



October 9, 2013

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**Re: Complaint and request for investigation of unlawful roving patrol stops by U.S. Border Patrol in southern Arizona including unlawful search and seizure, racial profiling, trespassing, excessive force, and destruction of personal property.**

Dear Mr. Edwards and Ms. Kessler:

We write with serious concerns regarding abuses by U.S. Customs and Border Protection (“CBP”) officials in the context of “roving patrol” stops in southern Arizona. Too often, the ACLU receives complaints from Arizona residents reporting unlawful searches and seizures, excessive use of force, and other misconduct related to Border Patrol’s roving patrol operations; several recent examples are described in detail below. As employees of the nation’s largest law enforcement agency, it is imperative that CBP officials be held to the highest professional law enforcement standards and conduct themselves in accordance with agency guidelines and the rule of law.

The ACLU is a non-partisan, non-profit, nation-wide organization that works daily in courts, communities, and legislatures across the country to protect and preserve the rights and liberties established by the Bill of Rights and state and federal law. The ACLU has a particular commitment to ensuring that fundamental constitutional protections of due process and equal protection are extended to every person, regardless of citizenship or immigration status. The ACLU also works to ensure that governmental agencies and officials respect the civil and human rights of all people. The ACLU of Arizona is an ACLU state affiliate organization with over 7,000 supporters. The ACLU’s Border Litigation Project investigates, documents, and litigates civil and human rights violations in the U.S.-Mexico border region.

Unlawful roving patrol stops by Border Patrol are a longstanding problem. Two weeks ago, the ACLU announced the terms of a settlement in its legal challenge to CBP roving patrol

practices on Washington's Olympic Peninsula.<sup>1</sup> As a result, CBP agreed to provide agents additional training on the Fourth Amendment, to abide by Supreme Court and Ninth Circuit precedent as well as Department of Homeland Security ("DHS") guidance prohibiting reliance on race in law enforcement decisions, and to hand over patrol data to the ACLU for the next 18 months.<sup>2</sup> As discussed below, numerous other lawsuits have contributed to a considerable body of case law delineating the lawful bounds of roving patrol stops.<sup>3</sup>

Despite the recent settlement and clearly established legal authority, many of the same unlawful CBP practices persist, and are widespread throughout southern Arizona. In addition to unlawful vehicle stops, the ACLU has documented cases in which Border Patrol agents have interrogated pedestrians on the streets of Yuma and Tucson as well as patients in Tucson area hospitals. Last year, a Sunnyside High School student in Tucson was wrongfully handed over to Border Patrol agents by school officials for investigation of his immigration status. The picture that emerges from these incidents and years of litigation is of pervasive abuse and a systemic failure of oversight and accountability at all levels of CBP.

We request that you promptly investigate the individual examples of abuse described below. Further, a comprehensive review of complaints involving CBP roving patrols is required to determine whether Border Patrol agents are complying with their obligations under agency guidelines, the U.S. Constitution, and international law. Cases of unlawful conduct must be met with appropriate intervention and discipline, and the results made publicly available. Absent prompt and transparent investigations, there is no incentive for CBP to effectively address continuing and future rights violations. Significant changes in CBP training, oversight, and accountability mechanisms are needed, and we urge you to make substantive recommendations for such changes consistent with your institutional mission to prevent further abuses.

Section I of this complaint sets out recent examples of unlawful CBP conduct in the context of Border Patrol's roving patrol operations in southern Arizona. Section II discusses some of the applicable constitutional provisions and relevant legal analysis.

## **I. Individual Complaints of Unlawful Roving Patrol Stops**

### **A. May 21, 2013 Roving Patrol Stop of Clarisa Christiansen**

On May 21, 2013, Clarisa Christiansen was driving home with her seven-year-old daughter and five-year-old son after picking her daughter up from elementary school. Ms.

