

May 12, 2025

Mike Crapo  
Chairman of Senate Finance Committee  
U.S. Senate

Ron Wyden  
Ranking Member Senate Finance Committee  
U.S. Senate

Members of the Senate Finance Committee  
U.S. Senate

**Re: Recommendation to vote No on confirmation of Rodney Scott for CBP  
Commissioner due to violations of Fourth Amendment Protections**

Dear Senators,

We, the undersigned organizations, write to express our concern about Rodney Scott, the current nominee to lead the U.S. Customs and Border Protection (CBP). As CBP Commissioner, Mr. Scott would direct the nation's largest law enforcement agency during a time in which it is escalating its role in carrying out aggressive, coercive, and unlawful actions in the border region and interior communities, often in violation of the U.S. Constitution. CBP is currently searching, detaining, disappearing, and deporting immigrants and U.S. citizens alike in a manner that erodes the Fourth Amendment. Mr. Scott's lack of understanding and respect for the Constitution, and the Fourth Amendment in particular, is highly relevant to your consideration of his confirmation.

Recent events confirm that Mr. Scott has directly, knowingly and repeatedly violated the Fourth Amendment rights of community members by illegally using non-judicial warrants and subpoenas to cover up killings and abuse by border agents under his direction. Mr. Scott has shown no remorse for his own actions and no ability to hold agents accountable under his command. A person who cannot recognize abuse of power or participates in it is a person who should not hold power. In light of this, we strongly urge you to vote No on his confirmation.

In his confirmation [hearing](#) on April 30, 2025, before the Senate Finance Committee, Mr. Scott admitted to authorizing an unlawful administrative immigration subpoena to acquire medical records of a homicide victim, Anastasio Hernández Rojas, who was killed by border agents. At the time of the incident, in May 2010, Mr. Scott was the head of the Border Patrol sector in San Diego. In the hearing, Mr. Scott stated that it was and is common practice for agents to use an administrative subpoena to gather evidence in agent-involved incidents, even though Border Patrol has no investigatory authority in use of force incidents. This practice is a clear abuse of power and violates the Fourth Amendment restrictions on searches and seizures.

On the same day as the Senate hearing, the Inter-American Commission on Human Rights (IACHR) issued its decision in the case of [\*Anastasio Hernández Rojas and Family vs. United States\*](#), holding the United States responsible for the killing of Mr. Rojas and for the cover up that implicates Mr. Scott. It was his agents who injured Mr. Rojas following his apprehension, denied him medical attention, and took him to the San Ysidro Port of Entry where agents brutally beat, electrocuted, tortured, and suffocated him, all while he was handcuffed and face down crying for mercy until his last breath.

According to the official accounting of facts in the decision, the Border Patrol Critical Incident Investigative Team (CIIT), which had no congressional authority to operate and answered to Mr. Scott, initiated its own investigation despite having no jurisdiction to do so. The San Diego Police Department had jurisdiction over the scene but was not alerted to the incident until a day later. In the interim, the CIIT took control of the scene, dispersed witnesses after erasing cell phone footage, and ordered blood tests of Mr. Rojas at the hospital. Mr. Scott then authorized an administrative subpoena to unlawfully acquire Mr. Rojas' hospital records in violation of the Fourth Amendment.

These acts were blatant violations that Mr. Scott attempted to normalize in his confirmation hearing, but there is nothing lawful about violating the Fourth Amendment. The Supreme Court has been clear that administrative subpoenas cannot be used to compel a search without judicial action that is based on meeting the requirements of a warrant in the Fourth Amendment.<sup>1</sup> They are not self-executing.<sup>2</sup>

The requirements for enforcement of an administrative subpoena require the agency to prove to a court that (1) the subpoena is issued for a congressionally authorized purpose, the information sought is (2) relevant to the authorized purpose and (3) adequately described, and (4) proper procedures have been employed in issuing the subpoena.<sup>3</sup> Mr. Scott did not have judicial backing for the subpoena and would not have been able to meet the standard set out by the Supreme Court in the first instance because the subpoena was not for a congressionally authorized purpose.

The statute on which the agency relies for use of the administrative proceedings, 8 USC 1225(d)(4), is limited to immigration proceedings. Mr. Scott did not use the subpoena for immigration proceedings — Mr. Rojas was dead — but rather to inform Border Patrol of evidence in the midst of a criminal homicide investigation of its own agents. Mr. Scott used the CIIT to mitigate the liability of his agents, interfering and obstructing the legitimate investigation by police. The IACHR has directed the United States to reopen its criminal investigation of the agents involved in the abuse and cover up of Anastasio's killing and bring criminal charges where appropriate. This could include Mr. Scott.

