities, which generally included various other things in addition to critical incident response. We categorized any incident that did not meet CBP's 2022 definition of a critical incident as a noncritical incident. Our estimate has a lower bound of 1,385 and an upper bound of 1,531 noncritical incidents.

Figure 4: Estimated Border Patrol Critical Incident Team Incident Responses, Fiscal Years 2010–2022



Source: GAO analysis of U.S. Border Patrol documentation. | GAO-24-106148

Accessible Data for Figure 4: Estimated Border Patrol Critical Incident Team Incident Responses, Fiscal Years 2010–2022

Category	Incidents	Percentage
Critical incidents:	893	38%
Critical incidents: Involving a death	149	6%
Critical incidents: Not involving a death	744	32%
Noncritical incidents	1458	62%

Source: GAO analysis of U.S. Border Patrol documentation. | GAO-24-106148

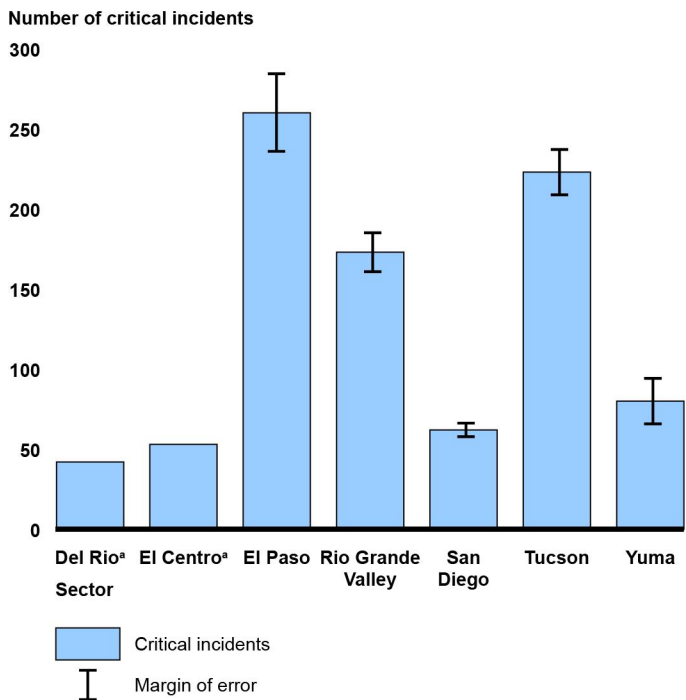
Notes: We estimated the number of incident responses by analyzing reports of investigation critical incident teams used to document their incident response activities. We determined that these reports were the best available source of information about incident responses. We used a statistical model to aggregate the contents of the reports of investigation and analyze a sample of them. We used CBP’s definition of critical incident and analyzed the reports to identify incidents with a serious injury that required medical attention, a death, or a use of deadly or excessive force. We categorized any incident that did not meet CBP’s definition of a critical incident as a noncritical incident. Our estimate of 1,458 noncritical incidents has a lower bound of 1,385 and an upper bound of 1,531. Our estimate of critical incidents has a lower bound of 820 and an upper bound of 966. Our estimate of critical incidents involving a death has a lower bound of 138 and an upper bound of 179.

Critical Incidents

The number of critical incidents CITs responded to varied across the seven Border Patrol sectors that had a team. CITs in three sectors—El Paso, Rio Grande Valley, and Tucson—responded to more critical incidents than teams in other sectors (see fig. 5). Specifically, teams in each of these sectors responded to an estimated

173 or more critical incidents over the 13-year period.³⁴ CITs in each other sector responded to an estimated 80 or fewer critical incidents over the same period.

Figure 5: Estimated Border Patrol Responses to Critical Incidents by Sector, Fiscal Years 2010–2022



Source: GAO analysis of U.S. Border Patrol documentation. | GAO-24-106148

Accessible Data for Figure 5: Estimated Border Patrol Responses to Critical Incidents by Sector, Fiscal Years 2010–2022

Sector	Critical incidents	Lower margin of error	Upper margin of error
Del Rio	42	42	42
El Centro	53	53	53
El Paso	260	235	285
Rio Grande Valley	173	160	186
San Diego	62	57	67
Tucson	223	208	238
Yuma	80	65	95

Source: GAO analysis of U.S. Border Patrol documentation. | GAO-24-106148

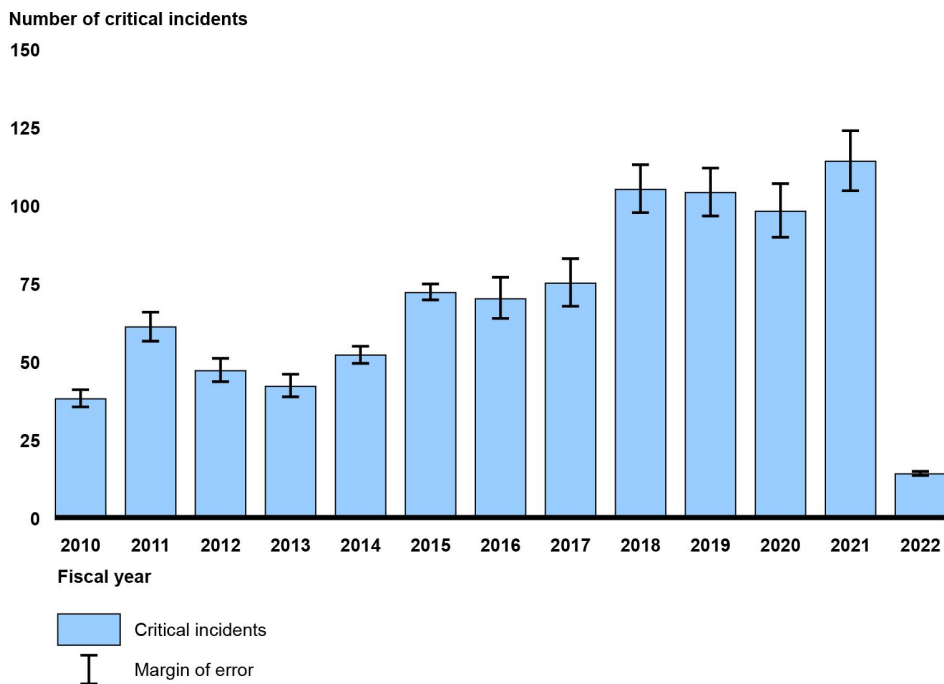
Notes: We estimated the number of incident responses by analyzing reports of investigation critical incident teams used to document their incident response activities. We determined that these reports were the best available source of information about incident responses. We used a statistical model to aggregate the contents of the reports of investigation and analyze a sample of them. We used CBP’s definition of critical incident and analyzed the reports to identify incidents with a serious injury that required medical attention, a death, or a use of deadly or excessive force. The margins of error for the estimated number of critical incidents by sector reflect the level of statistical precision in our results.

³⁴The estimates for each sector (lower bound, upper bound) are: El Paso 260 (235, 285), Rio Grande Valley 173 (160, 186); and Tucson 223 (208, 238).

^aIn these sectors, we analyzed the entire population of reports of investigation. Therefore, there is no margin of error associated with the results.

The number of critical incidents CITs responded to also varied over time (see fig. 6). The teams responded to more estimated critical incidents in each of fiscal years 2018 through 2021 than in any of the prior years. In fiscal year 2022, as CITs prepared to disband, they responded to fewer incidents. Border Patrol headquarters officials told us that variation in critical incident responses could be a function of the number of critical incidents, the resources each sector allocated to CITs, or other factors.

Figure 6: Estimated Border Patrol Responses to Critical Incidents by Fiscal Year, 2010–2022



Source: GAO analysis of U.S. Border Patrol documentation. | GAO-24-106148

Accessible Data for Figure 6: Estimated Border Patrol Responses to Critical Incidents by Fiscal Year, 2010–2022

Fiscal year	Critical incidents	Lower margin of error	Upper margin of error
2010	38	35	41
2011	61	56	66
2012	47	43	51
2013	42	38	46
2014	52	49	55
2015	72	69	75
2016	70	63	77
2017	75	67	83
2018	105	97	113
2019	104	96	112
2020	98	89	107

Fiscal year	Critical incidents	Lower margin of error	Upper margin of error
2021	114	104	124
2022	14	13	15

Source: GAO analysis of U.S. Border Patrol documentation. | GAO-24-106148

Notes: We estimated the number of incident responses by analyzing reports of investigation critical incident teams used to document their incident response activities. We determined that these reports were the best available source of information about incident responses. We used a statistical model to aggregate the contents of the reports of investigation and analyze a sample of them. We used CBP's definition of critical incident and analyzed the reports to identify incidents with a serious injury that required medical attention, a death, or a use of deadly or excessive force. The margins of error for the estimated number of critical incidents by fiscal year reflect the level of statistical precision in our results.

Noncritical Incidents

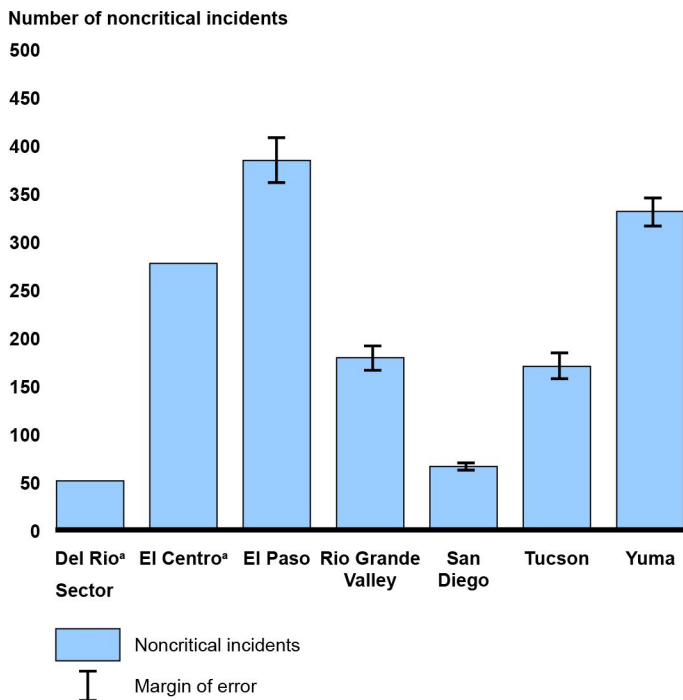
The number of noncritical incidents CITs responded to varied across Border Patrol sectors. In general, the teams responded to more noncritical than critical incidents. Specifically, teams in four sectors (Del Rio, El Centro, El Paso, and Yuma) responded to more noncritical than critical incidents. The team in Tucson responded to more critical than noncritical incidents. In the remaining two sectors (Rio Grande Valley and San Diego), teams responded to a similar number of critical and noncritical incidents.³⁵

CITs in three sectors—El Centro, El Paso, and Yuma—responded to more noncritical incidents than teams in other sectors. Specifically, CITs in these sectors each responded to an estimated 277 or more noncritical incidents over the 13-year period (see fig. 7).³⁶

³⁵The lower and upper bounds for the estimated number of critical and noncritical incidents in these sectors overlap; therefore, there is no statistically significant difference between the number of critical and noncritical incident responses documented in these sectors.

³⁶The estimates, if applicable, for each sector (lower bound, upper bound) are: El Centro 277; El Paso 384 (359, 409); and Yuma 331 (316, 346).

Figure 7: Estimated Border Patrol Responses to Noncritical Incidents by Sector, Fiscal Years 2010–2022



Source: GAO analysis of U.S. Border Patrol documentation. | GAO-24-106148

Accessible Data for Figure 7: Estimated Border Patrol Responses to Noncritical Incidents by Sector, Fiscal Years 2010–2022

Sector	Non-critical incidents	Lower margin of error	Upper margin of error
Del Rio	51	51	51
El Centro	277	277	277
El Paso	384	359	409
Rio Grande Valley	179	166	192
San Diego	66	61	71
Tucson	170	155	185
Yuma	331	316	346

Source: GAO analysis of U.S. Border Patrol documentation. | GAO-24-106148

Notes: We estimated the number of incident responses by analyzing reports of investigation critical incident teams used to document their incident response activities. We determined that these reports were the best available source of information about incident responses. We used a statistical model to aggregate the contents of the reports of investigation and analyze a sample of them. We used CBP’s definition of critical incident and analyzed the reports to identify incidents with a serious injury that required medical attention, a death, or a use of deadly or excessive force. We categorized any incident that did not meet CBP’s definition of a critical incident as a noncritical incident. The margins of error for the estimated number of noncritical incidents by sector reflect the level of statistical precision in our results.

^aIn these sectors, we analyzed the entire population of reports of investigation. Therefore, there is no margin of error associated with the results.

Two of the three sectors with a relatively high number of noncritical incident responses (an estimated 277 or more) had a relatively lower number of critical incident responses (an estimated 80 or fewer). This means that while the CIT teams in these sectors—El Centro and Yuma—were relatively active, a significant portion of their activities did not involve critical incidents.

Sectors Operated Critical Incident Teams Independently, but Teams Had Commonalities Such as Local Leadership, Guidance, and Training

CITs operated independently and at the direction of local leadership in Border Patrol’s southwest border sectors. Border Patrol headquarters and sector officials said that Border Patrol headquarters did not participate in the creation of the teams or oversee their operations. Rather, each team was locally created, led, and managed within the leadership structure of the relevant Border Patrol sector.

All sectors with teams created them at different times, and not all sectors had them. Specifically, seven of the nine southwest border sectors created CITs, with the San Diego sector establishing the first in 1987 and the Del Rio sector establishing the most recent in 2005.³⁷ Most sectors with CITs (5 of 7) created their teams between 2001 and 2005. Table 2 summarizes characteristics of CITs across Border Patrol’s southwest border sectors.

Table 2: Characteristics of Critical Incident Teams (CIT) in Border Patrol’s Southwest Border Sectors

Border Patrol sector	CIT creation ^a	CIT disbandment	Team composition ^b
Big Bend	N/A ^c	N/A ^c	N/A ^c
Del Rio	2005	September 2022	39 CIT-trained supervisory agents in the sector responded to incidents as a collateral duty
El Centro	2001	September 2022	6 members
El Paso	1996	September 2022	5–6 members
Laredo	N/A ^d	N/A ^d	N/A ^d
Rio Grande Valley	2004	September 2022	9–12 members
San Diego	1987	October 2016	12–15 members
Tucson	2003	August 2022	12 members
Yuma	2002	September 2022	3–5 members

Source: GAO analysis of U.S. Border Patrol information. | GAO-24-106148

^aAvailable documentation did not allow us to identify a precise creation date for some CITs. To determine the CIT creation date, we relied on information from sector officials who reviewed sector information to identify the earliest date for which the sector had documentation related to the CIT.

^bIn some sectors, team compositions varied over time based on leadership priorities and available resources. The table reflects the most recent CIT team composition before disbandment.

^cOfficials from Big Bend sector told us that the El Paso CIT responded to critical incidents in their area of responsibility.

^dLaredo sector did not have a standalone CIT. According to Laredo officials, Laredo had a unit that, prior to 2020, was known as the Sector Evidence Team. This unit did not collect evidence or conduct typical CIT activities, such as taking photographs, unless directed to do so by the lead law enforcement agency. The unit’s primary incident response activities were to secure the scene after an incident to relieve Border Patrol duty agents.

In the memorandum establishing the first team in the San Diego sector in 1987, the sector chief noted that there were an increasing number of incidents in the sector, and that sector leadership needed immediate, detailed information about them. To meet this need, the San Diego team was to respond to critical incidents, preserve the scenes, and document what occurred. As shown in table 2, two southwest border sectors (Big Bend and Laredo) did not establish CITs. Officials in these sectors told us that their sectors either did not have

³⁷Available documentation did not allow us to identify a precise creation date for some CITs. To determine the CIT creation date, we relied on information from sector officials who reviewed sector information to identify the earliest date for which the sector had documentation related to the CIT.

enough resources to maintain a dedicated team for critical incident response or that critical incidents did not happen frequently enough to warrant a team.

CITs also had different team compositions and numbers of personnel. For example, teams in six of the sectors ranged in size from three to 15 full-time members, and the team in the remaining sector (Del Rio) was composed of 39 supervisory agents who responded to incidents as a collateral duty.

While each CIT operated independently, the teams shared certain commonalities. Specifically, they all had local leadership that oversaw the team, a team member selection process, local operating guidance, and required training. The particulars of each varied by team. In addition, the teams did not regularly interact with one another or Border Patrol headquarters, but frequently coordinated with other law enforcement agencies with jurisdiction in the sector.

Leadership and oversight. Each CIT had local leadership that guided and oversaw the activities of the team. Though there was variation in who had authority over the team, all sectors had an official in management responsible for leading and deploying the team.

Officials from the seven Border Patrol sectors that had CITs told us that the local leadership took steps to oversee the activities of the team. Documentation we reviewed described how this local oversight was to work. For example, guidance we reviewed from four sectors said CITs were not to deploy without the approval of a supervisor. Officials in the other three sectors told us, similarly, that a supervisor was responsible for dispatching the CIT. In addition, guidance in one sector said that reports could not be distributed without authorization from sector management. In six sectors, officials said that management reviewed the team's reports of investigation. Reports we reviewed from all sectors showed evidence of supervisory review.

Critical Incident Example: Tucson Sector (2021)

Two Border Patrol agents and a local police officer were involved in a use of deadly force incident while attempting to apprehend people who bailed out of a vehicle that fled a Border Patrol checkpoint. The agents reported that they fired their weapons because the driver mimicked pointing a gun at one agent and they believed the driver was armed. No one was hit, but the report stated that the driver resisted arrest and sustained injuries. The local law enforcement officers transported the driver to a medical center. An empty holster was in the vehicle and a replica handgun was found near the scene. Four critical incident team (CIT) agents responded and coordinated with federal and local law enforcement at the scene. CIT agents observed the scene, took photographs, and marked and gathered evidence (such as the expended cartridge casings).