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<sup>1</sup> *Jose Sanchez, et al. v. U.S. Office of Border Patrol, et al.*, No. 2:12-cv-00735 (W.D.Wa. filed Apr. 26, 2012); Complaint available at <https://aclu-wa.org/cases/sanchez-v-homeland-security-0>; see also Manuel Valdes, *ACLU, Immigrant Groups to Keep an Eye on U.S. Border Patrol After Profiling-case Win*, Wash. Post, Sept. 24, 013, available at [http://www.washingtonpost.com/politics/aclu-immigrant-groups-to-keep-an-eye-on-us-border-patrol-after-profiling-case-win/2013/09/24/d400ae3a-2583-11e3-b75d-5b7f66349852\\_story.html](http://www.washingtonpost.com/politics/aclu-immigrant-groups-to-keep-an-eye-on-us-border-patrol-after-profiling-case-win/2013/09/24/d400ae3a-2583-11e3-b75d-5b7f66349852_story.html)

<sup>2</sup> *Sanchez v. U.S. Border Patrol Settlement Agreement*, available at <http://aclu-wa.org/sites/default/files/attachments/2013-09-23--Fully%20Executed%20Settlement%20Agreement.pdf>

<sup>3</sup> See, e.g., *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999); *Nicacio v. U.S. I.N.S.*, 797 F.2d 700 (9th Cir. 1985); *Muniz, et al. v. Gallegos, et al.*, No. 09-02865 (N.D. Ohio. filed Dec. 10, 2009); *Murillo v. Musegades*, 809 F.Supp. 487 (W.D.Tex.1992); *Ramirez v. Webb*, 599 F.Supp. 1278 (D.C. Mich., 1984); *Marquez v. Kiley*, 436 F.Supp. 100 (D.C.N.Y. 1977);

Christiansen and her children are U.S. citizens and residents of Three Points, Arizona, located west of Tucson and approximately 40 miles north of the U.S.-Mexico border. On their way home, at approximately 2:15 pm, the family was pulled over by a Border Patrol vehicle. The stop occurred on a stretch of dirt road about two miles from their home, which is approximately fifteen miles from the elementary school.

Ms. Christiansen stopped her vehicle and was approached by a Border Patrol agent. The agent asked her if she was a U.S. citizen; she answered affirmatively. The agent then demanded that Ms. Christiansen exit her vehicle so it could be searched. Ms. Christiansen stated that she did not consent to a search and asked the agent why she had been stopped. The agent responded that he would not provide an explanation until Ms. Christiansen exited her vehicle. Ms. Christiansen stated that she would not exit her vehicle until she was provided with an explanation for the stop. The agent refused and was clearly agitated that Ms. Christiansen had requested an explanation. At that point, two additional Border Patrol agents approached Ms. Christiansen's vehicle.

Ms. Christiansen then stated that if there was no reason for stopping her that she would be on her way, and wished the agent a good day. The agent told her, "You're not going anywhere." That agent then said to the other agents, "This one is being difficult, get the Taser." The agent opened the driver's side door and demanded that she exit. Ms. Christiansen, now fearing for her safety and that of her children, refused. Ms. Christiansen's children became upset; her daughter asked, "Mommy what's going on?" Ms. Christiansen told the children to stay calm and sit still, but she could see they were confused and afraid.

The agent then approached Ms. Christiansen with a retractable knife and threatened to cut her out of her seatbelt if she didn't exit the vehicle. Ms. Christiansen repeated her demand for an explanation, which the agents still refused to give her. Instead, the agent forcibly reached inside Ms. Christiansen's vehicle without her consent and removed the keys from the ignition.

Ms. Christiansen had no choice but to exit the vehicle. She presented her identification. The agents ran a background check, gave her back her driver's license, returned to their vehicle without saying anything, and drove away. The entire stop lasted approximately 35 minutes. At that point, Ms. Christiansen noticed that her rear tire had been punctured and was flat. There was a large incision along the side of the tire, consistent with a knife puncture and not a routine or accidental flat. It was a very hot day and there was no one for miles around. Fortunately, Ms. Christiansen was able to contact her brother to bring her a car jack to change the flat tire.