In addition to the above, Mr. Scott's use of an immigration subpoena for a non-immigration purpose demonstrates a lack of understanding and respect for the law. The Supreme Court has said clearly that under the Fourth Amendment, the agency cannot use an immigration-based administrative subpoena to investigate other matters.<sup>4</sup> But that is exactly what the CIIT did under Mr. Scott's command. Making matters worse, the administrative subpoena was used to acquire records in violation of the federal Health Insurance Portability and Accountability Act (HIPAA), which is meant to further protect patient information laws.

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<sup>1</sup> See *See v. City of Seattle*, 387 U.S. 541, 544-45 (1967).

<sup>2</sup> See *United States v. Sturm, Ruger & Co., Inc.*, 84 F.3d 1, 3 (1st Cir. 1996).

<sup>3</sup> See *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950).

<sup>4</sup> See *United States v. Minker*, 350 U.S. 179, 184 (1956).

At a time when the actions of CBP are coming under scrutiny for Fourth Amendment violations, it is imperative that the person who leads the agency is able and willing to protect constitutional rights. This includes refusing directives like the one regarding the [Alien Enemies Act](#) to engage in searches without regard to the Fourth Amendment. The CBP Commissioner takes an oath to uphold the Constitution, not abide blindly to an administration that violates it. Given Mr. Scott's admissions in the Senate hearing, it's not clear he would do that. It's also imperative that a new commissioner end CBP's ongoing and unlawful searches of community members based on racial profiling rather than probable cause. In a recent roundup of farmworkers in Kern County, California, a [federal judge rebuked border agents](#) for not complying with the Fourth Amendment.

Eroding the Fourth Amendment seems to be the regular practice of CBP, and that puts us all at risk. At airports nationwide, CBP officers are increasingly searching travelers' smartphones without a warrant, a practice a [federal judge found to violate the 4th Amendment](#). At Ports of Entry at both the southern and [northern border](#), travelers including U.S. citizens and permanent residents have been subjected to arbitrary and invasive searches and detention. Just last month, an arbitrary Border Patrol traffic stop in California led to [the death of a Chinese woman by suicide in CBP detention in Arizona](#).

Instead of protecting the public by safeguarding their constitutional rights, Mr. Scott has a history of forsaking those rights, and seems poised to continue doing so. Given his activities, those of agents under him in the case of Mr. Rojas, and his statements before this Committee, Mr. Scott is steeped in the misuse of agency resources and abuse of power. He is complicit in creating a culture of impunity at Border Patrol, the largest component of CBP, raising doubts about his ability to lead with integrity.

The question of integrity is particularly important, given that a 2024 General Accountability Office (GAO) [report](#) identified structural gaps in investigative integrity at CBP. The integrity gaps include the ongoing role of Border Patrol Evidence Collection Teams, also called Management Teams, that operate like CIITs and appear to be charged with mitigating liability in investigations. The GAO also pointed to the compromised role of the Office of Professional Responsibility (OPR), which answers to the CBP Commissioner in the same chain of command as the CBP personnel under investigation.

Compounding the impunity at CBP is the recent attempt by the Department of Homeland Security (DHS) to [shut down the Office of Civil Rights and Civil Liberties](#), and the recent [findings of misconduct by the DHS Inspector General](#). At present, there is no meaningful oversight of CBP. There is no recourse in the federal government for members of the public whose rights have been violated, and there is no right of action to bring a civil suit against federal agents. This makes the confirmation of Mr. Scott even more dangerous.

At a time when Congress is considering dramatically increasing resources to CBP, we cannot afford to have a Commissioner who has already demonstrated he is unable or unwilling to protect the Fourth Amendment rights of the public and who has yet to commit to advancing integrity and accountability at the agency. In light of the above, we strongly urge you to vote against Mr. Scott's confirmation.

Sincerely,

Southern Border Communities Coalition  
Alliance San Diego  
Al Otro Lado

AZ Immigration Alliance  
Bend the Arc: Jewish Action  
Borderlands Resource Initiative  
Buen Vecino  
Coalition for Humane Immigrant Rights (CHIRLA)  
Frontera Federation  
Government Information Watch  
Green Valley/Sahuarita Samaritans  
Hope Border Institute  
Immigrant Hope Arroyo Grande  
Immigrant Legal Resource Center  
Indivisible  
Just Detention International  
Laredo for Economic Justice  
Latin America Working Group  
Latinos Unidos  
MPower Change Action Fund  
National Immigrant Justice Center  
National Immigration Law Center  
National Immigration Project  
National Network for Immigrant and Refugee Rights (NNIRR)  
National Partnership for New Americans  
NM Comunidades en Acción y de Fe (NM CAFe)  
Orange County Equality Coalition  
Organization for the Legal Advancement of Raza, Inc. (O.L.A. Raza)  
Partnership for the Advancement of New Americans (PANA)  
Presente.org  
Project On Government Oversight  
Safe Harbors / Christ Ministry Center  
San Diego Immigrant Rights Consortium (SDIRC)  
Services, Immigrant Rights and Education Network (SIREN)  
Universidad Popular