



March 18, 2022

The Honorable President Joe Biden President of  
the United States  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Via email: Clavel, Lise L. EOP/NSC

Dear President Biden,

The undersigned 70 faith-based, immigrant rights, human rights and ally organizations are writing to urge the administration to conduct a fully independent, transparent and publicly available investigation of the tragic fatal shooting of **Carmelo Cruz Marcos, 32**, — a father of three children — by a Border Patrol agent in southeastern Arizona on Saturday, February 19, 2022.

This is another heartbreaking, needless loss of life resulting from a Border Patrol agent using excessive and lethal force. Furthermore, we are deeply concerned by indications that the agents involved and the agency took immediate actions that may have obstructed the investigation and justice, underscoring our ongoing alarm about the integrity of misconduct investigations at the nation's largest law enforcement agency. The death of Carmelo Cruz Marcos also raises questions about the role played by [Border Patrol Critical Incident Teams \(BPCITs\)](#), an entity that lacks legal authority and has the explicit and unethical role of mitigating agent liability.

On February 19, the Cochise County Sheriff's Office (CCSO) reported that a [migrant was killed by a Border Patrol agent](#) near Douglas, Arizona. The CCSO removed that statement from subsequent press releases, stating instead that the migrant was seriously injured and succumbed to his injuries. When [asked about](#) this change in the CCSO statement, "the public information officer explained that it had not been reviewed by the proper channels," raising questions about the shift in narrative and if CBP, and specifically the BPCITs, influenced this change. The Pima County medical examiner [made it clear](#) that Carmelo Cruz Marcos died of multiple gunshot wounds fired by the border agent.

We are deeply concerned by multiple red flags in this investigation. Instead of the CCSO processing the scene immediately, they waited a day. Even though the other migrants in the area were [taken by agents to a Border Patrol station right away](#), CCSO did not recover the body of the deceased migrant until the following day. Also, the CCSO does not appear to have collected any forensic evidence, including from the agent involved in the shooting (clothing, fingerprints, ballistics, or any other relevant evidence) until the next day. Instead, the CCSO ceded the incident area to border agents who could have tampered with the scene.

CBP later issued a [statement](#) saying that the incident occurred while the Border Patrol agent was “taking him into custody, discharged his firearm fatally wounding the migrant” and then — six days later — added in a [news quote](#) that Carmelo Ruiz Marcos “was about to hurl a rock when the agent, fearing for his life, shot him.” Border agents have for a long time used “rocking” as a pretext to shoot someone without any evidence of actual rocking or imminent threat. The alleged rocks are often identified by the agent without any forensic verification that the person shot had touched the rock. It should be noted that there has not been a single recorded Border Patrol agent fatality from being hit by a rock. The [number one cause](#) of on-duty agent deaths is vehicle accidents.

CBP’s latest [Use of Force Policy](#) (January 2021) states (page 4):

Authorized Officers/Agents shall not discharge their firearms in response to thrown or launched projectiles unless the officer/agent has a reasonable belief, based on the totality of circumstances, that the subject of such force poses an imminent danger of serious bodily injury or death to the officer/agent or to another person. Officers/agents may be able to obtain a tactical advantage in these situations through measures such as seeking cover or distancing themselves from the immediate area of danger.

It will be difficult to have confidence in any assessment of “the totality of circumstances” that may have led the agent to determine that they were in “imminent danger of serious bodily injury or death” given that, to our knowledge, there is no corroborating evidence of a threat or forensic evidence linking a rock to Carmelo. We are asked to trust the word of Border Patrol, which has repeatedly obstructed justice in use-of-force cases, in large part through BPCITs.

There can be no independent investigation of Border Patrol agents with the involvement of BPCITs. As SBCC detailed in a [letter to Congress](#) in October 2021, BPCITs are unauthorized investigators who mitigate the liability of *agents*. They are not neutral fact finders and their involvement may result in sabotaging an investigation and an obstruction of justice. The fact that the CBP Office of Professional Responsibility (OPR) is reportedly investigating is no solace if OPR uses BPCITs to collect evidence despite the inherent conflict of interest. Until OPR ceases to do this, they are compromised.

Just recently, in 2021, when a Border Patrol agent [shot Marisol García Alcántara](#) in the head in Arizona, the Nogales Police Department reports indicate that the police remained at the perimeter to control traffic while BPCITs investigated the scene. There, too, witnesses were taken into Border Patrol custody and no one was ever questioned — *not even Marisol Garcia Alcántara* — about the shooting. Instead, the witnesses and Marisol herself were deported. Although OPR was reportedly guiding the investigation, their reliance and use of the BPCIT compromised the investigation by denying Marisol and the community the truth and justice. To our knowledge, no meaningful investigation was ever conducted.

For decades, BPCITs and other unlawful evidence collection teams within Border Patrol have acted to protect agents at the expense of the public. For example, in the killing of José Antonio Elena Rodríguez in 2012, it was revealed in court records that the BPCIT collected all the evidence, including the gun used, the shell casings, the photos of the scene, and the rocks allegedly thrown. It was further revealed that the evidence had been corrupted thoroughly. Border Patrol agents drove their vehicles through the scene of the incident before it was secured, walked through the shell casings before they were collected, and never collected DNA from the rocks that were allegedly thrown — the same rocks that the agent used to justify the shooting. Former CBP Assistant Commissioner for Internal Affairs Tomscheck later stated that

this was “a good example of BP injecting false information or manipulating information to give the impression that this was a good shoot.” See [SBCC letter](#).

