Crossing the line

Discipline at Border Patrol criticized as 'spotty, uneven'; agency defends its procedures

"If the kinds of allegation were made against police or sheriff's departments across the country that are made against the Border Patrol, it would be a scandal. They get away with anything. Even murder."
- Isabel Garcia, Tucson lawyer and immigrant activist

The Associated Press

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Border agent's service gun used in lover's death

Border Patrol agents arrested

A two-part series

In the past two years, prosecutors have charged U.S. Border Patrol agents in Arizona with sexual assault, kidnapping, trafficking cocaine and bribery.

In November, the FBI arrested a 23-year Border Patrol veteran for allegedly selling classified information to a Mexican drug cartel.

This month, a former supervisor is scheduled to go on trial for
allegedly forcing a naked, handcuffed immigrant to perform a sex act on her knees in a remote desert area near Naco.

In response to the list of reported agent misconduct, the Tucson Citizen examined police reports, court files and federal documents to find out what happens when an agent is accused of a serious crime.

**On Duty**

While the Pima County Attorney's Office weighs possible criminal charges against Agent Andrew Althroff in the August shooting of an illegal entrant, Althroff is on active duty, which may include contact with the public. Agent Matthew Scheffler - the prime suspect in his girlfriend's homicide last year - worked at a checkpoint near Douglas yesterday.

David Aguilar, chief of the Border Patrol's Tucson Sector, declined to comment on specific cases, citing federal privacy protections. He would not say if agents under investigation for questionable shootings or homicide work in the field, arresting immigrants.

"I can't tell you in 100 percent of the cases because each case is different," Aguilar said. He said if an allegation is "of such an egregious nature that we deem it important to remove a person from contact with the public, then yes, we do it."

In a 1997 report to then-Attorney General Janet Reno, the Border Patrol's Citizens Advisory Panel urged that any employee accused of aggravated assault, rape or shooting be removed from public contact until the investigation is completed.

"Such an action communicates a message to the people in the (Immigration and Naturalization Service) and within the community, that the INS views this kind of misconduct, even if it is alleged, as a serious issue," the report stated.

Ron Sanders, chief of the sector here from 1994 to 1999, said while the decision depends on a case's circumstances, standard procedure is to keep agents under investigation from working in the field.

"If an officer is sworn to uphold the law, yet he is the subject of an investigation, it raises questions," Sanders said.

"It's not fair to a fellow officer who works with someone who is a suspect, and it's not fair for an officer being accused, to work under those conditions," Sanders added.

**Discipline Questioned**

In October, the top Justice Department official in charge of monitoring the Border Patrol and its parent agency, the INS, told Congress the INS does not demand accountability of its employees.

Glenn A. Fine, director of the Justice Department's Inspector General's Office, testified that discipline against INS employees who have committed misconduct is "spotty and uneven."

The Office of Internal Audit, the Border Patrol's internal investigations unit, provided the Citizen with a record of disciplinary action taken in the
From 1996 to 1999, administrators suspended three agents for substantiated allegations of intimidation, physical abuse and aggravated assault.

Six agents were fired in that period for homicide, aggravated assault or abuse, the records state.

No such allegations against an agent were substantiated in 2000, and figures for fiscal 2001 were not available.

The sector has more than 1,500 agents.

The statistics do not show if agents had been arrested before being disciplined, and they do not give details of substantiated allegations.

Internal investigations of agent misconduct can take more than a year, critics say.

Douglas Agent Patricia Ramos, the slain girlfriend of Scheffler, had been arrested in August 2000 for allegedly assaulting Scheffler.

He later dropped charges against her and the domestic violence case was dismissed.

According to Ramos' family, the couple was scheduled to testify in October before a Border Patrol review board investigating the case.

She was killed a month before the scheduled hearing.

Her family has questioned why the Border Patrol was going to wait more than a year to hold a hearing.

"Why didn't anyone step in if they knew what was going on?" asked Lidia Galvan, Ramos' sister.

In its 1997 report, the immigration citizens' panel said overlapping jurisdictions by the agencies that investigate complaints may detract from the INS' ability to pursue discipline in a timely manner.

**Accountability**

The Border Patrol "absolutely" reviews allegations, even if outside law enforcement declines prosecution, Aguilar said.

Kevin Gilmartin, a Tucson-based consultant to law enforcement agencies, said the Border Patrol's threshold for alleged violations appears to be higher than that of most law enforcement agencies.

"You have to have accountability," he said. "If you have someone who is a suspect in a major crime, even if that person is not convicted, that doesn't mean they can't be held accountable."

One reason local police departments are quick to respond to allegations of misconduct is concern about liability in lawsuits, according to Gilmartin said.

The Border Patrol is the defendant in two pending wrongful death lawsuits seeking a combined more than $25 million.

Isabel Garcia, a Tucson lawyer and immigrant activist, claims a double
standard exists in the handling of Border Patrol cases.

That is especially so because agents deal with undocumented immigrants, she said.

"If the kinds of allegation were made against police or sheriff's departments across the country that are made against the Border Patrol, it would be a scandal," she said. "They get away with anything. Even murder."

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