



June 2022

# BORDER PATROL

## Actions Needed to Improve Checkpoint Oversight and Data

Accessible Version

Why GAO Did This Study

Border Patrol has primary responsibility for securing the border between U.S. ports of entry. As part of its border enforcement strategy, Border Patrol operates immigration checkpoints where Border Patrol agents screen vehicles to identify people of foreign nationality who are potentially removable and they may enforce U.S. criminal law, such as seizing illegal drugs and interdicting human smugglers. GAO was asked to review Border Patrol’s use of immigration checkpoints.

This report examines: (1) available data about Border Patrol checkpoint activity, (2) the extent Border Patrol collects reliable data about checkpoint activity, and (3) how Border Patrol oversees checkpoint operations, among other objectives. GAO analyzed Border Patrol documents and data on checkpoint activity for fiscal years 2016 through 2020 (the most recent available); interviewed officials from Border Patrol headquarters, sectors, and 13 selected checkpoints; and reviewed prior GAO work on Border Patrol checkpoints.

What GAO Recommends

GAO is making seven recommendations, including that Border Patrol take several actions to strengthen checkpoint oversight and data. DHS concurred with each of the recommendations.

View [GAO-22-104568](#). For more information, contact Rebecca Gambler at (202) 512-8777 or [gambler@gao.gov](mailto:gambler@gao.gov).

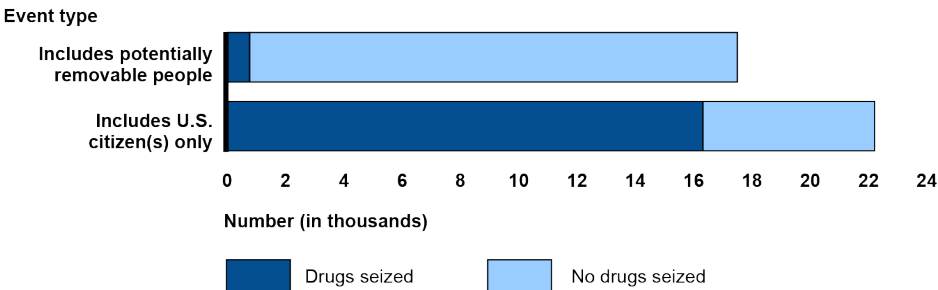
BORDER PATROL

Actions Needed to Improve Checkpoint Oversight and Data

What GAO Found

U.S. Border Patrol operates immigration checkpoints at more than 110 locations on U.S. highways and secondary roads, generally 25 to 100 miles inland from the southwest and northern borders. According to Border Patrol data, from fiscal years 2016 through 2020, Border Patrol apprehended about 35,700 potentially removable people in about 17,500 events at checkpoints. During the same period, Border Patrol seized drugs in about 17,970 events at checkpoints. GAO found that most drug seizure events involved only U.S. citizens (91 percent), of which 75 percent involved the seizure of marijuana and no other drugs.

Border Patrol Checkpoint Events by Type, Fiscal Years 2016 through 2020



Source: GAO analysis of U.S. Border Patrol data. | GAO-22-104568

Accessible Data for Border Patrol Checkpoint Events by Type, Fiscal Years 2016 through 2020

Category	Drugs seized	No drugs seized
Apprehension event (includes one or more potentially removable individuals)	761	16737
U.S. citizen event (includes U.S. citizens only)	16315	5900

GAO found that while Border Patrol data on apprehensions and drug seizures were generally reliable, certain other checkpoint activity data, including on apprehensions of smuggled people and canine assists with drug seizures, were unreliable. For example, although sector officials said canines were integral to checkpoint drug seizures, there was wide variation across sectors in how often agents documented canine assists with such events. Additionally, Border Patrol developed a tool to collect information about outcomes of secondary inspections at checkpoints. However, because the agency did not require agents to use the tool, only about half of checkpoints did so. Without reliable checkpoint data, Border Patrol does not have the information it needs to assess checkpoint effectiveness, ensure proper resource allocation, or explain checkpoint operations.

Border Patrol established the Checkpoint Program Management Office (CPMO) in 2013 to oversee checkpoint operations. However, Border Patrol has not demonstrated a sustained commitment to ensuring that CPMO carries out its checkpoint oversight activities or held CPMO accountable for implementing these activities. For example, CPMO was not reviewing checkpoint resources and technology—an activity assigned to it by Border Patrol. Further, Border Patrol has not established clear roles and responsibilities for CPMO, consistently and adequately staffed it, or ensured that newly assigned staff have the information they need to carry out CPMO activities. For example, documentation for new staff did not include details on tasks or the past activities of the office. By addressing these program management weaknesses, Border Patrol could ensure that CPMO is better positioned to fulfill its checkpoint oversight mission.

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#### **Abbreviations**

BEST	Border Enforcement Secondary Tool
CBP	U.S. Customs and Border Protection
CPMO	Checkpoint Program Management Office
CRCL	Office for Civil Rights and Civil Liberties
DHS	Department of Homeland Security
OIG	Office of Inspector General

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June 6, 2022

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

The Honorable Patrick Leahy  
United States Senate

The Honorable Patty Murray  
United States Senate

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

Within the Department of Homeland Security's (DHS) U.S. Customs and Border Protection (CBP), U.S. Border Patrol is responsible for securing the border between U.S. ports of entry.<sup>1</sup> As part of its border enforcement strategy, Border Patrol operates interior immigration checkpoints on major U.S. highways and secondary roads. Checkpoints are generally located between 25 and 100 miles inland from the southwest and northern borders. At checkpoints, Border Patrol agents screen vehicles to identify people of foreign nationality who are potentially removable.<sup>2</sup> In performing immigration enforcement functions, agents have general authority to

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<sup>1</sup>Ports of entry are officially designated facilities (e.g., airport or land border locations) that provide for the controlled entry into or departure from the U.S. At ports of entry, CBP officers are to secure the flow of people and cargo into and out of the country, while facilitating legitimate travel and trade.

<sup>2</sup>Removable people may have: (1) unlawfully entered the U.S. between ports of entry without inspection or at ports by means of evasion or fraud; (2) lawfully entered on a temporary basis but remained beyond their authorized period of stay; or (3) become removable for committing certain crimes (or on other statutory grounds). A foreign national in the U.S. may be removable on statutory grounds of inadmissibility, Immigration and Nationality Act § 212(a), 8 U.S.C. § 1182(a), if they have no prior lawful admission; or deportability, INA § 237, 8 U.S.C. § 1227, if they were previously lawfully admitted. See 8 U.S.C. § 1229a(e)(2). The lawfulness of a prior admission may be at issue in removal proceedings. See 8 U.S.C. §§ 1182(a)(6)(C)(i) (inadmissibility for having fraudulently obtained admission into the U.S.), 1227(a)(1)(A) (deportability for having been inadmissible at the time of entry).

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enforce U.S. criminal law, including seizing illegal drugs, identifying stolen vehicles, and executing warrants. More than 50 million vehicles pass through these checkpoints each year, according to Border Patrol.

At checkpoints, Border Patrol must balance its critical border security mission with individual liberties protected by the Fourth Amendment's prohibition of unreasonable searches and seizures. Civil liberties organizations and advocacy groups have expressed concerns over search and seizure activities at checkpoints, including allegations of Border Patrol agents subjecting people to extended detentions, interrogations unrelated to immigration or citizenship status, and invasive searches. Other such concerns include allegations of racial profiling, verbal harassment, and physical assaults committed by Border Patrol agents.

We previously reported on Border Patrol checkpoints in 2005, 2009, and 2017.<sup>3</sup> We identified challenges related to checkpoint data collection and checkpoint performance measures. In 2017, we found that 2 percent of Border Patrol apprehensions occurred at checkpoints and that 40 percent of contraband seizures at checkpoints were 1 ounce or less of marijuana from U.S. citizens.<sup>4</sup> In 2009, we reported on the measurement of checkpoint performance and the impact of checkpoint operations on nearby communities, among other things.<sup>5</sup> In 2005, we reported on the role of checkpoints in Border Patrol's border security strategy and how it evaluates checkpoint performance.<sup>6</sup>

We did not make new recommendations in 2017, but noted in that report that Border Patrol still needed to take additional steps to establish internal controls for checkpoint data, as we previously recommended in 2009.<sup>7</sup> Border Patrol took additional actions to improve the accuracy and

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<sup>3</sup>GAO, *Border Patrol: Available Data on Interior Checkpoints Suggest Differences in Sector Performance*, [GAO-05-435](#) (Washington, D.C.: July 22, 2005); *Border Patrol: Checkpoints Contribute to Border Patrol's Mission, but More Consistent Data Collection and Performance Measurement Could Improve Effectiveness*, [GAO-09-824](#) (Washington, D.C.: Aug. 31, 2009); and *Border Patrol: Issues Related to Agent Deployment Strategy and Immigration Checkpoints*, [GAO-18-50](#) (Washington, D.C.: Nov. 8, 2017).

<sup>4</sup>[GAO-18-50](#). Seized contraband included drugs, firearms, ammunition, and currency.

<sup>5</sup>[GAO-09-824](#).

<sup>6</sup>[GAO-05-435](#).

<sup>7</sup>[GAO-18-50](#).

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completeness of its checkpoint data and, in 2019, we closed the 2009 recommendation regarding checkpoint data as implemented.

In 2005 and 2009, we made recommendations regarding checkpoint performance measures, among other things.<sup>8</sup> Border Patrol concurred with these recommendations and took action to implement some of them, such as studying the feasibility of a checkpoint performance model and updating its facilities design standard to include consideration of traffic volumes. However, it did not take action sufficient to address other recommendations, which we closed as not implemented. For example, in 2009, we recommended that CBP implement quality of life measures that Border Patrol had identified to evaluate the impact that checkpoints have on local communities.<sup>9</sup> Border Patrol took steps to respond to this recommendation over a number of years. However, in May 2019, Border Patrol officials told us the agency had changed its approach to implementing the recommendation because measuring quality of life was outside its mission. We determined that its new approach was not consistent with the intent of our recommendation. As a result, we closed the recommendation as not implemented.

You asked us to review Border Patrol's use of checkpoints. This report examines: (1) available data about Border Patrol checkpoint activity; (2) the extent to which it collects reliable data about checkpoint activity; (3) how it oversees checkpoint operations; (4) its training and guidance for checkpoint search and seizure activity; and (5) methods available to the public to raise concerns or file complaints about activities at checkpoints.

To address these objectives, we analyzed Border Patrol data and documents and interviewed Border Patrol officials from headquarters, southwest and northern border sectors, and selected checkpoints. In particular, we interviewed officials from headquarters, analyzed written responses to questions about checkpoint operations from all nine southwest border sectors and from four northern border sectors, and interviewed officials from 13 selected checkpoints about operations at

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<sup>8</sup>[GAO-09-824](#) and [GAO-05-435](#).

<sup>9</sup>[GAO-09-824](#).

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these checkpoints.<sup>10</sup> The selected checkpoints included three checkpoints located on the northern border and 10 checkpoints located on the southwest border. We selected these sectors and checkpoints to provide a range in the location, type, and size of checkpoint operations. Information we obtained from these interviews cannot be generalized to all Border Patrol checkpoint operations, but the interviews provided insights on checkpoint data and the reliability of that data, the agency's oversight of checkpoint operations, training and guidance, and how DHS receives and responds to concerns about checkpoint activities. We also reviewed our prior work regarding checkpoints, including our 2005, 2009, and 2017 reports.<sup>11</sup>

To address our first and second objectives, we analyzed record-level data from Border Patrol's e3, an application that Border Patrol uses to collect and transmit data related to law enforcement activities, including checkpoint activity. Specifically, we analyzed e3 data on checkpoint apprehensions, seizures, and events for fiscal years 2016 through 2020, the most recent fiscal years of data available at the time of our review.<sup>12</sup> We assessed the reliability of Border Patrol's data on checkpoint activity by reviewing specific data elements for reasonableness, accuracy, and consistency, and interviewing knowledgeable agency officials. We also reviewed our prior work regarding checkpoints, in which we identified long-standing challenges related to checkpoint data reliability.<sup>13</sup> We determined that the e3 data on checkpoint apprehensions, drug seizures, and events were sufficiently reliable to describe apprehension and drug seizure activity at checkpoints.<sup>14</sup> Our interviews, data analysis, and review

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<sup>10</sup>Border Patrol divides responsibility for border security operations geographically among sectors, each with its own sector headquarters. The nine southwest border and four northern border sectors referenced here include all sectors with approved checkpoint locations. Two of the four northern border sectors did not have operational checkpoints from fiscal years 2016 through 2020.

<sup>11</sup>[GAO-05-435](#), [GAO-09-824](#), and [GAO-18-50](#).

<sup>12</sup>Border Patrol defines an event as an incident (1) including one or more people and (2) involving one or more offenses occurring at approximately the same time and place.

<sup>13</sup>[GAO-18-50](#) and [GAO-09-824](#).

<sup>14</sup>As a result of a checkpoint inspection, Border Patrol may seize items other than drugs, including vehicles, ammunition, firearms, currency, or other property. Officials told us that Border Patrol's data system reliably documents drug seizures, but does not reliably document other types of seizures. They said this was because CBP's SEACATS is the system of record for recording this information. SEACATS was formerly the Seized Asset and Case Tracking System, but CBP has since retired the formal name and only uses the acronym.

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of available policy documents identified data reliability issues regarding certain other checkpoint-related data elements and data entry practices. Therefore, we determined that certain data were not reliable for our reporting purposes, and instead, we reported on the data reliability issues that we identified.

To address our other objectives, we analyzed DHS, CBP, and Border Patrol documents and interviewed agency officials. To examine Border Patrol oversight of checkpoint operations, we focused on the Checkpoint Program Management Office (CPMO), Border Patrol's headquarters office established in 2013 to manage checkpoint performance and data. We reviewed CPMO organizational documents and interviewed CPMO officials about their policies, procedures, and activities. We also interviewed checkpoint, sector, and headquarters officials about the management and oversight of checkpoint operations. We assessed Border Patrol's efforts to establish, oversee, and staff CPMO; CPMO's organizational structure and responsibilities; and CPMO's efforts to develop policies and procedures against the control activities component of *Standards for Internal Control in the Federal Government*, among other criteria.<sup>15</sup>

To examine training and guidance for checkpoint search and seizure activities, we analyzed CBP and Border Patrol training materials, guidance documents, and policies for checkpoint search and seizure activity. We reviewed Border Patrol classroom training materials on performing checkpoint operations, searching vehicles, and searching suspects, as well as CBP Office of Chief Counsel training materials on checkpoint policies and legal authorities. We also interviewed Border Patrol headquarters and sector officials about search and seizure practices.

To examine methods to raise concerns or file complaints about checkpoints, we obtained and analyzed information on complaints received by CBP's Information Center, CBP's Joint Intake Center, DHS Office for Civil Rights and Civil Liberties (CRCL), and DHS Office of Inspector General (OIG) about checkpoint activities from fiscal years

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<sup>15</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

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2016 through 2020, to the extent such information was available.<sup>16</sup> In addition, we interviewed DHS, CBP, and Border Patrol officials responsible for receiving and responding to complaints about checkpoint activities and officials from selected checkpoints about their processes to track and respond to concerns and complaints, including allegations of civil liberties violations and allegations of misconduct by checkpoint agents. Finally, we spoke with representatives of nongovernmental organizations to gain insight into their experiences filing complaints or supporting people who have filed complaints regarding Border Patrol checkpoint search and seizure activities. We selected a nonprobability sample of organizations to interview and, therefore, the information gathered from advocacy organizations is not generalizable beyond those we interviewed.

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

We conducted this performance audit from October 2020 to June 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

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### Checkpoint Operations

Immigration checkpoints are part of Border Patrol's border enforcement strategy.<sup>17</sup> According to Border Patrol, the purpose of checkpoints is to detect and apprehend (1) removable people, including smuggled humans; (2) human and drug (or other contraband) smugglers; and (3) suspected terrorists attempting to travel into the interior of the U.S. after evading detection at the border. Checkpoints are located on major U.S. highways and secondary roads, usually 25 to 100 miles inland from the border. This

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<sup>16</sup>CBP Information Center provided data on checkpoint-related complaints from fiscal year 2020. Officials told us that data from prior years were not available because they began using a new system to manage complaints in 2019.

<sup>17</sup>Checkpoints are the third layer of Border Patrol's three-tiered border enforcement strategy. The first two layers, line watch and roving patrol, are performed at or near the border.



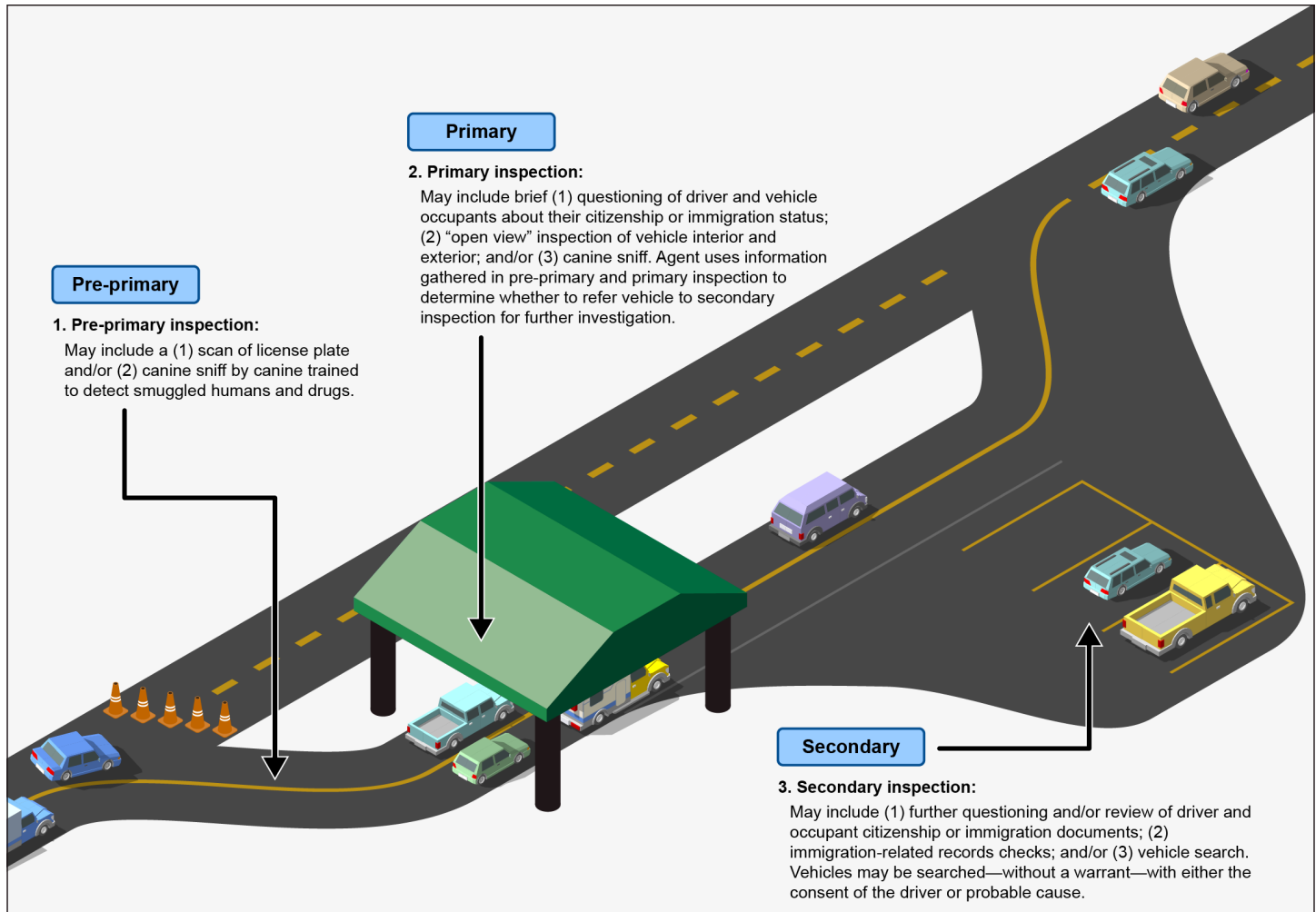
permits them to be far enough inland to detect and apprehend removable people, smugglers, and suspected terrorists attempting to travel farther into the interior of the U.S. after evading detection at the border, but close enough to the border to potentially control access to major population centers.

At checkpoints, Border Patrol agents may question a vehicle's occupants about their citizenship or immigration status, request citizenship or immigration documents from occupants, and perform an "open view" observation of the vehicle.<sup>18</sup> This is known as the primary inspection. As vehicles approach the checkpoint, license plates may be photographed by an automated camera and the vehicle may be "sniffed" by a canine trained to detect smuggled people and drugs as part of a pre-primary inspection. During the primary inspection, Border Patrol agents have wide discretion to refer vehicles to secondary inspection for further investigation. With the consent of the driver or owner, or probable cause, agents may search the vehicle during secondary inspection. Figure 1 shows the pre-primary, primary, and secondary inspection process.

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<sup>18</sup>During an "open view" observation, an agent may visually examine a vehicle. For example, a Border Patrol agent performing a checkpoint inspection may look through the window of a vehicle to check for evidence of a crime, such as indications of human smuggling or drug possession. Courts have held that a vehicle's driver and passengers have no reasonable expectation of privacy with respect to anything in plain sight during an "open view" observation. Agents would need probable cause to further seize or search for contraband based on observation of potentially illicit items in plain sight. See various relevant Supreme Court cases, including *Harris v. U.S.*, 390 U.S. 234 (1968); *Coolidge v. New Hampshire*, 403 U.S. 443 (1971); *Texas v. Brown*, 460 U.S. 730 (1983); *Horton v. California*, 496 U.S. 128 (1990); and *California v. Acevedo*, 500 U.S. 565 (1991).

Figure 1: Border Patrol Checkpoint Inspection Process



Source: GAO analysis of U.S. Customs and Border Protection information. | GAO-22-104568

Note: This figure illustrates Border Patrol's checkpoint inspection process. During an "open view" observation, a Border Patrol agent may visually examine a vehicle. For example, an agent performing a checkpoint inspection may look through the window of a vehicle for evidence of a crime, such as human smuggling or drug possession. Infrastructure at checkpoints varies and may include elements such as a canopy or a secondary inspection parking area.