Ms. Christiansen reported the incident as soon as she arrived home, at around 4:00 pm. She called Border Patrol headquarters in Tucson as well as the Pima County Sheriff's Department. She was contacted the next day by DHS official Vincent Zarcone, who identified himself as an investigator. Ms. Christiansen relayed the details of her ordeal to Mr. Zarcone over the phone and stated that she was seeking compensation for the flat tire. Mr. Zarcone invited Ms. Christiansen to his office to make a formal report, and asked that she bring the tire for evidence.

The next day, Ms. Christiansen met with Mr. Zarcone and two other DHS officials at 4720 N. Oracle Road, Suite 308 in Tucson, Arizona. Again she described the agents and their actions, and repeated her request for compensation. Mr. Zarcone and the other officials took down her story. Ms. Christiansen also provided Mr. Zarcone with the damaged tire and a receipt showing the cost of a replacement tire, which totaled approximately \$50.00. Mr. Zarcone photographed but kept the flat tire. He told Ms. Christiansen that she “might” get a call regarding the case.

When Ms. Christiansen contacted Mr. Zarcone in late June 2013, a month after they had met, he told her the case had “been investigated.” When she asked what the outcome would be, he did not say. Only after the ACLU contacted Mr. Zarcone on Ms. Christiansen’s behalf did he report that the matter had been transferred to another DHS official, Richard Hill. Ms. Christiansen’s attempted to contact Mr. Hill, but Mr. Hill did not initially respond. Finally, he responded that Ms. Christiansen’s request for compensation was “not something my office deals with” and provided her with an FTCA complaint form.

Mr. Hill subsequently contacted Ms. Christiansen, informed her that he believed the tire was “torn” and had not been intentionally punctured. Mr. Hill also disclosed that one of the agents involved in the May 21 incident was named Agent Laguna. Mr. Hill further stated that he planned to interview Agent Laguna that day and would follow up with Ms. Christiansen at a later time. As of the date of this letter, Mr. Hill has failed to do so. Ms. Christiansen has been provided no further information.

## **B. April 15, 2013 Roving Patrol Stop of Ernestine Josemaria**

On the evening of April 15, 2013, Ernestine Josemaria was driving her 2005 Ford F150 truck southbound on Federal Route 15 on the Tohono O’odham Indian Reservation, west of Tucson, Arizona and approximately 50 miles north of the U.S.-Mexico border. Ms. Josemaria is Tohono O’odham and a U.S. citizen. With the exception of one year, during which she lived in Phoenix, she has lived her entire life on the Tohono O’odham Reservation.

Around 7:30pm, Ms. Josemaria was driving south from the town of North Komelick and approaching the town of Santa Rosa. She was following another vehicle, which itself was following a Border Patrol vehicle going 65 mph in a 55 mph zone. From Ms. Josemaria’s perspective, it appeared that the vehicle in front of her truck was tailgating the Border Patrol vehicle and driving erratically. In the absence of oncoming traffic, Ms. Josemaria accelerated and passed, on the left hand side, the vehicle in front of her as well as the Border Patrol vehicle. After she did so, the Border Patrol vehicle accelerated, and began to follow her at a close distance with its high beams on. Ms. Josemaria was driving approximately 65 mph. The Border Patrol vehicle continued to tailgate Ms. Josemaria’s truck for approximately 5 miles approaching Santa Rosa. She became alarmed, and pushed her breaks repeatedly, but the Border Patrol vehicle continued to tailgate her with its high beams on for several more miles.

Ms. Josemaria continued into the town of Santa Rosa and began to slow to 35mph. As she passed the Santa Rosa School, she saw two Border Patrol vehicles parked on the side of the road with their emergency lights flashing. She immediately decelerated further. At that

moment, the Border Patrol vehicle behind her turned on its emergency lights, signaling for her to pull over, which she did. The other two Border Patrol vehicles pulled out with their emergency lights on and followed them to a stop.

Ms. Josemaria rolled down the front driver's side and passenger's side windows of her truck. She was approached on the passenger side by a Border Patrol agent – a young, Caucasian male who later identified himself as “Agent J. Rock.” The agent yelled at her, “Why were you speeding?!” He then demanded, “Give me your license, or do you have one?” Ms. Josemaria responded that she did, and handed the agent her license. Ms. Josemaria had not been speeding; rather, she had been followed at dangerously close range by Agent Rock for several miles before being directed to stop.