Source: GAO analysis of U.S. Border Patrol documentation. | GAO-24-106148

Border Patrol officials also described practices that sectors implemented to promote objectivity in CIT evidence collection activities. For example, officials from all sectors told us that more than one team member generally responded to incidents to help ensure the team's evidence collection activities and reports about the incident would be unbiased. Officials from three sectors said that to promote objectivity, team members were either not assigned to or would recuse themselves from an incident response and investigation in which a close friend or colleague was involved.³⁸

³⁸In three of the remaining four sectors, officials told us they could not recall an incident where CIT members' objectivity could have been affected by familiarity with the Border Patrol agent involved in the incident. One sector could not address whether there were incidents in which a team member's objectivity could have been affected by familiarity because the CIT had disbanded years prior.

Team member eligibility and selection. All seven sectors with a CIT had eligibility requirements for members and a selection process to evaluate interested agents that considered varying factors. In four sectors, team member positions were open to nonsupervisory agents, and in two sectors, agents had to be supervisors. In the remaining sector, team member positions were initially only open to supervisory agents, but later nonsupervisory agents could apply.

In all seven sectors, agents became CIT members through an internal solicitation process in which sector leadership invited interested agents to apply.³⁹ Each sector then used its own process to assess interested agents based on factors the sector determined were most relevant. In five sectors, officials noted that selecting officials considered an applicant's past experience working in law enforcement and relevant skills they acquired, such as conducting investigations and processing crime scenes.

Additionally, selecting officials in five sectors evaluated applicants based in part on their writing skills. Officials from one sector said they valued agents with strong writing skills because CIT members were responsible for writing reports of investigation that could inform the sector chief or CBP's Office of Chief Counsel about what occurred during a critical incident.

In two sectors, officials told us they evaluated agents on their ability to complete practical exercises involving processing simulated traffic collisions and crime scenes. For example, one sector assessed applicants based on their ability to, among other things, use a camera to photograph a vehicle involved in a collision; use a calculator to solve equations related to the vehicle's acceleration and velocity; and prepare a written document summarizing their assessment of what occurred during the simulated incident. Officials from this sector explained that these practical exercises helped them assess whether applicants had the skills they would need to collect and document relevant information about vehicle collisions.

Officials from six of the seven sectors said that CIT membership was a detailed position, meaning agents worked on the team on a temporary basis for a limited period of time, after which they returned to their previous Border Patrol stations and duties.⁴⁰ For example, in five sectors, CIT members served 3-year details with the option to extend the detail by an additional 1 to 2 years.

Critical Incident Example: El Centro Sector (2021)

A privately owned vehicle struck and killed a Border Patrol agent while the agent was assisting a civilian who was involved in another vehicle collision. The report stated that two critical incident team agents responded to the scene and met with state law enforcement. They observed that there were multiple vehicle collisions in the immediate area of the scene and identified and documented the position and condition of the government vehicle in which the Border Patrol agent arrived.

Source: GAO analysis of U.S. Border Patrol documentation. | GAO-24-106148

³⁹In three sectors, the solicitation process changed over time. Specifically, officials from two sectors explained that it evolved from an internal process to a formal job posting on the job portal website USAJobs. Officials from the third sector said that when border activity increased in the sector, the sector chief saw the need for additional station-based CIT members who could respond immediately following an incident. As a result, rather than soliciting CIT members, the sector decided to train all new supervisors to become CIT members as a part of their basic supervisory training, beginning in 2019. These supervisors were to respond to incidents as a collateral duty.

⁴⁰In the remaining sector, agents served on the CIT in a detailed capacity prior to 2019. After 2019, the sector began training all new supervisors to respond to critical incidents as a collateral duty.

Local operating guidance. All sectors that had a CIT had internal guidance that provided a shared understanding within the sector about the purpose of the team and its activities. Although the scope of the guidance varied, it generally described the types of incidents to which the teams were to respond and the activities they were to perform once they arrived. The internal guidance of all seven sectors indicated that the teams were to respond to critical incidents, including incidents involving a Border Patrol agent that resulted in a serious injury or death.⁴¹

Guidance from all seven sectors also indicated that the teams were to respond to noncritical incidents involving Border Patrol agents that resulted in significant property damage or other exposure to civil liability. The guidance also described other types of noncritical incidents teams were to respond to, which varied by sector. These included, for example, noncritical incidents involving traffic collisions, unintentional discharges of firearms, and assaults on federal officers.

Local guidance in all sectors included standard operating procedures, which described the activities the team was to perform, including tasks they were to complete at incident scenes. These tasks included securing suspects or weapons, diverting traffic, and collecting evidence to document the scene. The specific evidence collection steps the procedures described—and that sector officials told us their teams performed—varied by sector. They included activities such as taking photographs, collecting fingerprints and DNA, securing and documenting physical evidence, and creating diagrams of the incident scene.

Practices regarding witness interviews also varied by sector. Officials in two sectors told us that CITs did not participate in witness interviews and that such interviews were outside the scope of their activities. In the other five sectors, officials told us that CITs interviewed witnesses for various purposes, including to collect basic biographic information of involved agents or to document a civilian witness's description of an incident.

While the procedures outlined various steps team members were to take to collect evidence related to incidents, none of the sectors' guidance authorized CITs to conduct criminal investigations of critical incidents.⁴² Rather, CIT members collected evidence to support other agencies' investigative efforts and developed reports of investigation documenting what occurred for Border Patrol's internal purposes. For example, officials from one sector said that the CIT routinely assisted local law enforcement agencies with analysis of forensic evidence (e.g., fingerprints).

According to sector officials, CITs' reports of investigation, which varied in format and depth, were used to inform sector leadership about what occurred, help CBP's Office of Chief Counsel adjudicate any claims of civil liability resulting from the incident, and help the sector determine if the actions of the agents involved in the incident were consistent with Border Patrol policy. All seven sectors retained their teams' reports of investigation at the sector level.

⁴¹As previously discussed, for the purposes of this report, a critical incident involves CBP personnel and results in, or is intended or likely to result in, serious injury or death; a use of force; or widespread media attention. Sector guidance defined critical incidents their teams were to respond to more broadly, to include incidents involving significant property damage or other potential exposure to civil liability. We define those as noncritical incidents.

⁴²Border Patrol agents have statutory authority to conduct criminal investigations related to their law enforcement duties, such as those related to violations of federal immigration laws. See, e.g., 6 U.S.C. § 211(c)(8) (providing CBP the authority to, in coordination with U.S. Immigration and Customs Enforcement and U.S. Citizenship and Immigration Services, enforce and administer all immigration laws).

Critical Incident Example: El Paso Sector (2020)

A Border Patrol agent approached two people about half a mile north of the border and observed that one was pregnant and in medical distress. She reportedly fell from the border barrier while trying to climb over, sustaining injuries. An ambulance transported her to the hospital, and she died a few days later. The report stated that the critical incident team (CIT) agent who responded to the scene took photographs of the location where the woman was found and where she entered the U.S. and interviewed the agent who first encountered the woman. The CIT also requested a copy of the autopsy report from the local medical examiner's office.

Source: GAO analysis of U.S. Border Patrol documentation. | GAO-24-106148

Training. According to sector officials and documents, all seven sectors required CIT members to have some training, and six of the seven tracked the completion of the training. The amount of required training and the topics the training addressed varied and included topics such as scene preservation, evidence collection, incident investigation and reconstruction, interviewing witnesses, and photography. For example, in one sector, agents were to complete an 80-hour course focused on crime scene investigation. In another sector, agents were to complete several courses that collectively included about 400 hours of training. Training providers varied by sector and included CBP entities, such as Laboratories and Scientific Services, and external entities, such as universities.⁴³

Sector practices varied regarding whether sectors required CIT members to complete training courses before beginning evidence collection activities. For example, officials from two sectors said that they required members to complete one or more training courses prior to participating in evidence collection activities at incident scenes. In another sector, officials said that newly selected team members could collect evidence while responding to critical incidents with other, more experienced team members before completing any classroom training.

Sectors also offered CIT members the opportunity to attend additional, nonmandatory training. Specifically, officials from six of the seven sectors noted that CIT members could attend additional training.⁴⁴ Such training was generally offered based on class availability and funding. It may have included courses on advanced techniques, such as for vehicle accident reconstruction, or training on specialized equipment, such as crash data retrieval systems.⁴⁵

Critical Incident Example: El Paso Sector (2020)

Seven people died and three were injured after a vehicle traveling at high speed near downtown El Paso crashed. Border Patrol terminated a pursuit of the vehicle shortly before it crashed. The report stated that critical incident team (CIT) agents coordinated with the local police department, inspected and photographed the scene, went to the hospital and photographed and documented injuries to two civilians, and observed a witness interview. CIT agents used information from local police and another federal investigative agency to complete their report of investigation.

Source: GAO analysis of U.S. Border Patrol documentation. | GAO-24-106148

⁴³Laboratories and Scientific Services is the scientific, technical, and forensic arm of CBP. According to officials in one sector, Laboratories and Scientific Services offered basic crime scene investigation training to CIT members in the sector.

⁴⁴The remaining sector—where officials did not indicate that team members could attend additional training—was the sector that required CIT members to complete about 400 hours of mandatory training.

⁴⁵Crash data retrieval systems can be used to download crash-related data from a vehicle following an incident, such as the speed the vehicle was traveling at the time of a collision.

Coordination with other law enforcement agencies. During their operations, CITs frequently interacted with federal, state, and local law enforcement agencies with jurisdiction in the sector. For example, according to officials in one sector, a CIT may have been the first investigative entity to arrive at the scene of a vehicle accident and would secure it and begin to coordinate investigative efforts until other law enforcement agencies could arrive and begin their investigations.

Officials in all seven sectors said that the CIT generally worked at the direction of the law enforcement agency with jurisdiction at an incident. Officials also told us that, in limited circumstances, other law enforcement entities may not have responded to an incident involving Border Patrol personnel. Some reasons other law enforcement entities might not have responded included the remoteness of a scene or the incident not rising to the level of severity requiring a non-CBP law enforcement response.⁴⁶ These officials said that while sometimes the CIT was the only law enforcement responder to a noncritical incident, they could not recall any instance in which a CIT was the only responder to a critical incident.

The type and extent of support CITs provided to other law enforcement agencies varied by sector. For example, in three sectors, officials told us that CIT evidence collection capabilities were more advanced than those of most of the local law enforcement entities and that local law enforcement relied on the team to process evidence. Officials in one of these sectors said that CIT members sometimes acted as translators for witness interviews of Spanish-speaking civilians conducted by English-speaking law enforcement officers from other agencies. In other sectors, CITs generally helped secure the scene after an incident and then took photographs or examined evidence for Border Patrol purposes in parallel with other entities or after the other entities finished their investigation.

The types of other law enforcement entities that CITs interacted with depended on which entities had jurisdiction within the sector or the characteristics of the incident.⁴⁷ Federal entities CITs interacted with included local FBI and OPR field offices.⁴⁸ We found that six sectors did not have documented guidance describing how federal, state, and local law enforcement agencies should coordinate after a critical incident.⁴⁹ Officials in some sectors stated that interactions across law enforcement agencies were built on informal working relationships.

⁴⁶For example, officials in one sector said if a Border Patrol agent was involved in a minor vehicle accident with no injuries, other law enforcement agencies may not respond.

⁴⁷Other entities that responded to incidents included state highway patrol agencies and local police departments, among others. For example, an official from a highway patrol agency responsible for enforcing traffic laws on highways and roads told us that in the past, the agency responded to a single-vehicle collision in which a Border Patrol agent died and to many collisions in remote rural areas resulting from a Border Patrol pursuit of a person in a vehicle. Another official from a local police department said their primary interaction with a Border Patrol CIT was when responding to vehicle collisions involving Border Patrol agents.

⁴⁸We discuss the role of OPR field offices in responding to critical incidents later in this report.

⁴⁹Coordination in the remaining sector regarding two specific types of incidents—federal officer-involved shootings and uses of force resulting in death—was guided by a memorandum of understanding. Specifically, in 2014, federal, state, and local law enforcement agencies in San Diego, California, established a memorandum of understanding to provide consistency in interagency investigations and independent review for any law enforcement officer-involved shooting incidents that resulted in injury or death and other uses of force by law enforcement officers within San Diego County that resulted in death. San Diego County Police Chiefs' and Sheriff's Association, *Memorandum of Understanding: Protocol for Investigation and Review of Officer Involved Shootings and Other Uses of Force Resulting in Death* (April 2014).

While CITs frequently interacted with law enforcement agencies in their sector, the teams did not regularly interact with one another or Border Patrol headquarters. Officials from all sectors that spoke to the topic told us that there was not regular coordination between CITs in different sectors and described interactions across teams as inconsistent and occurring on an ad hoc basis.⁵⁰

When CITs did collaborate across sectors, such collaboration typically related to a specific need or circumstance. For example, officials from one sector told us their CIT coordinated with the CIT in a neighboring sector when an incident occurred in a remote area because, due to geography, the neighboring CIT could access the scene more quickly.

Likewise, officials from all sectors that spoke to the topic said that CITs did not regularly coordinate or share information with Border Patrol headquarters.⁵¹ Furthermore, according to headquarters officials, headquarters did not direct or oversee the sector's internal CIT operations and did not communicate directly with the teams.

Lacking Standardized Guidance, Border Patrol Sectors Continue to Approach Noncritical Incident Response Inconsistently

All Border Patrol sectors had disbanded their CITs by September 2022, in response to CBP's memorandum directing them to do so.⁵² While the memorandum assigned all critical incident response to OPR, it did not assign OPR responsibility for responding to noncritical incidents. Rather, Border Patrol sectors retained this function. However, in the absence of Border Patrol guidance or oversight from headquarters about noncritical incident response, the sectors continue to approach it inconsistently. With these inconsistent approaches, officials raised concerns that (1) Border Patrol may not have all the information it needs about these incidents and (2) sectors could infringe on OPR's critical incident response activities.

According to Border Patrol headquarters and sector officials, although all sectors have disbanded their CITs, Border Patrol still has a need to collect information about property damage associated with noncritical incidents. In the past, as discussed above, most incidents that CITs responded to were noncritical—an estimated 1,458 incidents from fiscal years 2010 through 2022. According to CBP Office of Chief Counsel officials, in the past, if a private party brought a civil liability claim against CBP related to an incident involving an injury or property damage, the information documented in the CIT report of investigation could be used to determine the extent to which Border Patrol had liability, and if so, the cost of the damages for payout purposes.⁵³

⁵⁰Across the seven sectors that had CITs, officials from four sectors told us there was not regular coordination between CITs, and officials from six sectors told us interactions across teams were inconsistent or ad hoc. Officials from the remaining sectors did not comment on these topics.

⁵¹Officials from five of the sectors that had CITs told us that the teams did not regularly coordinate or share information with Border Patrol headquarters. Officials from the remaining two sectors did not comment on this topic.

⁵²CBP, Commissioner, *Critical Incident Response Transition and Support* (May 3, 2022).

⁵³Such a civil liability claim is known as a tort claim. According to CBP, a person who wishes to make a claim for property damage or loss, personal injury, or death resulting from the negligent or wrongful acts or omissions of a CBP employee must file an administrative tort claim against the agency. CBP processes administrative tort claims in accordance with the Federal Tort Claims Act (FTCA) (codified as amended at 28 U.S.C. 2671 et seq.).

To address Border Patrol's need for information about noncritical incidents, sectors continue to respond to them and document property damage. However, Border Patrol headquarters and sector officials told us that current noncritical incident response activities do not have headquarters oversight and vary across sectors.

For example, after disbanding its CIT, one sector established a specialized team to respond to noncritical incidents. Sector officials said that this team responds to vehicle collisions involving Border Patrol agents in the sector. The team documents property damage and creates a record to help CBP's Office of Chief Counsel assess future civil liability claims. In particular, sector officials said that the team uses electronic surveying tools to diagram incident scenes and then documents its findings in a vehicle collision report. This team also responded to critical incidents in cases where OPR was notified about the incident and declined to respond.⁵⁴

Border Patrol headquarters officials told us that in most other Border Patrol sectors, after a noncritical incident such as a vehicle accident, the station supervisor who responds is to conduct an accident review. Border Patrol officials told us that, in the absence of CITs, the information these other sectors collect about property damage related to noncritical incidents is more limited than in the past. For example, officials from one sector said that when there is a minor incident involving property damage, a supervisor completes some documentation about what occurred. However, this may only be a one-page summary, whereas in the past, many CITs wrote comprehensive reports about such incidents describing what occurred and any damages incurred to both government and private property.

This more limited information has affected CBP's ability to assess civil liability claims, according to officials from Border Patrol and CBP's Office of Chief Counsel. Specifically, officials from three sectors said that, in the past, the evidence CITs collected was pivotal to Border Patrol's ability to defend against civil liability claims. Officials from one of these sectors said that there have been instances since the CIT was disbanded in which CBP's Office of Chief Counsel asked for information to help assess a civil liability claim related to property damage. The information the sector had available was more limited than in the past because the current accident review is less robust than the CIT investigation and subsequent documentation.

They added that the evidence other law enforcement agencies collect related to noncritical incidents, such as minor traffic accidents, is often not sufficiently detailed for Border Patrol to use to rebut a claim. An official from the Office of Chief Counsel corroborated this, noting that especially for incidents with minor property damage, CIT reports tended to have more detail and contain a more extensive record of the circumstances of the incident than reports from state or local law enforcement.