## Checkpoint Locations, Characteristics, and Features

Border Patrol divides responsibility for border security operations geographically among nine southwest border sectors, eight northern

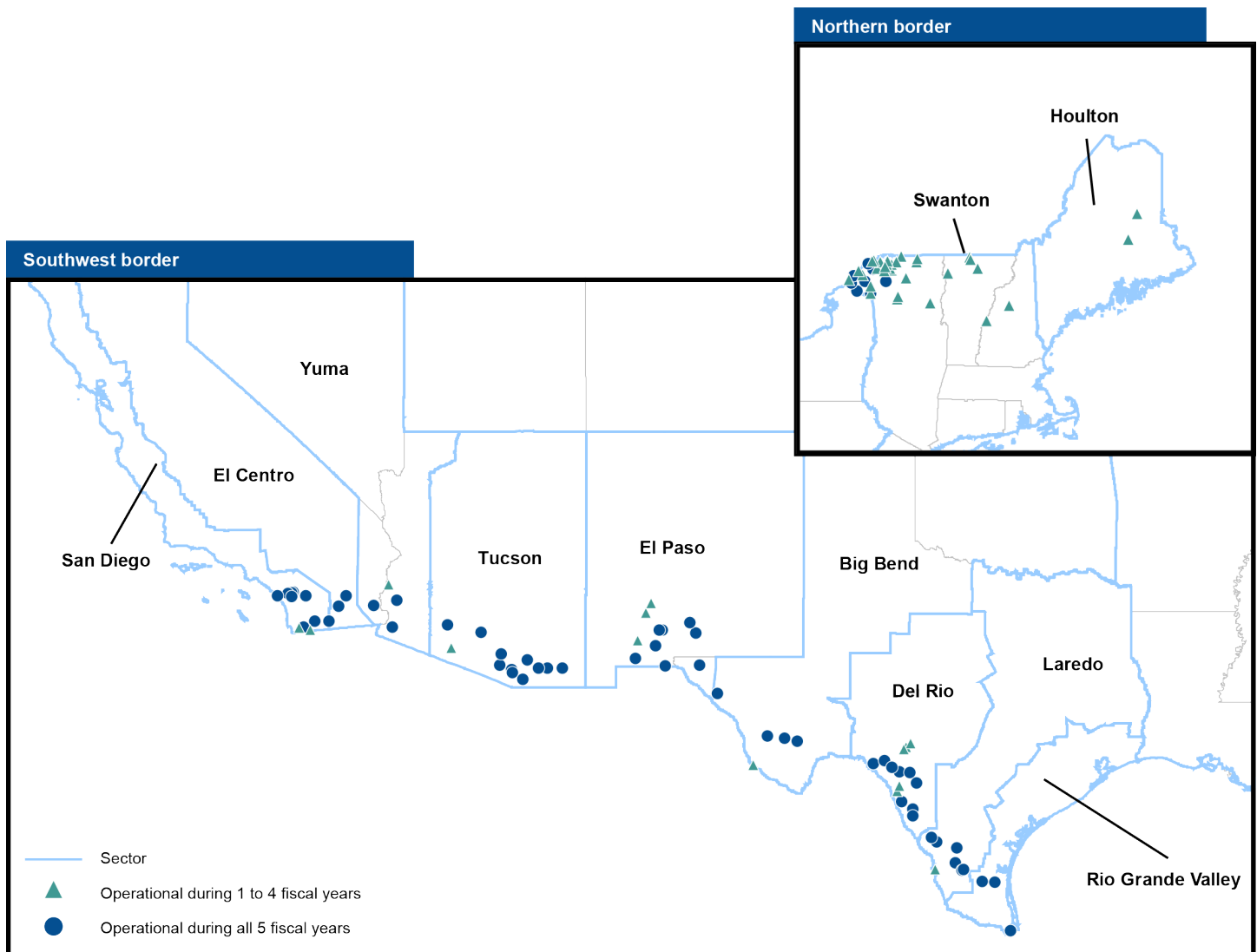
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border sectors, and three coastal border sectors.<sup>19</sup> According to Border Patrol, the agency operated 113 immigration checkpoints on the southwest or northern borders for at least one day from fiscal years 2016 through 2020. These included 72 checkpoints across all nine southwest border sectors and 41 checkpoints in two of the eight northern border sectors. Sixty-six of the 113 operational checkpoints, including 58 on the southwest border and eight on the northern border, operated in all five fiscal years. Figure 2 shows Border Patrol sectors and checkpoints that operated for at least one day from fiscal years 2016 through 2020.

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<sup>19</sup>There are no immigration checkpoints in the three coastal border sectors.

Figure 2: Border Patrol Sector and Checkpoint Locations, Fiscal Years 2016 through 2020



Source: GAO analysis of information from U.S. Border Patrol sectors. | GAO-22-104568

Note: All operational checkpoints on the northern border were in Houlton or Swanton sector.

Border Patrol operates two types of checkpoints, permanent and tactical, which differ in terms of size and infrastructure. Both operate at fixed locations based on agreements with state and local entities. In general, permanent checkpoints have brick and mortar structures and infrastructure. This may include off-highway covered lanes for vehicle inspection and buildings, including buildings for administration, detention of persons suspected of smuggling or other illegal activity, and kennels

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for canines. Tactical checkpoints may not have “permanent” infrastructure in place, and may operate with a few Border Patrol vehicles, orange cones to slow down and direct traffic, a portable water supply, a space for canines (if deployed at the checkpoint), portable rest facilities, and warning signs to notify vehicles about the checkpoint. Of the 66 checkpoints that operated in all five fiscal years from 2016 through 2020, 35 were permanent and 31 were tactical.<sup>20</sup> Figure 3 shows an image of a permanent and a tactical checkpoint.

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<sup>20</sup>Tucson sector is the only sector along the southwest border without permanent checkpoints. This dates back to 1998 legislation prohibiting the use of funds from a \$90 million no-year appropriation for site acquisition, design, or construction of any Border Patrol checkpoints in the Tucson sector. See Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No. 105-277, div. A, 112 Stat. 2681, 2681-59 (1998). Some of Tucson sector’s tactical checkpoints operate from fixed locations and are generally physically similar to permanent checkpoints in other sectors.

Figure 3: Images of Permanent and Tactical Border Patrol Checkpoints



Source: U.S. Border Patrol | GAO-22-104568

Checkpoints may use various video surveillance technologies to facilitate inspections and searches, including license plate readers (43 of 113 checkpoints) and closed circuit televisions (48 of 113 checkpoints).



License plate reader technology generally consists of a high-speed camera or cameras and related equipment. At checkpoints, license plate reader cameras are typically mounted in a fixed location from which they automatically photograph and query the license plate numbers of vehicles approaching a checkpoint's primary inspection.<sup>21</sup> Border Patrol's policy is to retain license plate reader information collected as part of a checkpoint inspection for 15 years. Closed circuit televisions monitor Border Patrol agent interactions with the public and may assist agents with their deterrence and detection mission. Border Patrol generally retains closed circuit television records for no more than 30 days, but may do so longer for operational needs, such as if they are part of an ongoing investigation.

In addition, agents at checkpoints may use biometric collection devices to conduct further investigation about people they refer to secondary inspection. For instance, agents may conduct a biometric search to find out whether a person they referred to secondary inspection has previously been encountered by DHS or has a record in a DHS or other law enforcement system.<sup>22</sup> Biometric collection devices at checkpoints include fingerprint readers (52 checkpoints) and iris scanners (4 checkpoints). According to Border Patrol officials, Border Patrol does not retain biometric data it collects as part of a checkpoint inspection unless the person is apprehended or placed under arrest for a violation of the law. Border Patrol guidance states that U.S. citizens and legal permanent residents arrested at checkpoints must have their biometric data captured

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<sup>21</sup>License plate readers work in conjunction with the Border Patrol Client application, which is used to query license plate data against multiple law enforcement databases. The information collected provides checkpoint agents with the vehicle's registered-owner information and any associated alerts, such as warrants, prior to the vehicle approaching a checkpoint agent in primary inspection.

<sup>22</sup>Border Patrol uses the e3 Biometrics Module, which captures biometric information about a person and searches against the DHS Automated Biometric Identification System, Department of Justice Next Generation Identification, and Department of Defense Automated Biometric Identification System. DHS's Automated Biometric Identification System is a DHS system that can be used to verify a person's identity. Next Generation Identification is a Department of Justice repository of biometric and criminal history data. The Automated Biometric Identification System is a Department of Defense system that contains a database of military-collected biometrics of foreign nationals. It is used to identify threat actors related to terrorism or counterintelligence and research information about a person of interest or identify a person for an investigative lead.

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and submitted into the Automated Biometric Identification System and TECS system.<sup>23</sup>

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## Legal and Regulatory Framework for Checkpoint Search and Seizure Activities

The Immigration and Nationality Act authorizes immigration officers, including Border Patrol agents, to take various immigration enforcement actions without a warrant, such as interrogating, arresting, and searching vehicles for potentially removable people.<sup>24</sup> In performing their immigration enforcement functions, Border Patrol agents may make arrests for violations of U.S. law.<sup>25</sup> As such, a Border Patrol agent at a checkpoint may briefly stop vehicles to question drivers and passengers regarding their immigration or citizenship status and may refer vehicles to secondary inspection without a warrant, probable cause, or reasonable suspicion. In addition, Border Patrol agents may search vehicles at checkpoints with the consent of the driver, or with probable cause of an immigration violation or a criminal offense.<sup>26</sup>

The Fourth Amendment protects against arbitrary governmental interference with a person's reasonable expectation of privacy by prohibiting unreasonable searches and seizures and by requiring that warrants be based upon probable cause. The U.S. Supreme Court has decided that Border Patrol may operate immigration checkpoints consistent with Fourth Amendment protections. In 1976, the Supreme Court ruled that Border Patrol agents may, without a warrant, operate a checkpoint and stop vehicles for brief questioning of occupants even if

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<sup>23</sup>TECS is DHS's border enforcement system and provides border security and law enforcement, case management, and intelligence functions for multiple federal, state, and local agencies.

<sup>24</sup>8 U.S.C. § 1357(a)(1)-(3). Within a reasonable distance (100 air miles from the border), immigration officers may board and search vehicles for potentially removable people. 8 C.F.R. § 287.1.

<sup>25</sup>8 U.S.C. § 1357(a)(5). Agents may make arrests for any offense under U.S. law committed in their presence or, on reasonable grounds, for any felony under U.S. law.

<sup>26</sup>Probable cause can include a canine detecting something it is trained to detect (e.g., concealed humans or drugs).



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there is no reason to believe that a particular vehicle contains removable people.<sup>27</sup>

Border Patrol checkpoint inspections are generally brief interactions between agents and vehicle occupants. Courts have held that the permissible duration of a stop at a checkpoint is the time reasonably necessary to seek information about citizenship status, determine the number and identity of a vehicle's occupants, and, if necessary, obtain consent to extend the stop.<sup>28</sup> A canine sniff to search for drugs and concealed humans must not lengthen the encounter beyond the time necessary to verify the immigration status of a vehicle's occupants.<sup>29</sup> The Supreme Court has held that, provided the intrusion is minimal, and even without a canine alert or other specific reason, Border Patrol agents have "wide discretion" to selectively refer motorists to a secondary inspection area for additional brief questioning.<sup>30</sup> However, a search of a vehicle at a checkpoint must be supported by either consent or probable cause.<sup>31</sup>

The use of canines to conduct search activities at checkpoints is also governed by federal court precedent. While a canine sniff of the exterior of a vehicle to detect any concealed humans or drugs is not considered a search under the Fourth Amendment, it must not lengthen a checkpoint encounter beyond the time necessary to verify immigration status of vehicle occupants.<sup>32</sup> A canine alert during any part of a checkpoint inspection (pre-primary, primary, or secondary) is one way Border Patrol may establish probable cause to conduct a vehicle search.<sup>33</sup>

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<sup>27</sup>*U.S. v. Martinez-Fuerte*, 428 U.S. 543, 545 (1976).

<sup>28</sup>*U.S. v. Tello*, 924 F.3d 782, 786-87 (5th Cir. 2019) (citing *U.S. v. Machuca-Barrera*, 261 F.3d 425, 433 (5th Cir. 2001)).

<sup>29</sup>*Tello*, 924 F.3d at 787 (citing *U.S. v. Ventura*, 447 F.3d 375, 378 (5th Cir. 2006)).

<sup>30</sup>*U.S. v. Brignoni-Ponce*, 422 U.S. 873, 881-2 (1975). In contrast, the Supreme Court held that Border Patrol agents on roving patrol may stop a vehicle only if they have reasonable suspicion that the vehicle contains people who may be unlawfully present in the U.S.—a higher threshold for stopping and questioning motorists than at checkpoints.

<sup>31</sup>*U.S. v. Ortiz*, 422 U.S. 891, 896-8 (1975).

<sup>32</sup>*Tello*, 924 F.3d at 787 (citing *U.S. v. Ventura*, 447 F.3d 375, 378 (5th Cir. 2006)).

<sup>33</sup>*U.S. v. Thomas*, 726 F.3d 1086, 1096 (9th Cir. 2013); *U.S. v. Forbes*, 528 F.3d at 1273, 1277 (10th Cir. 2008); *U.S. v. Williams*, 69 F.3d 27, 28 (5th Cir. 1995).

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## Data Show that Half of Immigration Checkpoint Enforcement Events Were Drug Seizures

According to Border Patrol data, from fiscal years 2016 through 2020, agents at checkpoints seized drugs about as often as they apprehended people who were potentially removable. Specifically, during this time period, about half of enforcement events at checkpoints involved a drug seizure and about half involved the apprehension of one or more potentially removable people.<sup>34</sup> Most drug seizure events involved only U.S. citizens, and the majority of those U.S. citizen drug seizure events involved the seizure of marijuana and no other drugs. In addition, most of the heroin, methamphetamine, and fentanyl that Border Patrol agents seized nationwide from fiscal years 2016 through 2020 was found at checkpoints.

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## Checkpoints Accounted for about 2 Percent of Border Patrol's Apprehensions

According to Border Patrol data, the agency apprehended about 35,700 people in about 17,500 apprehension events at checkpoints from fiscal years 2016 through 2020.<sup>35</sup> Most apprehension events involved between one and three people who were potentially removable.

**People apprehended.** From fiscal years 2016 through 2020, Border Patrol apprehended 35,742 people at checkpoints who agents documented were not lawfully present in the U.S. and were potentially

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<sup>34</sup>For the purposes of this analysis, a checkpoint event is defined as an incident (1) including one or more people and (2) involving one or more offenses occurring at approximately the same time and place. An enforcement event is defined as an event with a drug seizure, an apprehension, or both.

<sup>35</sup>By definition, an apprehension includes a person who is potentially removable. A person may be apprehended multiple times; as such, apprehensions do not represent unique individuals.

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removable.<sup>36</sup> Checkpoint apprehensions were about 2 percent of Border Patrol's overall 2.2 million apprehensions during that time period, similar to what we reported in 2017.<sup>37</sup> As shown in figure 4, the number of people Border Patrol apprehended at checkpoints increased year-over-year from fiscal years 2016 through 2019 and then decreased in 2020.<sup>38</sup>

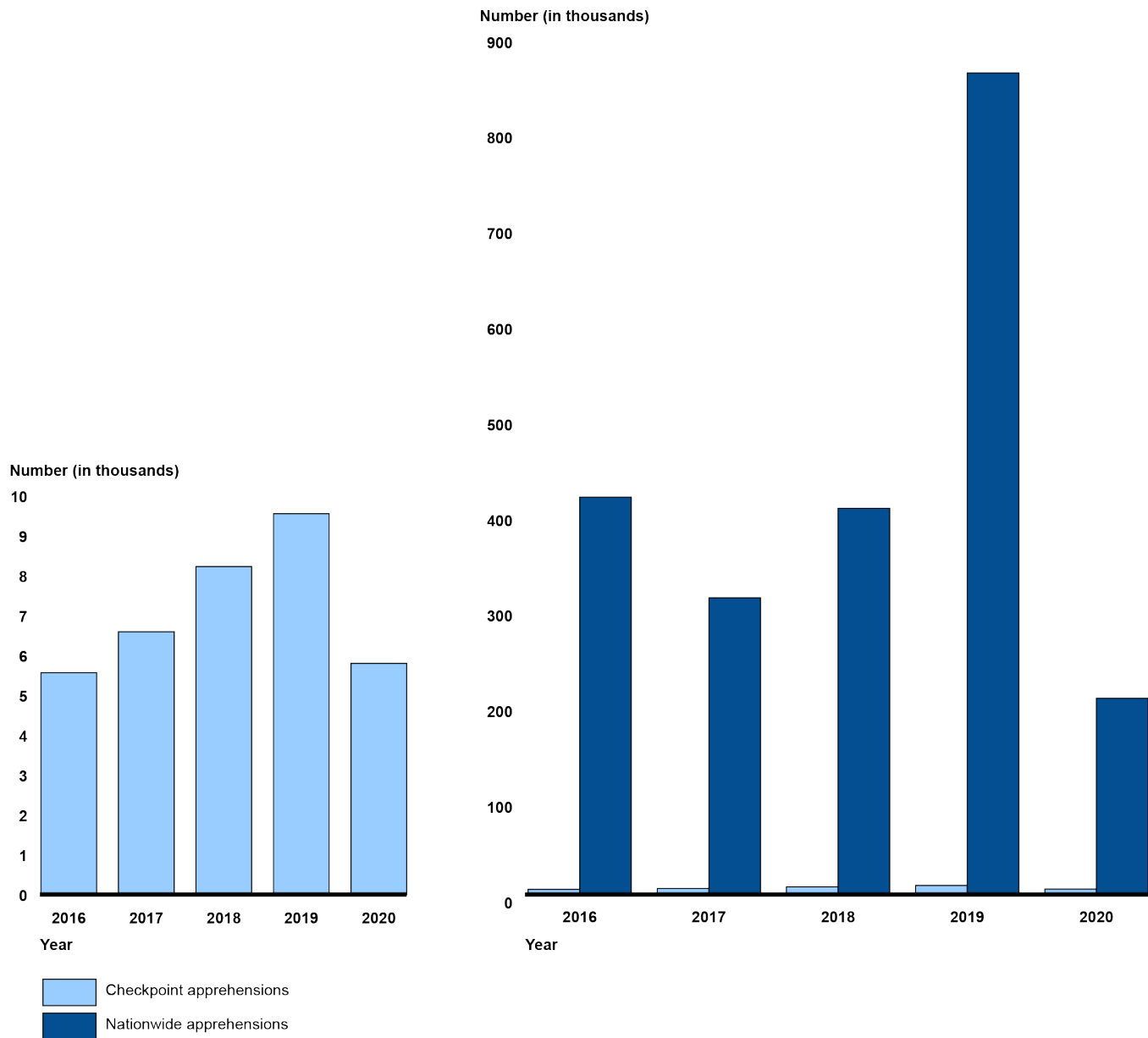
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<sup>36</sup>Beginning in March 2020, the Centers for Disease Control and Prevention temporarily suspended the introduction of certain people traveling from Canada or Mexico who would otherwise be introduced into a congregate setting at land ports of entry or Border Patrol stations at or near the U.S. land and adjacent coastal borders, subject to certain exceptions, to prevent the spread of COVID-19. These people, including some people encountered at checkpoints, may be immediately expelled to their country of last transit or country of origin. According to CBP, expulsions under Title 42 are not immigration actions as they are conducted under public health authority, although country of last transit or origin and immigration/citizenship status are relevant to determining whether a person may be expelled under Title 42. As such, they are tracked separately from immigration enforcement actions, such as apprehension or inadmissibility, which are regularly reported by CBP. Border Patrol officials told us that Title 42 expulsions that began with a checkpoint inspection might not be documented as occurring at a checkpoint. As a result, for fiscal year 2020, we report data on checkpoint apprehensions, but not on Title 42 expulsions that began with a checkpoint inspection. See Public Health Reassessment and Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists, 86 Fed. Reg. 42,828 (Aug. 2, 2021) (published Aug. 5), stemming from a since superseded March 2020 Centers for Disease Control and Prevention Order. Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 Fed. Reg. 17,060 (Mar. 20, 2020) (published Mar. 26).

<sup>37</sup>In 2017, we reported that 2 percent of Border Patrol's apprehensions and 43 percent of seizures occurred at checkpoints. See [GAO-18-50](#). In fiscal year 2019, for example, there were 9,552 checkpoint apprehensions and 859,501 Border Patrol apprehensions nationwide. Of these nationwide apprehensions, 4,408 took place on the northern border.

<sup>38</sup>Border restrictions amid the COVID-19 pandemic, including Border Patrol's use of Title 42 to expel people who were not lawfully present in the U.S., affected the number of apprehensions during the second half of fiscal year 2020.

**Figure 4: Checkpoint and Nationwide Border Patrol Apprehensions, Fiscal Years 2016 through 2020**



Source: GAO analysis of U.S. Border Patrol data. | GAO-22-104568

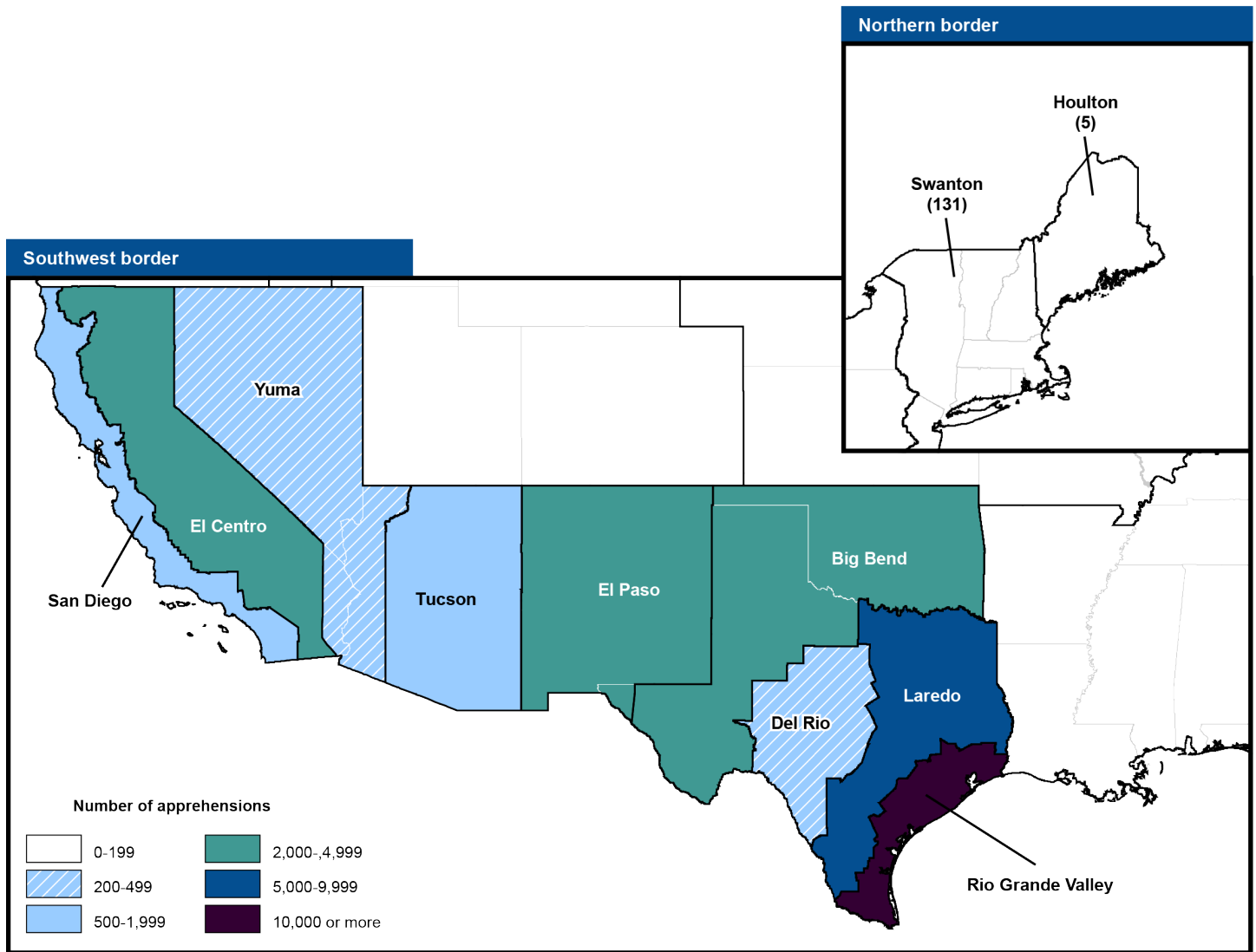
**Accessible Data for Figure 4: Checkpoint and Nationwide Border Patrol Apprehensions, Fiscal Years 2016 through 2020**

Fiscal year	Checkpoint apprehensions	Nationwide apprehensions
2016	5.567	415.816
2017	6.595	310.531
2018	8.228	404.142
2019	9.552	859.501
2020	5.8	205.435

Note: Checkpoint apprehensions are a subset of Border Patrol's nationwide apprehensions. Fiscal year 2020 data includes apprehensions at checkpoints and nationwide. It does not include Title 42 expulsions. According to U.S. Customs and Border Protection (CBP), expulsions under Title 42 are not immigration actions as they are conducted under public health authority, although country of last transit or origin and immigration/citizenship status are relevant to determining whether a person may be expelled under Title 42. As such, they are tracked separately from immigration enforcement actions, such as apprehension or inadmissibility, which are regularly reported by CBP. These expulsions are not illustrated in the above figure because, according to Border Patrol officials, agents were not required to document the locations of Title 42 expulsions. As a result, we determined that Title 42 expulsions may not have been reliably documented at checkpoints. There were 3,222 Title 42 expulsions at checkpoints documented in Border Patrol's data system in fiscal year 2020; this number represents the minimum number of Title 42 expulsions that began with a checkpoint inspection in fiscal year 2020.