We are heartbroken and outraged that more and more people are being killed in encounters with border agents. **Carmelo Cruz Marcos** is one of [hundreds of people](#) who have died as a result and no one has been held accountable since SBCC began tracking deaths in 2010. And these deaths are just the cases we are able to learn about. Those killed include U.S. citizens, migrants, and border residents, and they include men, women, and children. In the nearly 100-year history of Border Patrol, not a single agent has ever been successfully prosecuted for killing someone while on duty. Ever.

It's long past time for the impunity to end, for the killings to stop, and for families, communities and victims to receive answers and justice. We call on the administration to turn the page on impunity once and for all, beginning with shutting down BPCITs and by asking the Department of Justice to conduct a fully independent, transparent and publicly available investigation into these deaths.

Respectfully,



Vicki B. Gaubeca, Director  
Southern Border Communities Coalition (SBCC)  
Tucson, Arizona



Alba Jaramillo, Executive Director  
Arizona Justice for Our Neighbors (JFON);  
SBCC co-chair  
Tucson, Arizona



Lilian Serrano, Co-Director  
Universidad Popular  
SBCC co-chair  
Escondido, California

## Endorsing Organizations

Al Otro Lado  
Alianza Americas  
Alliance San Diego  
American Civil Liberties Union of Texas  
American Friends Service Committee (AFSC)  
Arizona Immigration Alliance (AZIA)  
Arizona Justice For Our Neighbors  
Artisans Beyond Borders  
Bend the Arc: Jewish Action  
Berkeley Immigration Group  
Border Angels  
Border Kindness  
Border Network for Human Rights  
Border Organizing Project  
Border Patrol Victims Network  
BorderLinks  
Bridges Faith Initiative  
Center for Gender & Refugee Studies  
Center for Justice & Reconciliation, Point Loma Nazarene University

Central Washington Justice For Our Neighbors  
Chula Vista Partners in Courage  
Church Women United in New York State  
Church World Service  
Community Asylum Seekers Project  
Comunidad de Apoyo San Diego  
Deported Asylum Seekers Assistance Project  
Dominican Sister of Peace  
End Streamline Coalition  
Espacio Migrante  
Fellowship Southwest  
Frontera de Cristo  
Good Samaritans  
Government Information Watch  
Green Valley Samaritans and  
Green Valley/Sahuarita Samaritans  
Hope Border Institute  
Human Rights First  
Immigration Hub  
Iowa Lakes Unitarian Universalist Fellowship  
Just Neighbors Ministry  
Justice Action Center  
Kino Border Initiative  
Latin America Working Group (LAWG)  
Madres e Hijos  
Migrant Ministry of Grace St. Paul's Episcopal Church  
National Immigrant Justice Center  
National Immigration Law Center  
National Immigration Project (NIPNLG)  
New York Immigration Coalition  
New York Justice for Our Neighbors, Inc.  
North American Climate, Conservation and Environment(NACCE)  
Northern Border Coalition  
Pedro Arrupe Jesuit Institute  
Presente.org  
Project On Government Oversight  
RAICES  
Samaritanos Sin Fronteras  
Sister  
Sisters of Charity of Leavenworth Office of Justice, Peace, and Integrity of Creation  
Sisters of Mercy of the Americas Justice Team  
South Bay People Power  
The Samaritans  
Tucson Samaritans  
UndocuBlack Network  
Unitarian Universalist Refugee & Immigrant Services & Education  
United We Dream  
Voices From the Border  
Wind of the Spirit Immigrant Resource Center

CC: Ambassador Susan Rice  
Honorable Alejandro Mayorkas, DHS Secretary  
Chris Magnus, CBP Commissioner  
Dan Herman, CBP Deputy Chief of Staff  
Rep. Bennie G. Thompson, Chair of House Homeland Security Committee  
Sen. Gary Peters, Chair of Senate Homeland Security and Governmental Affairs Committee  
Rep. Jerrold Nadler, Chair of House Judiciary Committee  
Sen. Richard Durbin, Chair of Senate Judiciary Committee  
Rep. Carolyn B. Maloney, Chair of House Oversight Committee  
Sen. Alex Padilla, Chair of Senate Judiciary Committee Immigration, Citizenship & Border Safety Subcommittee  
Rep. Nanette Baragan, Chair of House Homeland Security Committee Border Security, Facilitation & Operations Subcommittee  
Sen. Kysten Sinema, Chair of Senate Homeland Security & Governmental Affairs Committee Government Operations and Border Management Subcommittee  
Rep. Zoe Lofgren, Chair of House Judiciary Committee Immigration & Citizenship Subcommittee  
Rep. Jamie Raskin, Chair of House Oversight & Reform Committee Civil Rights & Civil Liberties Subcommittee