OPR officials also expressed concern that, in the absence of headquarters guidance directing noncritical incident response activities, the one sector's specialized team may respond to accidents involving property

⁵⁴According to sector officials, during fiscal year 2023, the local OPR field office declined to respond to certain critical incidents that, according to OPR guidance, required an OPR response. Our review of Border Patrol's data about these incident notifications to OPR indicated that the local OPR field office did not respond to seven of 14 incidents that, according to Border Patrol's assessment of the incident, required an OPR response from October 2022 through July 2023. For example, Border Patrol data indicated that OPR did not respond to an incident in which a civilian vehicle crashed and multiple people were taken to the hospital. Before it crashed, Border Patrol and state law enforcement were pursuing the vehicle. In another example, OPR did not respond to an incident in which a Border Patrol vehicle rear-ended a civilian vehicle. In six of these seven instances, the specialized sector-based team responded and investigated the incident, according to Border Patrol's data. According to officials from the local OPR field office, the office did not respond to all critical incidents as required by OPR guidance due to capacity constraints. We further discuss OPR's capacity to respond to critical incidents, and its progress building capacity, later in this report.

damage that are also critical incidents.⁵⁵ That is, the team may respond to incidents that are OPR's responsibility and outside the intended scope of Border Patrol incident response activities (currently limited to noncritical incidents). OPR officials said they understand why Border Patrol sectors need information about noncritical incidents to adjudicate resulting liability claims. OPR officials explained that guidance CBP headquarters entities have provided does not clearly establish Border Patrol's role in documenting noncritical incidents involving vehicle accidents or property damage, and that such guidance could be helpful.⁵⁶

Since the disbandment of CITs, Border Patrol has not issued standardized national guidance to sectors describing how they should respond to and document noncritical incidents because they are still deciding whether, and how, to do so. Border Patrol headquarters officials told us that a standardized approach to noncritical incident response and documenting this approach through guidance would be helpful.

In October 2022, Border Patrol officials also told us that there is a headquarters-based effort to establish a national coordinator position to bring oversight and consistency to sector-based teams conducting evidence collection activities and administrative investigations.⁵⁷ As of August 2023, Border Patrol told us the agency had taken steps to begin to establish such a headquarters-based role and establish internal operating procedures for them.

According to Border Patrol, this position could be used to standardize how sectors respond to noncritical incidents in the future. However, the agency had not yet finalized the roles and responsibilities for the position, and its primary function, as of August 2023, does not relate to noncritical incident response.⁵⁸ In addition, Border Patrol has not provided us with documentation of its efforts to establish this position or time frames for completion.

Standards for Internal Control in the Federal Government states that management should implement control activities through policies, including documenting such policies.⁵⁹ Further, these standards state that management should establish and operate activities to monitor the internal control system and evaluate the results.

As previously discussed, Border Patrol sectors have a long history of responding to both critical and noncritical incidents without headquarters oversight and at the direction of local leadership. One reason CBP disbanded

⁵⁵In this sector, OPR did not respond to all critical incidents. This specialized team collected evidence at some scenes when OPR did not respond.

⁵⁶The relevant guidance—which does not clearly establish Border Patrol's role in documenting noncritical incidents—includes CBP's May 2022 memo directing CITs to disband and OPR's September 2022 memo implementing its critical incident response activities.

⁵⁷According to Border Patrol's memorandum directing CITs to disband, sectors could continue to use the skills of CIT members by assigning them to sector-based teams that (1) collect evidence for mission-related enforcement actions or (2) conduct administrative investigations of minor agent misconduct. Specifically, the memorandum indicated that sectors could assign CIT members to Evidence Collection Teams and Management Inquiry Teams. As of fiscal year 2023, all sectors had these teams, according to Border Patrol officials. The sector that formed a specialized team to respond to noncritical incidents after it disbanded its CIT established the team within its Management Inquiry Team.

⁵⁸In commenting on a draft of this report, Border Patrol officials stated that, as of April 2024, efforts to develop internal operating procedures and roles and responsibilities for this position were ongoing.

⁵⁹[GAO-14-704G](#).

CITs and assigned critical incident response to OPR was to help ensure investigations are conducted with appropriate oversight.

By developing and implementing guidance that standardizes sector approaches to responding to noncritical incidents and documenting these response activities, Border Patrol would help its sectors better understand and adhere to their responsibilities related to noncritical incidents. Such guidance could also help Border Patrol ensure that sectors collect the information needed to assess civil liability claims. Further, by regularly monitoring adherence to the guidance—through a national coordinator position or other means—Border Patrol could help ensure that sector-led activities to collect information about noncritical incidents are within CBP’s intended scope of their work.

OPR Assumed Responsibility and Is Building Capacity for Critical Incident Response

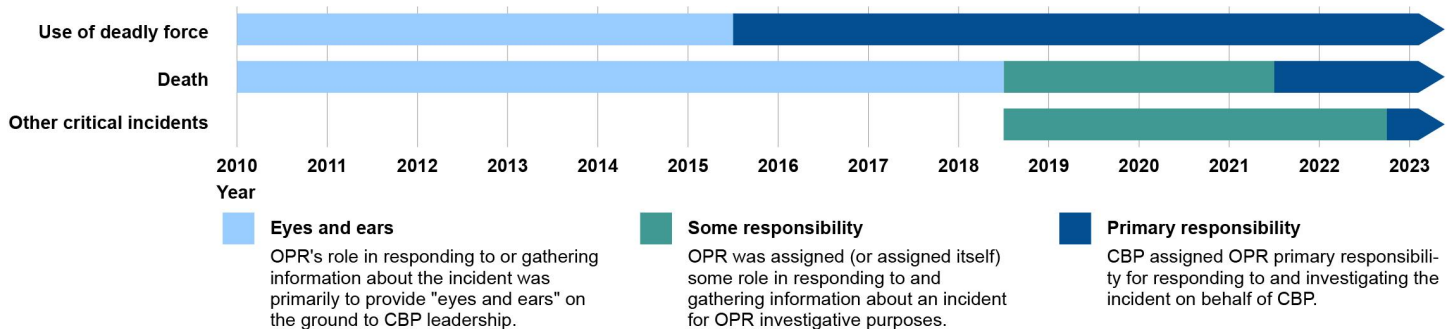
CBP Assigned All Critical Incident Response to OPR Before It Had Sufficient Resources

CBP has taken steps to increase OPR’s assigned role in responding to and investigating CBP critical incidents.⁶⁰ From 2015 through 2023, OPR’s responsibility for critical incident response increased several times, resulting in its role expanding from serving as observers on behalf of CBP leadership to being the primary entity responsible for responding to and investigating critical incidents. Each time, CBP or OPR guidance described how OPR’s critical incident-related responsibilities were to increase. And we found that, with each expansion of its critical incident response mission, OPR was not well-resourced—with skilled personnel or equipment—to carry out its assigned responsibilities.⁶¹ Figure 8 shows how OPR’s assigned role in responding to and reviewing three types of critical incidents—uses of deadly force, CBP-related deaths, and other critical incidents—increased over time.

⁶⁰OPR was not officially established until 2016. Prior to this, the office that became OPR was known as CBP Internal Affairs. We use OPR to refer to the functions of this office prior to and after OPR’s official establishment.

⁶¹In 2014, at the request of the Secretary of Homeland Security, the Homeland Security Advisory Council created the CBP Integrity Advisory Panel to evaluate CBP’s progress regarding its efforts to (1) deter and prevent corruption and the use of excessive force and (2) restore public confidence through more transparency with key stakeholders and the public. The resulting interim and final reports had 53 recommendations, including that CBP should adequately staff OPR and increase the number of criminal investigators from 218 to 550. The interim report noted that this was the minimum number of investigators for OPR to have an effective internal affairs capability.

Figure 8: CBP Office of Professional Responsibility’s (OPR) Assigned Role in Critical Incident Response, 2010–2023



Source: GAO analysis of U.S. Customs and Border Protection (CBP) documentation. | GAO-24-106148

Note: CBP defines a critical incident as any incident that involves CBP personnel that results in, or is intended or likely to result in, serious bodily injury or death; a use of force; or widespread media attention. A serious injury is a physical injury that needs treatment at a medical facility. Other critical incidents could include a vehicle crash with serious injuries, an allegation of excessive force, or a serious injury in the course of a CBP arrest or detention.

As OPR began to take on these added critical incident-related responsibilities, it faced challenges carrying them out as envisioned (see table 3). Officials attributed these challenges to a variety of factors, including limited personnel resources, difficulty coordinating with other law enforcement entities within or outside CBP, and a lack of primary evidence collection experience or training among OPR investigators.

Table 3: CBP Office of Professional Responsibility’s (OPR) Critical Incident Responsibilities and Examples of Challenges Implementing Them, 2010–2020

Time period	Additional assigned critical incident responsibilities	Examples of challenges OPR experienced in implementing assigned responsibilities
2010–2014	According to CBP guidance, OPR investigators were to respond to the scene of any incident (1) involving a use of deadly force or (2) with a fatality and CBP involvement to act as the “eyes and ears” of CBP leadership. ^a	According to OPR officials <ul style="list-style-type: none"> OPR frequently did not receive timely notification about critical incidents; and Other law enforcement agencies asserted that OPR did not have the authority to respond to incident scenes in an official capacity.
2015–2017	According to CBP guidance, OPR was to oversee CBP’s investigation of use of force incidents resulting in death or serious injury. In addition, OPR was to assemble and deploy a cross-functional group of CBP personnel to respond to and investigate uses of deadly force. The investigation was to be thorough, factual, and objective and include a report documenting the results. ^b	According to OPR officials <ul style="list-style-type: none"> Guidance was not clear about the role of OPR field offices in incident response and field offices did not have enough staff capable of responding to use of force incidents with the consistency or investigative depth contemplated in the guidance; and Convening the cross-functional investigative teams and facilitating travel from their assigned duty stations to the site of a use of force incident was logistically challenging and did not work as the guidance contemplated.

Time period	Additional assigned critical incident responsibilities	Examples of challenges OPR experienced in implementing assigned responsibilities
2018–2020	<p>According to OPR guidance, OPR field offices were to provide an immediate investigative response to uses of force, deaths in custody, and vehicle pursuits that resulted in serious injury or death.</p> <p>The guidance noted that all field offices were to maintain a posture to provide for an immediate and robust response to a wide range of critical incidents and to be prepared to assist in or conduct routine investigative functions.^c</p>	<p>According to OPR officials</p> <ul style="list-style-type: none"> OPR did not have a consistent headquarters-directed and overseen process to determine whether an OPR investigator should go to an incident scene, and field offices had great discretion in determining their incident response priorities; and Conducting primary investigative activities was a challenge for OPR investigators because they were not trained to do so.

Source: GAO analysis of information from U.S. Customs and Border Protection (CBP) documentation and officials. | GAO-24-106148

Note: OPR was not officially established until 2016. Prior to this, the office that became OPR was known as CBP Internal Affairs. We use OPR to refer to the functions of this office prior to and after OPR’s official establishment.

^aCBP, Acting Commissioner, *CBP Response to Incidents Involving CBP Use of Deadly Force (Amended)*, Memorandum for all CBP management officials (Apr. 6, 2009).

^bCBP, Commissioner, *Response to Use of Force Incidents, CBP Directive 4510-038* (July 27, 2015). According to the directive, use of force incidents are to be promptly investigated by Use of Force Incident Teams to gather all available evidence and statements. Further, use of force incidents are to be reviewed by either a national or local review board, depending on the severity of the incident, within 6 months of the incident.

^cOPR Investigative Operations Directorate, Executive Director, *Special Agent in Charge Office Response Policy* (June 27, 2018).

As noted in table 3, OPR officials told us about challenges that made it difficult for them to respond to critical incidents as called for in CBP and OPR guidance. For example, when OPR directed its field offices to respond to “a wide range of critical incidents” in 2018, officials in one field office told us that they responded to and investigated a CBP use of force incident that received significant media attention and which state and local law enforcement declined to investigate. They said that they found it challenging to conduct primary investigative activities during this response because they were not trained to do so. Officials from another field office said they faced challenges in 2017 and 2018 because there were no agreements or policy documents describing OPR’s role and how they were to coordinate with other DHS or non-DHS law enforcement entities at incident scenes.

More recently, OPR management and others began to assert OPR’s role to direct and lead critical incident response for all CBP critical incidents, beginning with CBP-related deaths. Specifically, in late 2020, a House report accompanying DHS’s fiscal year 2021 annual appropriations act directed (1) CBP to review deaths in CBP custody or in which CBP was involved and (2) OPR to notify Congress of its findings and any associated recommendations for any deaths it investigated.⁶² According to OPR officials, OPR field office investigators did not have the skills to conduct death reviews at the time they were directed to investigate all deaths; they were “learning on the fly.”

OPR also began to take steps to bring coordination to CBP’s critical incident response activities and promote transparency and accountability for entities involved in them. Specifically, OPR issued guidance in January 2021 saying that it would collaborate with CBP component entities, including Border Patrol, to establish standardized checklists and procedures for responding to and processing critical incidents.⁶³ This guidance noted that CBP’s existing critical incident response process did not work because, although OPR and Border

⁶²See, e.g., H.R. Rep. No. 116-458, at 21 (July 20, 2020) (incorporated by reference in the explanatory statement for Pub. L. No. 116-260, 134 Stat. 1182 (2020)).

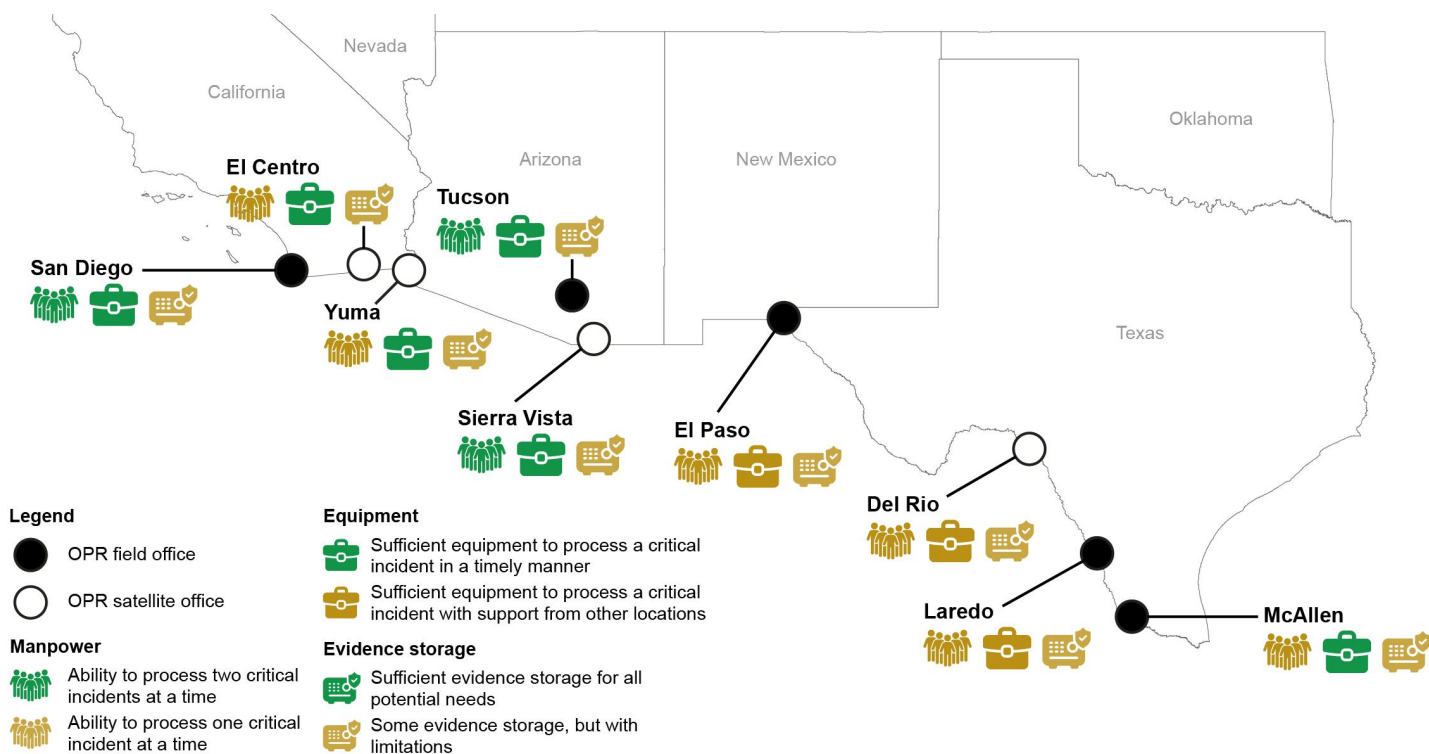
⁶³CBP OPR, Assistant Commissioner, *CBP Unified Response to Use of Force and Critical Incidents*, Memorandum to CBP component leaders (Jan. 28, 2021).

Patrol CITs regularly collaborated during critical incident response activities, there were no standardized protocols for scene and evidence processing. This resulted in (1) uncoordinated investigative steps involving perishable evidence and (2) inconsistent handling of similar incidents in different geographic locations, according to the guidance. At that time, OPR investigators were not trained in all tasks necessary for critical incident response and investigation, nor did OPR have the personnel or equipment needed for this work, according to OPR documents and officials.

From early 2021 through early 2022, OPR began to build its incident response capability, in collaboration with Border Patrol and other CBP components. Specifically, OPR, Border Patrol, and other CBP component officials met to discuss CIT roles and activities, and OPR and Border Patrol directed CITs to conduct their evidence collection activities at the direction and with the oversight of OPR.

In May 2022, CBP announced that OPR would assume full responsibility for responding to and processing all CBP critical incidents no later than October 1, 2022—no longer relying on direct support from Border Patrol CITs. Although OPR was wholly responsible for CBP critical incident response beginning at that time, OPR did not have sufficient resources to carry out these activities. In September 2022, OPR completed an assessment of the capabilities of its southwest border locations to respond to critical incidents beginning in the following month (see fig. 9).