Figure 5 shows total Border Patrol apprehensions at checkpoints, by sector, from fiscal years 2016 through 2020.

**Figure 5: Total Checkpoint Apprehensions by Border Patrol Sector, Fiscal Years 2016 through 2020**



Source: GAO analysis of U.S. Border Patrol data. | GAO-22-104568

Note: Fiscal year 2020 data includes apprehensions at checkpoints. It does not include Title 42 expulsions that began with a checkpoint inspection. According to U.S. Customs and Border Protection, expulsions under Title 42, which began in March 2020 as a result of the COVID-19 pandemic, are not immigration actions as they are conducted under public health authority, although country of last transit or origin and immigration/citizenship status are relevant to determining whether a person may be expelled under Title 42. As such, they are tracked separately from immigration enforcement actions, such as apprehension or inadmissibility, which are regularly reported. These expulsions are not illustrated in the above figure because, according to Border Patrol officials, agents were not required to document the locations of Title 42 expulsions.

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About 65 percent (23,180) of the 35,742 checkpoint apprehensions from fiscal years 2016 through 2020 took place in two sectors, Laredo and Rio Grande Valley. A small number of apprehensions (136) occurred at checkpoints along the northern border.

Border Patrol data indicate that most people who Border Patrol apprehended at checkpoints during this period were citizens or nationals of Mexico (62 percent), Guatemala (13 percent), Honduras (8 percent), El Salvador (7 percent), and Ecuador (2 percent).<sup>39</sup>

**Apprehension events.**<sup>40</sup> Border Patrol data indicate that there were a total of 17,498 events in which agents apprehended one or more people who were potentially removable (checkpoint apprehension events) from fiscal years 2016 through 2020.<sup>41</sup> Most checkpoint apprehension events took place in three sectors, and the majority of checkpoint apprehension events involved the apprehension of one potentially removable person. Figure 6 shows that about 70 percent of Border Patrol checkpoint apprehension events took place in three southwest border sectors (Big Bend, Laredo, and Rio Grande Valley), with fewer than 1 percent on the northern border. It also shows information about the number of potentially removable people apprehended in such events.

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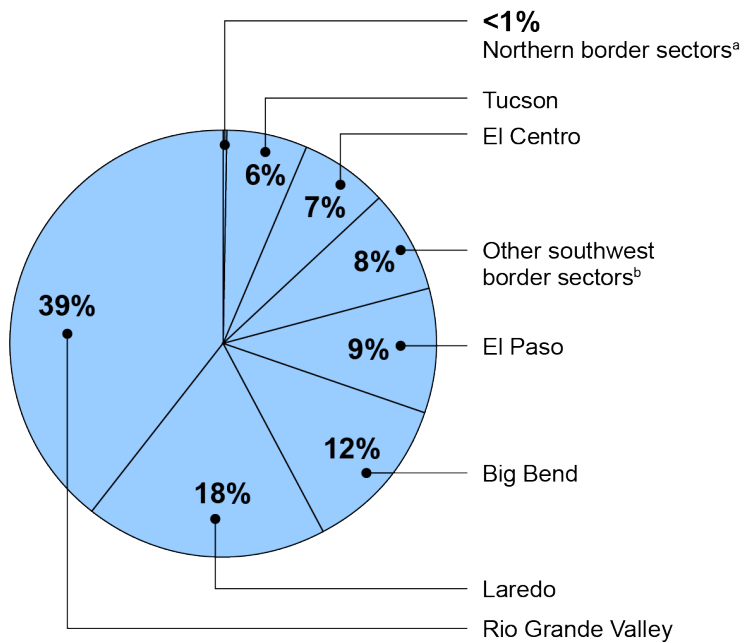
<sup>39</sup>The remaining nationalities represented in Border Patrol's data on checkpoint apprehensions each represented 1 percent or fewer of checkpoint apprehensions from fiscal years 2016 through 2020.

<sup>40</sup>We analyzed checkpoint event data from fiscal years 2016 through 2020 to examine checkpoint activity, including the types of property seized and the citizenship or immigration status of involved subjects. An event can include an apprehension of a potentially removable person (apprehension event), a drug seizure, or an extended detention of a person during a vehicle search with no associated seizure, among other things. The people in an event may or may not face criminal or other charges. We define an apprehension event as a checkpoint event that includes one or more potentially removable people. We define a U.S. citizen event as a checkpoint event that includes only U.S. citizens.

<sup>41</sup>The 35,742 apprehensions discussed previously took place during these 17,498 apprehension events.

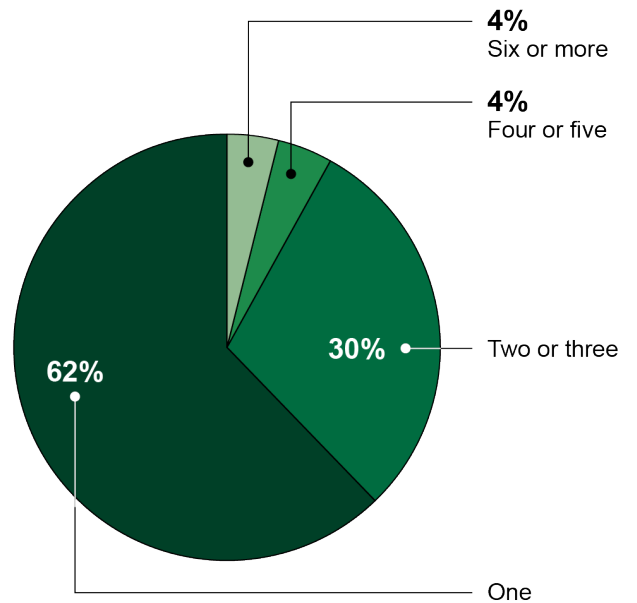
**Figure 6: Border Patrol Checkpoint Apprehension Events by Sector and Number of Potentially Removable People, Fiscal Years 2016 through 2020**

Location of apprehension event



Source: GAO analysis of U.S. Border Patrol data. | GAO-22-104568

Number of potentially removable people in event





**Accessible Data for Figure 6a: Border Patrol Checkpoint Apprehension Events by Sector and Number of Potentially Removable People, Fiscal Years 2016 through 2020 (Location of apprehension event)**

Northern border sectors <sup>c</sup>	Tucson	El Centro	Other southwest border sectors <sup>b</sup>	El Paso	Big Bend	Laredo	Rio Grande Valley
72	1092	1168	1343	1624	2112	3192	6895

**Accessible Data for Figure 6b: Border Patrol Checkpoint Apprehension Events by Sector and Number of Potentially Removable People, Fiscal Years 2016 through 2020 (Number of potentially removable people in event)**

6 or more	Four or Five	Two or Three	One
692	767	5208	10931

Note: Percentages may not add to 100 due to rounding. Fiscal year 2020 data includes apprehensions at checkpoints. It does not include Title 42 expulsions that began with a checkpoint inspection. According to U.S. Customs and Border Protection, expulsions under Title 42, which began in March 2020 as a result of the COVID-19 pandemic, are not immigration actions as they are conducted under public health authority, although country of last transit or origin and immigration/citizenship status are relevant to determining whether a person may be expelled under Title 42. As such, they are tracked separately from immigration enforcement actions, such as apprehension or inadmissibility, which are regularly reported. These expulsions are not illustrated in the above figure because, according to Border Patrol officials, agents were not required to document the locations of Title 42 expulsions.

<sup>a</sup>Northern border sectors include Swanton and Houlton.

<sup>b</sup>Other southwest border sectors include San Diego, Yuma, and Del Rio.

We found that about 62 percent of checkpoint apprehension events involved the apprehension of one potentially removable person and about 38 percent of such events involved the apprehension of two or more potentially removable people as part of the same checkpoint event. These could include events in which two or more potentially removable people were traveling in a vehicle together or two or more such people were being smuggled, or both. Two sectors—Laredo and Rio Grande Valley—had 286 and 249 checkpoint apprehension events, respectively, in which six or more potentially removable people were apprehended as part of the event.

See appendix II for more information about apprehensions by year and sector.

## Most Checkpoint Drug Seizures Involved U.S. Citizens

### Drug Seizures at Checkpoints Represented a Significant Portion of Nationwide Drug Seizures

According to Border Patrol data, drug seizures at checkpoints represented a significant portion of all drugs Border Patrol seized nationwide. Table 1 shows the type and quantity of drugs Border Patrol seized, in pounds, at checkpoints and nationwide from fiscal years 2016 through 2020.

**Table 1: Border Patrol Checkpoint and Nationwide Drug Seizures in pounds, Fiscal Years 2016 through 2020**

Drug	Checkpoint seizures by fiscal year (FY)					Checkpoint total FY16–20	Border Patrol nationwide total FY16–20	Percent of drug quantity seized at checkpoints
	FY16	FY17	FY18	FY19	FY20			
Cocaine	2,727	3,290	2,717	2,336	2,929	13,999	48,411	29%
Heroin	382	574	405	518	357	2,236	3,441	65%
Marijuana	70,058	65,282	41,863	29,660	30,828	237,691	3,140,635	8%
Methamphetamine	5,998	6,492	6,366	9,168	12,015	40,039	65,095	62%
Fentanyl	52	76	200	129	405	862	1,709	50%

Source: GAO analysis of U.S. Border Patrol information. | GAO-22-104568

Note: Checkpoint drug seizures are a subset of Border Patrol's nationwide drug seizures. Border Patrol publicly reports on drug seizures of these drug types. Other drugs may also be seized at checkpoints or nationally.

As shown in table 1, more than 60 percent of the heroin and methamphetamine, and about half of the fentanyl, that Border Patrol agents seized nationwide from fiscal years 2016 through 2020 was found at checkpoints.<sup>42</sup> Less than 10 percent of the marijuana Border Patrol seized nationwide was found at checkpoints. In general, the amount of methamphetamine and fentanyl seized annually at checkpoints increased from fiscal years 2016 through 2020 (more than doubling during the period), while the amount of marijuana decreased by about 50 percent during the same years.

<sup>42</sup>Border Patrol's public reporting of drug seizures documents the quantity of drugs seized, in pounds. As discussed following, our analysis examines the number of checkpoint events in which Border Patrol agents seized drugs.

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### Most Checkpoint Drug Seizures Involved Only Marijuana from U.S. Citizens

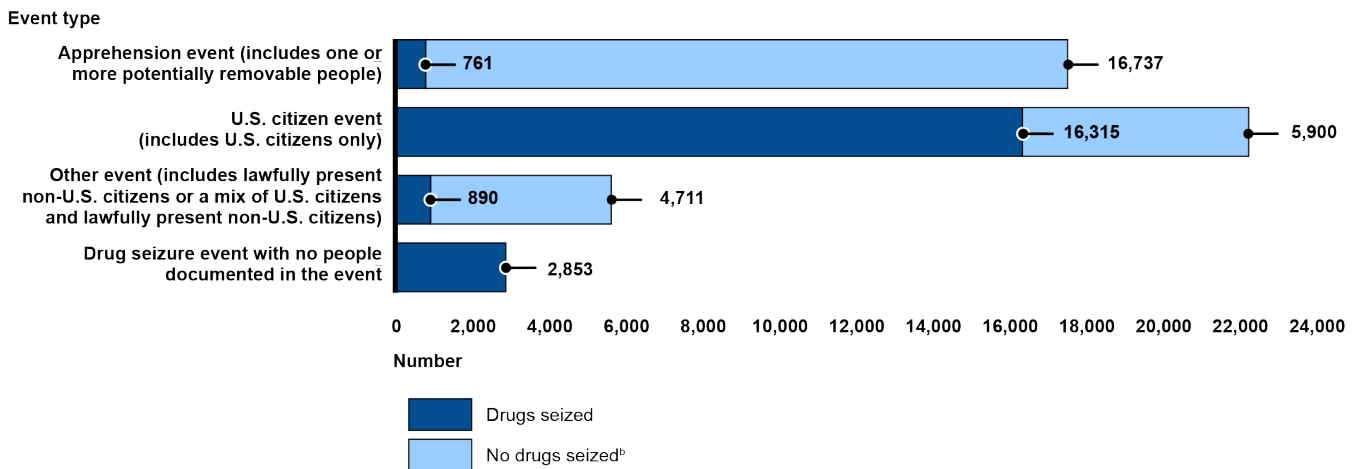
Border Patrol seized drugs at checkpoints about as frequently as they apprehended potentially removable people, and most drug seizure events involved marijuana (and no other drugs) from U.S. citizens. In particular, we found that from fiscal years 2016 through 2020, there were 17,966 checkpoint events in which Border Patrol documented that it seized drugs and also documented information about one or more people involved in the event; as we previously reported, there were 17,498 checkpoint apprehension events during that time period.<sup>43</sup> Of the drug seizure events, 91 percent (16,315 events) involved only U.S. citizens and 4 percent (761 events) involved one or more potentially removable people.<sup>44</sup>

In addition, we found that checkpoint apprehension events rarely involved drug seizures. Specifically, we found that 4 percent of the 17,498 checkpoint apprehension events also included a drug seizure. Figure 7 shows the types of checkpoint events documented in Border Patrol's data system, including whether the people in the event were all U.S. citizens, the event included an apprehension of a potentially removable person, and the event included a drug seizure.

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<sup>43</sup>Border Patrol data show that 2,853 checkpoint events during this period included drug seizures not associated with an individual subject record. We discuss these events and our examination of them in greater detail later in this report. Under federal law, anyone who is found in possession of drugs (a controlled substance) in any amount may be subject to criminal prosecution. Possession with intent to manufacture, distribute or dispense a controlled substance carries more severe criminal penalties (21 U.S.C. § 841) in comparison to simple possession (21 U.S.C. § 844). Possession of a personal use amount of certain controlled substances, including marijuana (1 ounce or less), would generally subject a person to a civil penalty. See 21 U.S.C. § 844a.

<sup>44</sup>There were 890 events (5 percent of all drug seizure events with one or more people documented in the event) with a drug seizure that did not meet our definition of (1) apprehension event or (2) U.S. citizen event. These 890 events included one or more people who were not U.S. citizens but also not removable, such as lawful permanent residents, people with valid visas, or people expelled under Title 42 in fiscal year 2020. These events may have included U.S. citizens, but each such event included one or more people Border Patrol documented as not a U.S. citizen.

**Figure 7: Border Patrol Checkpoint Events by Event Type, Fiscal Years 2016 through 2020<sup>a</sup>**

Source: GAO analysis of U.S. Border Patrol data. | GAO-22-104568

**Accessible Data for Figure 7: Border Patrol Checkpoint Events by Event Type, Fiscal Years 2016 through 2020<sup>a</sup>**

Category	Drugs Seized	No Drugs Seized
Apprehension event (includes one or more potentially removable individuals)	761	16737
U.S. citizen event (includes U.S. citizens only)	16315	5900
Other event (Includes lawfully present non-U.S. citizens or a mix of U.S. citizens and lawfully present non-U.S. citizens)	890	4711
Drug seizure event with no people documented in the event	2853	

<sup>a</sup>Fiscal year 2020 data includes apprehensions at checkpoints. It does not include Title 42 expulsions that began with a checkpoint inspection. According to U.S. Customs and Border Protection, expulsions under Title 42, which began in March 2020 as a result of the COVID-19 pandemic, are not immigration actions as they are conducted under public health authority, although country of last transit or origin and immigration/citizenship status are relevant to determining whether a person may be expelled under Title 42. As such, they are tracked separately from immigration enforcement actions, such as apprehension or inadmissibility, which are regularly reported. These expulsions are not illustrated in the above figure because, according to Border Patrol officials, agents were not required to document the locations of Title 42 expulsions.

<sup>b</sup>Border Patrol may seize items other than drugs, including vehicles, ammunition, firearms, currency, or other property as a result of a checkpoint inspection. We determined that Border Patrol's data on non-drug property seizures at checkpoints was not reliable. As such, we do not illustrate property seizure events in which there were no drugs seized.

In contrast, as shown below in figure 8, the vast majority of drug seizures at checkpoints (91 percent of 17,966 drug seizure events with a person documented in the event) were from U.S. citizens. The other 9 percent of drug seizure events involved one or more potentially removable people

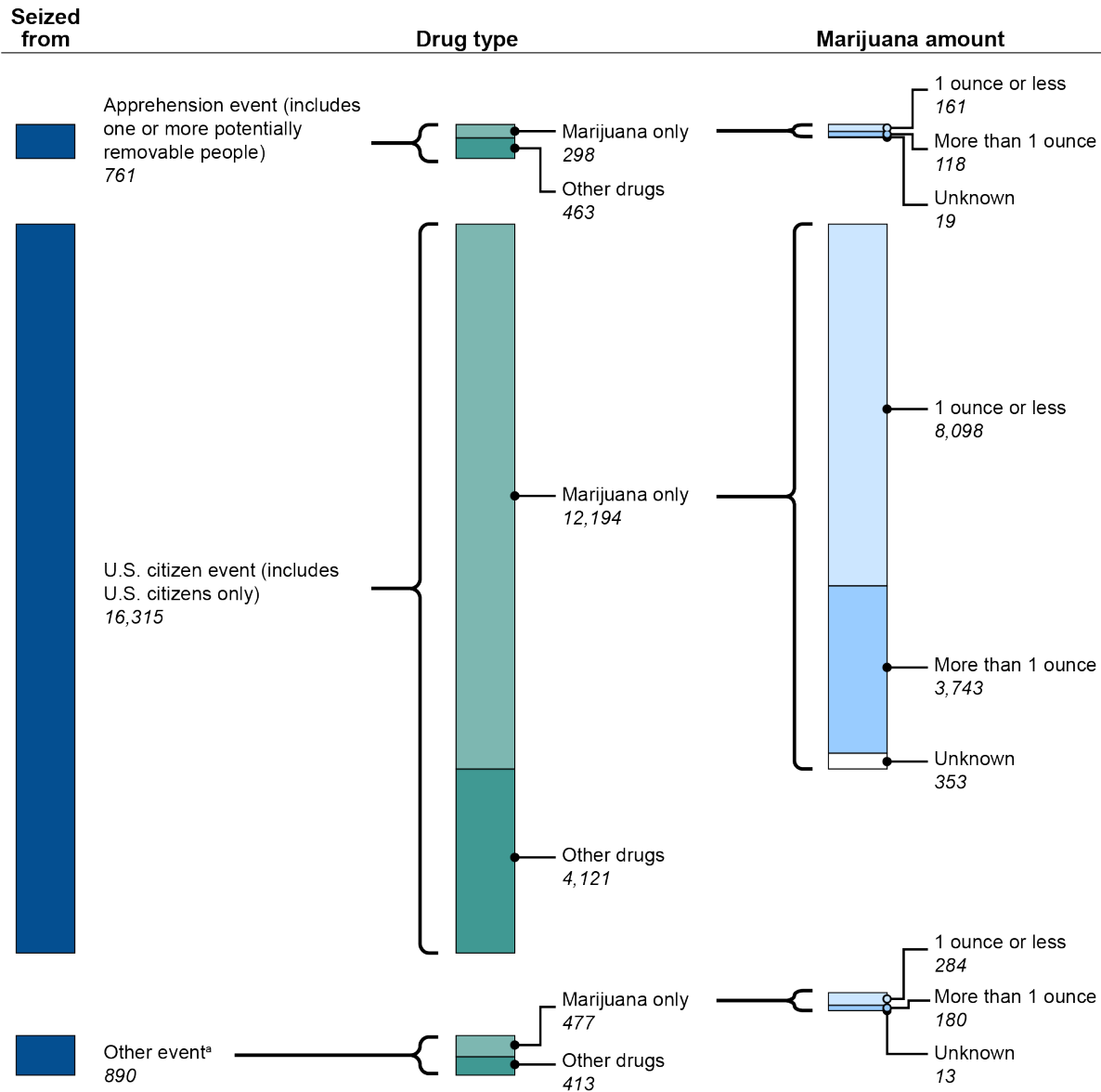
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(761 events) or a mix of U.S. citizens and non-U.S. citizens who Border Patrol did not document as potentially removable (890 events).<sup>45</sup>

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<sup>45</sup>These 890 events could include people encountered in fiscal year 2020 who were expelled under Title 42 because, as previously discussed, Border Patrol agents did not document these people as potentially removable and does not consider the encounter with them an apprehension.

**Figure 8: Border Patrol Drug Seizure Events at Checkpoints by People Associated with the Seizure and Drug Type, Fiscal Years 2016 through 2020**



Source: GAO analysis of U.S. Border Patrol data. | GAO-22-104568

<sup>a</sup>"Other" events did not meet our definition of (1) apprehension event, which included a potentially removable person, or (2) U.S. citizen event, which included only U.S. citizens. These 890 events included one or more people who were not U.S. citizens, but also not removable, such as lawful permanent residents, people with valid visas, or people expelled under Title 42 in fiscal year 2020.

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These events may have included U.S. citizens, but each such event included one or more people Border Patrol did not document as U.S. citizens.

About 25 percent (4,121) of the 16,315 U.S. citizen drug seizure events at checkpoints involved a drug other than marijuana, such as cocaine, heroin, fentanyl, or pills, as shown in figure 8.<sup>46</sup> The other 75 percent (12,194) of U.S. citizen drug seizure events involved marijuana only. About half of checkpoint events in which Border Patrol seized drugs from U.S. citizens (8,098 of 16,315) included the seizure of a personal use quantity of marijuana and no other drugs.<sup>47</sup> Border Patrol headquarters officials told us that, in accordance with federal law, agents seize all drugs they find as a result of checkpoint inspections because it is unlawful to possess such drugs. Such drug seizures may or may not lead to a citation or prosecution for drug possession. Border Patrol officials from all selected checkpoints we met with told us that U.S. Attorney's offices in their sector generally do not prosecute people for possessing personal use quantities of marijuana.<sup>48</sup> In such cases, people from whom marijuana is seized may be (1) referred to state or local authorities for criminal investigation or (2) released. As of March 2022, adult possession of a personal use quantity of marijuana is legal in the following states that have checkpoints: Arizona, California, Maine, New Mexico, New York, and Vermont.

### Agents May Seize Vehicles and Other Items at Checkpoints

Border Patrol agents are to follow CBP's seized asset guidance when seizing drugs, vehicles, or other items at a checkpoint.<sup>49</sup> Border Patrol headquarters officials told us that each sector has an asset forfeiture officer to help agents ensure that they are seizing property appropriately and in accordance with CBP guidance. Figure 9 shows the items that agents may seize at a checkpoint and describes the circumstances under which such seizures take place.

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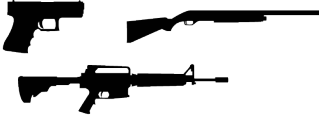


<sup>46</sup>Some of these 25 percent of events included a seizure of marijuana and other drugs.

<sup>47</sup>According to CBP's *Seized Asset Management and Enforcement Procedures Handbook*, a personal use quantity of marijuana is defined as one ounce (28.35 grams) or less. The handbook describes a personal use quantity as an amount that indicates no evidence of intent to distribute or to facilitate the manufacture, delivery, or import or export of controlled substance in quantities not intended for immediate personal use.

<sup>48</sup>These checkpoints were in all 11 sectors that had one or more operational checkpoints in fiscal years 2016 through 2020.

<sup>49</sup>CBP, Office of Field Operations, Fines, Penalties and Forfeitures Division, *Seized Asset Management and Enforcement Procedures Handbook*, HB 4400-01B (July 2011).