Ms. Josemaria asked if speeding wasn't a traffic issue for the Tribal Police to handle. The agent responded, “We don't want them interfering.” The agent then yelled, “You know what? Get out of the vehicle now!” The agent then came around to the driver's side and was visibly angry. Fearing for her safety, Ms. Josemaria refused to exit her truck. Then, without Ms. Josemaria's consent and over her objections, Agent Rock tried to forcibly open her door. It was locked, so the agent reached up and into the open window, then unlocked and opened the door.

Ms. Josemaria told the agent that she had done nothing wrong, told him to stop, and demanded an explanation. The agent yelled out, “You're a known smuggler.” Ms. Josemaria is not a known smuggler and has no criminal convictions. The agent continued yelling at Ms. Josemaria: “Get out of the truck! You're resisting arrest! Help!” At that moment, approximately four other Border Patrol agents ran to the truck and joined Agent Rock in trying to pull Ms. Josemaria out. All of the agents appeared to be Caucasian males with the exception of one agent who appeared to be a Latino male. Ms. Josemaria cried out for them to stop but the agents ignored her. One of the agents reached into her vehicle on the passenger side, opened the door, entered the truck cab, and unbuckled Ms. Josemaria's seat belt. Ms. Josemaria was terrified but she demanded to know what she was being arrested for. She received no response.

The agents twisted her wrist and pushed her arm behind her back, causing her to cry. She demanded that they call the police. Agent Rock yelled back, “You call them if you want.” As she was being pulled from her truck, a Tohono O'odham Ranger's car drove by, but it did not stop. Crying in pain as the group of agents pulled at her arms and legs, Ms. Josemaria exited her truck. Agent Rock tried to throw her to the ground but could not do so, and instead pushed Ms. Josemaria towards the side of the road.

The agents began to search Ms. Josemaria's truck, over her objections. When Ms. Josemaria objected to the search the agents laughed at her. An agent reached into the glove box and into back seat of the truck cab. The agents never checked her registration or asked about her citizenship or legal status.

After searching the truck, the agents called for a drug-sniffing CBP “service canine.” Ms. Josemaria was forced to wait by the side of the road for approximately one hour until the service canine arrived. When it finally did, the service canine was allowed to enter her truck and circled it several times but found no contraband. By this time, there were five Border Patrol

vehicles parked at the scene of the stop. Several agents were laughing at Ms. Josemaria; when she repeatedly asked if she was free to go, the agents ignored her or told her she was not.

Agent Rock finally told Ms. Josemaria she could go and returned her license to her. She asked him for the agents' names and badge numbers, and he identified himself as "Agent J. Rock," with ID #58, and an additional agent as "Agent Pena," ID #668. Before she left, Ms. Josemaria saw the agents conferring together in private and making notations in their notepads. The entire stop lasted approximately an hour and a half.

Ms. Josemaria called and reported the incident to the Tribal Police the next day. An officer Cook came to her house to take photographs of the injuries she sustained while being forcibly removed from her truck, as well as the damage the Border Patrol agents had caused to her driver's side door. She also tried to fill out an online complaint on the DHS website the night of the incident; however, she was still extremely upset and when she received an error message and was unable to submit the complaint, she gave up.

Ms. Josemaria is outraged that she was stopped by Border Patrol without cause, assaulted, and subjected to an unlawful search and seizure. Ms. Josemaria has heard many stories of other Tohono O'odham subjected to similar abuse and mistreatment by U.S. Border Patrol agents, but she did not ever think it would happen to her.

### **C. March 22, 2013 Roving Patrol Stop of Bryan Barrow**

On March 22, 2013, at approximately 3:30 pm at Fort Bowie National Historic Site in southeast Arizona, Bryan Barrow was returning from a hike to the visitor center. Mr. Barrow is a U.S. citizen and resident of Oregon, and was vacationing in Arizona. As he proceeded toward his car, Mr. Barrow noticed a man with a dark cap and sunglasses, his hands cupped against the driver side window looking directly into Mr. Barrow's vehicle.