Figure 9: Office of Professional Responsibility (OPR) Assessment of its Critical Incident Response Capabilities in Southwest Border Locations as of September 2022



Source: GAO analysis of U.S. Customs and Border Protection information; Icons-Studio/stock.adobe.com (illustrations); U.S. Census Bureau (map). | GAO-24-106148

Notes: According to OPR, Laredo and McAllen became field offices in 2023; prior to 2023, they were satellite offices of the Houston OPR field office. Two OPR southwest border satellite offices—Brownsville, Texas and Alpine, Texas—are not shown because (1) OPR did not assess Brownsville's incident response capability in September 2022 and (2) Alpine was created as a new satellite office in fiscal year 2022 and did not have any

investigators in September 2022. According to OPR officials, Brownsville is located in close proximity to McAllen and its capabilities are functionally the same as those of the McAllen field office. CBP defines a critical incident as any incident that involves CBP personnel that results in, or is intended or likely to result in, serious bodily injury or death; a use of force; or widespread media attention. A serious injury is a physical injury that needs treatment at a medical facility.

More specifically, OPR's September 2022 assessment of its capabilities found that only three of its nine southwest border locations had the personnel to process two critical incidents at a time, and the remaining six locations could process one incident at a time.⁶⁴ Our review of OPR documentation found that southwest border offices reported that they have sometimes had to respond to between three and 10 critical incidents in the same week.

OPR's Capacity to Respond to Critical Incidents Has Grown

In fiscal year 2022, OPR received additional resources to hire more investigators and build its capacity for critical incident response. Specifically, DHS's fiscal year 2022 appropriation provided \$74.3 million for OPR to hire, train, and equip additional personnel, including criminal investigators.⁶⁵ Since 2022, OPR has increased its capacity to respond to critical incidents on the southwest border. It has (1) hired more investigators, (2) implemented specialized training for its existing workforce and new hires, and (3) acquired additional equipment and taken steps to ensure that its facilities are aligned with incident response mission needs.

Hiring

In 2022, OPR initiated a hiring surge with the goal to nearly double its criminal investigator workforce from 266 to 518 investigators.⁶⁶ More than half of these new investigators (137 of 252, or 54 percent) were to be stationed at OPR's southwest border field locations.⁶⁷ As of the end of fiscal year 2023, OPR had made progress toward this hiring goal. Specifically, OPR onboarded 22 new investigators in fiscal year 2022 and an additional 63 in fiscal year 2023, for a total of 85 new investigators in southwest border locations. As of the end of fiscal year 2023, 69 additional people had accepted OPR investigator positions in these locations but had not yet onboarded (see fig. 10).⁶⁸

⁶⁴OPR's assessment did not include the capabilities of its satellite offices in Brownsville and Alpine, Texas. According to OPR officials, Brownsville is located in close proximity to McAllen and its capabilities are functionally the same as those of the McAllen field office. Alpine was created as a new satellite office in fiscal year 2022 and did not have any investigators in September 2022.

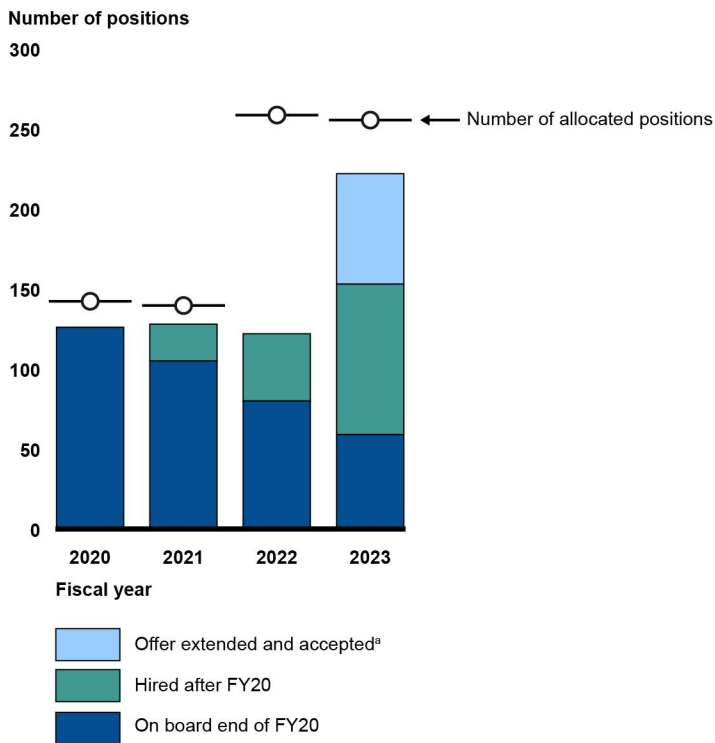
⁶⁵See 168 Cong. Rec. H1709, H2398 (Mar. 9, 2022) (explanatory statement accompanying Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, 136 Stat. 49). According to OPR officials and documentation, the topline hiring target of 350 additional personnel was based on the recommendations of the Homeland Security Advisory Council CBP Integrity Advisory Panel convened in 2014 through 2016. The panel recommended that OPR hire 330 additional criminal investigators.

⁶⁶As of September 2022, 238 of OPR's 266 pre-surge allocated criminal investigator positions nationwide were filled and 28 were vacant.

⁶⁷These numbers reflect criminal investigator and southwest border positions OPR allocated to the hiring initiative in fiscal year 2022. OPR's allocation of investigator positions within the hiring initiative changed slightly in fiscal year 2023—to 135 of 241 (56 percent) criminal investigator positions allocated to the southwest border.

⁶⁸According to OPR officials, it typically takes between 1 and 6 months for new hires to join the agency and start their training after a hiring offer is extended and accepted. During this time, new hires complete actions such as background investigations, polygraph examinations, and medical examinations. Not all investigators who accept offers ultimately join the agency. OPR does not consider these positions vacant because there is a hiring action pending for them. We further discuss the composition of new hires later in this report.

Figure 10: OPR Southwest Border Criminal Investigator Positions, Fiscal Years (FY) 2020–2023



Source: GAO analysis of U.S. Customs and Border Protection (CBP) Office of Professional Responsibility (OPR) data. | GAO-24-106148

Accessible Data for Figure 10: OPR Southwest Border Criminal Investigator Positions, Fiscal Years (FY) 2020–2023

Fiscal year	On board end of FY20	Hired after FY20	Hired, pending screening	Authorized
2020	126	0	0	142
2021	105	23	0	139
2022	80	42	0	259
2023	59	94	69	255

Source: GAO analysis of U.S. Customs and Border Protection (CBP) Office of Professional Responsibility (OPR) data. | GAO-24-106148

Notes: Data are as of the end of each fiscal year. According to OPR officials, the number of allocated criminal investigator positions in southwest border offices decreased slightly in fiscal year 2023 because four positions were reallocated to meet other needs of the organization.

^aAccording to OPR officials, it typically takes between 1 and 6 months for new hires to join the agency and start their training after a hiring offer is extended and accepted. During this time, new hires complete actions such as background investigations, polygraph examinations, and medical examinations. Not all investigators who accept offers ultimately join the agency; however, OPR does not consider these positions vacant because there is a hiring action pending for them.

Despite these new hires, OPR’s investigator cadre has not grown commensurate with its hiring progress in southwest border locations because those offices have experienced significant attrition, losing 67 of 126 investigators who were on board as of September 2020.⁶⁹ OPR officials told us that the recent changes to

⁶⁹Twenty of the 67 investigators who left southwest border locations moved to other OPR positions, including to headquarters assignments, and 18 remained employed by OPR as of September 2023. Two of these investigators were temporarily detailed to headquarters in fiscal year 2022 and returned to the southwest border in fiscal year 2023.

OPR's mission—most notably, the addition of critical incident responses—have led to low morale for many investigators who joined OPR prior to 2021.

For example, OPR officials from all three of the field offices we visited stated that investigator departures were the result of changes in the scope of investigator work and responsibilities. These changes included increased workloads and dissatisfaction with the frequency with which investigators needed to be on-call and respond to incidents in the field. In addition, OPR headquarters officials told us that in the past many investigators joined OPR as a “pre-retirement” role at the end of their careers. Officials added that these retirement-eligible investigators found OPR's new mission—which required highly trained responders available to go to critical incident scenes at all hours, 365 days a year—incompatible with their skills and what they wanted in a job.

OPR officials told us that they have faced challenges hiring new investigators. They said one challenge is the generally difficult climate for law enforcement hiring. Another is that OPR is the only entity within CBP that hires criminal investigators, and CBP's hiring process was not designed to meet OPR's specific needs. OPR officials said they have made progress despite these challenges and have pursued a variety of options to meet their needs. These include obtaining direct hire authority in early 2023 and implementing recruitment efforts, including hiring bonuses, in certain locations.⁷⁰ As of October 2023, OPR headquarters officials told us they are on track to fill their southwest border criminal investigator positions by the end of fiscal year 2024.

Training

OPR changed its training curriculum to reflect its mission changes and address knowledge gaps related to the new mission among its investigators. Since 2021, OPR has required its existing investigators to attend training on critical incident-related topics. Required trainings for the existing investigator workforce included sexual assault investigations (2021), death investigations (2021), basic crime scene investigations (2022), investigations involving body-worn cameras and video evidence (2023), and human performance indicators (2023).⁷¹ We reviewed OPR training logs and found that 98 percent or more of OPR's southwest border investigators attended the 2021 and 2022 trainings as required.⁷²

In addition, all new investigators that OPR hires attend OPR Special Agent Training.⁷³ In fiscal year 2023, OPR expanded this training from 2 to 6 weeks and added modules such as sexual assault investigations, death investigations, and basic crime scene investigations. From March 2023 through August 2023, 34 investigators

⁷⁰The Office of Personnel Management may permit agencies to use direct hire authority if they demonstrate either a severe shortage of candidates or a critical hiring need. Direct hire authority allows an agency to expedite the typical hiring process by eliminating certain steps traditionally required for competitive hiring, including by eliminating competitive rating and ranking procedures and veterans' preference for specific positions. 5 U.S.C. § 3304(a)(3) and 5 C.F.R. pt. 337, subpt. B.

⁷¹According to OPR officials, human performance indicators training considers how civilians and law enforcement behave during and after an incident. Officials said that this training helps agents understand the human behavior involved in an incident and how they might be able to use video or body-worn camera footage to understand what happened.

⁷²As of August 2023, OPR was in the process of implementing the 2023 trainings and had provided human performance indicators training to 277 investigators and video evidence training to 217 investigators.

⁷³OPR Special Agent Training is a CBP-specific training. Newly hired federal criminal investigators at the 1811 job series level, including OPR investigators who have not previously completed the training, generally also attend the 12-week Criminal Investigator Training Program at the Federal Law Enforcement Training Center in Glynco, Georgia. It is an interagency training designed to fulfill the basic criminal investigative training requirements necessary for responsible and competent job performance. This training covers topics such as behavioral science, driving skills, enforcement and investigative operations, firearms, and legal issues.

assigned to southwest border locations completed the 6-week OPR Special Agent Training.⁷⁴ OPR officials told us that new hires are enrolled in training as it is offered and space is available and that new hires may report to their assigned office before completing all training.

Facilities and Equipment

Prior to becoming fully responsible for critical incident response in October 2022, OPR field offices had minimal equipment for processing critical incident scenes, and OPR did not have standards for equipping its field offices to perform response activities. After CBP determined OPR would become wholly responsible for responding to CBP critical incidents, OPR identified the equipment and supplies its field offices would need to carry out this mission. In August 2022, OPR began acquiring these items.

As of August 2023—a year later—OPR had made progress providing a range of equipment and supplies to its field offices, including vehicles and technical equipment for collecting evidence at critical incident scenes.⁷⁵ For example, as of August 2023, OPR documentation shows that eight of nine southwest border locations have a laser scanner for vehicle crash reconstruction and seven of nine offices have crash data retrieval tools.⁷⁶ The offices that do not have this equipment are to borrow it from neighboring offices, as needed. OPR also had ongoing efforts to procure the remaining equipment and supplies it determined its offices needed.

OPR also needs additional facilities to carry out its critical incident response mission. OPR assessed its facilities needs when it became fully responsible for critical incident response. It determined that these needs include, among other things, office space to accommodate newly hired investigators, secured parking, and ample and appropriate space to store evidence that investigators collect from critical incident scenes. Since October 2022, OPR has developed plans to address the facility needs of its southwest border field offices and its fiscal year 2024 budget request asked for \$14.1 million to support these efforts.⁷⁷ According to OPR officials, OPR is meeting these needs on an interim basis in a variety of ways, including by borrowing Border Patrol storage space.

As of October 2023, OPR had identified outstanding facilities needs in nine of its southwest border offices. It was in the process of, or planning to, meet the needs of each office by reconfiguring or expanding existing office space, or by constructing or moving the office to a new facility. OPR was also continuing to inventory other facility needs, such as for secured parking, and working to address them.

⁷⁴OPR data showed that 66 new criminal investigator hires nationwide completed this training during this time period.

⁷⁵This equipment included laser distance measuring devices, digital cameras, GPS-based surveying tools, laser scanners with three-dimensional diagramming software, and crash data retrieval tools.

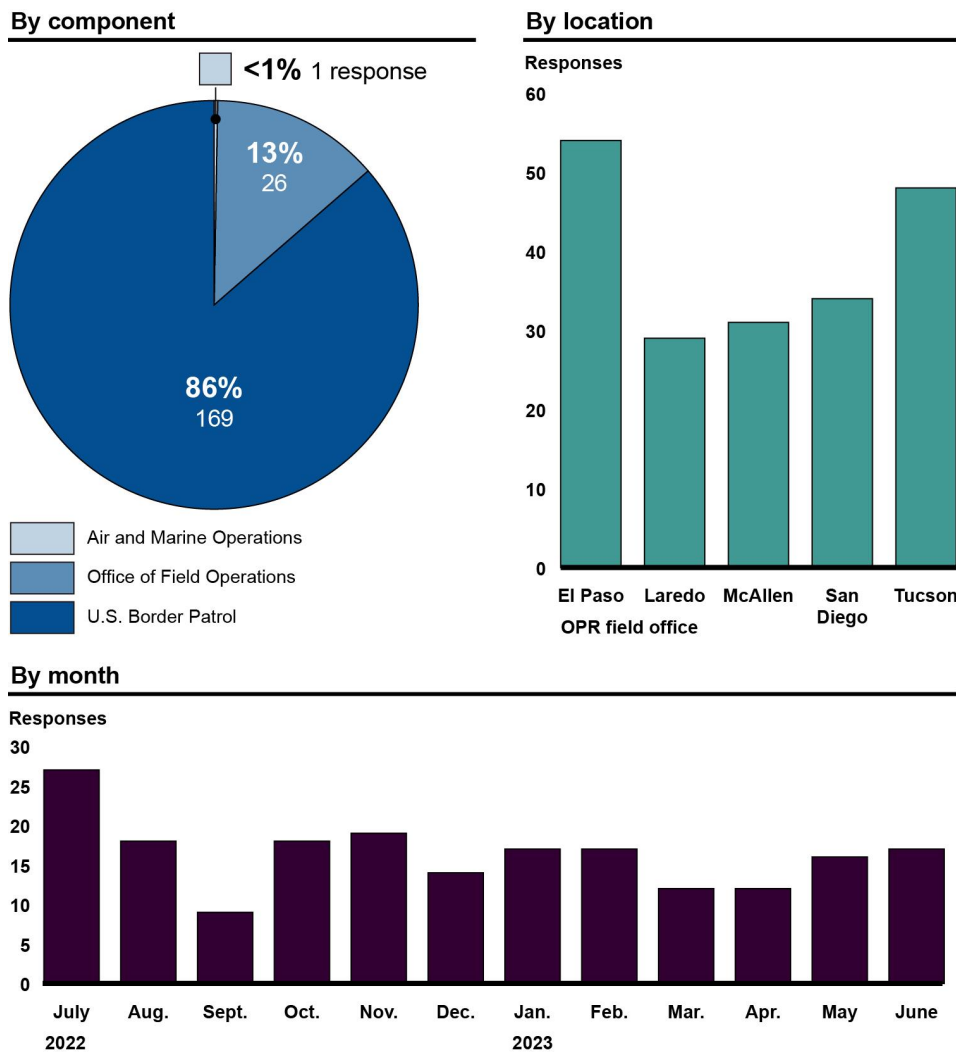
⁷⁶OPR's assessment of its equipment by location does not include Alpine and Brownsville, Texas. According to OPR officials, Brownsville is located in close proximity to McAllen and its capabilities are functionally the same as those of the McAllen field office. Alpine was created as a new satellite office in fiscal year 2022 and did not have any investigators as of September 2023.

⁷⁷The fiscal year 2024 CBP congressional budget justification included a request for \$14.1 million for facility construction and improvement costs associated with additional OPR criminal investigators. Specifically, the funding was to provide newly designed, constructed, and outfitted office space for investigators. Department of Homeland Security. *U.S. Customs and Border Protection Budget Overview: Fiscal Year 2024 Congressional Justification* (2023). The explanatory statement accompanying DHS's fiscal year 2024 appropriation stated that the request for OPR facilities was reduced by \$7 million. Explanatory Statement Regarding the Further Consolidated Appropriations Act, 2024, 170 Cong. Rec. H1501, H1810 (daily ed. Mar. 22, 2024).

OPR Responded to About 200 Critical Incidents from July 2022 through June 2023

From July 2022 through June 2023, OPR southwest border field offices responded to 196 critical incident notifications.⁷⁸ The vast majority of critical incidents they responded to were Border Patrol incidents. Specifically, about 86 percent (169 incidents) involved Border Patrol, 13 percent (26 incidents) involved the Office of Field Operations, and fewer than one percent (1 incident) involved Air and Marine Operations (see fig. 11).

Figure 11: OPR Responses to Critical Incident Notifications in Southwest Border Locations, July 2022–June 2023



Source: GAO analysis of U.S. Customs and Border Protection Office of Professional Responsibility (OPR) data. | GAO-24-106148

⁷⁸According to OPR guidance, when incidents occur, CBP personnel are to notify OPR by calling a CBP nationwide hotline and asking to speak with the local OPR agent on call. This was the most recent data available at the time of our review. We chose to report 1 year of data as an indication of the annual workload associated with OPR’s critical incident response activities.