Figure 9: Items that Border Patrol Agents May Seize at a Checkpoint and Circumstances For Doing So

Property type	Circumstances for making seizure
<b>Drugs</b> 	Always seized (mandatory).
<b>Documents</b> 	Always seized when fraudulent or, if documents are valid, when used by an imposter. May be seized if related to a status, such as a student visa, being revoked or invalid.
<b>Vehicles</b> 	Discretionary. May be seized if used in the commission of a crime, such as drug possession (if drugs are carried in the vehicle) or human smuggling. Vehicle seizure can be used as a punitive consequence regardless of whether a crime is prosecuted.
<b>Firearms and ammunition</b> 	Always seized if in possession of someone legally prohibited from possessing the firearm or ammunition, or if used in the commission of a crime.
<b>Currency</b> 	Undeclared currency in an amount more than \$10,000 can be seized. Currency that is identified as the proceeds of a crime can be seized. In general, currency carried by potentially removable individuals is treated as their personal property and is not seized.
<b>Other property</b> 	Drug paraphernalia is to be treated like a drug and seized if it contains any amount of drug residue. Cell phones and other types of property can be seized if they will be used as evidence such as if, for example, they include communications between members of a human smuggling network.

Source: GAO analysis of U.S. Customs and Border Protection and Border Patrol information. | GAO-22-104568

According to Border Patrol guidance, any vehicle involved in, or property traceable to, human smuggling is to be seized and is subject to forfeiture. In addition, any vehicle in which drugs are found can be seized. The Border Patrol official responsible for oversight of seizures told us that sectors have discretion in directing agents to seize vehicles as long as



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doing so is legally supportable.<sup>50</sup> Officials also said that some sectors may prioritize seizing vehicles as a punitive consequence for drug possession or smuggling, for example, while other sectors may not.

Our analysis of Border Patrol data on vehicle seizures at checkpoints and interviews with sector officials found differences across sectors in the frequency with which they seize vehicles, in accordance with the discretion described in CBP's seized asset management guidance.<sup>51</sup> For example, Border Patrol data show that three sectors (El Centro, Laredo, and Rio Grande Valley) seized vehicles relatively frequently.<sup>52</sup> Officials from Laredo and Rio Grande Valley sectors said that if agents seize drugs during a checkpoint event, they nearly always seize the vehicle associated with the event. In contrast, two sectors (Big Bend and Yuma) seized vehicles relatively infrequently, according to Border Patrol data. Officials from Big Bend sector told us that agents in the sector decide whether to seize vehicles on a case-by case-basis and that, for seizures of small amounts of marijuana that will not be prosecuted, they may exercise discretion and not seize the vehicle in which the marijuana is found.

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## Border Patrol Continues to Have Checkpoint Data Reliability Issues

In our prior work, we found issues with the reliability of Border Patrol's data on checkpoint activity, and in this review we found the agency continues to have them.<sup>53</sup> Specifically, we found that Border Patrol agents at checkpoints inconsistently documented certain checkpoint activity data, including data on apprehensions of smuggled people, canine assists with

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<sup>50</sup>CBP's *Seized Asset Management and Enforcement Procedures Handbook* states that the decision to seize or not seize an asset is difficult, and good judgment should be used to ensure that seizure authority is not abused because the fact that an asset can be seized does not necessarily mean that it should be seized.

<sup>51</sup>*Seized Asset Management and Enforcement Procedures Handbook*.

<sup>52</sup>As discussed later in this report, we determined that Border Patrol's data on non-drug property seizures at checkpoints was not reliable. As such, we do not report on the number of vehicles seized at checkpoints or the percent of events in which Border Patrol agents seize vehicles. However, we determined that we could report generally on variation in vehicle seizures across sectors based on interviews with sector officials and Border Patrol officials about seizure practices that corroborated our observations based on our analysis of Border Patrol's data.

<sup>53</sup>[GAO-18-50](#) and [GAO-09-824](#).

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drug seizures, seizures of trace amounts of marijuana, non-drug property seizures, and attempted checkpoint circumventions. Further, agents did not consistently document the people involved in enforcement actions at checkpoints. Additionally, Border Patrol developed a tool to collect information about the outcomes of secondary inspections at checkpoints, but only about half of its checkpoints used the tool because it was not required, resulting in unreliable data on the outcomes of secondary inspections.

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### Data Border Patrol Collected about Certain Checkpoint Activity Are Unreliable

Border Patrol agents collect data on checkpoint activity, including data on apprehensions of smuggled people, canine assists with drug seizures, seizures of trace amounts of marijuana, non-drug property seizures, and attempted checkpoint circumventions.<sup>54</sup> However, although Border Patrol has guidance regarding the proper documentation of such checkpoint activity, agents at checkpoints inconsistently documented these data and therefore they provide an unreliable record of some checkpoint activities.

**Smuggled people.** Our analysis of Border Patrol checkpoint activity data showed that checkpoint agents did not consistently and appropriately document human smuggling events in the agency's e3 data system (Border Patrol's application that captures data related to checkpoint activity). According to Border Patrol documentation and leadership, the primary purpose of checkpoint operations is to interdict human smuggling events and identify recent entrants to the U.S. who are potentially removable. According to Border Patrol's e3 guidance, agents are to document people involved in human smuggling events by, among other things, designating the principal smuggler and each smuggled person in e3.

Our analysis of checkpoint activity data from fiscal years 2016 through 2020 found that Border Patrol agents documented about 600 people as "smuggled" while simultaneously documenting them as lawfully present in the U.S.<sup>55</sup> Of these, 485 people were documented as both U.S. citizens and smuggled people. Most of these records (88 percent) were from two

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<sup>54</sup>Border Patrol defines a circumvention as "any deviation from a normally used route of egress in order to avoid detection by a checkpoint."

<sup>55</sup>From fiscal years 2016 through 2020, Border Patrol agents documented approximately 19,000 people encountered at checkpoints as "smuggled" in e3.

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checkpoints in the Rio Grande Valley sector. Rio Grande Valley sector data integrity officials told us that the incorrect smuggled person designations were likely due to user data entry error or system error. According to our analysis of the data, about 85 percent of the incorrect designations occurred in 2019.

Rio Grande Valley data integrity officials noted that in 2019 Border Patrol transitioned to a new version of the e3 application. Headquarters officials also stated that the incorrect smuggled person designations may be due to data entry error, but noted that there are some instances where a lawfully present person could be recorded as a smuggled person, such as a lawfully present child travelling with a family member as part of a smuggling event.

Data integrity officials from three sectors, including Rio Grande Valley, told us that checkpoint supervisors are responsible for reviewing and approving human smuggling data. However, given the incorrect designations we identified, improving oversight of the data Border Patrol collects on human smuggling could help ensure that the agency is better positioned to more accurately quantify human smuggling activity interdicted at checkpoints.

**Canine assists.** Our analysis of checkpoint activity data showed that checkpoint agents did not consistently document canine assists with drug seizures at checkpoints. Checkpoint officials from all 13 selected checkpoints we interviewed told us that canines were critical to the checkpoint mission, including to drug seizures.<sup>56</sup> Per Border Patrol policy, agents are required to document when canines assist with a checkpoint apprehension or seizure. Specifically, in February 2018, Border Patrol issued a memorandum reminding sectors of the requirement to record asset assists with apprehensions or seizures, including canine assists.<sup>57</sup> The memorandum noted that the data are important in determining asset effectiveness and ensuring the proper utilization of assets. Border Patrol's

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<sup>56</sup>The 13 selected checkpoints were located in 11 sectors, with three checkpoints located on the northern border and 10 checkpoints located on the southwest border.

<sup>57</sup>In November 2017, we reported on data quality issues related to the completeness and reliability of Border Patrol's data on asset assists, which are instances in which technologies or other assets, including canine teams, contributed to an apprehension or seizure. We recommended that Border Patrol issue guidance for sectors to improve the quality and usability of the data. Border Patrol issued this memorandum in response to our recommendation. See: GAO, *Southwest Border Security: Border Patrol Is Deploying Surveillance Technologies but Needs to Improve Data Quality and Assess Effectiveness*, [GAO-18-119](#) (Washington, D.C.: Nov. 30, 2017).

canine program manager told us that canine handlers are responsible for ensuring that canine assists are appropriately documented in e3.

Although officials we interviewed at all selected checkpoints told us that canines are integral to checkpoint drug seizures, our analysis of checkpoint activity data found wide variation across sectors in the frequency with which Border Patrol agents documented that canines assisted with drug seizure events. As shown in table 2, the four sectors with the highest number of drug seizure events from fiscal years 2016 through 2020 were Yuma, Big Bend, Tucson, and Rio Grande Valley. However, Border Patrol data showed substantial variation in the frequency of canine assists with drug seizures in these sectors. For example, data showed canines assisted with a small proportion of drug seizure events in Yuma (2 percent) and Big Bend (4 percent) and a large proportion of such events in Tucson (77 percent) and Rio Grande Valley (88 percent).

**Table 2: Border Patrol Checkpoint Agent Documented Canine Assists in Drug Seizure Events by Sector, Fiscal Years 2016 through 2020**

Sector	Total drug seizure events	Drug seizure events documented with a canine assist	Percent with documented canine assist
Big Bend	5,640	245	4%
Del Rio	497	422	85%
El Centro	525	160	30%
El Paso	1,595	28	2%
Laredo	1,179	638	54%
Rio Grande Valley	2,005	1,765	88%
San Diego	860	529	62%
Tucson	1,988	1,534	77%
Yuma	3,333	51	2%
Houlton	127	88	69%
Swanton	217	162	75%
<b>Total</b>	<b>17,966</b>	<b>5,622</b>	<b>31%</b>

Source: GAO analysis of U.S. Border Patrol data. | GAO-22-104568

Note: A drug seizure event is defined as the seizure of any quantity of one or more drugs, such as marijuana or cocaine, from one or more people.

Data integrity officials from the Yuma and Big Bend sectors offered contrasting explanations regarding the relatively low number of canine assists their agents documented in e3. Yuma sector officials said that it did not seem reasonable that canines assisted with only 2 percent of drug

seizure events at checkpoints in their sector. These officials acknowledged that they did not have a good oversight mechanism in place at the sector level to ensure that agents appropriately documented canine assists in e3. In contrast, Big Bend sector data integrity officials said that it seemed reasonable that canines assisted with 4 percent of drug seizure events at sector checkpoints.<sup>58</sup> However, officials from a selected checkpoint in Big Bend sector told us that canines were critical to their mission and that the sector regularly assigned canine teams to work at the checkpoint.

Given these differing perspectives and the wide variation in data on canine assists, it is unclear whether Border Patrol is recording complete and reliable data on such assists. Having reliable data on canine assists in drug seizures at checkpoints would help Border Patrol better assess the effectiveness of canines for checkpoint searches and ensure that canines are properly utilized.

**Seizures of trace amounts of marijuana.** Our analysis of checkpoint activity data from fiscal years 2016 through 2020 found that checkpoint agents did not consistently document seizures of trace amounts of marijuana, such as marijuana residue found on paraphernalia.<sup>59</sup> According to Border Patrol officials, when documenting seizures in e3, checkpoint agents are to first select the appropriate property type and then document information about the seized property, such as the seizure date and a description of the item. For drug seizures, checkpoint agents are to document the drug type (such as marijuana) and amount (including a quantity and the unit of measure, such as 10 pounds), among other information.

According to Border Patrol policy, agents are to document seizures of trace amounts of marijuana by entering the drug type “marijuana,” selecting “trace” as the unit of measure, and leaving the quantity blank. If drug paraphernalia contains residue or trace amounts of marijuana, agents are to document the paraphernalia separately under the property type “other property,” in addition to documenting the trace amount of

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<sup>58</sup>Big Bend sector data integrity officials stated that they believed the numbers seemed reasonable for their sector when taking into account the number of canines assigned to their sector’s checkpoints, days off and leave, and outside agency canine requests.

<sup>59</sup>Paraphernalia refers to any product that is used to produce, conceal, or consume illicit drugs. For example, from fiscal years 2016 through 2020, checkpoint agents documented seizures of marijuana drug paraphernalia such as pipes, grinders, bongs, and storage containers.

marijuana. In other words, drug paraphernalia containing marijuana residue should be documented as two items seized—a trace quantity of marijuana and an item of “other property” with a description of the drug paraphernalia. The Border Patrol memorandum reflecting this policy noted that applying standardized processing procedures for documenting seizures of trace amounts of drugs in e3 would improve overall drug seizure data quality and statistical reporting.

Our analysis identified about 1,973 seized items containing trace amounts of marijuana incorrectly documented in e3 by checkpoint agents from fiscal years 2016 through 2020.<sup>60</sup> We found that most of these records were cases in which agents found residue or trace amounts of marijuana on paraphernalia, but generally did not separately document the marijuana and the paraphernalia in the appropriate categories, as Border Patrol policy requires. Border Patrol headquarters officials told us that they typically focus their oversight of drug seizure data on relatively large seizures, such as marijuana seizures over 100 pounds on the southwest border. As a result, officials acknowledged that incorrect documentation of small quantities of marijuana, such as trace amounts, would likely be undetected by headquarters.

Our analysis of checkpoint activity data found that the majority (about 69 percent) of marijuana seizure events at checkpoints involved the seizure of a small quantity of marijuana, including trace amounts.<sup>61</sup> Therefore, headquarters does not typically review data on the majority of marijuana seizure activity occurring at checkpoints to determine whether those seizures were correctly documented. Because of the inconsistencies we identified in agents documenting quantities of trace amounts of marijuana at checkpoints and because Border Patrol does not typically conduct

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<sup>60</sup>These numbers represent individual marijuana seizures, as documented by Border Patrol agents in e3. There could be more than one item of marijuana seized in a checkpoint event. In order to report on marijuana seizures at Border Patrol checkpoints earlier in this report, we adjusted these incorrectly documented trace amounts of marijuana and incorporated them into our counts of marijuana seizures at checkpoints. See more on our methodology in appendix I.

<sup>61</sup>This included 8,928 events where checkpoint agents documented that they seized a small quantity of marijuana and documented one or more people associated with the event, out of a total of 12,969 marijuana-only drug seizure events (meaning the only drugs seized during these events were marijuana or marijuana products or derivatives). For the purposes of this analysis, we considered small quantities to be personal use amounts of marijuana and trace amounts of marijuana with no recorded weight. According to CBP's *Seized Asset Management and Enforcement Procedures Handbook*, a personal use quantity of marijuana is defined as one ounce (28.35 grams) or less.

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oversight of data on these small seizures, Border Patrol does not have reliable information on all drug seizure activity at checkpoints. Additionally, Border Patrol is not positioned to ensure the quality of its data on marijuana seizures, which comprise a significant amount of overall drug seizures at checkpoints.

**Non-drug property seizures.** We found that Border Patrol does not have reliable, readily available data on non-drug property seizures at checkpoints.<sup>62</sup> As previously noted, according to Border Patrol training and guidance, these seizures are to be documented by Border Patrol agents in the e3 application. However, we found that e3 may not contain reliable data on non-drug seizures at checkpoints—including vehicle seizures—because Border Patrol has conducted limited oversight of e3 data on such seizures, instead relying on data in CBP’s SEACATS (not an acronym).<sup>63</sup> SEACATS is CBP’s data system of record for all seizures, including those made by components such as Border Patrol.

According to Border Patrol guidance, agents are to first record property seizures in e3. Using an automatic transfer button in e3, they then merge the relevant information into SEACATS via a one-time transfer process. However, Border Patrol officials told us that agents may create a record of a seizure in e3 for items—including vehicles—that they plan to seize but do not ultimately seize. For example, agents may create a record in e3 when they assist another law enforcement entity with a property seizure, even if Border Patrol does not ultimately seize the property. Border Patrol headquarters and sector officials said that agents generally would not subsequently revise the e3 record to indicate that the item was not seized. They noted that the agency had limited oversight in place to ensure that agents update the e3 record to reflect that the seizure did not happen. Border Patrol headquarters officials said that because there is limited oversight of how agents document property seizures at checkpoints in e3, the data on such seizures may not fully reflect checkpoint seizure activity. As a result, e3 does not have reliable, readily available information about non-drug property seizures at checkpoints.

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<sup>62</sup>For the purposes of this report, non-drug property seizures include seizures of vehicles, currency, firearms, ammunition, documents, and cell phones, among other types of property.

<sup>63</sup>SEACATS was formerly the Seized Asset and Case Tracking System, but CBP has since retired the formal name and only uses the acronym.

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Our analysis of e3 data on vehicle seizures found that Border Patrol agents documented more seizures in e3 than they transferred to SEACATS, the data system of record. Specifically, e3 data indicates that from fiscal years 2016 through 2020, Border Patrol agents documented seizures of 18,912 vehicles at checkpoints. In contrast, data from SEACATS indicates there were 14,649 vehicle seizures at southwest Border Patrol stations with checkpoints during this period—including checkpoint and non-checkpoint seizures attributable to those stations.<sup>64</sup> In other words, Border Patrol's e3 application included records for at least an additional 4,000 vehicle seizures at checkpoints for this time period than were documented in SEACATS.

In addition, although CBP has mechanisms to ensure that data in SEACATS reflects items that CBP has seized, as of February 2022, there was no data field in SEACATS to identify whether a property seizure took place at a checkpoint. Instead, SEACATS had a field identifying the Border Patrol station where a seizure took place and a narrative field identifying the specific location of the seizure, if available. Our review of SEACATS record-level data found that station-level data did not reliably indicate whether a seizure took place at a checkpoint and that there was no consistent way that agents described checkpoint seizures in the narrative field.

In response to our audit work, Border Patrol officials told us that CBP added a field to the SEACATS data system that will allow officials to identify checkpoint property seizures. As of April 2022, this "place of seizure" field is mandatory in SEACATS. While this is a positive step, improvements to SEACATS do not address Border Patrol's need for reliable e3 data to support checkpoint operations and report on checkpoint activity. This is because Border Patrol regularly uses seizure data from e3 to meet its reporting needs. For example, Border Patrol has used data from e3 to report twice annually to Congress about currency and firearms seizures at checkpoints, among other data. Border Patrol guidance states that agents are to use e3 to document complete, reliable information about checkpoint activities because Border Patrol needs such information in its data system to inform operational decisions at

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<sup>64</sup>Our analysis of e3 data on vehicle seizures includes seizures at both southwest and northern border sector checkpoints, while SEACATS data includes only southwest border stations with checkpoints. We found that a small number (approximately 0.2 percent) of checkpoint events in which Border Patrol documented a vehicle seizure in e3 took place in northern border sectors. We determined that this small number of northern border vehicle seizures does not materially affect the e3 and SEACATS data comparison.



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checkpoints. However, because e3's data on non-drug seized property are not reliable, Border Patrol does not have the information the agency needs to inform its checkpoint operations. In turn, it may be reporting unreliable information about its checkpoint activity to Congress.

**Attempted checkpoint circumventions.** Border Patrol agents have not consistently documented data on attempted checkpoint circumventions, resulting in unreliable data. We previously reported on issues with checkpoint circumvention data in our 2009 and 2017 reports, and our analysis has shown that these issues persist. Specifically, in our 2009 report, we found that officials at some checkpoints were including apprehensions occurring on checkpoint circumvention routes in their reporting of apprehensions occurring at the checkpoint itself, which led to inconsistent reporting across checkpoints.<sup>65</sup> We recommended that Border Patrol establish internal controls for management oversight of the accuracy, consistency, and completeness of checkpoint performance data, to include checkpoint circumvention data.

In response to our recommendation, in 2010, Border Patrol issued a memorandum on the proper documentation of apprehensions and seizures occurring at checkpoints and those occurring on circumvention routes.<sup>66</sup> It also took a number of steps, including issuing an additional memorandum in 2019 reasserting the importance that agents accurately document checkpoint circumventions by marking the circumvention checkbox in e3.<sup>67</sup>

Despite these efforts, officials we interviewed at selected checkpoints in four sectors stated that agents were not following the Border Patrol policy to document checkpoint circumventions in e3 using the checkpoint circumvention checkbox.<sup>68</sup> Further, officials from three of the four sectors and one additional sector reported that they were not aware of the June

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<sup>65</sup>[GAO-09-824](#).

<sup>66</sup>U.S. Border Patrol, *Checkpoint Data Integrity* (Washington, D.C.: Jan. 6, 2010).

<sup>67</sup>U.S. Border Patrol, *Immigration Checkpoints Circumvention Data Integrity* (Washington, D.C.: June 12, 2019). In addition, in 2019, officials from CPMO provided training to sectors to help agents in the field properly identify and document checkpoint circumvention events. This training emphasized the importance of accurate circumvention data for checkpoint justification, situational awareness of the operating environment, and proper resource allocation.

<sup>68</sup>Officials from four selected checkpoints provided these perspectives. Officials from one of 13 selected checkpoints reported that, to their knowledge, the checkpoint had no attempted circumventions.

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2019 memorandum requiring them to document circumventions in e3. This raises questions about the extent to which Border Patrol has complete and reliable data in e3 on checkpoint circumventions, particularly for those sectors. Without complete and reliable data on circumventions, Border Patrol is limited in its ability to use such data for checkpoint justification, situational awareness of the operating environment, and proper resource allocation, as intended.

CPMO and Border Patrol sectors are to provide oversight of checkpoint data integrity and quality, including oversight of the data we identified above as inconsistently documented by checkpoint agents. However, neither entity has effectively fulfilled this role. As discussed in more detail later in this report, Border Patrol established CPMO to provide oversight of checkpoint data quality and accuracy, among other checkpoint oversight responsibilities. In particular, the Border Patrol memorandum establishing CPMO tasked the office with reviewing checkpoint data for accuracy. Further, individual sectors are responsible for checkpoint data integrity and quality checks and, headquarters officials told us that during our period of review, most sectors had designated agents assigned to oversee and ensure data accuracy.

As part of an effort to improve data integrity, in September 2020, the Chief of Border Patrol issued a memorandum requiring all sectors to establish formal data integrity units to oversee and ensure data accuracy. The memorandum stated that because Border Patrol relies on data to make critical decisions and complete external reporting, the precision of the data input at the field level directly affects the validity of decisions made at the national level. However, our analysis shows that Border Patrol—at various levels—has not provided sufficient oversight to ensure the accuracy and reliability of certain checkpoint activity data, including apprehensions of smuggled people; canine assists with drug seizures; seizures of trace amounts of marijuana; non-drug property seizures; and attempted checkpoint circumventions. Having reliable data on these checkpoint activities could help Border Patrol better understand checkpoint activity and effectiveness, explain checkpoint operations to external stakeholders, and help ensure proper resource allocation.

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## Agents Did Not Consistently Document the People Involved in Checkpoint Enforcement Actions

By policy, Border Patrol agents are to enter complete information about all checkpoint encounters and activities into the agency's data system.<sup>69</sup> However, we found that Border Patrol agents do not consistently do this. Specifically, we identified a number of instances in which agents did not document the subject of an enforcement action at a checkpoint in e3—including people involved in drug seizures and human smuggling events.<sup>70</sup> We found that e3 did not include a record of the subject encountered during 6,016 of the 36,470 property seizure events agents documented in the application from fiscal years 2016 through 2020.<sup>71</sup> In other words, in about 16 percent of events in which Border Patrol agents documented a property seizure, they did not document the person from whom they seized the property in e3.

We reviewed e3 narratives for a non-generalizable random sample of 20 events in which agents documented a property seizure in fiscal year 2020 with no documented subject. We found that 18 of the 20 events involved an enforcement action against a person.<sup>72</sup> Specifically, we found 11 events involved a drug seizure, five events involved interdicted human smuggling, and two events involved an encounter with subjects who were

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<sup>69</sup>U.S. Border Patrol, *Ensuring U.S. Border Patrol Data Integrity at Checkpoints* (Washington, D.C.: Apr. 25, 2016).

<sup>70</sup>For the purpose of this analysis, we defined an enforcement action as (1) having property seized; (2) being referred to another law enforcement agency; or (3) experiencing an administrative consequence that does not involve criminal prosecution as a result of a checkpoint encounter, such as an administrative immigration consequence.

<sup>71</sup>As discussed previously, we found that Border Patrol's e3 data on non-drug property seizures did not reliably identify property Border Patrol seized at checkpoints. However, we were able to use property seizures that agents documented in e3 to identify a non-generalizable random sample of events in which agents documented that they seized property but did not document a "subject" from whom the property was seized.