When Mr. Barrow inquired what the man was doing, the man identified himself as a park ranger. The ranger then asked Mr. Barrow for identification, which Mr. Barrow provided. The ranger instructed him to wait by the car while he radioed in the information, and soon returned. The ranger then asked for Mr. Barrow's registration and proof of insurance. Mr. Barrow replied that he would try to locate the documents, but that the car was a mess as it was filled with camping gear.

The ranger then assumed a hostile tone and began to interrogate Mr. Barrow. Eventually, he asked if Mr. Barrow had drugs in the vehicle. Mr. Barrow replied that he did not, but the ranger persisted, "Are you sure you don't have drugs in the vehicle? Do you have marijuana in the vehicle, sir? I think you have marijuana in your car don't you?" The ranger continued: "You have marijuana in your car. So if the canine came to sniff your car there would be nothing in there to set him off?" Mr. Barrow consistently answered that he did not use drugs. Nonetheless, the ranger stated that he was going to call a canine unit. He continued interrogating Mr. Barrow at length.

There were very heavy winds that day and at one point Mr. Barrow went to shut the passenger-side door, which was ajar, but the ranger wedged himself between the body of the car and the inside of the door and pushed it forcefully back outward. When Mr. Barrow said that he would like to close the door to his car, the ranger pulled out a Taser and ordered Mr. Barrow to sit on the ground, which he did. The ranger then demanded the car keys, which Mr. Barrow refused to provide. The ranger called in additional rangers, one of whom frisked Mr. Barrow.

Mr. Barrow was never asked for his consent to search his vehicle, nor did he give such consent for anyone to search his vehicle, stating numerous times that there was no probable cause to support such a search. Though the rangers said he was not under arrest, when Mr. Barrow tried to stand and approach his car, the rangers told him to sit back down.

Finally, a Border Patrol agent named Owens arrived with a drug-sniffing service canine. While inspecting the vehicle, the dog never visibly alerted to the presence of any contraband, though Agent Owens claimed the dog was “set off” and a search of the vehicle ensued. The rangers and the Border Patrol Agent Owens began rifling through the contents of Mr. Barrow’s vehicle. When Mr. Barrow tried to stand or get a better view of what the officials were doing, he was promptly told to stay put; however, he was able to videotape a portion of the ordeal with his phone. Other tourists returning to their cars were asked by the ranger to leave the area.

In the course of the search, the Border Patrol service canine caused significant damage to Mr. Barrow’s vehicle, both inside and out. The damage was later assessed and totaled \$682.12. At the time, Agent Owens agreed that it did appear that the dog could have caused damages. He took a picture of the scratched paint and suggested Mr. Barrow could submit a tort claim if he desired. Border Patrol subsequently denied a claim by Mr. Barrow’s insurance company, stating in a letter that there was insufficient evidence and that the Federal Torts Claims Act “bars recovery for property damaged by CBP employees while the property is under detention in CBP custody”).

Mr. Barrow was detained for approximately four hours. During that time he was not allowed food, water or access to a bathroom, and he became dehydrated. The ranger confiscated a bottle of essential oils, which had been given to Mr. Barrow as a Christmas present. The ranger also issued two citations for failure to show registration and proof of insurance. Those citations were subsequently dismissed, but Mr. Barrow was forced to extend his stay in Arizona to fight the charges, causing great inconvenience and further expense.

Mr. Barrow feels that his constitutional rights to be free of unreasonable search and seizure were clearly violated. “What at first began as a pleasant hike and a nice memory in a national park ended up a nightmare,” he said.

#### **D. May 6, 2012 Roving Patrol Stop of Salvador Valdivia**

Adam Valdivia co-owns a vegetable farm, Sleeping Frog Farms, near the town of Benson, Arizona, about 38 miles east of Tucson. He is a U.S. citizen and has lived near Benson with his wife and two children for about three years. Border Patrol agents have entered his 76 acre private property and parked their vehicles there, without his consent or a warrant, and in

clear violation of the law. Mr. Valdivia notes there is a large presence of Border Patrol agents in and around Benson – a town of just over 5,000 people, located approximately 60 miles north of the U.S.-Mexico border – despite the apparent absence of undocumented immigrants and smugglers in the area.