Accessible Data for Figure 11: OPR Responses to Critical Incident Notifications in Southwest Border Locations, July 2022–June 2023

By component	Responses
Air and Marine Operations	1
Office of Field Operations	26
U.S. Border Patrol	169

By location	Responses
El Paso	54
Laredo	29
McAllen	31
San Diego	34
Tucson	48

By month	Responses
July 2022	27
Aug. 2022	18
Sept. 2022	9
Oct. 2022	18
Nov. 2022	19
Dec. 2022	14
Jan. 2023	17
Feb. 2023	17
Mar. 2023	12
Apr. 2023	12
May 2023	16
June 2023	17

Source: GAO analysis of U.S. Customs and Border Protection Office of Professional Responsibility (OPR) data. | GAO-24-106148

Notes: When incidents occur, CBP personnel are to notify OPR by calling a CBP nationwide hotline and asking to speak with the local OPR agent on call. July 2022 through June 2023 was the most recent year of incident response data available at the time of our review. The Del Rio satellite office was reassigned from the El Paso field office to the Laredo field office in January 2023; as such, Del Rio incidents prior to January 2023 are reported with the El Paso field office and Del Rio incidents in January 2023 or later are reported with the Laredo field office.

The number of incidents OPR field offices responded to during the 1-year period ranged from 29 in Laredo to 54 in El Paso.⁷⁹ OPR officials told us that the number of incident responses does not necessarily correspond with the overall volume of the workload associated with incident response because some incidents require more personnel and weeks of investigative work, while others may require a few hours of work by one investigative team and are finished within a few days.

The number of critical incidents across the southwest border varied each month, with a low of 9 incidents in September 2022, a high of 27 incidents in July 2022, and an average of about 16 incidents per month over the

⁷⁹OPR restructured its southwest border field office locations in 2023. Two offices that were previously satellite locations affiliated with the Houston field office—McAllen and Laredo—became field offices. Houston became a satellite location. Del Rio remained a satellite office but was reassigned from El Paso to the Laredo field office.

year. OPR headquarters officials told us that managing the workload associated with critical incident response is challenging because while critical incidents happen every month, they are not predictable, require an immediate response, and often involve travel to remote locations.

Assuming Critical Incident Responsibility While Building Capacity Has Strained OPR

Carrying out critical incident response activities while building the capacity for them has strained OPR and its workforce. Although, as noted above, OPR southwest border investigators responded to about 200 critical incidents from July 2022 through June 2023, they did so while most locations were understaffed. According to OPR data, as of the end of fiscal year 2023, OPR's southwest border offices were staffed with about 60 percent of the investigators allocated to those locations.⁸⁰

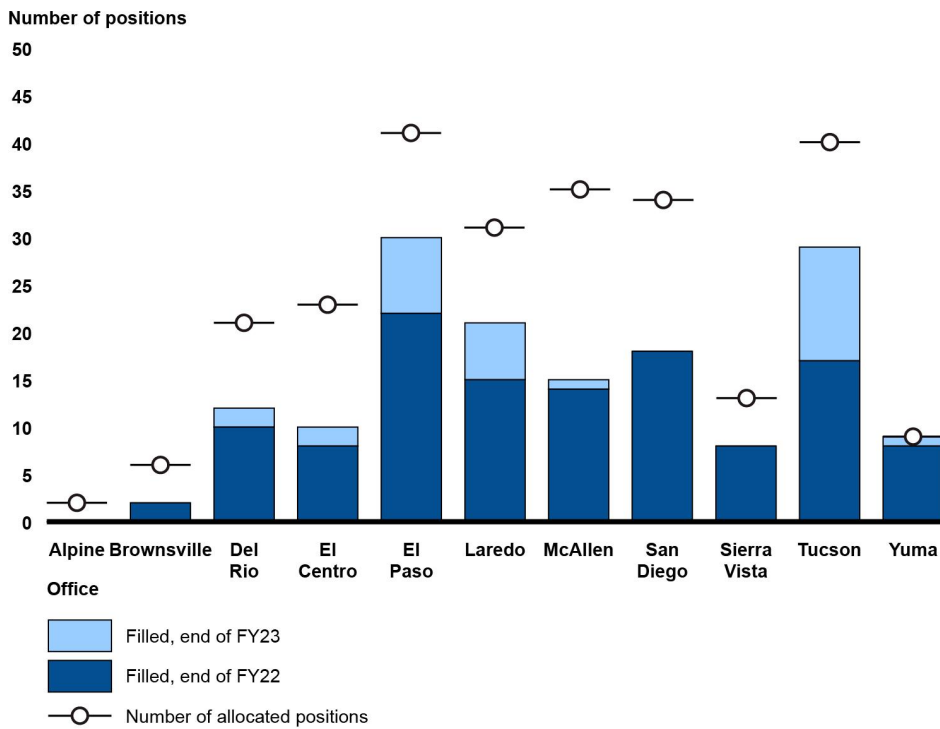
OPR headquarters officials stated that it has been challenging to build capacity and add critical incident response activities at the same time. In a briefing to the investigative workforce in August 2022, headquarters noted that these challenges were pushing the organization to, and beyond, its limits. OPR officials told us that implementing these changes at the same time has created fatigue throughout the office. Field investigators described adding critical incident response to their workloads as leading to unsustainable operations that required staff to work more than 50 hours per week.

Figure 12 shows staffing levels in OPR southwest border locations as of the end of fiscal year 2022, when OPR became wholly responsible for CBP critical incident response, and 2023. As shown, the extent of vacant investigator positions varied by location. By the end of fiscal year 2023, El Paso, Tucson, and Yuma had filled 73 percent or more of their investigator positions. Four offices—Alpine, Brownsville, El Centro, and McAllen—had fewer than half of their investigator positions filled. This ranged from 0 percent (Alpine) to 43 percent (McAllen and El Centro) of positions filled.⁸¹

⁸⁰At the end of fiscal year 2022, the year OPR received funding for its hiring initiative, OPR had 47 percent of the investigators it allocated to southwest border locations.

⁸¹The remaining locations—Del Rio, Laredo, San Diego, and Sierra Vista—had 50 to 68 percent of their investigator positions filled as of the end of fiscal year 2023.

Figure 12: OPR Southwest Border Office Investigator Staffing Levels, End of Fiscal Year (FY) 2022 and 2023



Source: GAO analysis of U.S. Customs and Border Protection Office of Professional Responsibility (OPR) data. | GAO-24-106148

Accessible Data for Figure 12: OPR Southwest Border Office Investigator Staffing Levels, End of Fiscal Year (FY) 2022 and 2023

Office location	Filled, end of FY22	Filled, end of FY23	Number of allocated positions
Alpine	0	0	2
Brownsville	2	0	6
Del Rio	10	2	21
El Centro	8	2	23
El Paso	22	8	41
Laredo	15	6	31
McAllen	14	1	35
San Diego	18	0	34
Sierra Vista	8	0	13
Tucson	17	12	40
Yuma	8	1	9

Source: GAO analysis of U.S. Customs and Border Protection Office of Professional Responsibility (OPR) data. | GAO-24-106148

Note: San Diego lost one net investigator from the end of fiscal year 2022 to 2023. Allocated positions are as of the end of fiscal year 2023.

OPR headquarters and field office officials told us that they have used various strategies to ensure that they can respond to critical incidents despite not being adequately staffed to do so. Some of those strategies—such as requiring investigators to be on call more than in the past and to work significant amounts of overtime—

have had negative effects on the workforce and contributed to low morale and attrition, according to officials. Headquarters officials also said that they have detailed personnel from headquarters to field offices to help meet investigative needs.

Other strategies have affected OPR's investigative priorities. For example, investigators in the three field offices we visited said that their offices have deprioritized misconduct investigations in the face of their large critical incident response workload. As a result, they said misconduct investigations are taking longer than usual to complete and some time-sensitive activities, such as interviewing witnesses shortly after a misconduct allegation is made, do not occur as timely as they should. Headquarters officials also said that national security and fraud-related investigative priorities are being set aside to address investigations related to critical incidents.⁸²

Field office officials also told us that responding to all critical incidents has been challenging and they have not always been able to do so. For example, officials from two of the three OPR field offices we visited said they respond to all critical incidents, in alignment with CBP's incident response guidance, but that prioritizing the critical incident workload has negatively affected investigator morale and remains challenging to implement effectively.⁸³ Officials from the third field office we visited told us that they do not respond to all incidents the guidance requires because they do not have the investigator resources to do so.⁸⁴ These officials said that they have prioritized preserving their limited investigator resources so that they are able to respond to the most serious incidents, which they said happen frequently.⁸⁵

OPR has taken or is taking steps to address these challenges. For example, as previously mentioned, OPR is hiring additional investigators and has received direct hire authority and used bonuses to aid its hiring efforts. Further, OPR headquarters officials told us that in fiscal year 2023, they implemented a tool for field offices to track incident notifications and document whether they respond and why. OPR officials told us that, moving forward, analyzing information from the tool will help OPR headquarters better understand the workload associated with critical incidents and make more informed resource allocation decisions across its field offices. It will also help OPR headquarters better understand how field offices are exercising discretion in responding to incidents and why offices do not respond to particular incidents. They added that they understand that field office capacity constraints affect the extent to which all offices can respond to all critical incidents and that it is appropriate for field offices to use local protocols and discretion to determine whether to respond to certain incidents.

Implementing a tool to track and monitor field office decisions about whether to respond after an incident notification is a positive step in helping OPR understand the workload associated with its critical incident response mission. As OPR has not yet fully begun using this tool for monitoring purposes, it is too soon to tell

⁸²According to OPR officials, this is because some headquarters personnel working on national security and fraud-related priorities were detailed to southwest border field offices to assist with critical incident and other investigations.

⁸³See appendix II for more detail about CBP's incident response guidance.

⁸⁴They told us that supervisors use their discretion to determine whether an incident is "truly critical" and requires an immediate response.

⁸⁵In the 3 months prior to our visit, they said that they had responded to four vehicle pursuits with a death and three shootings.

how well the tool will help OPR identify its incident response workload, understand reasons field offices do not respond to certain incidents, and ensure that field offices have appropriate resources to meet their workloads.

OPR Has Made Progress, but Has Not Yet Fully Implemented Investigative Standards for Critical Incident Response

As of November 2023, OPR had taken various actions to implement the Council of the Inspectors General on Integrity and Efficiency investigative standards. OPR adopted these standards in December 2020, and though efforts are ongoing, it has not fully implemented them.⁸⁶ OPR has made significant progress toward implementing the investigative standards broadly. However, we found it could strengthen its efforts to implement the independence standard for its critical incident investigations. Our assessment of OPR’s implementation of the seven investigative standards—due professional care, planning, executing investigations, reporting, qualifications, information management, and independence—follows.

Due Professional Care

According to investigative standards, due professional care requires that investigative organizations use constant effort to achieve quality and professional performance in conducting investigations and preparing reports. Due professional care includes adherence to legal requirements, use of appropriate techniques, and documented policies and procedures for conducting investigations and preparing reports.

Source: Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Investigations* (2011). | GAO-24-106148

Due professional care. OPR has made progress implementing a framework to ensure that its investigators can and do exercise due professional care when responding to and investigating critical incidents. When OPR began its efforts to implement investigative standards in late 2020, it did not have protocols to guide investigators in responding to critical incidents.

Since early 2021, OPR developed standard protocols for critical incident response activities that include checklists for different types of incidents investigators are to follow when responding to a scene. OPR also implemented a structure in which subject matter experts based in headquarters act as “shadow” investigators on a critical incident scene, providing on-call advice and guidance to ensure that investigators follow all necessary steps in the checklist and to support investigators implementing the standard protocols.⁸⁷

Moreover, OPR is implementing a multilayered framework to help ensure the quality of its work. This framework includes quality reviews while an investigation is ongoing and after it is complete. Some pieces of the framework are in place and others are under development. According to OPR officials and documentation, there are regular and iterative quality reviews of an investigator’s work while an investigation is in progress.

At the field office level, there are two layers of review of every substantive update to an investigation. These include reviews by a first line supervisor and field office leadership to, among other things, ensure that the case

⁸⁶Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Investigations*. According to OPR, the standards provide a framework for quality-related policies and procedures and, prior to 2020, some elements of the standards were addressed in OPR’s internal guidance on investigative reports.

⁸⁷OPR has subject matter experts for death reviews, sexual assault investigations, and other critical incidents.

file is complete and examine evidence in the investigation, such as witness interviews, to ensure that the investigator characterized and interpreted evidence accurately.

OPR also has two headquarters-based entities that review the quality of work for completed investigations. The first is the investigative review team, which examines some investigation files before they are closed to make sure that the steps taken during the investigation and the documentation of those steps meet OPR's standards.⁸⁸ As of July 2023, OPR officials told us they had hired seven new people to this team, for a total of 10 personnel, and were in the process of onboarding them.

The second entity is the inspections unit, which reviews a sample of closed investigation files from each of OPR's field offices on a quarterly basis.⁸⁹ As of July 2023, OPR officials told us that they were in the process of building the capacity and developing processes for these entities to incorporate quality reviews of critical incident investigations into their work. OPR headquarters officials said that, in the future, they hope to identify and collaborate with an external entity that could conduct a peer review of their investigative work.⁹⁰

Planning

According to investigative standards, investigative organizations are to establish case-specific priorities and objectives to ensure that investigative tasks are performed efficiently and effectively.

In general, an investigative plan describes the nature of any allegations under investigation, the planned focus and objectives of the investigation, and necessary investigative steps and resources.

Source: Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Investigations* (2011). | GAO-24-106148

Planning. OPR has implemented processes to adhere to the planning standard in its critical incident response work. OPR officials told us that most critical incidents require a formulaic initial investigative response. To facilitate this response, OPR developed detailed checklists for a variety of incident types, and these checklists act as the investigative plan in the immediate aftermath of a critical incident. For example, OPR developed checklists for investigators to use when responding to specific types of incidents, such as a use of deadly force or a death in custody. OPR officials told us that these checklists function as the investigative plan for investigators responding to critical incidents.⁹¹

Each checklist includes multiple categories of actions that could be needed at a scene and detailed lists of expected investigator activities for each action. For example, the categories of investigator actions for a vehicle pursuit with a collision include actions to take before processing a scene, scene processing steps, scene photography instructions, hospital response, and witness interviews. OPR investigators who respond to a critical incident are to use these checklists to ensure that they complete all required investigative steps.

⁸⁸According to OPR headquarters officials, as of 2023, this team reviews all death review case files and some other critical incident case files.

⁸⁹We reviewed the results of inspections from two quarters in fiscal year 2022, in which the unit reviewed 83 closed case files. These included between two and six closed case files per OPR field office per quarter.

⁹⁰The Council of the Inspectors General on Integrity and Efficiency manages peer reviews of investigative entities in the inspector general community. An investigations peer review could include a qualitative assessment of OPR's management procedures and quality control activities.

⁹¹For other investigations, the investigation plan is generally prepared before the investigation begins and describes the nature of allegations under investigation, planned focus of the investigation, and necessary investigative steps and resources.

In addition to the checklists, OPR guidance articulates expectations for its investigator response activities in the first 72 hours after a critical incident. This provides investigators, field office leaders, and headquarters a shared expectation for the time period immediately following a critical incident. Specifically, OPR developed a notification and reporting timeline that contains notional estimates for OPR notification of a critical incident (within 1 hour after the incident), scene arrival (within 2–5 hours), and scene processing and interviews (hours 5–16 after an incident). OPR guidance also includes an expectation that there is ongoing coordination and engagement between the field office and headquarters from the time investigators arrive at a scene until the first report of what happened is due to headquarters, which is to occur within 48 hours after the incident.

OPR headquarters and field office officials told us that it is not always possible to adhere to the notional timeline. Sometimes, critical incidents happen in remote locations with poor cellular or satellite phone service. Therefore, it is not always possible for the investigator responding to the scene to remain in close communication with their field office leadership and headquarters. In addition, OPR and other law enforcement agencies may respond to an incident scene. If the other law enforcement entity is the lead investigator, it can be difficult for OPR investigators to (1) gain access to the scene and (2) get permission to observe evidence collection activities or witness interviews. While these and other factors can affect OPR’s ability to gather evidence in the immediate aftermath of a critical incident, field office and headquarters officials told us that the processes OPR has implemented generally ensure that investigative tasks are performed effectively and efficiently right after a critical incident.

Executing Investigations

According to investigative standards, investigations must be conducted in a timely, efficient, thorough, and objective manner. The standards also include specific guidelines for conducting interviews, collecting evidence, documenting activities, complying with legal requirements, and conducting supervisory reviews of investigative activities.

Source: Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Investigations* (2011). | GAO-24-106148

Executing investigations. As OPR has taken steps to build its critical incident response capacity, the office has prioritized executing timely, efficient, and thorough critical incident investigations, in alignment with this standard. Specifically, OPR field offices have developed staffing models for critical incident response, and headquarters implemented guidance and training to support investigators who respond to and investigate critical incidents.

More specifically, one of OPR’s first steps in developing protocols for critical incident response was identifying staffing models for its field offices that would allow investigators to respond timely after a critical incident.⁹² This is because critical incidents happen at all hours and may involve remote locations. According to OPR officials, critical incident response relies on on-call investigative personnel who are available to respond after an incident and then to conduct necessary investigative activities.

Between 2021 and 2023, OPR field offices explored different staffing models by, for example, assigning investigators to “on-call” duty for 1, 3, or 7 days at a time. Headquarters and field office officials told us field offices have discretion in selecting a staffing model that works best for their office. They expect field office

⁹²According to CBP, most OPR investigations begin with an allegation of misconduct. OPR’s critical incident response and investigation work is different because critical incidents generally do not begin with an allegation of misconduct. Instead, OPR’s purpose in responding to critical incidents is to promote oversight of and bring transparency to CBP component actions.

staffing models will continue to mature as southwest border field offices hire and on-board more investigators through 2024.