<sup>72</sup>In fiscal year 2020, there were 2,073 property seizure events with no documented subject. These events took place in all nine southwest border sectors and two northern border sectors.

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not lawfully present in the U.S.<sup>73</sup> In six of the 11 drug seizure events, the subject associated with the seizure was turned over to another law enforcement agency and in the other three events, the subject was released by Border Patrol.<sup>74</sup>

Border Patrol headquarters officials told us that checkpoint agents may not document information in e3 about the people involved in checkpoint encounters if they believe the agency does not require that information operationally. They noted the example of a person agents may find in possession of drugs during a checkpoint inspection, but subsequently turn over to a federal, state, or local law enforcement agency for further criminal investigation or prosecution.<sup>75</sup>

However, checkpoint agents regularly document in e3 the people involved in such drug seizure events. From fiscal years 2016 through 2020, Border Patrol agents documented subjects associated with 86 percent of the checkpoint drug seizure events they documented in e3.<sup>76</sup> Additionally, we identified pairs of events in which Border Patrol seized similar quantities of drugs in the same sector and agents documented the events differently. In one case, agents seized 0.51 pounds of methamphetamine at a checkpoint in the San Diego sector and did not document any people associated with the seizure in e3, although the narrative description of the event indicates that the drugs were seized from U.S. citizens. In another case in the same year, agents seized 0.62 pounds of methamphetamine at a checkpoint in the same sector and documented information about the U.S. citizen from whom Border Patrol agents seized the drugs in e3.

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<sup>73</sup>The non-generalizable random sample included property seizure events in seven sectors. Two of the 20 events involved abandoned drugs, which are documented as a seizure with no associated subject in e3. The event narratives for the two events that involved people not lawfully present in the U.S. stated that the people were returned to Mexico under Title 42. As previously discussed, Border Patrol officials told us that Title 42 expulsions that began with a checkpoint inspection might not be documented as occurring at a checkpoint.

<sup>74</sup>These are the outcomes Border Patrol agents documented in their narrative description of each event.

<sup>75</sup>According to Border Patrol officials, agents document information about the people involved in such events in the narrative section of relevant forms, such as Form I-44 (Report of Apprehension or Seizure) and Form G-166 (Report of Investigation).

<sup>76</sup>From fiscal years 2016 through 2020, Border Patrol agents documented drug seizures and associated subjects in 17,966 events and drug seizures with no associated subject in 2,853 events.

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Further, Border Patrol has an operational need to document the people involved in human smuggling events because, according to Border Patrol documentation and officials, a primary purpose of checkpoints is to interdict human smuggling activities. In the five property seizure events in which the narrative description of the event indicated that there was an enforcement action in response to human smuggling interdicted at a checkpoint, e3 did not include subject records for either the smugglers or the people being smuggled in the event.

In 2016, Border Patrol issued a memorandum regarding checkpoint data integrity, which stated that agents should document—and supervisors should review—complete information about all checkpoint encounters and activities in e3. Although checkpoint officials told us that they may not document encounters with subjects if they have no operational need for the subject information, this practice does not align with the 2016 checkpoint data integrity memorandum’s expectation. Because Border Patrol agents do not consistently document the people involved in enforcement actions at checkpoints, Border Patrol does not have a complete or comprehensive record of checkpoint encounters and activities.

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### Border Patrol Has Not Fully Used License Plate Reader System to Track Outcomes of Checkpoint Searches

Border Patrol developed the Border Enforcement Secondary Tool (BEST) in 2019 to document information about secondary inspections at checkpoints, among other functions. However, we found that Border Patrol has not required checkpoints to use BEST, only about half of checkpoints with the capability are using BEST as intended, and Border Patrol has not reviewed or analyzed BEST data and does not have plans to do so. As a result, Border Patrol does not have reliable information about the number of secondary inspections at checkpoints or their outcomes.

Border Patrol developed BEST to facilitate and document referrals to secondary inspection at checkpoints, similar to how CBP officers use the Consolidated Secondary Inspection Services system at land ports of

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entry.<sup>77</sup> In its 2020 Privacy Impact Assessment notifying the public of BEST, Border Patrol stated that agents referring vehicles to secondary inspection and conducting secondary inspections at checkpoints are to use BEST to document, investigate, and adjudicate the inspection.<sup>78</sup> According to Border Patrol headquarters officials, when documenting referrals to secondary inspection in BEST, checkpoint agents are to enter the reason for a referral (such as a canine alert or suspicious driver behavior) and the results of any search (“positive” if the search resulted in an enforcement action or “negative” if it did not), among other information. BEST works in conjunction with license plate reader technology, which most permanent checkpoints and some tactical checkpoints have.<sup>79</sup> BEST also allows checkpoint agents to see the outcomes of prior secondary inspections for a vehicle, regardless of whether the prior inspection resulted in an enforcement action, such as an apprehension or seizure.

However, according to information from Border Patrol sectors, as of September 2021, only about half of checkpoints with license plate reader technology (21 of 43 checkpoints) were using BEST as intended.<sup>80</sup> Officials in sectors with checkpoints that were not using the system or not using it consistently attributed this to various factors. These factors included that their use of BEST is not required; some checkpoints do not have the necessary technological capabilities, such as adequate bandwidth and computer terminals, to use the system; and documenting secondary inspections in the system is time-consuming.

Border Patrol headquarters officials told us that they have not required checkpoints to use BEST and that the agency did not handle its implementation as well as it could have for a number of reasons,

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<sup>77</sup>CBP officers at land ports of entry use the Consolidated Secondary Inspection Service, a subsystem of TECS, to document relevant information obtained during secondary inspection. For example, if the secondary inspection result was negative, the officer documents the type of search conducted, how it was determined that there were no issues, the results of the inspection, and an indication that the person was admitted into the U.S.

<sup>78</sup>U.S. Department of Homeland Security, *Privacy Impact Assessment for the CBP Portal (e3) to EID/IDENT*, DHS/CBP/PIA-012(b) (Aug. 10, 2020).

<sup>79</sup>Our analysis of information from Border Patrol sectors found that, as of September 2021, 43 checkpoints (33 permanent and 10 tactical) had license plate reader technology.

<sup>80</sup>Specifically, officials in four sectors with 21 checkpoints with license plate reader technology told us that they were using BEST at their checkpoints as intended. In contrast, officials in six sectors with 22 checkpoints with license plate reader technology said that they were not using the system or not using it consistently at their checkpoints.

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including competing priorities for resources such as migrant surges at the southwest border. Further, although some checkpoints may be using BEST as intended, headquarters officials said that, as of July 2021, they had not reviewed the extent to which checkpoints were using BEST, nor had they analyzed data in BEST to examine secondary inspection referrals or their outcomes.

Using BEST as intended could provide Border Patrol with reliable information about secondary inspections at checkpoints that the agency otherwise does not have. As previously discussed, Border Patrol agents have the authority to refer any vehicle to secondary inspection, but such inspections are to be brief unless Border Patrol has consent from the driver to search their vehicle or probable cause of an immigration violation or criminal offense. Officials we spoke to from selected checkpoints said that vehicle searches are generally not documented in e3 unless (1) they lead to an apprehension or seizure or (2) agents decide that they should create a record of the circumstances of an inspection that might not meet the court's definition of "brief."<sup>81</sup> As a result, Border Patrol's available data did not allow us to examine all secondary inspections or the extent to which agents documented the legal basis for vehicle searches. Using BEST to document referrals to secondary inspection, including the legal basis for any vehicle search, could help Border Patrol ensure that such searches meet the relevant legal standard.<sup>82</sup>

In addition, according to BEST documentation, Border Patrol could use data captured in BEST to examine the number of secondary inspection referrals, the reasons for such referrals (including canine alerts), and the outcomes of secondary inspections, regardless of their disposition. BEST could also allow Border Patrol to view trends in secondary inspections, such as the number of referrals to secondary inspection—and the reason for such referrals—that led to an apprehension or seizure. Border Patrol headquarters officials told us such information would be valuable to better understand checkpoint operations, including the extent to which canine

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<sup>81</sup>Border Patrol's Form I-44 is to be used to document evidence in a variety of circumstances, including to document (1) an apprehension and/or (2) an interview of a non-deportable subject, whether that subject is subsequently arrested or released. According to Border Patrol guidance, any incident may be documented on this form for later reference.

<sup>82</sup>As previously discussed, an inspection that is not "brief" requires consent from the driver to search their vehicle or probable cause of an immigration violation or criminal offense.

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alerts lead to an apprehension or seizure.<sup>83</sup> Requiring that checkpoints with license plate reader technology use BEST as intended would provide Border Patrol with reliable information on secondary inspections at checkpoints. Border Patrol could also use this information to monitor secondary inspection referral trends, assess checkpoint effectiveness, and adjust operations, as needed.

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## Headquarters Has Provided Minimal Oversight of Checkpoint Operations

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### Checkpoint Operations Are Managed at the Sector Level

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Checkpoint activity, performance, and resource allocations are managed at the sector level by the sector chief.<sup>84</sup> According to Border Patrol officials, each sector faces a different operating environment and has different priorities. Officials told us that data on checkpoint activity, local intelligence, and available resources contribute to their decisions about when and where to operate checkpoints. As described below, checkpoints on the southwest border are typically operational far more often than checkpoints on the northern border.

**Southwest border checkpoints.** In general, the nine southwest border sectors operate checkpoints frequently. When deciding where and how often to operate checkpoints, sectors consider intelligence on changing patterns of human and drug smugglers and routes used by removable individuals to travel inland. There are checkpoints on nearly all of the routes of egress from the U.S.–Mexico border to population centers such as San Diego, Tucson, and El Paso. According to Border Patrol, checkpoints operate in all nine southwest border sectors and officials from selected southwest border checkpoints told us some checkpoints operate 24 hours per day, as available agent resources and weather permit.

Tactical checkpoints on the southwest border are intended to supplement permanent ones by monitoring and inspecting traffic on secondary roads

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<sup>83</sup>According to Border Patrol national canine program officials, a canine alert can be “productive” or “non-productive.” The officials stated that a non-productive canine alert is when a canine alerts to a substance it is trained to detect, such as a drug or smuggled person, but there is no such substance found during a subsequent vehicle search.

<sup>84</sup>We most recently reported on checkpoint operations in 2017, see [GAO-18-50](#).



that can be used to evade the permanent checkpoints. For example, officials from a tactical checkpoint in the El Centro sector told us that their sector's checkpoints act as a "system," with a tactical checkpoint strategically located between the sector's larger permanent checkpoints.

Officials from selected checkpoints in southwest border sectors told us that smugglers are aware of checkpoint locations and Border Patrol resource allocations and limitations. For example, when sectors temporarily close checkpoints, such as when all available agents are called to respond to a large group of individuals crossing the border without valid travel documents, intelligence shows that human and drug smugglers take advantage of the closure and use the route for their smuggling activities.

**Northern border checkpoints.** In general, northern border sectors operate their checkpoints infrequently, and such checkpoints apprehend few people who recently crossed the northern border.<sup>85</sup> Of the eight northern border sectors, only the Swanton Sector has a permanent checkpoint and four sectors—including Swanton—have approved locations for tactical checkpoints.<sup>86</sup>

Since 2016, two of the eight northern border sectors—Houlton and Swanton—have operated checkpoints in their sector. According to Border Patrol apprehension and arrest data, checkpoints in Houlton and Swanton typically operated from 1 to 4 days at a time and for no more than 10 days in a year. According to officials and operational documentation from two selected northern border checkpoints, checkpoint operations in these two sectors generally resulted in few or no apprehensions of individuals who had recently crossed the border from Canada unlawfully. Instead, most checkpoint encounters with non-U.S. citizens in these sectors involved individuals who were lawfully present (or those with a pending claim in immigration court) who were not carrying their lawful permanent residence card or other documents.

Officials from the other two northern border sectors—Blaine and Buffalo—told us that these sectors have not operated checkpoints in recent years

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<sup>85</sup>When northern border checkpoints are operational, there are generally alternative routes available to smugglers or other traffic.

<sup>86</sup>Spokane, Havre, Grand Forks, and Detroit sectors do not have approved checkpoint locations, according to Border Patrol data.

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due to limited resources and a lack of actionable intelligence of smuggling activities.<sup>87</sup>

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## Headquarters Has Provided Minimal Oversight of Checkpoint Operations

Border Patrol established the Checkpoint Program Management Office (CPMO) to oversee checkpoint operations, but CPMO has not effectively performed this function. In response to our 2009 recommendations, including that Border Patrol establish internal controls for management oversight of the accuracy, consistency, and completeness of checkpoint data,<sup>88</sup> the Chief of Border Patrol issued a memorandum in July 2013 establishing CPMO.<sup>89</sup> The memorandum called for two full-time CPMO staff members and tasked the office with various checkpoint oversight responsibilities, as described below. However, we found that CPMO has not effectively fulfilled these responsibilities because Border Patrol: (1) has not provided adequate oversight of CPMO; (2) has not consistently and adequately staffed CPMO; (3) has not established an effective structure for CPMO that includes clear roles and responsibilities; and (4) has not developed effective policies and procedures for CPMO oversight activities.

### Oversight of CPMO

Since establishing CPMO, Border Patrol has not demonstrated a commitment to ensuring that the office carries out its checkpoint oversight activities or held the office accountable for implementing these activities. As a result, CPMO has not carried out its checkpoint oversight responsibilities in a consistent or effective manner. Border Patrol's July 2013 memorandum establishing CPMO tasked it with various checkpoint oversight responsibilities, including: (1) overseeing checkpoint data quality and accuracy; (2) reviewing checkpoint staffing and resources, such as canine teams and technology, and coordinating checkpoint facility updates; (3) examining checkpoint policy and legal issues for headquarters, and liaising with sectors on checkpoint issues; and (4)

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<sup>87</sup>There are about a dozen locations in Blaine and Buffalo sectors in which state authorities have agreed that tactical checkpoints could operate if sector leadership determined that they were needed.

<sup>88</sup>[GAO-09-824](#).

<sup>89</sup>U.S. Border Patrol, *Implementation of Checkpoint Program Management Office* (Washington, D.C.: July 8, 2013).

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coordinating external reviews of checkpoint operations. Further, the Chief of Border Patrol tasked CPMO with additional responsibilities in 2019 related to assisting sectors with checkpoint circumvention data integrity and tracking checkpoint internal assessments.

Border Patrol took steps to implement the 2013 memorandum beginning in 2016 when it first assigned staff to the office. From 2017 to 2019, CPMO officials carried out various activities in an effort to begin fulfilling the office's responsibilities. For example, CPMO officials provided trainings to sectors in 2019 regarding checkpoint data integrity.<sup>90</sup> However, we found that Border Patrol did not ensure that the office continued to fulfill its responsibilities. Specifically, when we requested information about CPMO's policies, procedures, and activities for our review, we found that CPMO officials were not fulfilling a number of the checkpoint oversight activities that Border Patrol leadership assigned to CPMO in 2013 and 2019. For example:

- **Reviewing checkpoint resources and technology.** We found that CPMO did not have information on overall checkpoint operational status or an accurate list of checkpoint locations and features, including the types of technologies currently in use at each checkpoint. As a result, CPMO could not effectively review checkpoint resources and technology—an activity described in the 2013 memorandum establishing the office. In January 2021, in response to our request for a current list of checkpoints and their features, CPMO provided us with a list of checkpoint locations and resources from 2019 that included duplicative checkpoint locations and had outdated information on checkpoint features, including inaccurate information on the types of technologies in use at checkpoints.<sup>91</sup>
- **Tracking internal assessments.** We found that CPMO was not fulfilling its assigned role of tracking internal assessments of

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<sup>90</sup>The trainings focused on checkpoint circumvention data integrity and CPMO conducted these activities in response to our 2009 recommendation that Border Patrol establish internal controls for management oversight of the accuracy, consistency, and completeness of checkpoint data. See [GAO-09-824](#).

<sup>91</sup>For example, the list from 2019 that CPMO provided us in January 2021 showed that four checkpoints had license plate reader technology, but sector officials told us that, as of September 2021, 43 checkpoints had license plate reader technology. While it is possible that some checkpoints may have added license plate readers between January and September 2021, in January 2021 CPMO did not know how many checkpoints had license plate readers. Further, other Border Patrol documentation indicates that at least 37 checkpoints had license plate readers in 2020.

checkpoint performance. Specifically, in 2019, the Chief of Border Patrol assigned CPMO responsibilities related to the Checkpoint Internal Assessment Program, which requires sectors to complete internal assessments, or “covert tests”, at least once per year at each operational checkpoint location followed by an additional reassessment to test against initial findings.<sup>92</sup> Border Patrol updated its checkpoint internal assessment policy in 2019 and in that update, the Chief of Border Patrol tasked CPMO with tracking test results and corrective actions.<sup>93</sup> However, in June 2021, CPMO officials told us they did not know whether sectors were completing the required assessments and had not reviewed any covert testing documentation since at least November 2020. Because CPMO had not tracked covert test results, we requested information about these assessments from sectors with checkpoints. Officials from six of 11 sectors with operational checkpoints told us that they were not completing the covert tests as required.

Since establishing CPMO in 2013, Border Patrol has not provided sustained oversight of CPMO or ensured that it is held accountable for fulfilling its responsibilities. For example, as we previously reported, in August 2016, the Associate Chief responsible for checkpoint oversight activities told us he was not aware of the July 2013 memorandum establishing CPMO. Additionally, Border Patrol did not formally establish the office by assigning staff to CPMO until the summer of 2016 when we submitted a request for checkpoint policies as part of our audit work at that time.<sup>94</sup> In October 2016, Border Patrol officials acknowledged that the agency had not taken steps to properly establish CPMO in the 3 years between the Chief’s memorandum establishing the office and our inquiry

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<sup>92</sup>Border Patrol uses internal assessments at checkpoints to identify compliance issues and vulnerabilities related to fraudulent documents, imposter detection, and radiation detection, among other things. Such assessments entail designated agents acting as role players attempting to penetrate security systems at checkpoints using fraudulent documents, illegal items, or other techniques.

<sup>93</sup>In July 2020, the DHS Office of Inspector General reported that Border Patrol had not provided CPMO with the authority to direct or coordinate checkpoint testing, and that CPMO had no historical records or a shared folder to centrally store test results, among other things. As a result, Border Patrol established a centralized database and the Chief of Border Patrol tasked CPMO with tracking the information. Department of Homeland Security, Office of Inspector General, *CBP Needs a Comprehensive Process for Conducting Covert Testing and Resolving Vulnerabilities*, OIG-20-55 (Washington, D.C.: July 28, 2020).

<sup>94</sup>[GAO-18-50](#).

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about its activities. Officials attributed this to a lack of attention and leadership from agency management.

Further, while CPMO officials took some steps to implement its activities from 2017 to 2019, a subsequent lack of sustained attention to CPMO from agency leadership led to little progress, and it conducted minimal checkpoint oversight from 2020 to 2021. In June 2021, the newly assigned Associate Chief responsible for CPMO acknowledged that the agency had not provided sustained and effective oversight of CPMO, nor held CPMO accountable for its activities. This official told us of ongoing work with Border Patrol leadership to define the agency's goals and priorities—or vision—for CPMO moving forward. *Standards for Internal Control in the Federal Government* state that management should design appropriate control activities—in this case, CPMO oversight mechanisms—to achieve objectives and respond to risks.<sup>95</sup> Until Border Patrol provides sustained oversight of CPMO and holds the office accountable for consistently implementing its activities over time, Border Patrol cannot have assurance that CPMO is effectively providing national-level leadership and oversight of checkpoints, as Border Patrol intended when it first established the office in 2013.

### CPMO Staffing

Border Patrol has not consistently and adequately staffed CPMO. The July 2013 memorandum that established CPMO called for two full-time CPMO staff members, but Border Patrol has not consistently staffed CPMO at this level. Specifically, Border Patrol did not officially staff CPMO until the summer of 2016, when we requested checkpoint policies as part of a prior review.<sup>96</sup> Since 2016, CPMO has had multiple leadership changes and staff with competing priorities. According to Border Patrol documentation, of the nine agents assigned to the office between 2016 and July 2021, six had collateral duty assignments while assigned to CPMO.<sup>97</sup> As an example, the CPMO lead staff member in November 2020 was also assigned as the national canine program manager and

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<sup>95</sup>[GAO-14-704G](#).

<sup>96</sup>[GAO-18-50](#).

<sup>97</sup>Border Patrol officials could not provide a comprehensive list of agents assigned to CPMO during this period, and told us that they do not have documentation of the dates that each of these nine agents were staffed to CPMO.

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told us that he spent about 20 percent of his time working on checkpoint oversight activities.

A senior Border Patrol official responsible for CPMO staffing acknowledged that Border Patrol had historically not provided the office with the continuity and appropriate levels of staff necessary to fulfill its checkpoint oversight mission. Notably, we found CPMO officials had not reviewed checkpoint performance measures for accuracy, an activity described in the 2013 memorandum establishing the office, in part due to inadequate staffing. Border Patrol officials attributed these staffing issues to a lack of sustained leadership attention to CPMO. In August 2021, Border Patrol assigned two new full-time personnel to CPMO. This represents a positive step. However, given the past staff turnover within CPMO and Border Patrol's practice of rotating staff to CPMO on details, ensuring that CPMO is consistently and adequately staffed as described in the July 2013 memorandum, would better ensure that CPMO is able to carry out the office's activities over time. Further, as discussed below, it is important that CPMO staff have the information they need, such as policies and procedures, to carry out the office's responsibilities and activities.

### CPMO Roles and Responsibilities

Border Patrol has not established a clear role for CPMO within the agency, nor clearly defined its roles and responsibilities for checkpoint oversight. This has contributed to a lack of shared understanding across Border Patrol sectors and offices about CPMO's purpose and authority. Specifically, the 2013 memorandum establishing CPMO contains limited detail on the roles and responsibilities of the office, and some of the information in the memorandum no longer reflects the agency's checkpoint operating environment. For example, the memorandum tasked CPMO with reviewing Checkpoint Activity Reports for accuracy, but officials from eight of 13 selected checkpoints we interviewed told us that they no longer use or completely use the Checkpoint Activity Report because the information entered into the report is now captured in other data systems.<sup>98</sup> The memorandum also notes that CPMO should review

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<sup>98</sup>Border Patrol developed a Checkpoint Activity Report in 2006 as a means for field agents to report daily summaries of specific checkpoint operational and performance data, such as hours checkpoints are in operation and the number of people arrested at a checkpoint and referred to a U.S. Attorney for prosecution.

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checkpoint staffing and resources, but provides no further explanation of this role and what purpose it serves.

This limited and outdated guidance has contributed to a lack of shared understanding across Border Patrol sectors and offices about CPMO's purpose and authority. Specifically, officials assigned to CPMO in August 2021 told us that because checkpoint operations are managed at the sector level, CPMO does not have the authority or resources to direct checkpoint activities and therefore, the role CPMO can play in checkpoint operations is necessarily limited. Additionally, CPMO officials said that they need further clarity regarding how CPMO should collaborate about checkpoint oversight with other Border Patrol headquarters offices, such as the office that conducts covert tests, and with sectors. Officials said that these other offices generally communicate directly with sectors about checkpoint-specific issues, and it has been challenging to identify how CPMO's role fits with these other offices.

This challenge has been further exacerbated because the lack of consistent staffing of CPMO has meant that CPMO has not fulfilled its assigned role of acting as a liaison between sectors and headquarters regarding checkpoint activities. For example, the official who led CPMO activities from November 2020 through July 2021 told us that he was primarily tasked with responding to audit requests from external entities and that, during his time in the role, he did not engage with or provide guidance to sectors on any checkpoint-related issues. Officials we interviewed from selected checkpoints told us that they had little or no interaction with CPMO. For example, officials from one checkpoint on the southwest border told us that they had communicated with CPMO sporadically in the past, but that they stopped reaching out to CPMO because they did not find the office to be responsive or helpful.

*Standards for Internal Control in the Federal Government* state that management should develop and maintain documentation of its internal controls, including established roles and responsibilities, in order to operate effectively.<sup>99</sup> These standards also state that management should use established reporting lines to communicate the necessary information to enable personnel to perform key roles.