One incident of particular concern occurred when Mr. Valdivia's father Salvador, who was 57 years old at the time, was visiting from his home in Colorado. On May 6, 2012 at approximately 2 pm, Salvador Valdivia, who is of Mexican descent and has dark skin, was driving back to the farm with his five-year-old grandson in the backseat. Approximately 15 miles from the farm, a Border Patrol vehicle began following him at a very close distance. As he approached the farm, the Border Patrol vehicle pulled onto the Valdivia property and turned its emergency lights on. Salvador Valdivia pulled into the driveway and stopped.

Two agents emerged from their vehicle, holding automatic weapons. This was a day of the week the Valdivia family hosted a farm stand for locals in the community. Nonetheless, the agents questioned Salvador Valdivia, with their hands on their guns, for over an hour, in front of his grandson and Adam Valdivia, who had emerged from the house to see what was happening. The family objected that the agents were on private property and had no right to be there. The agents, who were later identified as Agent Gia and Agent Yaeger, ran Salvador Valdivia's license and the vehicle information. When pressed on the reason for the stop, Agent Gia claimed that the agents were looking for a red station wagon (Salvador Valdivia was driving a grey station wagon). The agents finally left without providing any further explanation.

Adam Valdivia filed a complaint with Patrol Agent in Charge ("PAIC") Weinbrenner at the local CBP office in Wilcox, Arizona. PAIC Weinbrenner informed him that Salvador Valdivia was pulled over because his "route of travel," rate of speed, and vehicle type raised a "reasonable suspicion." At the time of the stop, Salvador Valdivia was driving the speed limit, on Cascabel Road, the main route from Benson, in a grey Volvo station wagon with Colorado plates and a roof rack, with a five-year-old asleep in the back seat. PAIC Weinbrenner never clarified how any of those factors would have created a reasonable suspicion to justify the stop. Adam Valdivia also left several messages with CBP official Roger San Martin at Tucson Sector Headquarters but was referred back to PAIC Weinbrenner. Mr. Valdivia never heard anything further in response to his complaint (Case No. 12-wcx-05-02), other than a form letter he received from PAIC Weinbrenner saying the matter was "under investigation."

Adam Valdivia used to work at the Agua Linda Farm in Amado, Arizona, about 25 miles north of the border, and says CBP agents would enter the property constantly.<sup>4</sup> It was partly because of this experience that he intentionally chose to live further from the border and did not consider buying property closer to the border. As such, Mr. Valdivia is upset by what he views as a clear case of racial profiling, as well as trespassing, by Border Patrol agents in Benson. He feels that he and his family should not have less freedom or be suspect in the eyes of CBP simply because of where they have chosen to live.

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<sup>4</sup> The owner of Agua Linda Ranch, Stuart Loew, was recently featured in a New York Times Op-Ed in which he describes being detained by CBP agents on his ranch while agents demanded that he provide identification. See Todd Miller, *War on the Border*, NY TIMES, Aug. 18, 2013, available at [http://www.nytimes.com/2013/08/18/opinion/sunday/war-on-the-border.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/08/18/opinion/sunday/war-on-the-border.html?pagewanted=all&_r=0).



## **E. Spring 2011 Roving Patrol Stop of Suzanne Aldridge**

In the spring of 2011, Suzanne Aldridge was returning from her daughter's home in Hereford, Arizona to Bisbee, Arizona. Ms. Aldridge is a U.S. citizen and 19-year resident of Bisbee, a town of 5,600 people, where she owns a small business. Just outside of Bisbee, the vehicle behind Ms. Aldridge turned on its emergency lights, signaling for her to stop. After she pulled over, Ms. Aldridge was approached by a man dressed in plainclothes. The man did not identify himself as a Border Patrol agent. Instead, he aggressively demanded to know where Ms. Aldridge was coming from. She responded that she was returning from her daughter's house. The man demanded to know what the name of the road was, and Ms. Aldridge told him. The man responded, "That's not the name of the road." He then asked if anyone else was in the car. The man was standing over Ms. Aldridge's vehicle and could clearly see there was no one else inside it. Ms. Aldridge responded there was no one inside. The man then told her to roll down the back window. She complied, but she asked the man why he'd pulled her over. The man did not respond; instead he asked if he could search the car. Ms. Aldridge said "no." The man responded that he was going to get a drug-sniffing dog.