In addition, OPR developed guidance to aid its field offices in determining whether an incident notification from a CBP component required an OPR critical incident response.⁹³ Field office officials we spoke with told us that, although the rate at which OPR headquarters implemented and revised this guidance sometimes made it difficult to adhere to, overall, it has helped them execute investigations effectively. OPR also trained its investigators in conducting interviews, collecting evidence, and complying with legal requirements.

OPR has established timeliness goals for its field investigators to complete an initial incident report after they respond to a critical incident scene, and OPR is to inform Congress about the circumstances of certain CBP-related deaths within 72 hours. While OPR headquarters and field office officials noted benefits of these timeliness goals, such as the availability of information about an incident soon after it occurred, they also noted challenges with meeting them. For example, OPR field office officials said the goals can create a lot of pressure at an incident scene and can lead to conflict with other law enforcement agencies who may be leading aspects of an investigative response. This is because OPR does not have control of the time frames of other law enforcement agency investigations, which can affect OPR's ability to collect evidence (such as witness statements) and complete timely investigations.

OPR headquarters and field office officials also told us that they sometimes face additional challenges because factors outside OPR's control can affect the thoroughness of their critical incident investigations.⁹⁴ OPR headquarters and field office officials told us that field offices maintain relationships with law enforcement agencies in their respective localities to try to mitigate these challenges, and they think challenges will lessen over time as other law enforcement agencies become more accustomed to regularly coordinating with OPR at critical incident scenes.

Reporting

According to investigative standards, reports must address all relevant aspects of an investigation and be accurate, complete, concise, timely, and objective.

Source: Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Investigations* (2011). | GAO-24-106148

Reporting. OPR developed and implemented report writing guidance that addresses the reporting investigative standard, and OPR is taking steps to assess adherence to the guidance. In particular, from the time OPR adopted the investigative standards in late 2020 through June 2023, headquarters officials took steps to emphasize the importance of quality documentation of investigative work. For example, when OPR adopted the standards, office leadership articulated a plan to update and standardize report writing standards. At that time, leadership emphasized that OPR's written interim and final investigative reports were to be grammatically correct, free of law enforcement jargon, and unbiased.

⁹³CBP and OPR developed several iterations of this guidance between 2021 and September 2022. Officials said the guidance changed over time to reflect an expansion in the set of incidents that required an OPR investigator response.

⁹⁴These challenges can include gaining access to an incident scene when another entity is the lead investigator, restrictions on CBP evidence collection when another entity is considering whether to pursue criminal charges related to a critical incident, or medical examiner delays in completing an autopsy report.

OPR headquarters officials continued to emphasize the importance of good writing during conferences with field office leaders and all-staff meetings over the next several years. Additionally, OPR headquarters officials told us they regularly reviewed field office interim and final reports and provided detailed feedback. Field office officials told us that their investigators regularly received feedback from headquarters regarding the quality of interim and final reports and that, over time, they began to understand and internalize the expectations for written work products.

In June 2023, OPR issued a report writing guide that comprehensively addressed the reporting standard. The guide notes that OPR's interim and final investigative reports may be used by various entities (see table 4). As such, OPR requires that they are written in a way that makes it easy for readers to comprehend them.

Table 4: Areas Addressed in OPR’s June 2023 Report Writing Guide

Area addressed	Contents
Report function	Investigative reports document and summarize investigative activities and evidence gathered during an investigation.
Report audience	Investigative reports may be used by federal, state, and local prosecutors; CBP and Department of Homeland Security management and senior leadership; Congressional representatives; CBP employees; agency and union representatives; and nongovernmental entities.
Report types	<p>Types of reports investigators use include</p> <ul style="list-style-type: none"> • Investigative activity reports—used to document interim investigative activity, such as interviews, and document unsuccessful attempts to obtain evidence; • Case closing reports—used to combine all investigative activities and evidence gathered into one final report; and • Field reports—used to document a critical incident review, death review, or other incident that requires briefing to senior leadership.
Writing style	Written work should be clear and concise, and investigators should use short sentences and short paragraphs. Reports are to use proper grammar and sentence structure and be free of bias and speculation. All conclusions are to be based on facts.

Source: GAO analysis of U.S. Customs and Border Protection’s (CBP) Office of Professional Responsibility (OPR) *Quality Standards for Report Writing* (June 2023). | GAO-24-106148

The guide also defines and provides examples of field reports, which are the specific type of written report that investigators are to use to document the outcomes of critical incident reviews.⁹⁵ For example, field reports are to include a two- to three-paragraph incident summary, a detailed and chronologically organized report narrative containing the facts of the incident, investigative updates, and any planned follow-up or remaining investigative work.

After issuing the report writing guide, OPR officials told us they trained headquarters and field office staff on its contents and OPR’s expectation that all written work should adhere to it. According to headquarters officials, the internal entities that assess the quality of OPR’s investigative work will use the report writing guide to evaluate investigative reports.

One goal of these internal evaluations is to identify and correct instances where OPR’s written work may not adhere to the reporting standard. OPR headquarters officials told us they plan to regularly update the report writing guide with any needed changes. They also said that they expect the quality of OPR’s investigative writing to improve over time as all personnel become more familiar and comfortable with the new guide, and as their work is assessed using it.

⁹⁵Field reports provide an executive level summary of an incident and investigative review activities. They are generated in the data system OPR uses to document critical incident responses and death investigations.

Qualifications

According to investigative standards, individuals assigned to conduct investigative activities must collectively possess the necessary knowledge, skills, and abilities for the tasks required. Further, investigative organizations should establish criteria—including factors such as education and experience, character, physical capabilities, and age—to be used in recruiting and selecting qualified applicants.

Source: Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Investigations* (2011). | GAO-24-106148

Qualifications. To build an investigative workforce that is qualified to respond to and investigate critical incidents, OPR has implemented hiring criteria and a process for hiring criminal investigator candidates. It has also trained its new hires and experienced investigators in topics and skills that OPR determined they need to conduct critical incident response.

In alignment with investigative standards, OPR developed criteria to recruit and select qualified candidates. According to the criteria, candidates OPR selects must be U.S. citizens, must have resided in the U.S. for at least 3 of the past 5 years, and must generally be younger than 37 at the time they apply for the job. In addition, candidates are required to pass a background investigation, medical clearance, polygraph examination, and drug test.⁹⁶

According to OPR officials, OPR took steps to centralize and standardize its hiring process beginning in August 2022 because it needed to streamline the process to meet hiring goals. OPR officials told us that centralizing the process in headquarters has allowed them to ensure consistent and equitable hiring across OPR locations, and they plan to keep the process centralized in the future.⁹⁷

OPR officials also told us they have multiple ways to assess the experience and suitability of candidates who apply to job announcements. First, they administer a written eligibility assessment designed to assess a candidate's skills as part of the initial application. For candidates who pass the initial screening, a panel reviews their resume, a different panel interviews them, and OPR administers an assessment of their writing skills. The panels review the results of the writing assessment and then an official uses the information OPR has collectively gathered to make a hiring recommendation.

OPR officials told us that they expect a high level of character and integrity from their criminal investigators and that every investigator they hire is screened and vetted. Officials said if OPR becomes aware of any former or current allegations of misconduct, criminal activity, excessive use of force, financial conflicts of interest, or integrity issues, that applicant typically does not proceed. Officials told us that they have cancelled a hiring announcement due to concerns about integrity in the applicant pool and that they will leave a position vacant rather than fill it with a person who might not be suitable.

In addition to standardizing its hiring processes, OPR requires new hires to complete more than 18 weeks of training, as described previously. According to OPR officials, while the broad federal criminal investigator training is helpful in providing general information about the criminal investigator role, it is not specific enough to give OPR investigators the skills they need to do critical incident response work. OPR designed its 6-week

⁹⁶According to OPR, candidates hired from other law enforcement entities within DHS may be exempt from medical and polygraph examinations.

⁹⁷According to OPR headquarters officials, field offices managed their own hiring in the past, including convening their own panels of subject matter experts to review applications and make hiring recommendations.

OPR Special Agent Training to fill this skills gap. This training includes more than a week of instruction specifically dedicated to critical incident investigations. According to OPR officials, experienced supervisory investigators and field office leaders attend the 6-week course and act as “mentors” for new personnel, helping to draw connections between the classroom and the real-world experience of OPR investigative work.

As previously discussed, OPR also identified specific skills and knowledge that its existing investigative personnel lacked and that they needed to effectively conduct critical incident response work. OPR provided training in these topics to investigators from 2020 through 2023. Investigators who completed these trainings generally found them effective.⁹⁸

One portion of the qualifications standard states that individuals assigned to investigative work must collectively possess the skills needed to do that work. To that end, OPR officials told us that they offer additional advanced training to investigators assigned to incident response. These advanced courses build on the basic training for specific evidence collection topics or techniques, such as crime scene investigations and death investigations. According to OPR officials, there are certain tasks or types of evidence collection that investigators cannot participate in until they are trained and, in some cases, certified. As an example, officials told us that OPR requires investigators to be trained in child forensic interviewing before they interview children.

OPR is beginning to assess the extent to which its new special agent training is working as intended and plans to make adjustments to it in response to feedback from new hires and their field office supervisors. For example, headquarters officials told us that they plan to add a full investigative case study to the curriculum to give new hires more hands-on experience and a chance to practice evidence collection activities and interviewing skills. OPR headquarters officials responsible for training told us that, moving forward, they plan to continue coordinating with field office leaders and supervisors to make curriculum adjustments based on feedback, when appropriate.

Information Management

According to investigative standards, investigative data must be stored in a manner that allows effective retrieval, reference, and analysis.

The standards further state that quality information (or a lack of it) affects management's ability to make good decisions relating to investigative matters. Effective information management enhances the organization's ability to conduct trend analyses and make informed judgments relative to resource allocation, training needs, and incident prevention activities.

Source: Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Investigations* (2011). | GAO-24-106148

Information management. OPR has steps underway intended to help strengthen its collection and storage of investigative data and address reliability concerns with some aspects of its data. These steps include correcting data errors and contracting for a new comprehensive case management system.

In 2022, when OPR assumed responsibility for all critical incident response, the agency used three different data systems to store data about critical incident investigations. One is a legacy CBP system that tracks use of force investigations. The other two systems OPR developed itself to track (1) death reviews and (2) critical incident responses. OPR headquarters and field office officials told us that these systems do not meet their

⁹⁸We reviewed course survey results from trainings on sexual assault and death investigations OPR offered to investigators in 2020. More than 95 percent of respondents rated the trainings positively.

investigative case management needs. Field office officials told us the data systems are cumbersome to use, cannot store all relevant investigative information, and sometimes require redundant data entry, resulting in inefficiencies.

Moreover, headquarters officials told us that while the current systems allow OPR to conduct some analyses, they do not fully meet OPR's analytical needs. For example, the existing systems allow OPR to identify the number of critical incidents each field office responded to in a particular time frame, but they do not enable OPR to readily quantify or identify patterns in the types or locations of critical incidents. This limits OPR's ability to use information from the systems to identify critical incident patterns or trends which could, for example, inform how OPR allocates its resources in the future or recommendations OPR makes to CBP operational components to mitigate or prevent future critical incidents.

In January 2023, OPR attempted to merge data from the three systems into one of the systems—the critical incident response system—to better meet OPR's information needs. We reviewed data from this system after the merge and identified errors and resulting concerns with the accuracy of the data.⁹⁹ More specifically, we found errors in the data related to duplicate records, the OPR field office that responded to an incident, and components involved, which raised concerns to us about the reliability of OPR's data for the purposes of analysis for trends. For example, we identified

- more than 30 records for incidents that happened in the San Diego area for which the record said the investigative response was led by OPR's Miami field office;¹⁰⁰
- more than 100 records that, according to OPR, were created in error or were duplicates; and
- five records that said the incident involved OPR personnel but that OPR later confirmed actually involved Border Patrol personnel.

After we informed OPR of these errors and concerns, OPR officials told us that they are confident in certain data they report from their systems, such the number of death reviews they conduct and certain characteristics of those deaths.¹⁰¹ Specifically, they said they use a manual process to track, analyze, and report on in-custody and other reportable deaths and are confident in the reliability of that data, which involves a relatively small number of data points. They noted that they are less confident that all elements of OPR's other critical incident data, such as whether an incident involved a vehicle pursuit, are complete and accurate. Officials emphasized that the critical incident response data system was under continuous development at the time of our review and that, despite the system's analytical limitations, it is an important tool in organizing data and information related to critical incidents.

⁹⁹We obtained data with records for OPR incident responses from January 2021 through June 2023. To assess the reliability of the data, we examined factors such as the number of records associated with each OPR field office and the number of records associated with each CBP component. We also examined the data for potential duplicate records, such as records for incidents with the same description in the same location on the same day. For additional information about our scope and methodology, see appendix I.

¹⁰⁰OPR identified that these errors were due to a system default related to personnel detailed from the Miami field office assisting the San Diego field office at the time of these incidents.

¹⁰¹OPR publishes an annual report documenting its death review activities. As of April 2024, the most recent available report said that OPR reviewed 171 CBP-related deaths in fiscal year 2022. CBP, *CBP-Related Deaths: Fiscal Year 2022*, Publication Number: 3584-0224 (Mar. 2024).

OPR also took steps to correct the specific errors we identified and to improve the quality of other critical incident data in their current systems by manually reviewing and updating some records. Officials also said they plan to take additional steps to resolve data quality issues, such as conducting additional manual review of individual records and using a new export feature in the system to holistically review data accuracy and completeness. According to these officials, they plan to resolve these quality issues so that (1) they have complete and accurate information about OPR's critical incident response and investigation activities through fiscal year 2024 and (2) the data being merged into the new case management system can reliably be used to analyze critical incident response activity.

Regarding the latter point, OPR has determined that it needs a case management system with more capabilities than its existing systems—including the one with the data it previously merged—can provide. It hired a vendor to develop a new system in September 2023, with an estimated completion date in September 2024. According to the statement of work, the new system is to allow for data input, tracking, monitoring, reporting, and storage for all OPR investigation data, including allegations of criminal and administrative misconduct, use of force investigations, death reviews, and critical incidents.

The new system is expected to have the capacity to store unlimited audio, video, and photographic evidence. Further, it is to include analytical capabilities that will allow OPR to create ad hoc or repeatable reports across many criteria or metrics. Finally, according to the statement of work, the contractor is to migrate up to 5 years of data from OPR's existing systems into the new case management system.

Developing a comprehensive case management system to store and analyze information on critical incident responses and investigations is a positive step that could help OPR further implement the information management standard. In light of the errors and concerns we identified with OPR's existing data, it will be important for OPR to ensure that, consistent with investigative standards, data migrated to the new system are complete and accurate for future analyses and organizational decision-making. Given that OPR's efforts to improve the quality of its data are ongoing, as of November 2023, it is too early to tell if data moved to the new system will reliably document the office's past critical incident response activities.

Independence

According to investigative standards, investigative organizations and their investigators must be free in fact and appearance from impairments to independence, and investigative organizations and investigators are responsible for maintaining independence.

Source: Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Investigations* (2011). | GAO-24-106148

Independence. OPR has taken steps to conduct its critical incident response activities independently, but we found that OPR training and guidance to its investigators do not address how they should identify potential impairments to their independence and the steps they should take to address them.

Regarding organizational independence, OPR is located within CBP's organizational structure and reports to the CBP commissioner.¹⁰² In addition, in contrast to inspector general offices, OPR is not as statutorily

¹⁰²6 U.S.C. § 211(j).

independent from CBP.¹⁰³ As a result of its position within the organization, OPR cannot achieve full organizational independence. However, according to OPR officials, CBP leadership has given OPR significant independence in carrying out its critical incident response and investigation activities. OPR officials also told us that the steps they are taking to implement investigative standards, such as the layers of quality reviews and checklists for different types of incident responses, are intended to help institutionalize their operations and support their efforts to maintain independence in critical incident investigative activities in the future.

In addition, CBP has supported OPR's efforts to bring transparency to the circumstances of critical incidents. One example of this is CBP's Accountability and Transparency web page, which provides the public with a detailed summary of some critical incidents, including the timeline of the incident and who was involved.¹⁰⁴ According to CBP and OPR, this detailed information is the written summary of OPR's preliminary findings about what occurred during an incident and is intended to provide transparency to the public about the incident. OPR officials told us that CBP does not materially alter the facts or specific details of these written summaries.

Regarding investigator independence, we found that OPR training and guidance to its investigators does not address how they should identify potential impairments to their independence and the steps they should take to address them.¹⁰⁵ OPR has some guidance describing the organization's expectation that investigators should conduct their work objectively and without bias. For example, OPR's investigator operating procedures note that investigators should not have personal or professional connections to a case they are investigating and describe that investigators should notify their supervisor if they identify such a connection. Experienced field office investigators we spoke with in three locations said that it is generally straightforward to identify a personal connection that could impair independence, and investigators in their offices have done so.

However, OPR has not specifically trained its investigators in how to identify potential personal impairments to independence, nor has OPR developed guidance to help investigators understand when and how to take action regarding such potential impairments beyond the general direction to notify a supervisor.

For example, OPR expanded its new hire training from 2 to 6 weeks in 2023, but there are no modules in the new syllabus that relate to investigator independence. In addition, OPR has developed a significant amount of guidance to support its critical incident response activities. However, according to headquarters and field office officials, none of this guidance directly addresses how impairments to independence could arise during critical incident response or what investigators who respond to a critical incident scene should do if they identify such an impairment.