In December 2021, the officials assigned to CPMO in August 2021 said that they were working to establish relationships with sector and

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<sup>99</sup>[GAO-14-704G](#).

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headquarters officials involved in checkpoint operations. CPMO officials also said that they were conducting a needs assessment to determine what role CPMO can and should play in checkpoint oversight, as part of an effort to mature the roles and responsibilities of CPMO. While this represents a positive step, officials acknowledged that because CPMO's role within Border Patrol has not been clearly established, they need buy-in from agency leadership to implement changes. Moreover, they noted that Border Patrol has not revised or updated the roles and responsibilities for CPMO specified in the 2013 memorandum. By updating CPMO's roles and responsibilities—and communicating this information across the agency, including to sectors—Border Patrol could ensure that CPMO is better positioned to fulfill its checkpoint oversight mission.

### CPMO Policies and Procedures

As of December 2021, Border Patrol had not developed and implemented adequate policies and procedures for CPMO to fulfill its checkpoint oversight role. CPMO officials assigned to the office between 2018 and 2020 created documentation outlining some activities of the office. However, we found that this documentation was generally not specific or clear enough to guide new staff in implementing CPMO checkpoint oversight activities. For example, the documentation included a high-level list of CPMO duties and ongoing program efforts (e.g., "Improve effectiveness, data collection and standardization"), but did not include specific details on tasks to be carried out or on the past activities of the office.

CPMO officials said that the office had a limited record of prior staff's CPMO-related activities. As a result, CPMO has not successfully retained organizational knowledge during staff transitions or provided such information to new staff. For example, the official who led CPMO activities from November 2020 through July 2021 described his transition into the role as informal and acknowledged a lack of institutional knowledge beyond his immediate predecessor.

Further, past efforts to develop policies and procedures for CPMO activities have been lost due to staff turnover. For example, in September 2017, CPMO officials provided us with draft documentation for revised policies related to checkpoint data entry, reporting, and oversight. These policies included CPMO activities for checkpoint data reliability, such as examining a sample of checkpoint activity data to ensure its completeness and accuracy. However, when the CPMO official revising



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these policies was reassigned, the effort to develop CPMO policies ended and they were ultimately not implemented.

Newly assigned CPMO officials in August 2021 stated that the office lacked policies and procedures and that, after conducting a needs assessment to determine what role CPMO can and should play in checkpoint operations, they intend to draft a set of standard operating procedures for CPMO. These officials told us that the 2013 memorandum that established the office was outdated and did not reflect the current operating environment for checkpoints. They added that they intend to revisit the office's purpose, roles, and responsibilities—including policies and procedures for checkpoint activities—in their entirety. However, the officials did not provide a time frame for drafting or implementing CPMO standard operating procedures.

*Standards for Internal Control in the Federal Government* state that discrete units, such as CPMO, should establish control activities through policies and procedures to achieve objectives and respond to risks in the internal control system.<sup>100</sup> By developing policies and procedures for CPMO's checkpoint oversight activities—such as overseeing checkpoint data quality, reviewing checkpoint resources, and other oversight activities identified by the CPMO official's needs assessment—Border Patrol could ensure that CPMO staff will be better positioned to consistently implement checkpoint oversight activities over time.

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## Border Patrol Provides Training and Guidance for Checkpoint Activities

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### Training and Guidance for Agents at Checkpoints

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Border Patrol's training for agents incorporates information about the exercise of search and seizure authority at checkpoints and limitations on that authority. Border Patrol agents receive classroom and on-the-job training in conducting traffic stops and in search and seizure law. For example, during Border Patrol's basic training academy, new agents are to receive classroom training and complete practical exercises in performing checkpoint operations, searching vehicles, and searching suspects. This training includes such topics as court cases relevant to checkpoints and their importance in checkpoint operations; identifying

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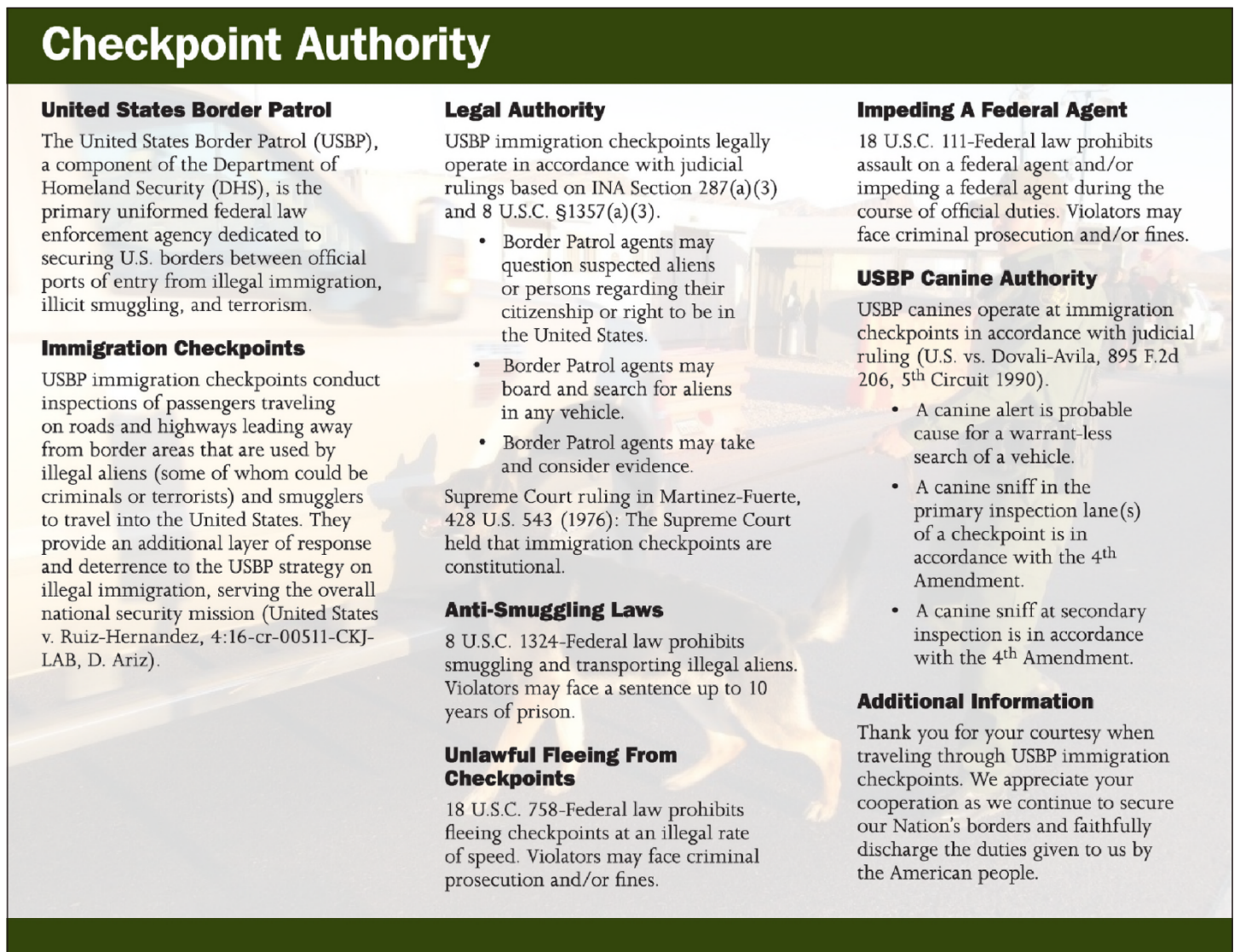
<sup>100</sup>[GAO-14-704G](#).

indicators of concealed smuggling loads; and inspecting a noncompliant motorist.

Sectors manage on-the-job training in search and seizure activities, and may provide or require other training, including training related to checkpoint legal authorities. According to officials we spoke with at selected checkpoints, such training may include sector-specific training related to the use of force, legal requirements at checkpoints, and updates on court cases relevant to checkpoints. CBP's Office of Chief Counsel has also provided regular training to some sectors on policies and legal authorities regarding search and seizure activities at checkpoints.

Border Patrol also provides guidance to agents to facilitate their interactions with the public at checkpoints. For example, agents may carry a "pocket card" that describes checkpoint and canine legal authority and includes citations to relevant laws. According to Border Patrol sector officials, some agents use these cards as a reference if motorists question them about the purpose or legality of checkpoint operations. In addition, sector officials told us that, upon request, agents can provide brochures to members of the public with information about the legal authorities for checkpoint activities, as shown in figure 10.

Figure 10: Brochure that Describes Border Patrol's Checkpoint Authority to the Public



Source: U.S. Border Patrol. | GAO-22-104568

In addition, CPMO manages an intranet site that contains a repository of policy and guidance documents relevant to agents at checkpoints including Border Patrol's license plate reader initiative, CBP's use of force handbook, checkpoint data integrity guidance, and the use of canines at checkpoints. Officials from selected checkpoints also told us that if there are operational updates or changes to policy or guidance that affect checkpoint operations, such updates are disseminated from headquarters

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to sector officials and then to stations and their checkpoints, following Border Patrol's chain of command.

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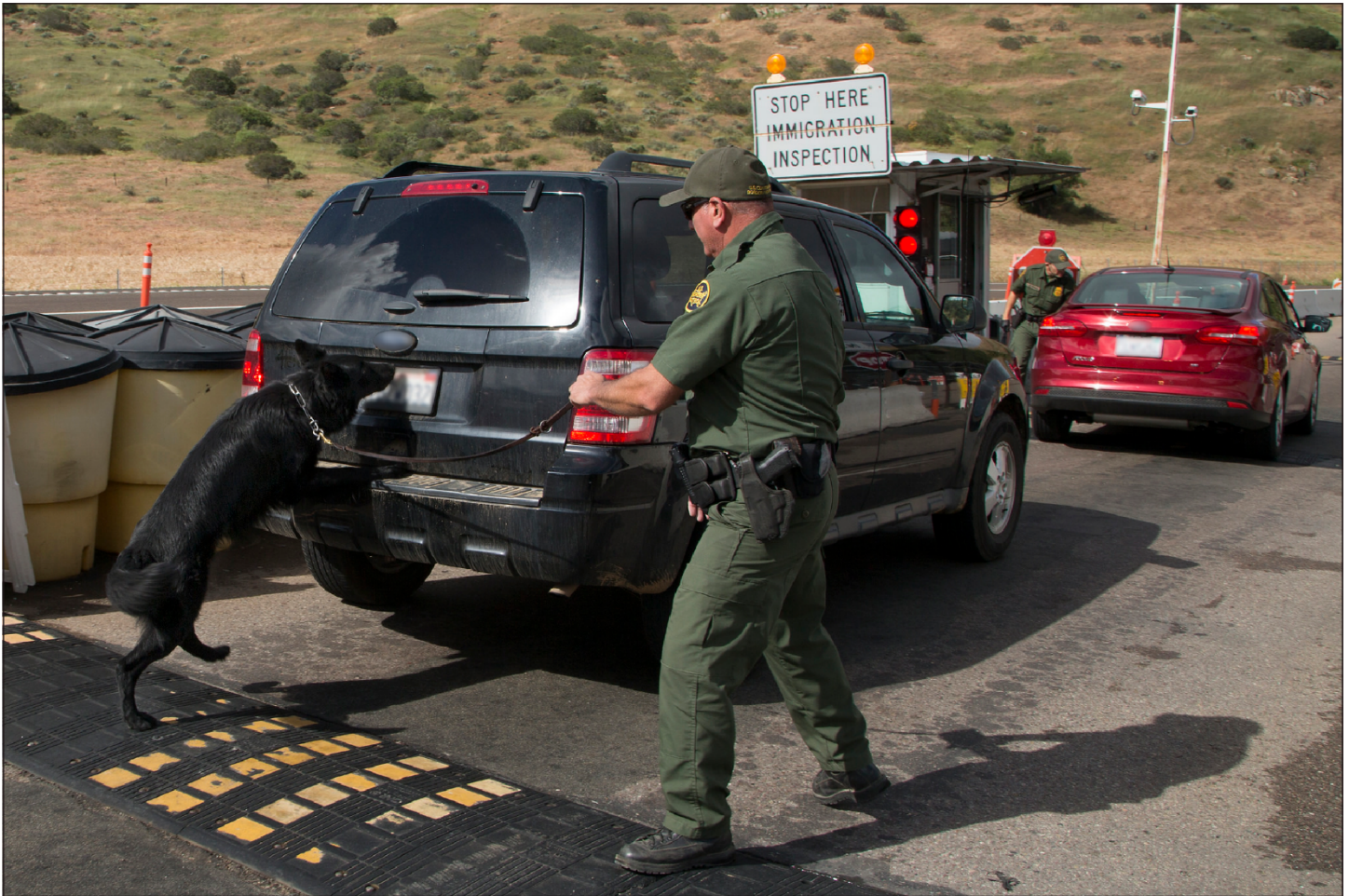
## Training and Guidance for the Use of Canines at Checkpoints

Border Patrol's canine program is managed at the headquarters and sector levels, and both headquarters and sectors have defined roles and duties. According to Border Patrol's canine unit policy, the headquarters National Canine Program Manager is responsible for overseeing the canine program, including developing policies and training requirements; liaising internally within DHS, with external entities, and with sector canine programs; monitoring program performance and providing reports as needed or directed; and assisting with budgeting for existing or anticipated needs.<sup>101</sup> Each sector has a canine program manager and a canine coordinator that manage the canine program at the sector level; canine instructors that are responsible for training; and canine handlers, the agents that work directly with canines at checkpoints or on other assignments. According to the canine unit policy, canine handlers are to ensure that the use of canines in a given situation is consistent with CBP and Border Patrol policies and procedures and legally supportable. Figure 11 shows a Border Patrol canine team inspecting a vehicle at a checkpoint.

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<sup>101</sup>In February 2021, DHS OIG reported on CBP's canine program and made four recommendations regarding training and oversight of the canine program. See DHS Office of Inspector General, *CBP Needs to Improve the Oversight of its Canine Program to Better Train and Reinforce Canine Performance*, OIG-21-19 (Washington, D.C.: Feb. 8, 2021).



**Figure 11: Border Patrol Checkpoint Canine Team Inspects a Vehicle**

Source: U.S. Customs and Border Protection. | GAO-22-104568

According to Border Patrol's canine unit policy, canine teams are to receive regular training in their sectors and are to recertify at least every year. Canine teams (consisting of a canine and its agent handler) are required to participate in "maintenance" training for a minimum of 16 hours every month to be considered "active." The canine unit policy says that each training day is to include training exercises that are evaluated and documentation of each canine team's performance. Officials told us that sectors manage maintenance training and recertification as well as the documentation of such training and certification. In addition, officials said that Border Patrol's data system of record for canines, which

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headquarters and sector officials use, contains information about the certification status and recertification date for each canine team.<sup>102</sup>

Canine handlers are trained on checkpoint legal authorities in several ways. Border Patrol's course that trains canine handlers in concealed human and drug detection includes a module about canine case law. This lesson includes information about the Fourth Amendment and its applicability to canine detection, definitions of "search" and "seizure", and court decisions that affect canine deployment. According to the National Canine Program Manager, sector-level canine instructors generally provide refresher training on case law and any new legal developments that may affect canine-related activities at checkpoints on an annual basis as part of the canine team maintenance training.<sup>103</sup> In addition, when the National Canine Program Manager identifies information or guidance relevant to canines or canine handlers—including any changes in case law—that information is to be distributed to sectors and disseminated, as appropriate.

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## DHS Offers Various Methods to File Complaints about Checkpoint Activities

DHS and its components have multiple methods intended to receive and respond to complaints regarding checkpoint operations. Border Patrol officials we spoke with at selected checkpoints told us that people with concerns about alleged agent misconduct or search and seizure activities at checkpoints can raise these concerns to the supervisor on duty at the checkpoint. Depending on the nature of the concern or complaint, the supervisor may attempt to resolve it locally, or may report it to the Joint

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<sup>102</sup>In February 2021, DHS OIG reported that CBP had outdated canine program policies and procedures, inconsistent retention periods for training documents, and an absence of canine tracking system policies and procedures. In June 2021, the Border Patrol National Canine Program Manager told us that Border Patrol officials meet weekly to take steps to address DHS OIG's recommendations and that the National Canine Program has begun taking steps to try to create a simple set of standard operating procedures for the program.

<sup>103</sup>Sector-level canine instructors are required to be recertified every 3 years and officials told us that, as part of their recertification process, they take a class in canine case law, including any recent changes in case law.

Intake Center for review and further action, if needed.<sup>104</sup> People can also submit complaints through various entities at DHS or CBP headquarters.<sup>105</sup> These entities include: (1) CBP Information Center; (2) Joint Intake Center; (3) DHS Office for Civil Rights and Civil Liberties (CRCL); and (4) DHS OIG. Complaints can be submitted by telephone, email, website, fax, or mail. For example, all four entities operate a hotline or telephone intake line to receive complaints, and CBP's Information Center has a website through which people can file a complaint, as shown in figure 12.


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<sup>104</sup>The Joint Intake Center is jointly managed by CBP's Office of Professional Responsibility and U.S. Immigration and Customs Enforcement's Office of Professional Responsibility. Officials at selected checkpoints told us that, in general, complaints from the public that may require further investigation are transmitted to the Joint Intake Center, which serves as the central "clearinghouse" for receiving, processing, and tracking allegations of misconduct involving personnel and contractors employed by CBP and U.S. Immigration and Customs Enforcement.

<sup>105</sup>These entities are not specifically designed to address complaints regarding search and seizure activities at checkpoints, but rather are available for anyone seeking to make a complaint related to DHS or its components. Our review of complaints regarding search and seizure activities at checkpoints found that complaints are sometimes submitted by other parties, such as attorneys or advocacy organization staff.


Figure 12: U.S. Customs and Border Protection's Information Center Complaint Intake Website


Select Type
Expect Response o...
For you or someone...
Personal Information
Confirmation



**Submit a Complaint/Concern**  
We're sorry to hear that we didn't meet your expectations


\* Please select one of these options

- ☐ My complaint is related to my experience arriving in or departing from the United States
- ☐ My complaint is related to my experience with a U.S. Customs and Border Protection Officer at an airport, seaport or land border port of entry
- ☒ My complaint is related to my experience with an agent while traveling through an interior U.S. Border Patrol Checkpoint
- ☐ My complaint is related to my experience with an Air and Marine Agent at a general aviation facility (private aviation) or marina
- ☐ My complaint is related to importing or exporting goods to and from the United States
- ☐ My complaint is related to a lost, delayed, or seizure of any package
- ☐ My complaint is related to my experience with customer service

CBP Officer  



Border Patrol Agent

Air and Marine Agent  



Other (Local Police)

Next

Source: U.S. Customs and Border Protection. | GAO-22-104568

Each of the entities that receives complaints has a different purpose and is designed to address different issues, including alleged violations of civil rights and civil liberties and other types of grievances. The types of complaints submitted through these entities could relate to such issues as: (1) agent misconduct, such as agent rudeness or allegations of improper use of force; or (2) concerns with search and seizure activities at checkpoints, such as allegations of racial profiling, improper referrals to



secondary inspection, or improper vehicle searches.<sup>106</sup> In addition, people who believe their civil rights or civil liberties were violated during search and seizure activities at checkpoints may file a civil lawsuit in federal court or raise defenses in a criminal proceeding on constitutional grounds, such as through a motion to suppress evidence alleged to have been obtained improperly. Appendix III describes recent federal rulings and lawsuits related to checkpoint search and seizure activities.

According to DHS officials, complaints can be reported through any of these different entities and the same complaint may be reported through multiple entities. Further, one entity may refer complaints it receives to another entity for review and possible investigation. Within DHS and CBP, these entities have different jurisdictions and thresholds for opening an investigation in response to a complaint. Table 3 summarizes the DHS entities through which people can submit complaints, including the responsible DHS entity and the purpose of each.

**Table 3: Department of Homeland Security (DHS) Entities that Receive and Address Complaints about Search and Seizure Activities at Checkpoints**

Complaint method and responsible entity	Purpose
U.S. Customs and Border Protection (CBP) Information Center	Serves as an intake process for compliments and complaints from the public about CBP employees, including Border Patrol agents. The CBP Information Center resolves minor complaints (approximately 95 percent of complaints received) and refers serious complaints (approximately 5 percent of complaints received) to other entities, such as DHS Office of Inspector General (OIG), DHS Office for Civil Rights and Civil Liberties (CRCL), or CBP's Office of Professional Responsibility. Once CBP's Information Center refers a complaint to another entity, their involvement in that complaint is complete.
Joint Intake Center, managed by CBP Office of Professional Responsibility	Receives, processes, and refers misconduct complaints involving CBP employees and contractors. The Joint Intake Center refers allegations of serious or criminal misconduct to DHS OIG for review. CBP's Office of Professional Responsibility may coordinate with DHS OIG to investigate allegations jointly. If DHS OIG declines to investigate a serious allegation, it is returned to the Joint Intake Center and then sent to CBP's Office of Professional Responsibility or component management for further investigation or other action.
DHS CRCL	Receives and investigates complaints alleging civil rights and liberties violations related to actions taken by DHS officials, employees or contractors, or as a result of DHS programs or activities. This may include allegations related to search and seizure activities at checkpoints. DHS CRCL also works with DHS components, including DHS OIG, to review and resolve complaints.

<sup>106</sup>Allegations of improper vehicle searches could include, for example, concerns regarding the lawfulness of a vehicle search purportedly conducted without consent from the driver or without established probable cause, such as a canine alert.

Complaint method and responsible entity	Purpose
DHS OIG	Receives and investigates complaints of criminal and non-criminal misconduct by DHS employees and contractors, including complaints related to search and seizure activities at checkpoints. DHS OIG officials told us that they consider the seriousness of the allegation—such as whether an agent’s conduct is egregious and outside of normal law enforcement procedures—in determining whether to open an investigation in response to a complaint. Complaints DHS OIG decides not to investigate may be referred (or referred back) to CBP’s Office of Professional Responsibility, DHS CRCL, or component management. DHS OIG also reviews and investigates allegations related to potential fraud, waste, abuse and mismanagement.

Source: GAO analysis of DHS information. | GAO-22-104568

Advocacy organization officials we spoke with who have filed complaints about search and seizure activities at checkpoints—or have supported people filing such complaints—expressed concerns with the complaints process, including that individual complaints are rarely considered as indicators of systemic problems. In addition, advocacy organization officials told us that, given the interconnected process by which complaints are reviewed and referred within DHS, it can be difficult to find information about the outcome or resolution of individual complaints. For example, if a “serious” complaint is submitted through CBP’s Information Center website, such as an allegation of a civil rights violation, information center analysts are to forward the complaint to DHS CRCL, CBP’s Office of Professional Responsibility, or other appropriate entity via email.<sup>107</sup> According to CBP Information Center guidance, a complaint referred to another DHS entity is considered “closed” in the Information Center’s data system and they may not receive further status updates regarding the outcome of the complaint. However, the complainant is to receive an email from CBP Information Center stating that the complaint was referred elsewhere for further processing.

Our review of complaints received by CBP’s Information Center, CBP’s Joint Intake Center, DHS CRCL, and DHS OIG about checkpoint search and seizure activities found that complaint topics included concerns about alleged racial profiling, agent misconduct, and unauthorized searches and

<sup>107</sup>According to CBP Information Center guidance, a “serious” complaint generally requires review by CBP Office of Professional Responsibility, DHS CRCL, or other entity and may be about allegations such as assault, discrimination, or harassment.