Ms. Aldridge was terrified. At this point, she still did not know who the man was, why he had stopped her, or why he wanted to search her vehicle. The man had been extremely aggressive and hostile, and she was parked in an area with no pedestrians or other vehicles around. Ms. Aldridge was afraid for her safety and shaking with fear. When the man returned to his vehicle, she decided to drive a short distance to San Jose Plaza, a more public area approximately 1500 yards away, where she knew there would be people.

Ms. Aldridge pulled into the San Jose Plaza parking lot and parked. She attempted to call her son-in-law, a Bisbee police officer. As she was making the call, she saw additional Border Patrol vehicles pull into the parking lot. Before she could complete the call, Ms. Aldridge was approached by multiple uniformed Border Patrol agents. Without speaking to her, one of the agents opened her car door and forcibly dragged Ms. Aldridge from her vehicle, over her objections. The agent pushed Ms. Aldridge against the side of the car and hand-cuffed her with extreme force. The same agent patted her down, groping her and touching her breasts. Ms. Aldridge was crying. The agent then forcibly pulled Ms. Aldridge away from the car and pushed her to the ground. She remained seated by the side of the car, crying and asking for someone to remove the handcuffs, which the agents refused to do.

Additional law enforcement vehicles arrived to the scene, including Bisbee Police and Cochise County Sheriff vehicles. Ms. Aldridge estimates there were eventually upwards of ten Border Patrol vehicles in the parking lot. One of those vehicles arrived with a Border Patrol service dog, which searched the interior of Ms. Aldridge's car without her consent. She was detained in a Border Patrol vehicle during the search.

Eventually, a local police officer Ms. Aldridge knew arrived on the scene and told Border Patrol to remove the handcuffs, which they finally did. Ms. Aldridge was told she could go. She had been detained for approximately one hour. As she was leaving one of the uniformed Border Patrol agents that had arrived was cursing and saying, "That is fucked up. If that was me, you

would not be letting me go.” Ms. Aldridge understood that to mean that the agent opposed her release, and that if she had been a man she would not have been released.

Before leaving, Ms. Aldridge asked for the name of the agent who pulled her over; however, no one would provide it. She again asked why she had been stopped. One of the agents told her that her vehicle “fit a description” but would say nothing more. Ms. Aldridge’s subsequent requests for the name of the agent who stopped her have all been refused by Border Patrol officials. Similarly, when she requested an explanation for her initial stop, none was provided. Border Patrol officials finally claimed that Ms. Aldridge’s car fit the description of a drug smuggling vehicle they had been looking for. Officials later claimed she was stopped because her license plates matched a vehicle that had been used to smuggle drugs. However, Ms. Aldridge had owned her car for 11 years, during which time she had traveled to Mexico periodically and returned through Ports of Entry without incident.

After trying to resolve her complaint with a local Border Patrol supervisor, the supervisor said he could no longer speak with her and that she would have to file a complaint with Tucson Sector CBP headquarters. Ms. Aldridge contacted a Tucson Sector CBP representative, who in turn directed her to file an online complaint with a DHS office in Washington, D.C. Ms. Aldridge submitted the online complaint but never received a verification of receipt or response.

Ms. Aldridge continued to feel great fear and anxiety following this incident. To this day, she still feels traumatized. Ms. Aldridge says she is fearful around Border Patrol because she never knows what they will do, a sentiment she says is shared by many others in and around Bisbee. Ms. Aldridge has heard the stories of friends and neighbors abused and harassed by Border Patrol agents. Prior to this incident, she herself had been pulled over by Border Patrol on approximately five other occasions.

As someone born and raised in the border region, Ms. Aldridge says she is deeply saddened and disturbed that Border Patrol has come to have such a negative impact on the place she calls home and the people who live there.