Guidance and training related to ensuring investigator independence is particularly important given the growth in OPR's workforce and the composition of its new hires. Specifically, more than half of investigators OPR

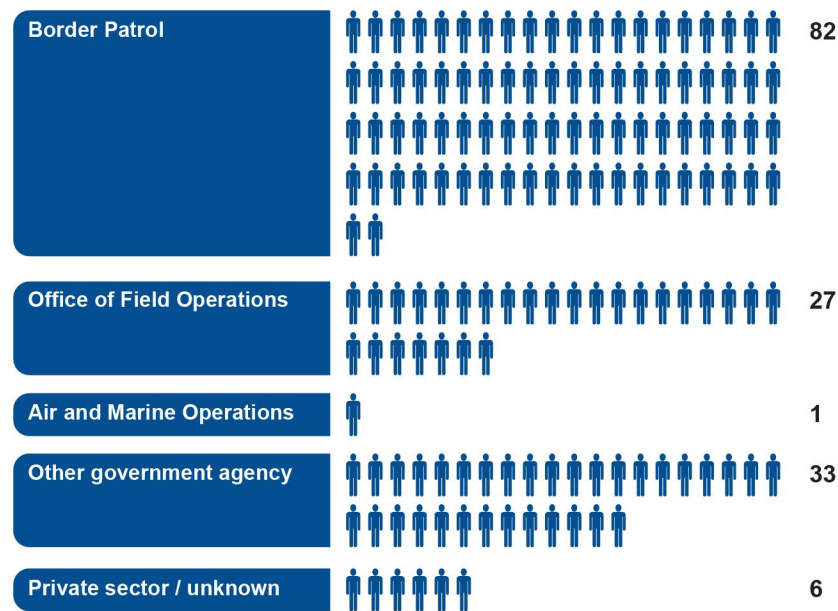
¹⁰³The investigative standards were written for investigators in the inspector general community; in general, by law, inspectors general are under the general supervision of the agency head. However, neither the agency head nor the deputy can prevent or prohibit an inspector general from conducting an audit or investigation and inspectors general are thus recognized as independent from the agency over which they have oversight. See Pub. L. No. 95-452, 92 Stat. 1101 (1978) (codified at 5 U.S.C. App.). In contrast, the CBP commissioner may assign additional duties and powers to OPR. See 6 U.S.C. § 211(j)(3).

¹⁰⁴CBP, *Newsroom: Accountability and Transparency*, Accessed Feb. 14, 2024. <https://www.cbp.gov/newsroom/accountability-and-transparency>.

¹⁰⁵Personal impairments to independence include circumstances in which an investigator may find it difficult to be impartial because of their views, personal situations, or relationships.

hired in southwest border locations as part of the fiscal year 2022 hiring initiative (82 of 149, or 55 percent) came from Border Patrol—the agency that was involved in the majority (86 percent) of critical incidents OPR responded to between July 2022 and June 2023 (see fig. 13).¹⁰⁶

Figure 13: Most Recent Prior Employment for Investigators Hired for OPR Southwest Border Locations, as of October 2023



Source: GAO analysis of U.S. Customs and Border Protection Office of Professional Responsibility (OPR) documentation and data. | GAO-24-106148

Accessible Data for Figure 13: Most Recent Prior Employment for Investigators Hired for OPR Southwest Border Locations, as of October 2023

Most recent prior employment	Number of investigators
Border Patrol	82
Office of Field Operations	27
Air and Marine Operations	1
Other government agency	33
Private sector/unknown	6

Source: GAO analysis of U.S. Customs and Border Protection Office of Professional Responsibility (OPR) documentation and data. | GAO-24-106148

Note: These 149 new hires represent about 58 percent of all allocated OPR southwest border investigator positions (255), as of October 2023. According to OPR officials, this data could include people who accepted offers as part of the hiring initiative but ultimately did not join OPR.

¹⁰⁶OPR data show that, as of October 2023, 149 investigators new to OPR had accepted offers in southwest border field offices as part of the fiscal year 2022 hiring initiative. These include people hired from CBP components, other government agencies, and the private sector. OPR officials told us that this data could include people who accepted offers as part of the hiring initiative but ultimately did not join OPR. This number of new hires is particularly significant in relation to the relatively high attrition in OPR’s southwest border offices from fiscal years 2021 through 2023, as discussed previously. In addition, OPR filled 30 of its vacant southwest border investigator positions with internal hires and transfers.

The number of new hires, including the majority from Border Patrol, present increased risks for impairments to independence to arise because they increase the likelihood that an investigator could have a personal or professional connection to people involved in a critical incident.¹⁰⁷

According to the investigative standard on independence, investigators are responsible for maintaining independence so that decisions they use in obtaining evidence, conducting interviews, and making recommendations will be impartial. Further, *Standards for Internal Control in the Federal Government* state that management should document responsibilities through policies and that employees gain competence largely through training, which reinforces standards of conduct.¹⁰⁸

OPR has made significant progress toward implementing investigative standards in the past 3 years, particularly given the substantial increase in its workload and the hiring efforts underway. OPR headquarters officials told us that managing these efforts at the same time has required tradeoffs and strategic prioritization to balance meeting mission requirements, ensuring work quality, and growing the workforce.

One result of these tradeoffs is that OPR has not prioritized developing guidance or training for its investigators regarding identifying and addressing potential impairments to their independence. OPR headquarters officials agreed that ensuring investigator independence through guidance and training should be a future priority and would help provide assurance to OPR leadership that the office's critical incident response and investigative work adheres to investigative standards. Officials emphasized that implementing investigative standards takes time and that while ensuring investigator independence is important, they have prioritized the actions they determined were most pressing in sequencing steps related to implementing the standards.

We recognize that assuming responsibility for all critical incident response before it had sufficient capacity has presented OPR with challenges and required tradeoffs. However, moving forward, OPR could strengthen its efforts to implement the independence investigative standard. Specifically, (1) developing guidance for investigators on identifying potential impairments to their investigative independence and when and how to take action regarding any such impairments and (2) training them on how to apply this guidance could provide OPR and CBP with additional assurance that OPR's investigative work is objective and unbiased in both fact and appearance.

Conclusions

Each year, CBP law enforcement personnel are involved in critical incidents involving a use of deadly force or the serious injury or death of CBP personnel or civilians. CBP personnel may also be involved in noncritical incidents, such as a vehicle crash with no injuries. Border Patrol disbanded the teams that investigated both critical and noncritical incidents in 2022. However, Border Patrol sectors have a long history of responding to both critical and noncritical incidents without headquarters oversight, and they continue to approach noncritical incident response inconsistently. Developing and implementing guidance that standardizes sector approaches to responding to noncritical incidents and documenting these response activities would help Border Patrol

¹⁰⁷According to OPR officials, OPR's ability to hire new investigators from outside of CBP is constrained by federal requirements. These officials also said that many other law enforcement agencies hire or assign their internal affairs personnel from within their own workforces.

¹⁰⁸[GAO-14-704G](#).

sectors better understand and adhere to their responsibilities related to noncritical incidents. Further, regularly monitoring adherence to the guidance could help Border Patrol ensure that sector-led activities to collect information about noncritical incidents are within CBP's intended scope of their work.

OPR has made progress building its capacity to respond to critical incidents and toward implementing investigative standards in the past 3 years. OPR's progress implementing the investigative standards is notable given the increase in its critical response workload and hiring efforts underway to double the size of its investigative personnel during the same time period. Moving forward, OPR could strengthen its efforts to implement the investigative standard regarding investigator independence. Specifically, (1) developing guidance for investigators on identifying potential impairments to their investigative independence and when and how to take action regarding any such impairments and (2) training them on how to apply this guidance could provide OPR and CBP with additional assurance that OPR's investigative work is objective and unbiased in both fact and appearance.

Recommendations for Executive Action

We are making a total of four recommendations, including two to Border Patrol and two to CBP:

The Chief of Border Patrol should develop and implement guidance that standardizes sector approaches to responding to noncritical incidents and documenting these response activities. (Recommendation 1)

The Chief of Border Patrol should regularly monitor sector noncritical incident response activities to ensure they adhere to the guidance. (Recommendation 2)

The Commissioner of CBP should ensure that OPR develops guidance for investigators on identifying potential impairments to their investigative independence and when and how to take action regarding any such impairments. (Recommendation 3)

The Commissioner of CBP should ensure that OPR trains investigators on how to apply the guidance on the independence standard, once developed, to their investigative work. (Recommendation 4)

Agency Comments

We provided a draft of this report to the Department of Homeland Security and the Department of Justice for review and comment. DHS provided written comments, which are reproduced in appendix III. In its written comments, DHS concurred with all four of our recommendations and identified actions that it has taken, or plans to take, to implement them.

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

If you or your staff have any questions about this report, please contact me at (202) 512-8777 or gambler@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 IV.

Letter

Rebecca Gambler

Rebecca Gambler
Director, Homeland Security and Justice

List of Requesters

The Honorable Gary C. Peters
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Richard J. Durbin
Chair
Committee on the Judiciary
United States Senate

The Honorable Kyrsten Sinema
Chair
Subcommittee on Government Operations and Border Management
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Alex Padilla
Chairman
Subcommittee on Immigration, Citizenship, and Border Safety
Committee on the Judiciary
United States Senate

The Honorable Bennie G. Thompson
Ranking Member
Committee on Homeland Security
House of Representatives

The Honorable Jerrold Nadler
Ranking Member
Committee on the Judiciary
House of Representatives

The Honorable Jamie Raskin
Ranking Member
Committee on Oversight and Accountability
House of Representatives

Letter

The Honorable Pramila Jayapal
Ranking Member
Subcommittee on Immigration Integrity, Security, and Enforcement
Committee on the Judiciary
House of Representatives

The Honorable Nanette Diaz Barrag?
House of Representatives

The Honorable Zoe Lofgren
House of Representatives

Appendix I: Objectives, Scope, and Methodology

This report assesses how

1. U.S. Border Patrol critical incident teams (CIT) operated and Border Patrol's responses to noncritical incidents since disbanding them;
2. the Office of Professional Responsibility (OPR) has assumed responsibility and developed its capacity for critical incident response; and
3. OPR has taken steps to implement investigative standards for critical incident response.

To address all three objectives, we focused our audit work on critical incidents as defined by U.S. Customs and Border Protection (CBP). According to CBP's definition, a critical incident is any incident that involves CBP personnel that results in, or is intended or likely to result in, serious bodily injury or death; a use of force; or widespread media attention.¹ We defined noncritical incidents to include any incidents that did not meet CBP's definition of a critical incident, but for which the agency might need information about what occurred.²

Site Visits to Southwest Border Locations

To address all three objectives, we visited Border Patrol sectors and OPR field offices in three southwest border locations: San Diego, California; Tucson, Arizona; and El Paso, Texas. We selected these locations to include geographic diversity (three states) and places where CBP documentation indicated a variety of critical incidents had occurred (e.g., incidents involving deaths in custody, vehicle accidents, shootings, and other circumstances). Additionally, we selected the locations to include ones where, according to CBP documentation, Border Patrol CITs and OPR field offices responded to a relatively large number of critical incidents and a relatively large number of personnel were involved in critical incident response and investigation.

At each location, we interviewed officials from Border Patrol sectors, including former CIT members, and OPR field offices. We collected information about the critical incident response and investigation activities CITs and OPR field offices performed, how they coordinated these activities with other law enforcement agencies, and how these activities changed over time. At two locations (San Diego and El Paso), we visited past critical

¹CBP adopted this definition of critical incident in February 2022. Subsequent September 2022 CBP guidance clarified that the following types of use of force by CBP personnel are critical incidents: a use of deadly force, any use of force that results in serious injury or death, and any allegation of excessive force. CBP defines a serious injury as an injury that requires treatment at a medical facility.

²For example, noncritical incidents include incidents involving minor or major property damage, such as to CBP or civilian vehicles or property, and unintentional firearm discharges by CBP personnel that do not result in injuries or death. CBP may need such information to adjudicate a claim of civil liability or to determine whether the actions of CBP personnel aligned with policy.

incident sites with OPR field office officials. We observed the physical areas, and the officials described the incidents that occurred and how they and other law enforcement agencies responded.³

We also interviewed federal, state, and local law enforcement agencies with jurisdictions on the southwest border about their responses to CBP critical incidents and how they coordinated with CITs and OPR field offices. Specifically, at each location we interviewed officials from the local Federal Bureau of Investigation field office and a state or local law enforcement agency.⁴

The information we obtained from our site visits cannot be generalized to CBP critical incident response in all southwest border locations but offers insight into how CITs and OPR field offices responded to and investigated CBP critical incidents over time and their coordination with other law enforcement agencies.

Analysis of CIT Operations and How Border Patrol Responds to Noncritical Incidents

To address our first objective, we analyzed available Border Patrol documentation that described the operations of CITs until their disbandment.⁵ Individual Border Patrol sectors on the southwest border developed this documentation. The documentation included local guidance, including standard operating procedures, which we analyzed to determine how CITs were intended to operate, as well as information on other aspects of the teams, such as how sectors selected and trained team members.

We also analyzed available Border Patrol documentation to describe the number and characteristics of individual incidents CITs responded to. In all seven sectors that had a CIT, the teams documented their incident response activities in some form of report of investigation. The format and information in these reports varied but generally included where and when an incident occurred, a description of the incident (e.g., a vehicle pursuit or officer-involved shooting), and some information about evidence the CIT collected for its investigation. Accordingly, we determined that these reports were the best available source of information about CIT incident responses. The time periods for which these reports were available—and reasons reports were not available for some sectors in some years—varied, as shown in table 5.

Table 5: Available Reports of Investigation for Critical Incident Teams (CIT) in Border Patrol’s Southwest Border Sectors

Border Patrol sector	Fiscal years with reports of investigation	Report availability and any effect on our analysis
Big Bend	N/A ^a	N/A ^a
Del Rio	2010–2022	Reports available all years.

³We did not visit a critical incident site at the third location (Tucson) because there was not one proximate to the OPR field office. Instead, OPR field office officials showed us a map of critical incidents they responded to in their area of responsibility and described the circumstances of several such incidents.

⁴The state and local law enforcement agencies we interviewed were California Highway Patrol, Arizona Department of Public Safety, and El Paso Police Department. We selected these agencies because CIT reports of investigation indicated that they coordinated or interacted with CITs in responding to Border Patrol critical incidents.

⁵Border Patrol disbanded all CITs by September 2022.

Appendix I: Objectives, Scope, and Methodology

Border Patrol sector	Fiscal years with reports of investigation	Report availability and any effect on our analysis
El Centro	2010–2014, 2015–2022	El Centro changed how it documented CIT activities in 2014. We determined that reports of investigation for incidents prior to 2015 were not comparable to those for 2015 and later. To ensure that our analysis was internally consistent within each sector and across years, we did not analyze or report on El Centro responses to critical and noncritical incidents for fiscal year 2014 or earlier.
El Paso	2010–2022	Reports available all years.
Laredo	2021	Laredo did not have a standalone CIT. Laredo documented a response to one noncritical incident in a report of investigation in fiscal year 2021. Sector officials said that this was a “test case” to determine whether it would be worthwhile for sector personnel to perform in-depth responses to incidents. After this test, they determined that these activities were labor and resource intensive and were not a priority for the sector. We did not include this report in our analysis.
Rio Grande Valley	2015–2021	Officials said that Rio Grande Valley used emails to track incident responses until they created a database to do so around 2015 or 2016. The sector did not provide these emails or any records of investigation prior to fiscal year 2015; as such, our analysis begins in fiscal year 2015. There were no reports in fiscal year 2022.
San Diego	2010–2016	San Diego disbanded its CIT in 2016. Our analysis included reports from fiscal years 2010 through 2016.
Tucson	2010–2021	No reports in fiscal year 2022.
Yuma	2010–2021	No reports in fiscal year 2022.

Source: GAO analysis of U.S. Border Patrol information. | GAO-24-106148

^aBig Bend did not have a CIT. Officials from Big Bend sector told us that the El Paso CIT responded to critical incidents in their area of responsibility.

We analyzed available CIT reports of investigation for incidents that occurred from fiscal years 2010 through 2022 to estimate the number of critical and noncritical incidents the teams responded to by sector and over time.⁶ Specifically, we used a statistical model on a sample of reports to derive from the overall data estimates of the number of critical incidents for each sector and year. In two sectors (El Centro and Del Rio), we analyzed the entire population; as such, the results for the two sectors should be interpreted as population totals.

CITs did not categorize incidents they responded to as critical or noncritical. We created these categories by applying CBP’s definition of a critical incident as the outcome in the statistical model. In particular, our statistical model analyzed the reports to identify incidents with a serious injury that required medical attention, a death, or a use of deadly or excessive force.⁷ The statistical model predicted whether a report contained a critical incident using the frequency of key words in the report as predictors. We identified key words iteratively using CBP’s definition of critical incident. CITs did not specifically track whether the incidents they responded to involved a death. We created a category for critical incidents involving a death and used our statistical model to estimate the number of such incidents, which are a subset of all critical incidents. We categorized any incident that did not meet CBP’s definition of a critical incident as a noncritical incident. We manually reviewed the model results to ensure they were valid. In total, our analysis included 2,351 reports of investigation. The

⁶We selected this time period because it is the period for which reports were generally available at the time of our review, as described in further detail in table 5.

⁷CBP’s definition of a critical incident also includes incidents involving CBP personnel that result in, or are likely to result in, widespread media attention. Because of the subjectivity involved in identifying these incidents, we did not use our statistical model to identify them.

model estimated 893 critical incidents, with an overall margin of error of plus or minus 3.1 percent, or 73 incidents.