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seizures, among others.<sup>108</sup> Below are selected examples of complaints received or reviewed by these entities in fiscal year 2020.<sup>109</sup>

- **CBP Information Center.** Complaints were most often about alleged agent misconduct, such as rudeness or abuse of authority, or checkpoint policies and procedures, including search authority.<sup>110</sup> In one complaint, a U.S. citizen alleged that he was racially profiled by checkpoint agents. The man alleged that all cars in front of his at the checkpoint were allowed to pass without questioning and that, although he was wearing a military uniform, checkpoint agents questioned him about his citizenship because he was Hispanic. In another complaint, a U.S. citizen alleged that the checkpoint agent asked questions about where he was going, which he refused to answer, after which he was referred to secondary inspection, his drivers' license was taken by an agent and examined, and his vehicle was searched. CBP Information Center officials told us they consider 95 percent of the complaints they receive to be minor and generally resolve them with an email response from a CBP Information Center analyst.
- **CBP Office of Professional Responsibility's Joint Intake Center.** Complaints were generally about alleged agent misconduct, such as rudeness or failing to perform inspection duties properly. In one

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<sup>108</sup>For a variety of reasons, we were not able to quantify the number of complaints related to search and seizure activities at checkpoints that each entity, or all entities, received. These reasons include (1) each entity has its own data system; (2) entities may refer complaints to one another; and (3) several entities do not have a category in their data system to indicate whether a complaint is about an issue that occurred at a checkpoint. For example, DHS OIG identified 443 complaints related to alleged agent abuse or misconduct at checkpoints that they received or reviewed from fiscal years 2016 through 2020. DHS OIG's complaint records indicate that most of these complaints were first made to the Joint Intake Center and referred to DHS OIG. According to DHS OIG complaint records, DHS OIG investigated a small number of these complaints and referred many back to CBP's Office of Professional Responsibility or to other DHS or component complaint entities for potential further investigation.

<sup>109</sup>According to DHS OIG officials, DHS OIG cases generally involve egregious agent conduct that is outside normal law enforcement procedures. Based on our review of the available DHS OIG complaint data, we determined that checkpoint-related complaints DHS OIG received or reviewed in fiscal year 2020 largely originated from or were referred to CBP's Office of Professional Responsibility or DHS CRCL. Because DHS OIG reviewed few checkpoint-related complaints from the general public or complaints related to agent search and seizure activities at checkpoints, we do not discuss examples of complaints DHS OIG received or reviewed.

<sup>110</sup>Some complaints lacked detail about the complainant's allegation or about the checkpoint location where the alleged misconduct took place.

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complaint, the complainant alleged that an agent at a checkpoint in Laredo, Texas improperly inspected a vehicle. The complaint was referred to sector management for investigation and was closed because management determined that the allegation was unsubstantiated. In another complaint, the complainant alleged an illegal search during a checkpoint inspection in Tucson, Arizona. CBP Office of Professional Responsibility's Tucson field office reviewed the complaint and determined that the complaint did not require further investigation.

- **DHS CRCL.** Complaints DHS CRCL received or reviewed covered a variety of issues, including allegations of improper use of force, improper search and seizure activities, and racial profiling or harassment. In one complaint, the complainant alleged that an agent at a checkpoint in Arizona slammed him to the ground, causing injuries. In response, CBP provided statements from four agents involved in the incident indicating that the complainant was confrontational and, when asked if he was carrying a weapon, showed them an unopened knife. In addition, in 2018, DHS CRCL completed an investigation about search and seizure activities at checkpoints in Arizona.<sup>111</sup> As a result of the investigation, DHS CRCL made seven recommendations to CBP. CBP concurred with the recommendations, which related to a variety of issues including collecting data about and analyzing checkpoint activities, and sharing this information with CBP headquarters and sectors; increasing public outreach about checkpoint activities and operations, if needed; and ensuring that agents are trained in appropriate responses to uncooperative motorists and in performing canine searches. DHS CRCL officials told us that they have not identified any patterns in new complaints regarding search and seizure activities at checkpoints since 2018.

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## Conclusions

More than 50 million vehicles pass through immigration checkpoints each year, and Border Patrol regularly apprehends removable people, interdicts human smugglers, and seizes drugs at these checkpoints. However, Border Patrol does not have a complete understanding of the search and seizure activity at checkpoints because of long-standing

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<sup>111</sup>DHS CRCL initiated this investigation in 2014 in response to (1) a letter from the then-U.S. Attorney for Arizona, sent on behalf of nine people and (2) a letter from the American Civil Liberties Union of Arizona, sent on behalf of 15 U.S. citizens. As part of this investigation, DHS CRCL officials visited four Arizona checkpoints in 2015.

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challenges related to the reliability and completeness of data about checkpoint activity and a lack of sustained attention to checkpoint oversight. We continue to emphasize, as we reported in 2005, 2009, and 2017, that reliable data on checkpoint activity is important for effective oversight of checkpoints and to inform decisions about checkpoint operations.

Border Patrol took some steps in 2018 and 2019 to improve its oversight of checkpoint data. However, this effort was not sustained. Because of this lack of data oversight, Border Patrol does not have assurance that its data about apprehensions of smuggled humans at checkpoints, canine assists with drug seizures at checkpoints, seizures of trace amounts of marijuana at checkpoints, non-drug property seizures, and attempted checkpoint circumventions are reliable. In addition, because Border Patrol agents do not consistently use e3 to document encounters that lead to a drug seizure from (or subsequent enforcement action against) some people, e3 does not have a complete record of people involved in checkpoint events. Without complete and reliable data about checkpoint activity, Border Patrol does not have key information that may help to explain checkpoint operations to external stakeholders, to assess checkpoint effectiveness, or to ensure proper resource allocations.

Finally, although Border Patrol implemented a data system to track checkpoint secondary inspections and outcomes in 2019, the system has limited benefit because Border Patrol did not require its use. Requiring that checkpoints with license plate reader technology use BEST as intended would provide the agency with additional information on secondary inspections at checkpoints that could be helpful for monitoring referral trends, assessing checkpoint effectiveness, and making any needed adjustments to operations.

Most importantly, the office Border Patrol established to oversee checkpoint operations in 2013 and first staffed in 2016 has not fulfilled its mission. Until Border Patrol provides sustained oversight of CPMO and holds the office accountable for consistently implementing its activities over time, the agency cannot have assurance that CPMO is effectively providing leadership and oversight of checkpoint operations. In August 2021, Border Patrol assigned two new full-time personnel to CPMO, which represents a positive step. However, given past staff turnover within CPMO, ensuring that CPMO is consistently and adequately staffed would better ensure that CPMO is able to carry out the office's activities over time.

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Further, by updating CPMO's roles and responsibilities and communicating information about these roles and responsibilities within Border Patrol, including to sectors, Border Patrol could ensure that CPMO is better positioned to fulfill its checkpoint oversight mission. Finally, by developing policies and procedures for CPMO's checkpoint oversight activities, Border Patrol could ensure that CPMO staff are better positioned to consistently implement checkpoint oversight activities over time.

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## Recommendations

We are making the following seven recommendations to Border Patrol:

The Chief of Border Patrol should ensure that sectors and the Checkpoint Program Management Office (CPMO) are overseeing that checkpoint activity data are consistently and accurately recorded. This should include (but not be limited to) overseeing data on apprehensions of smuggled people, canine assists with drug seizures, seizures of trace amounts of marijuana, non-drug property seizures, and attempted checkpoint circumventions. (Recommendation 1)

The Chief of Border Patrol should ensure that Border Patrol uses its data system to document information about all people for whom a checkpoint encounter leads to a subsequent enforcement action. (Recommendation 2)

The Chief of Border Patrol should require checkpoints with license plate readers to document secondary inspections by using the Border Enforcement Secondary Tool as intended. (Recommendation 3)

The Chief of Border Patrol should provide sustained oversight of CPMO and hold it accountable for implementing its checkpoint oversight activities. (Recommendation 4)

The Chief of Border Patrol should ensure that CPMO is consistently and adequately staffed. (Recommendation 5)

The Chief of Border Patrol should update CPMO's roles and responsibilities and communicate them across Border Patrol, including to sectors. (Recommendation 6)

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The Chief of Border Patrol should develop policies and procedures for CPMO's checkpoint oversight activities. (Recommendation 7)

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## Agency Comments and Our Evaluation

We provided a draft of this report to DHS for review and comment. DHS provided comments, which are reproduced in full in appendix IV. DHS also provided technical comments, which we incorporated as appropriate.

DHS concurred with each of our seven recommendations and described planned actions to address them. For example, CPMO plans to coordinate with Border Patrol and CBP offices and divisions, as appropriate, to review checkpoint activity data and guidance related to checkpoint processing and to regularly review data related to checkpoint operations. In addition, CPMO plans to hold regular meetings with Border Patrol headquarters and sector officials to define organizational structures, headquarters and sector responsibilities, and standard operating procedures. These actions, if fully implemented as described, should address the intent of our recommendations and better position CBP to oversee checkpoint operations and data.

We are sending copies of this report to the appropriate congressional committees and the Secretary of Homeland Security. In addition, this 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 [gablerr@gao.gov](mailto:gablerr@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.



Rebecca Gambler  
Director, Homeland Security and Justice

## Appendix I: Objectives, Scope, and Methodology

This report examines the following:

1. available data about U.S. Border Patrol checkpoint activity;
2. the extent to which Border Patrol collects reliable data about checkpoint activity;
3. how Border Patrol oversees checkpoint operations;
4. Border Patrol's training and guidance for checkpoint search and seizure activity; and
5. methods available to the public to raise concerns or file complaints about activities at checkpoints.

To address these objectives, we analyzed Border Patrol data and documents and interviewed Border Patrol officials from headquarters, southwest and northern border sectors, and selected checkpoints. In particular, we interviewed officials from headquarters, analyzed written responses to questions about checkpoint operations from all nine southwest border sectors and from four northern border sectors, and interviewed officials from 13 selected checkpoints about operations at these checkpoints.<sup>1</sup> The selected checkpoints included three checkpoints located on the northern border (two tactical, one permanent) and 10 checkpoints located on the southwest border (four tactical, six permanent).<sup>2</sup> We selected these checkpoints to provide a range in the location (border and sector), type (permanent and tactical), and size (volume of apprehensions and seizures) of checkpoint operations. Information we obtained from these interviews cannot be generalized to all Border Patrol checkpoint operations, but the interviews provided insights on checkpoint data and the reliability of that data, the agency's oversight of checkpoint operations, training and guidance, and how the

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<sup>1</sup>Border Patrol divides responsibility for border security operations geographically among sectors, each with its own sector headquarters. The nine southwest border and four northern border sectors include all sectors with approved checkpoint locations. Two of the four northern border sectors did not have operational checkpoints from fiscal years 2016 through 2020.

<sup>2</sup>The 13 selected checkpoints were located in 11 sectors.



Department of Homeland Security (DHS) receives and responds to concerns about checkpoint search and seizure activities. We also reviewed our prior work regarding checkpoints, including our 2005, 2009, and 2017 reports.<sup>3</sup>

To address our first objective, we obtained and analyzed record-level data from Border Patrol's e3, which is an application in the Enforcement Integrated Database that Border Patrol uses to collect and transmit data related to law enforcement activities, including checkpoint activity. Specifically, we analyzed e3 data on checkpoint apprehensions, seizures, and events for fiscal years 2016 through 2020.<sup>4</sup> We selected these years because they were the five most recent fiscal years for which complete data were available at the time of our review. For fiscal year 2020, we report data on checkpoint apprehensions, but not on Title 42 expulsions that began with a checkpoint inspection because, according to Border Patrol officials, the location of Title 42 encounters and expulsions may not be reliably documented.<sup>5</sup> We considered an apprehension, seizure, or event as having occurred at a checkpoint if the landmark associated with the record corresponded to the landmark for a checkpoint, which is also

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<sup>3</sup>GAO, *Border Patrol: Available Data on Interior Checkpoints Suggest Differences in Sector Performance*, [GAO-05-435](#) (Washington, D.C.: July 22, 2005); *Border Patrol: Checkpoints Contribute to Border Patrol's Mission, but More Consistent Data Collection and Performance Measurement Could Improve Effectiveness*, [GAO-09-824](#) (Washington, D.C.: Aug. 31, 2009); and *Border Patrol: Issues Related to Agent Deployment Strategy and Immigration Checkpoints*, [GAO-18-50](#) (Washington, D.C.: Nov. 8, 2017).

<sup>4</sup>Border Patrol defines an event as an incident (1) including one or more people and (2) involving one or more offenses occurring at approximately the same time and place.

<sup>5</sup>Beginning in March 2020, the Centers for Disease Control and Prevention temporarily suspended the introduction of certain people traveling from Canada or Mexico who would otherwise be introduced into a congregate setting at land ports of entry or U.S. Border Patrol stations at or near the U.S. land and adjacent coastal borders, subject to certain exceptions, to prevent the spread of COVID-19. These people, including some people encountered at checkpoints, may be immediately expelled to their country of last transit or country of origin. According to U.S. Customs and Border Protection, expulsions under Title 42 are not immigration actions as they are conducted under public health authority, although country of last transit or origin and immigration/citizenship status are relevant to determining whether a person may be expelled under Title 42. As such, they are tracked separately from immigration enforcement actions, such as apprehension or inadmissibility, which are regularly reported. Border Patrol officials told us that Title 42 expulsions that began with a checkpoint inspection might not be documented as occurring at a checkpoint.

how Border Patrol reports on apprehensions and seizures at checkpoints.<sup>6</sup>

We analyzed e3 checkpoint activity data at the subject and event level, including the number and citizenship or immigration status of subjects involved in checkpoint events and the types and quantity of drugs seized in checkpoint events. We identified checkpoint events in e3 by examining subjects and drug seizures associated with the same unique event identifier. For example, an event could include a record of an apprehension of a potentially removable person and a record of a drug seizure, among other things. We assessed the reliability of the e3 apprehension and seizure data by testing for missing data and obvious errors, reviewing related documentation, and interviewing knowledgeable agency officials. We determined that the e3 data on checkpoint apprehensions, drug seizures, and events were sufficiently reliable to describe apprehension and drug seizure activity at checkpoints.<sup>7</sup>

However, we identified about 1,970 seizures of trace amounts of marijuana incorrectly recorded by checkpoint agents.<sup>8</sup> We recategorized these incorrectly documented trace amounts of marijuana to align with Border Patrol policy on documenting trace quantities of seized drugs so that we could incorporate these seizures into our analysis of marijuana seizures at checkpoints.

To address our second objective, we assessed the reliability of Border Patrol's data on checkpoint activity by reviewing specific data elements in Border Patrol's e3 checkpoint data for reasonableness, accuracy, and consistency, and interviewing knowledgeable agency officials. We reviewed the e3 checkpoint data for duplicative records and obvious errors or anomalies. For example, we compared checkpoint activity data

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<sup>6</sup>A landmark is a location identified at the sector level to designate an apprehension area. Border Patrol publicly reports e3 checkpoint activity data on the quantity and types of drugs seized at checkpoints.

<sup>7</sup>As a result of a checkpoint inspection, Border Patrol may seize items other than drugs, including vehicles, ammunition, firearms, currency, or other property. Officials told us that Border Patrol's data system reliably documents drug seizures but does not reliably document other types of seizures. They said this was because U.S. Customs and Border Protection's SEACATS is the system of record for recording this information.

<sup>8</sup>As discussed earlier in this report, these records generally involved the seizure of residue or trace amounts of marijuana found on drug paraphernalia, and checkpoint agents did not separately document the marijuana in addition to the item of drug paraphernalia in e3, as Border Patrol policy requires.

to Border Patrol policy and guidance governing the proper use of the e3 data system to document checkpoint activity.<sup>9</sup> We also reviewed our prior work regarding checkpoints from 2009 and 2017, which identified long-standing challenges related to checkpoint data reliability.<sup>10</sup> In addition, we asked officials from 13 selected checkpoints about their data entry practices, including how they ensure data integrity. We sent written questions to sector officials with operational checkpoints about their checkpoint activity data entry practices. We also interviewed headquarters officials responsible for maintaining and overseeing checkpoint activity data and officials responsible for data integrity from three southwest border sectors about the steps they took to ensure the quality and reliability of these data. We selected the three southwest border sectors (Big Bend, Rio Grande Valley, and Yuma) because the characteristics of certain checkpoint activity data documented in those sectors raised questions about how they were overseeing data reliability, and because the sectors had higher numbers of apprehensions and seizures than other relevant sectors.

Our interviews, data analysis, and review of available policy documents identified data reliability issues regarding certain checkpoint-related data elements and data entry practices, including with the data checkpoint agents collect on human smuggling, canine assists with drug seizures, non-drug property seizures, and referrals to secondary inspection, among other data (as discussed earlier in this report). Therefore, we determined that these data were not reliable for our reporting purposes, and instead, we reported on the data reliability issues that we identified. We also examined the Border Enforcement Secondary Tool (BEST), which is Border Patrol's data system to facilitate and document secondary inspections at checkpoints. We interviewed headquarters officials responsible for BEST about its implementation and their review and use of BEST data. We also asked officials from all Border Patrol sectors with operational checkpoints about their use of BEST. In addition, we reviewed available documentation on BEST, including the system's 2020 Privacy

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<sup>9</sup>For example, we reviewed the following Border Patrol guidance documents: U.S. Border Patrol, *Immigration Checkpoints Circumvention Data Integrity* (Washington, D.C.: June 12, 2019); *Ensuring U.S. Border Patrol Data Integrity at Checkpoints* (Washington, D.C.: Apr. 25, 2016); and *Changes to e3 Processing of Drug Residue and Plants* (Washington, D.C.: July 23, 2010).

<sup>10</sup>[GAO-18-50](#) and [GAO-09-824](#).

Impact Assessment and headquarters documentation on BEST's rollout and training to checkpoints.<sup>11</sup>

To address our third objective, we focused on the Checkpoint Program Management Office (CPMO), which Border Patrol established in 2013 to manage checkpoint performance and data. We reviewed CPMO organizational documents, including documentation of CPMO activities, staffing, and procedures.<sup>12</sup> We interviewed CPMO officials about their ongoing checkpoint oversight activities, organizational structure, and documentation of policies and procedures. We also interviewed selected checkpoint and sector officials, as described earlier, about how they manage and oversee checkpoint operations, checkpoint performance, and resource allocations, as well as their interaction with CPMO. We also interviewed headquarters officials responsible for staffing and managing CPMO. In addition, we reviewed our 2017 checkpoint report, as well as relevant documents collected and interviews conducted during the review because, as we reported at that time, CPMO was first staffed in the summer of 2016 when we began that review.<sup>13</sup>

We determined that the control activities component of internal control was significant to this objective, along with the underlying principle that management should design and establish control activities through policies and procedures to achieve objectives and respond to risks in the internal control system.<sup>14</sup> We assessed Border Patrol's efforts to establish and oversee CPMO to determine whether the agency was successful in holding the office accountable for implementing its activities. We also assessed Border Patrol's efforts to develop and implement policies and procedures for CPMO to determine whether CPMO staff were positioned to consistently implement checkpoint oversight activities over time. In addition, we determined that the control environment component of internal control was significant to this objective, along with the underlying principle that management should develop and maintain documentation of its internal control system. We also determined that the information and

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<sup>11</sup>U.S. Department of Homeland Security, *Privacy Impact Assessment for the CBP Portal (e3) to EID/IDENT*, DHS/CBP/PIA-012(b) (Aug. 10, 2020).

<sup>12</sup>For example, we reviewed: U.S. Border Patrol, *Checkpoint Internal Assessments* (Washington, D.C.: Aug. 5, 2019); and *Implementation of Checkpoint Program Management Office* (Washington, D.C.: July 8, 2013).

<sup>13</sup>[GAO-18-50](#).

<sup>14</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

communication component of internal control was significant to this objective, along with the underlying principle that management should communicate the necessary information to enable personnel to perform key roles. We assessed Border Patrol's documentation establishing CPMO to determine whether the roles and responsibilities established for CPMO were clearly defined and communicated across Border Patrol in order for CPMO to fulfill its checkpoint oversight mission.

To address our fourth objective, we analyzed U.S. Customs and Border Protection (CBP) and Border Patrol training materials, guidance documents, and policies for checkpoint search and seizure activity. These included Border Patrol classroom training materials on performing checkpoint operations, searching vehicles, and searching suspects, as well as CBP Office of Chief Counsel training materials on checkpoint policies and legal authorities. We also analyzed CBP and Border Patrol canine handler training materials and Border Patrol's canine unit policy and procedures in order to understand how canine teams are trained and how they are used in search and seizure activities at checkpoints. In addition, we reviewed guidance documents provided to checkpoint agents to facilitate their interactions with the public, such as "pocket cards" and brochures describing checkpoint and canine legal authorities, among other information. Further, we interviewed headquarters, selected checkpoint, and sector officials about guidance provided to checkpoint agents and sector-specific on-the-job training in search and seizure activities at checkpoints, such as on the use of force, legal requirements, and how agents are trained on relevant court cases. We also interviewed Border Patrol's National Canine Program Manager, who is responsible for oversight of the canine program at the national level.

To address our fifth objective, we obtained and analyzed information on complaints received by CBP's Information Center, CBP's Joint Intake Center, DHS Office for Civil Rights and Civil Liberties, and DHS Office of Inspector General about checkpoint activities from fiscal years 2016 through 2020, to the extent such information was available.<sup>15</sup> In general, officials from these entities told us that they conducted keyword searches in their data systems to identify checkpoint-related complaints. We found that not all of the complaints identified by these keyword searches pertained to checkpoints; for example, some complaints were related to search activities at ports of entry. For a variety of reasons, we were not

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<sup>15</sup>CBP Information Center provided data on checkpoint-related complaints from fiscal year 2020. Officials told us that data from prior years were not available because they began using a new system to manage complaints in 2019.

able to quantify the number of complaints related to search and seizure activities at checkpoints that each entity, or all entities, received. These reasons include (1) each entity has its own data system; (2) entities may refer complaints to one another; and (3) several entities do not have a category in their data system to indicate whether a complaint is about an issue that occurred at a checkpoint.

We also reviewed documentation from DHS Office for Civil Rights and Civil Liberties and CBP related to a DHS Office of Civil Rights and Civil Liberties investigation completed in 2018 about search and seizure activities at checkpoints in Arizona. The documentation described the investigation and resulting recommendations, as well as CBP's response and plan of action. In addition, we interviewed DHS, CBP, and Border Patrol officials responsible for receiving and responding to complaints about checkpoint activities. This included officials from the DHS Office for Civil Rights and Civil Liberties, DHS Office of Inspector General, CBP Information Center, and CBP Joint Intake Center. We also interviewed officials from selected checkpoints about their processes to track and respond to concerns and complaints, including allegations of civil liberties violations and allegations of misconduct by checkpoint agents.

In addition, we spoke with representatives of nongovernmental organizations to gain insight into their experiences filing complaints or supporting people who have filed complaints regarding Border Patrol checkpoint search and seizure activities. We met with American Civil Liberties Union affiliates in northern and southwest border states, the Southern Border Communities Coalition, and the Santa Cruz Valley (Arizona) Citizens Council.<sup>16</sup> We identified organizations that had publicly expressed perspectives on Border Patrol's use of checkpoints and we solicited additional recommendations for organizations to contact from those we interviewed. We selected a nonprobability sample of organizations to interview and, therefore, the information gathered from these organizations is not generalizable beyond those we interviewed.

We conducted this performance audit from October 2020 to June 2022 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

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<sup>16</sup>We met with American Civil Liberties Union affiliates in New Hampshire, Vermont, Maine, and southern California (San Diego and Imperial counties).

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**Appendix I: Objectives, Scope, and  
Methodology**

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the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Appendix II: Information on Checkpoint Apprehensions

This appendix contains information on checkpoint apprehensions, as documented in U.S. Border Patrol's e3 application.

### Apprehensions

Table 4 shows checkpoint apprehensions by sector and nationwide Border Patrol apprehensions in each year for fiscal years 2016 through 2020. By definition, an apprehension includes a person who is potentially removable.