To understand how CITs operated, we also interviewed Border Patrol officials in all nine southwest border sectors.⁸ For the seven sectors that had a team, we interviewed former CIT members, supervisors, and other knowledgeable officials about the team's leadership, oversight, and operating guidance.⁹ We also discussed the range of incidents the team responded to, the activities it performed at incident sites, how it coordinated with other law enforcement agencies, and how team members were selected and trained. In the two sectors that did not have a team, we interviewed officials about how the sector addressed incidents in the absence of a CIT. Further, we interviewed representatives from nongovernmental organizations that have researched or expressed perspectives about CITs to obtain their views on the past activities of the teams and their disbandment.¹⁰

To assess how Border Patrol responds to noncritical incidents since disbanding the CITs, we analyzed Border Patrol headquarters guidance to sectors on disbanding their teams. We also analyzed sector memorandums describing their implementation of the headquarters guidance and any steps their personnel are to take to respond to noncritical incidents. Additionally, we interviewed officials from Border Patrol headquarters and sectors about sectors' noncritical incident response activities and oversight of those activities. Finally, we interviewed officials from CBP's Office of Chief Counsel about how they use information that Border Patrol sectors collect about noncritical incidents to adjudicate any resulting claims of civil liability.

We determined that the control activities and monitoring components of *Standards for Internal Control in the Federal Government* were significant to this objective, along with the underlying principles that management should (1) implement control activities through policies and (2) operate monitoring activities to monitor the internal control system and evaluate the results.¹¹ We assessed Border Patrol's implementation and monitoring of policies for noncritical incident response against these principles to determine whether Border Patrol is positioned to achieve its objectives.

Analysis of OPR Capacity Building and Critical Incident Response

To address the second objective, we analyzed CBP and OPR documentation describing OPR's involvement in, and capacity for, critical incident response over time. Specifically, we analyzed CBP and OPR memorandums and guidance describing OPR's roles and responsibilities for responding to and investigating critical incidents

⁸We interviewed Border Patrol officials from three of the nine sectors during our previously described site visits.

⁹All CITs had disbanded by the time we conducted these interviews. Therefore, we relied on officials with knowledge of past CIT operations and activities to understand how CITs operated in each sector.

¹⁰Specifically, we interviewed representatives from eight organizations that are members of the Southern Border Communities Coalition. This coalition includes 60 organizations from across the southern border and aims to promote policies and solutions that improve the quality of life of border residents. The coalition has written various communications about CITs, including letters and press releases, that include its perspectives and research about the teams.

¹¹GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014).

from 2010 through 2023.¹² We also reviewed OPR assessments of its capacity to respond to critical incidents leading up to, and after, it became responsible for all critical incident response in October 2022. Additionally, we analyzed documentation of OPR's efforts to build its capacity for critical incident response along the southwest border with respect to acquiring the necessary equipment and facilities, training investigators, and increasing the size of its investigator workforce.

To assess OPR's progress in increasing the size of its investigator workforce, we analyzed OPR workforce data. We analyzed data from fiscal year 2020, prior to a hiring initiative OPR undertook in 2022 to build its critical incident response capacity, through fiscal year 2023, the most recent data available at the time of our review. We analyzed these data to determine how the number of OPR investigators changed over time and across southwest border field offices and how hiring and attrition contributed to these changes.

We also analyzed data OPR had collected for the hiring initiative. Specifically, we analyzed data OPR collected in real-time during the hiring initiative regarding vacant positions and positions for which offers of employment were extended and accepted. We analyzed these data, along with OPR's general workforce data, as of the end of fiscal year 2023, to determine the number of southwest border investigator positions that were vacant but had new hires pending and those that were vacant with no hire pending.¹³

Additionally, we analyzed OPR critical incident response data to describe the office's response activities leading up to, and after, assuming full responsibility for critical incident response. Specifically, we analyzed data from July 2022 through June 2023, the most recent full year of data available at the time of our review.

To assess the reliability of the hiring and critical incident response data, we (1) reviewed related documentation, such as data dictionaries; (2) reviewed the data to identify any errors or omissions; and (3) interviewed knowledgeable OPR officials. We found the workforce and hiring initiative data sufficiently reliable for the purpose of describing OPR's progress increasing the size of its investigator workforce.

As described in our report, we found discrepancies in the critical incident response data, such as duplicate records and inaccuracies. We brought these discrepancies to the attention of OPR officials and worked with them to correct the discrepancies before conducting our analyses. We determined that the data were sufficiently reliable for the purpose of describing the number of critical incidents OPR responded to by southwest border field office, month, and CBP component involved for the time period we analyzed.

Finally, we interviewed officials from OPR headquarters and the southwest border field office locations we visited regarding OPR's critical incident-related responsibilities over time and implementation of those responsibilities. Further, we obtained information from OPR officials on how OPR tracks incident notifications and responses, OPR's efforts to build critical incident response capacity, and the impacts to OPR of assuming responsibility for all critical incident response while building this capacity.

¹²OPR was not officially established until February 2016. Prior to this, the office that became OPR was known as CBP Internal Affairs. We use OPR to refer to the functions of this office prior to and after OPR's official establishment. We selected this time period for our analysis to include when CITs were operating concurrently with OPR—prior to their disbandment—through the most recent information available at the time of our review.

¹³According to OPR officials, it typically takes between 1 and 6 months for new hires to join the agency and start their training after a hiring offer is extended and accepted.

Assessment of OPR Implementation of Investigative Standards

To address our third objective, we analyzed documentation and interviewed OPR officials about the office's efforts to implement the Council of the Inspectors General on Integrity and Efficiency investigative standards since adopting them in December 2020.¹⁴ For each of the seven standards, we analyzed available documentation of the steps OPR had taken to adhere to the standard and its intended approach to implementing remaining steps. For example, documentation we analyzed included guidance OPR developed for its investigators to follow when they respond to critical incidents, conduct investigative activities, and prepare reports of investigation. It also included documentation related to OPR's efforts to build a qualified investigative workforce through hiring and training and oversight mechanisms to ensure the quality of critical incident investigations.

Additionally, we analyzed other data OPR collected as part of its hiring initiative. Specifically, we analyzed data regarding the most recent prior employment for investigators OPR hired for its southwest field offices.¹⁵ We analyzed these data from when OPR began its hiring initiative in fiscal year 2022 through October 2023, the most recent data available at the time of our review. To assess the reliability of these data, we reviewed the data to identify any obvious errors or omissions and interviewed knowledgeable OPR officials about how they collected and updated the data. We determined these data were sufficiently reliable for the purpose of describing the most recent prior employment experience of investigators OPR hired as part of the hiring initiative.

Further, we interviewed OPR headquarters officials regarding their approach to implementing the standards, progress made and work remaining, and steps headquarters is taking to support and oversee field offices in adhering to the standards. During our visits to OPR southwest border field office locations, we interviewed officials about their experiences using guidance provided by headquarters. We also discussed other factors that affected the alignment of field offices' critical incident work with the investigative standards, such as the capabilities of OPR information systems field offices used to record their incident responses and investigations.

We compared OPR's efforts to align its critical incident work with each investigative standard to requirements and practices described by the Council of the Inspectors General on Integrity and Efficiency.¹⁶ We also determined that the control activities and control environment components of *Standards for Internal Control in the Federal Government* were significant to OPR's implementation of the independence standard, along with the underlying principles that management should (1) implement control activities through policies and (2) demonstrate a commitment to recruit, develop, and retain competent individuals.¹⁷ We assessed OPR's efforts to implement policies and develop competent investigators for critical incident response to determine whether they support adherence to the investigative standards.

¹⁴The seven investigative standards are due professional care, planning, executing investigations, reporting, qualifications, information management, and independence. According to OPR, one reason for adopting them was to ensure that its work was carried out in a thorough and objective manner and documented in well-written reports. Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Investigations* (Washington, D.C.: Nov. 15, 2011).

¹⁵We analyzed these data as part of our assessment of OPR's implementation of the independence standard.

¹⁶Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Investigations*.

¹⁷[GAO-14-704G](#).

We conducted this performance audit from August 2022 to May 2024 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.

Appendix II: Examples of Incidents Involving CBP Personnel and How OPR is to Respond

This appendix shows examples of U.S. Customs and Border Protection (CBP) critical and noncritical incidents and how CBP’s Office of Professional Responsibility (OPR) is to respond, based on OPR’s September 2022 guidance to CBP components.¹

Figure 14: Examples of Critical and Noncritical Incidents Involving CBP Personnel and How OPR is to Respond

	Incident categories				
	Use of force	Death	Vehicle collisions	Vehicle pursuits	Other
CBP incidents requiring immediate OPR response	<ul style="list-style-type: none"> Use of deadly force resulting in serious injury or death^{a,b} Use of deadly force not resulting in serious injury or death^{a,b} Any firearm discharge resulting in injury or death 	<ul style="list-style-type: none"> Death while in the process of an arrest, while detained, or while attempting to escape On-duty death of a CBP employee 	<ul style="list-style-type: none"> Any vehicle collision involving a CBP vehicle resulting in serious injury or death^b 	<ul style="list-style-type: none"> Any vehicle pursuit resulting in serious injury or death^b 	<ul style="list-style-type: none"> Any death, including CBP employee suicide, involving a CBP-owned firearm or equipment
CBP incidents OPR has discretion to respond to or decline	<ul style="list-style-type: none"> Use of less-lethal force resulting in minor injury^{c,d} 	<ul style="list-style-type: none"> Death of an individual found in medical distress who dies during initial lifesaving efforts in the field or later at a hospital 	<ul style="list-style-type: none"> Any vehicle collision involving a CBP vehicle resulting in minor injury^d 	<ul style="list-style-type: none"> Any vehicle pursuit resulting in a collision with minor injury^d 	<ul style="list-style-type: none"> CBP employee suicide not involving a CBP-owned firearm or equipment
CBP incidents not requiring OPR response	<ul style="list-style-type: none"> Use of less-lethal force not resulting in injury^c 	<ul style="list-style-type: none"> Discovery of human remains 	<ul style="list-style-type: none"> A vehicle collision, not related to a CBP enforcement action, that results in property damage only^e 	<ul style="list-style-type: none"> Any vehicle pursuit resulting in a collision with no injuries, but that may involve property damage 	<ul style="list-style-type: none"> Unintentional discharge of a firearm not resulting in injury

Source: GAO analysis of U.S. Customs and Border Protection (CBP) Office of Professional Responsibility (OPR) guidance. | GAO-24-106148

¹CBP OPR, Assistant Commissioner, *Implementation of CBP’s Incident Notification, Reporting and Response Procedures - Effective October 1, 2022*, Memorandum for CBP Components (Sept. 29, 2022).

Appendix II: Examples of Incidents Involving CBP Personnel and How OPR is to Respond

Accessible Data for Figure 14: Examples of Critical and Noncritical Incidents Involving CBP Personnel and How OPR is to Respond

CBP incident type	Use of force (incident category)	Death (incident category)	Vehicle collisions (incident category)	Vehicle pursuits (incident category)	Other (incident category)
CBP incidents requiring immediate OPR response	<ul style="list-style-type: none"> Use of deadly force resulting in serious injury or death^{a,b} Use of deadly force not resulting in serious injury or death^{a,b} Any firearm discharge resulting in injury or death 	<ul style="list-style-type: none"> Death while in the process of an arrest, while detained, or while attempting to escape On-duty death of a CBP employee 	Any vehicle collision involving a CBP vehicle resulting in serious injury or death ^b	Any vehicle pursuit resulting in serious injury or death ^b	Any death, including CBP employee suicide, involving a CBP-owned firearm or equipment
CBP incidents OPR has discretion to respond to or decline	Use of less-lethal force resulting in minor injury ^{c,d}	Death of an individual found in medical distress who dies during initial lifesaving efforts in the field or later at a hospital	Any vehicle collision involving a CBP vehicle resulting in minor injury ^d	Any vehicle pursuit resulting in a collision with minor injury ^d	CBP employee suicide not involving a CBP-owned firearm or equipment
CBP incidents not requiring OPR response	Use of less-lethal force not resulting in injury ^c	Discovery of human remains	A vehicle collision, not related to a CBP enforcement action, that results in property damage only ^e	Any vehicle pursuit resulting in a collision with no injuries, but that may involve property damage	Unintentional discharge of a firearm not resulting in injury

Source: GAO analysis of U.S. Customs and Border Protection (CBP) Office of Professional Responsibility (OPR) guidance. | GAO-24-106148

^aDeadly force is force that is likely to cause death or serious injury, such as the intentional discharge of a firearm against a person.

^bCBP defines a serious injury as a physical injury that needs treatment at a medical facility.

^cLess-lethal force encompasses tactics and devices that are neither likely nor intended to cause death or serious injury, such as the use of a device that emits an electrical discharge to stun or immobilize subjects.

^dAccording to CBP, minor injury includes bruising, abrasions, swelling, lacerations, or nose bleeds as well as unknown injuries, such as a complaint of pain.

^eCBP enforcement actions include apprehensions, determinations of inadmissibility, arrests, removals, seizures, and trade enforcement related to CBP's mission to secure U.S. borders.

Appendix III: Comments from the Department of Homeland Security

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



**Homeland
Security**

April 23, 2024

Rebecca Gambler
Director, Homeland Security and Justice
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548-0001

Re: Management Response to Draft Report GAO-24-106148, "SOUTHWEST BORDER: CBP Could Take Additional Steps to Strengthen Its Response to Incidents Involving Its Personnel"

Dear Ms. Gambler:

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

DHS leadership is pleased to note GAO's recognition that U.S. Customs and Border Protection (CBP) has made significant progress toward implementing investigative standards, which were adopted in 2020. During the past two years, CBP made meaningful progress in this area by consolidating its critical incident response capability into the CBP Office of Professional Responsibility (OPR). CBP also made considerable advancements in hiring new personnel authorized for OPR in the "Department of Homeland Security Appropriations Act, 2022,"¹ to include a substantial number of applicants from outside of CBP.

When developing any future guidance on CBP's approaches to responding to non-critical incidents, CBP will ensure the roles and responsibilities of OPR, and U.S. Border Patrol (USBP) Evidence Collection Team (ECT)/Management Inquiry Team (MIT) are clearly delineated. CBP remains committed to being a leader in law enforcement transparency and accountability and takes the proper review of critical incidents very seriously.

¹ <https://www.congress.gov/117/crpt/hrpt87/CRPT-117hrpt87.pdf>

The draft report contained four recommendations with which the Department concurs. Enclosed find our detailed response to each recommendation. DHS previously submitted technical comments under a separate cover for GAO's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

JIM H CRUMPACKER

Digitally signed by JIM H
CRUMPACKER
Date: 2024.04.23 10:57:38 -0400'

JIM H. CRUMPACKER,
Director
Departmental GAO-OIG Liaison Office

Enclosure

**Enclosure: Management Response to Recommendations
Contained in GAO-24-106148**

GAO recommended that the Chief of USBP:

Recommendation 1: Develop and implement guidance that standardizes sector approaches to responding to non-critical incidents and documenting these response activities.

Response: Concur. USBP headquarters (HQ) is developing an Internal Operating Procedure (IOP) that will outline roles and responsibilities of the National ECT/MIT Program Office (PO), the Chain of Command between HQ and Sectors, and reporting requirements. Once the IOP is finalized, the ECT/MIT PO will create a Standard Operating Procedure (SOP) that will standardize sector approaches to responding to non-critical incidents and documenting these response activities. Specifically, the SOP will govern roles and responsibilities of Sector ECT and MIT personnel and establish USBP HQ and the OPR reporting requirements. The ECT/MIT PO will also oversee all USBP ECT/MIT activity, to include monitoring of sector non-critical incident response activities to ensure they adhere to guidance. Estimated Completion Date (ECD): February 28, 2025.

Recommendation 2: Regularly monitor sector non-critical incident response activities to ensure they adhere to the guidance.

Response: Concur. As previously noted, following completion of the IOP to outline roles and responsibilities of the National ECT/MIT PO and the SOP to standardize sector approaches to responding to non-critical incidents, the ECT/MIT PO will oversee all USBP ECT/MIT activity, to include monitoring of sector non-critical incident response activities to ensure they adhere to guidance. The ECT/MIT PO will also be the primary point of contact for strategic level communication and correspondence with USBP HQ (including the USBP Chief). Additionally, ECT/MIT PO will ensure sector compliance with ECT/MIT SOP, improving leadership visibility and transparency into all critical and non-critical incidents. ECD: February 28, 2025.

GAO recommended that the Commissioner of CBP:

Recommendation 3: Ensure that OPR develops guidance for investigators on identifying potential impairments to their investigative independence and when and how to take action regarding any such impairments.

Response: Concur. OPR is drafting training materials and guidance for all investigators that, once finalized, will assist with identifying potential impairments and enforce their

independence. In addition, this information will provide investigators clear instructions on actions to be taken when impairments are identified. This training will be provided to all current OPR investigative personnel during FY 2024 and mandated for all new personnel going forward. ECD: July 31, 2024.

Recommendation 4: Ensure that OPR trains investigators on how to apply the guidance on the independence standard, once developed, to their investigative work.

Response: Concur. As part of the updated “OPR Special Agent Training Program,” which began on April 8, 2024, OPR piloted training on identifying and responding to potential impairments to investigative independence to newly hired criminal investigators. Based on feedback from that training evolution, OPR will finalize, then release these guidance and training materials to all OPR investigative personnel. ECD: July 31, 2024.

Accessible Text for Appendix III: Comments from the Department of Homeland Security

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U.S. Government Accountability Office
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¹ <https://www.congress.gov/l17/cmt/hrpt87/CRPT-I17hrpt87.pdf>

JIM H CRUMPACKER

Digitally signed by JIM H
CRUMPACKER

Date: 2024.04.23 10:57:38-04'00'

JIM H. CRUMPACKER,
Director
Departmental GAO-OIG Liaison Office

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Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

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

Staff Acknowledgments

In addition to the contact named above, Taylor Matheson (Assistant Director), Mary Pitts (Analyst-in-Charge), Elizabeth Dretsch, Eric Hauswirth, Christina Lee, Landis Lindsey, Jordan Miller, Heidi Nielson, Samuel Portnow, and Kevin Reeves made key contributions to this work.

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