**Table 4: Checkpoint Apprehensions by Sector and Nationwide Border Patrol Apprehensions by Fiscal Year, Fiscal Years (FY) 2016 through 2020**

Checkpoint apprehensions	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020 <sup>a</sup>	Total
<i>Southwest border sectors</i>	5,546	6,555	8,188	9,528	5,789	<b>35,606</b>
<i>Southwest border sectors: Big Bend</i>	645	555	516	781	517	<b>3,014</b>
<i>Southwest border sectors: Del Rio</i>	104	91	53	101	139	<b>488</b>
<i>Southwest border sectors: El Centro</i>	304	300	646	1,029	302	<b>2,581</b>
<i>Southwest border sectors: El Paso</i>	594	526	460	558	489	<b>2,627</b>
<i>Southwest border sectors: Laredo</i>	1,606	1,567	1,954	2,466	2,090	<b>9,683</b>
<i>Southwest border sectors: Rio Grande Valley</i>	1,337	2,846	3,859	3,804	1,651	<b>13,497</b>
<i>Southwest border sectors: San Diego</i>	457	284	214	277	157	<b>1,389</b>
<i>Southwest border sectors: Tucson</i>	399	270	382	424	391	<b>1,866</b>
<i>Southwest border sectors: Yuma</i>	100	116	104	88	53	<b>461</b>
<i>Northern border sectors</i>	21	40	40	24	11	<b>136</b>
<i>Northern border sectors: Houlton</i>	0	1	1	2	1	<b>5</b>
<i>Northern border sectors: Swanton</i>	21	39	39	22	10	<b>131</b>
<b>Total checkpoint apprehensions</b>	<b>5,567</b>	<b>6,595</b>	<b>8,228</b>	<b>9,552</b>	<b>5,800</b>	<b>35,742</b>
<b>Nationwide Border Patrol apprehensions</b>	<b>415,816</b>	<b>310,531</b>	<b>404,142</b>	<b>859,501</b>	<b>205,435<sup>b</sup></b>	<b>2,195,425</b>

Source: GAO analysis of U.S. Border Patrol data. | GAO-22-104568

Note: Checkpoint apprehensions are a subset of nationwide apprehensions.

<sup>a</sup>Fiscal year 2020 data includes apprehensions at checkpoints. It does not include Title 42 expulsions that began with a checkpoint inspection. According to U.S. Customs and Border Protection, expulsions under Title 42 are not immigration actions as they are conducted under public health



## Appendix II: Information on Checkpoint Apprehensions

authority, although country of last transit or origin and immigration/citizenship status are relevant to determining whether a person may be expelled under Title 42. As such, they are tracked separately from immigration enforcement actions, such as apprehension or inadmissibility, which are regularly reported. These expulsions are not illustrated in the above table because, according to Border Patrol officials, agents were not required to document the locations of Title 42 expulsions. As a result, we determined that Title 42 expulsions may not have been reliably documented at checkpoints. There were 3,222 Title 42 expulsions at checkpoints documented in Border Patrol's data system in fiscal year 2020; this number represents the minimum number of Title 42 expulsions that began with a checkpoint inspection in fiscal year 2020.

<sup>b</sup>Excludes Title 42 expulsions.

### Apprehension Events

Table 5 shows information about the number of potentially removable people apprehended in checkpoint apprehension events from fiscal years 2016 through 2020, by sector. For the purposes of this analysis, a checkpoint event is defined as an incident (1) including one or more people and (2) involving one or more offenses occurring at approximately the same time and place. A checkpoint apprehension event is a checkpoint event that includes one or more potentially removable people.

**Table 5: Checkpoint Apprehension Events by Border Patrol Sector, Fiscal Years 2016 through 2020<sup>a</sup>**

Sector	Number of potentially removable people in the event				Total number of apprehension events
	One	Two or three	Four or five	6 or more	
<i>Southwest border sectors</i>	10,794	5,181	759	692	<b>17,426</b>
<i>Southwest border sectors: Big Bend</i>	1,662	364	51	35	<b>2,112</b>
<i>Southwest border sectors: Del Rio</i>	168	74	10	13	<b>265</b>
<i>Southwest border sectors: El Centro</i>	564	417	137	50	<b>1,168</b>
<i>Southwest border sectors: El Paso</i>	1,104	407	87	26	<b>1,624</b>
<i>Southwest border sectors: Laredo</i>	1,869	886	151	286	<b>3,192</b>
<i>Southwest border sectors: Rio Grande Valley</i>	4,086	2,341	219	249	<b>6,895</b>
<i>Southwest border sectors: San Diego</i>	467	263	50	14	<b>794</b>
<i>Southwest border sectors: Tucson</i>	678	364	35	15	<b>1,092</b>
<i>Southwest border sectors: Yuma</i>	196	65	19	4	<b>284</b>
<i>Northern border sectors</i>	37	27	8	0	<b>72</b>
<i>Northern border sectors: Houlton</i>	3	1	0	0	<b>4</b>
<i>Northern border sectors: Swanton</i>	34	26	8	0	<b>68</b>
<b>Total</b>	<b>10,831</b>	<b>5,208</b>	<b>767</b>	<b>692</b>	<b>17,498</b>

Source: GAO analysis of U.S. Border Patrol data. | GAO-22-104568

<sup>a</sup>Fiscal year 2020 data includes apprehensions at checkpoints. It does not include Title 42 expulsions that began with a checkpoint inspection. According to U.S. Customs and Border Protection, expulsions under Title 42 are not immigration actions as they are conducted under public health authority, although country of last transit or origin and immigration/citizenship status are relevant to

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**Appendix II: Information on Checkpoint  
Apprehensions**

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determining whether a person may be expelled under Title 42. As such, they are tracked separately from immigration enforcement actions, such as apprehension or inadmissibility, which are regularly reported. These expulsions are not illustrated in the above table because, according to Border Patrol officials, agents were not required to document the locations of Title 42 expulsions.

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## Appendix III: Federal Court Precedent and Recent Cases Regarding Immigration Checkpoints

Individuals who believe their federal civil rights or civil liberties were violated during search and seizure activities at checkpoints may (1) file a civil lawsuit in federal court or (2) raise defenses in a criminal proceeding on constitutional grounds, such as through a motion to suppress evidence alleged to have been obtained improperly. In response to such civil suits and issues raised in criminal cases, federal courts have generally upheld the constitutionality of immigration checkpoints as long as they operate in accordance with constitutional constraints.

The primary Supreme Court case setting the legal framework for the operation of immigration checkpoint is *U.S. v. Martinez-Fuerte*, in which the Court ruled that Border Patrol agents may, without a warrant, operate a fixed checkpoint to stop vehicles for brief questioning of occupants even if there is no reason to believe that a particular vehicle contains removable individuals.<sup>1</sup> In this ruling, the Court: (1) reversed the Ninth Circuit, which had overturned criminal convictions for smuggling of removable individuals and upheld orders of suppression of evidence gathered at immigration checkpoints; and (2) affirmed the Fifth Circuit, which had upheld a conviction on the basis that checkpoint stops were consistent with the Fourth Amendment.

We requested that U.S. Customs and Border Protection's (CBP) Office of Chief Counsel provide examples of key lawsuits filed in federal courts in fiscal years 2016 through 2020 related to the constitutionality of checkpoint search and seizure activities. The Office of Chief Counsel identified five relevant civil cases. As of March 2022, three of these lawsuits were complete and two were ongoing. Of the completed lawsuits,

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<sup>1</sup>*U.S. v. Martinez-Fuerte*, 428 U.S. 543 (1976).

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each was terminated or dismissed with prejudice.<sup>2</sup> According to CBP, Border Patrol's search and seizure activities at checkpoints did not change in response to these lawsuits.

The two ongoing lawsuits challenge the constitutionality of specific checkpoints and question whether their primary purpose is immigration-related—to identify individuals who are unlawfully present in the U.S.—or for the purpose of general crime control or drug interdiction. First, *Drewniak v. CBP, et al.* (New Hampshire federal district court), initiated in 2020, relates to an allegedly illegal search and seizure at a temporary Border Patrol checkpoint in New Hampshire, which resulted in state prosecution of a number of people, including the U.S. citizen p

who was charged with unlawful possession of a prohibited substance (purportedly a “small quantity of hashish oil”).<sup>3</sup> As of March 2022, the *Drewniak* lawsuit remains pending before the New Hampshire federal district court.

Second, *Bressi v. Pima County Board of Supervisors, et al.* (Arizona federal district court), began in 2018, and relates to the experience of a U.S citizen who passes through a southwest border checkpoint regularly while traveling for work and who claims to have been “routinely seized” and “detained” at the checkpoint and alleges that Border Patrol has

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<sup>2</sup>*Tadeo v. USA*, No. 18-cv-00436, Doc. 115, Order Granting Defendants' Motion for Summary Judgment and Terminating with Prejudice (D. Az. Mar. 15, 2021); *DeGroot v. USA*, No. 15-cv-02145, Doc. 69, Order Granting Joint Motion to Dismiss with Prejudice (S.D. Cal. July 1, 2020) (In November 2017, plaintiffs appealed—No. 17-56674—the California federal district court's September 2017 order granting defendant's motion for summary judgment as to all claims, and the 9th Circuit affirmed in part, reversed in part and remanded to the district court for further proceedings which culminated in the July 2020 dismissal); *Villarruel v. USA*, No. 16-cv-02885, Doc. 43, Dismissal with Prejudice (S.D. Cal. June 13, 2018). A case ended “with prejudice,” is closed in a way that finally disposes of a party's claim and bars any future action on that claim. With Prejudice, *Black's Law Dictionary* (11th ed. 2019), available at Westlaw.

<sup>3</sup>*Drewniak v. CBP, et al.*, No. 20-cv-00852, Doc. 1, Complaint for Damages and Injunctive Relief & Jury Trial Demand (D. N.H. Aug. 11, 2020). An amended complaint was filed in December 2021. *Drewniak v. CBP, et al.*, No. 20-cv-00852, Doc. 64, Amended Complaint (D. N.H. Dec. 7, 2021).

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“placed dogs in the bed of” his truck.<sup>4</sup> The *Bressi* plaintiff also alleges that the primary purpose of the checkpoint is detection and interdiction of illegal narcotics, and bases this allegation, at least in part, on reportedly few immigration-related arrests relative to narcotics arrests at the checkpoint during particular time frames. On January 10, 2022, the Arizona federal district court issued its judgment and order granting the motions for summary judgment filed by Pima County Board of Supervisors and the federal defendants (including the Department of Homeland Security, CBP, Border Patrol, and related officials).<sup>5</sup>

The court ruled that “[p]laintiff’s Fourth Amendment and First Amendment rights under the U.S. Constitution were not violated by Defendants’ border checkpoint operations on SR-86 or his detention and citation for blocking traffic on April 10, 2017.” Regarding the allegation that the checkpoint produces relatively few immigration arrests compared to narcotics arrests, the court “reject[ed] a ‘primary purpose’ analysis for border checkpoints based on simple mathematical calculations of arrests or events with a tipping point ratio set to somewhere between immigration or other general law enforcement, including drug smuggling.” The court stated that “[i]t would make no sense to hinge Fourth Amendment protections on swings in criminal activities that shift in response to effective law enforcement strategies.” The court further opined that the use of techniques such as “dog sniffs, backscatter (X-ray), license-plate readers, active intelligence-gathering, and use of local law enforcement, including programs like Operation Stonegarden,” are not, as the plaintiff asserts, “much more reflective of a goal of seizing narcotics than of intercepting undocumented people.”<sup>6</sup> Instead, the court determined that these “operational components reflect nothing more than the dual role played by Border Patrol, approved even in [*Indianapolis v. Edmond*, 531 U.S. 32 (2000)], that police officers have the ability to act appropriately upon information

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<sup>4</sup>*Bressi v. Pima County Board of Supervisors, et al.*, No. 18-cv-00186, Doc. 42, Proposed Second Amended Complaint (D. Az. June 11, 2019). Plaintiff filed a motion for partial summary judgment in June 2021. In July 2021, Federal defendants filed a controverting statement of facts in response. *Bressi*, No. 18-cv-00186, Docs. 104, 173 (D. Az. June 10 & July 26, 2021).

<sup>5</sup>*Bressi*, No. 18-cv-00186, Docs. 185, 186, Order and Judgment in a Civil Case (D. Az. Jan. 10, 2022).

<sup>6</sup>Operation Stonegarden is a Department of Homeland Security grant program intended to enhance coordination among local, tribal, territorial, state, and federal law enforcement agencies in securing U.S. borders.

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that they properly learn during a stop which is justified by a lawful primary purpose.”

On January 20, 2022, the plaintiff appealed to the U.S. Court of Appeals for the Ninth Circuit.<sup>7</sup> As of March 2022, the *Bressi* lawsuit is ongoing before the Ninth Circuit.

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<sup>7</sup>*Bressi*, No. 18-cv-00186, Doc. 189, Notice of Appeal to the Ninth Circuit U.S. Court of Appeals (D. Az. Jan. 20, 2022). See *Bressi v. Pima County Board of Supervisors, et al.*, No. 22-15123 (9th Cir. Docketed Jan. 27, 2022).

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## Appendix IV: Comments from the Department of Homeland Security



May 17, 2022

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

Re: Management Response to Draft Report GAO-22-104568, "BORDER PATROL:  
Actions Needed to Improve Checkpoint Oversight and Data"

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.

The Department is pleased to note GAO's recognition of the extent of U.S. Customs and Border Protection (CBP) U.S. Border Patrol (USBP) activities to support immigration checkpoint operations, including the seizure of drugs in approximately 17,970 events at checkpoints from fiscal years 2016 through 2020, as well as finding that data on apprehensions and drug seizures done were generally reliable. As part of CBP's border enforcement strategy, USBP is responsible for securing the U.S. border between official ports of entry, in which USBP agents screen vehicles to identify potentially removable people of foreign nationality, as well as enforce U.S. criminal law by seizing illegal drugs and interdicting human smugglers. DHS remains committed to strengthening and maintaining CBP and USBP checkpoint operations, roles and responsibilities, and improving data collection, performance measures, and overall oversight of this important part of U.S. national security.


The draft report contained seven recommendations, with which the Department concurs. Enclosed, please find our detailed response to each recommendation. DHS previously submitted technical comments addressing accuracy, contextual, and other issues 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: 2022.05.17 11:29:03 -04'00'

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

Enclosure

**Enclosure: Management Response to Recommendations  
Contained in GAO-22-104568**

GAO recommended that the USBP Chief:

**Recommendation 1:** Ensure that sectors and the Checkpoint Program Management Office (CPMO) are overseeing that checkpoint activity data are consistently and accurately recorded. This should include (but not be limited to) overseeing data on apprehensions of smuggled people, canine assists with drug seizures, seizures of trace amounts of marijuana, non-drug property seizures, and attempted checkpoint circumventions.

**Response:** Concur. The USBP CPMO will coordinate with USBP and CBP offices and divisions, as appropriate, to review checkpoint activity databases and guidance associated with USBP checkpoint processing. Specifically, the CPMO will work to setup quarterly reviews of data systems while leveraging current Data Integrity Management Teams (DIMIT) staff. This effort will consist of CPMO taking the following actions:

<b>Actions</b>	<b>Estimated Completion Date (ECD)</b>
Establish a dedicated CPMO liaison to work with sector DIMIT and sector management level (Supervisory Border Patrol Agents and above) subject matter experts.	June 30, 2022
Initiate a quarterly review of CPMO data systems and reports, via the CPMO DIMIT liaison working with the USBP-Systems Division (SD) to update automated reports based on the results of the review, as appropriate.	October 31, 2022
Complete initial checkpoint assessments. USBP CPMO will conduct site visits to all sectors with permanent checkpoints and complete an analysis to establish CPMO baseline requirements to gain a better understanding of sector checkpoint needs and current CPMO footprint in the field.	May 31, 2023
Conduct initial review of CPMO processing system issues related to data, in which the CPMO will work with USBP SD, DIMITs, and the USBP sector Self-Inspection Program (SIP) regarding the consistency and accuracy of data associated with checkpoint operations.	June 30, 2023
Develop planned courses of action and guidance for CPMO processing and data systems. Liaise with USBP-SD and DIMITs at CBP headquarters and sector SIP regarding the	June 30, 2023

consistency and accuracy of data associated with checkpoint operations.	
Initiate Line of Effort Meetings to integrate and maintain sector engagement, which will socialize and facilitate requirement compliance, engagement of data management, integrity teams, and development of SIP data field review requirements	September 29, 2023
Complete implementation of planned courses of action for CPMO processing and data systems, to include working with USBP SD and DIMTs regarding ongoing reviews of data associated with checkpoint operations and implementation of actions, as appropriate.	December 29, 2023

Overall ECD: December 29, 2023.

**Recommendation 2:** Ensure that Border Patrol uses its data system to document information about all people for whom a checkpoint encounter leads to a subsequent enforcement action.

**Response:** Concur. The USBP CPMO will coordinate with USBP and CBP offices and divisions, as appropriate, to review checkpoint activity databases and guidance associated with USBP checkpoint processing. Specifically, the CPMO will work to setup quarterly reviews of data systems while leveraging current DIMT staff, focusing on better documentation of encounters that lead to enforcement actions. This effort will consist of CPMO taking the following actions:

Actions	ECD
Establish a dedicated CPMO liaison to work with sector Data Integrity Management Teams (DIMT) and sector management level (Supervisory Border Patrol Agents and above) subject matter experts.	June 30, 2022
Initiate a quarterly review of CPMO data systems and reports, via the CPMO DIMT liaison working with the USBP Systems Division (SD) to update automated reports based on the results of the review, as appropriate.	October 31, 2022
Complete initial checkpoint assessments. USBP CPMO will conduct site visits to all sectors with permanent checkpoints and complete an analysis to establish CPMO baseline requirements to improve the CPMO national program.	May 31, 2023
Conduct initial review of CPMO processing system issues related to data, in which the CPMO will work with USBP SD, DIMTs, and the USBP sector SIP regarding the	June 30, 2023

consistency and accuracy of data associated with checkpoint operations.	
Develop planned courses of action and guidance for CPMO processing and data systems. Continue to liaise with SD and DIMTs at HQ and sector SIP regarding the consistency and accuracy of form I-44 quarriable fields associated with checkpoint operations.	June 30, 2023
Initiate Line of Effort Meetings to integrate and maintain sector engagement, which will socialize and facilitate requirement compliance, engagement of data management, integrity teams, and development of SIP data field review requirements	September 29, 2023
Complete implementation of planned courses of action for CPMO processing and data systems, to include working with USBP SD and DIMTs regarding ongoing reviews of data associated with checkpoint operations and implementation of actions, as appropriate.	December 29, 2023

Overall ECD: December 29, 2023.

**Recommendation 3:** Require checkpoints with license plate readers to document secondary inspections by using the Border Enforcement Secondary Tool as intended.

**Response:** Concur. The USBP CPMO will coordinate with USBP and CBP offices and divisions, as appropriate, to review checkpoint activity databases, guidance associated with the use of Border Enforcement Secondary Tool (BEST), and infrastructure capabilities to support BEST at sector checkpoint locations where license plate readers exist. This effort will consist of CPMO taking the following actions:

Actions	ECD
Complete initial checkpoint assessments. USBP CPMO will identify target checkpoints that have the infrastructure, technology, and communication lines to implement the use of BEST.	May 31, 2023
Conduct infrastructure discussions with USBP Facilities Management and Engineering (FM&E) and CBP Office of Information and Technology (OIT) to identify technology, infrastructure, communications requirements to successfully implement the BEST.	May 31, 2023
Develop facilities and OIT checkpoint requirements for sector to submit to FM&E and OIT	June 30, 2023

Issue USBP BEST memorandum mandating the use of BEST at checkpoints where successful implementation can occur, to include usage procedures of BEST.	August 31, 2023
Initiate Line of Effort Meetings to integrate and maintain sector engagement, which will socialize and facilitate requirement compliance, to include implementation of BEST.	September 29, 2023
Initiate quarterly follow-up meetings with FM&E and OIT regarding infrastructure improvements.	October 31, 2023
Initiate quarterly notifications to newly-serviced checkpoints regarding the use of BEST, after meeting infrastructure requirements.	October 31, 2023

Overall ECD: December 29, 2023.

**Recommendation 4:** Provide sustained oversight of CPMO and hold it accountable for implementing its checkpoint oversight activities.

**Response:** Concur. The USBP CPMO will coordinate with USBP and CBP offices and divisions, as appropriate, to review checkpoint activity databases and guidance associated with USBP checkpoint processing. Additionally, USBP will hold doctrine line of effort meetings and quarterly meetings with sectors to develop standard operating procedures (SOP), organizational structures, and define responsibilities, as appropriate, as well as a yearly report to the USBP Law Enforcement Operations Directorate (LEOD) Deputy Chief. This effort will consist of CPMO taking the following actions:

Actions	ECD
Complete initial checkpoint assessments. USBP CPMO will conduct site visits to all sectors with permanent checkpoints and complete an analysis to establish CPMO baseline requirements to improve the CPMO national program, to include current CPMO state at each sector.	May 31, 2023
Conduct line of effort meetings with both headquarters and sector CPMO entities to identify CPMO and sectors responsibilities.	September 29, 2023
Develop a CPMO Doctrine, to include headquarters and sector CPMO roles and responsibilities, and organizational structure.	May 31, 2024
Develop standard operating procedures, as appropriate, for sector and program management oversight of CPMO.	December 31, 2024
Initiate quarterly meetings between CPMO and Sector personnel regarding CPMO activities and responsibilities.	May 30, 2025

Define CPMO metrics to be reported in annual sector and headquarters reports, as appropriate.	December 31, 2025
Initiated yearly CPMO status reports to the LEOD Chief, to include a “rollup” of sector annual reports.	December 31, 2026

Overall ECD: December 31, 2026.

**Recommendation 5:** Ensure that CPMO is consistently and adequately staffed.

**Response:** Concur. The USBP CPMO will coordinate with USBP Headquarters LEOD and sector CPMO entities to socialize, coordinate, and facilitate CPMO responsibilities, requirements and activities on an ongoing basis. This effort will consist of CPMO taking the following actions:

Actions	ECD
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Initiate quarterly meetings between CPMO and Sector personnel regarding CPMO activities and responsibilities.	May 30, 2025

Overall ECD: December 31, 2025.

**Recommendation 6:** Update CPMO’s roles and responsibilities and communicate them across Border Patrol, including to sectors.

**Response:** Concur. The USBP CPMO will coordinate with USBP and CBP offices and divisions, as appropriate, to review checkpoint activity databases and guidance associated with USBP checkpoint processing. Specifically, CPMO will conduct doctrine line of effort meetings to support the development of CPMO doctrine and SOPs with continual quarterly engagement communicating CPMOs roles and responsibilities. This effort will consist of CPMO taking the following actions:

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Overall ECD: December 31, 2025.

**Recommendation 7:** Develop policies and procedures for CPMO's checkpoint oversight activities.

**Response:** Concur. The USBP CPMO will coordinate with USBP and CBP offices and divisions, in order to develop policies and procedures that meet predetermined CPMO requirements. Specifically, this effort will consist of CPMO taking the following actions:

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

May 17, 2022

Rebecca Gambler  
Director, Homeland Security and Justice  
U.S. Government Accountability Office  
441 G Street, NW  
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The draft report contained seven recommendations, with which the Department concurs. Enclosed, please find our detailed response to each recommendation. DHS previously submitted technical comments addressing accuracy, contextual, and other issues under a separate cover for GAO's consideration.



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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, CIA, CFE  
Director  
Departmental GAO-OIG Liaison Office

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Overall ECD: December 31, 2025.



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## Appendix V: GAO Contact and Staff Acknowledgments

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### GAO Contact

Rebecca Gambler at (202) 512-8777 or [gablerr@gao.gov](mailto:gablerr@gao.gov)

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### Staff Acknowledgments

In addition to the contact named above, Adam Hoffman (Assistant Director), Mary Pitts (Analyst-in-Charge), Michele Fejfar, Frederick T. Lyles Jr., Grant Mallie, Sasan J. “Jon” Najmi, Cristina Norland, and Adam Vogt made key contributions to this work.

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Washington, DC 20548

## Strategic Planning and External Liaison

Stephen J. Sanford, Managing Director, [spel@gao.gov](mailto:spel@gao.gov), (202) 512-4707  
U.S. Government Accountability Office, 441 G Street NW, Room 7814,  
Washington, DC 20548



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