## **II. Legal Analysis**

The Fourth Amendment’s protection against unreasonable searches and seizures extends to protect against unlawful investigatory stops. To be lawful, an investigatory stop must be supported by “reasonable suspicion,” based on specific articulable facts, that the individual being stopped is engaged in illegal activity. *United States v. Arvizu*, 534 U.S. 266, 273 (2002); *see also* 8 C.F.R. § 287.8(b)(2). Without such reasonable suspicion, Border Patrol agents on roving patrols are prohibited from stopping individuals to inquire about citizenship status or for any other purpose.

The reasonableness standard is meant to strike a balance between preventing illegal entry and criminal conduct and an individual’s rights to personal security, without “arbitrary” interference by law enforcement officers. *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975). The reasonable suspicion analysis evaluates all of the known circumstances, any objective observations, and the known patterns of such lawbreakers the sum of which must yield

a particularized suspicion that the individual being stopped is engaging in wrongdoing. *United States v. Cortez*, 449 U.S. 411, 418 (1981) (where reasonable suspicion was based upon the corroboration of narrowly anticipated conditions, following a two-month investigation); *see also*, e.g., *United States v. Diaz-Juarez*, 299 F.3d 1138 (9th Cir. 2002) (reasonable suspicion existed where agent encountered vehicle late at night, in high-crime area near border, shortly after receiving reports that contraband was entering the U.S., and vehicle appeared to be modified for smuggling); *United States v. Montero-Camargo*, 208 F.3d 1122 (9th Cir. 2000) (finding reasonable suspicion where two vehicles, with Mexican license plates, driving in tandem, each made a U-turn prior to an unexpectedly operational border patrol checkpoint, before stopping at a high-crime turnoff).

Courts have enumerated various factors that officers can consider in their reasonable suspicion determination. In the Ninth Circuit, which includes Arizona, those factors include but are not limited to: (1) characteristics of the area; (2) proximity to the border; (3) usual patterns of traffic and time of day; (4) previous alien or drug smuggling in the area; (5) behavior of the driver, including obvious attempts to evade officers; (6) appearance or behavior of passengers; (7) model and appearance of the vehicle; and (8) officer experience. *United States v. Valdez-Vega*, 685 F.3d 1138, 1144 (9th Cir. 2012). The Ninth Circuit has specifically prohibited Border Patrol and other law enforcement officials from relying on race as a factor in forming reasonable suspicion. *Montero-Camargo*, 208 F.3d at 1135 (“[A]t this point in our nation’s history, and given the continuing changes in our ethnic and racial composition, Hispanic appearance is, in general, of such little probative value that it may not be considered as a relevant factor where particularized or individualized suspicion is required. Moreover...it is also not an appropriate factor.”).

Although making a reasonable suspicion finding is not always simple, it is clear that reasonable suspicion cannot be satisfied by facts that establish a profile applicable to “**a very large category of presumably innocent travelers.**” *United States v. Sigmond-Ballesteros*, 285 F.3d 1117, 1127 (9th Cir. 2002) (emphasis added) (finding profile too broad to support reasonable suspicion where defendant was traveling on a road used by smugglers, in a type of vehicle a smuggler might use, at a time when the road was mostly populated by commercial vehicles); *see also United States v. Garcia-Camacho*, 53 F.3d 244 (9th Cir. 1995) (determining that a driver in a heavily loaded pickup truck who changed lanes while looking in front of him as he passed a stationary Border Patrol agent established too broad a profile to find reasonable suspicion).

In the factual accounts presented above, Border Patrol lacked reasonable suspicion to justify the stops. Although the circumstance varied, the factors that would support a lawful stop were absent or weighed against an intrusive investigatory stop because they applied to a large category of innocent travelers. However, one factor in particular stands out: None of the stops occurred in close proximity to the border, and most were close to populated areas where the volume of legitimate travelers was extremely high.

The U.S. Border Patrol claims broad authority over areas within “a reasonable distance”<sup>5</sup> of the border. That reasonable distance is defined by outdated regulations to be “100 air miles”<sup>6</sup>

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<sup>5</sup> 8 U.S.C. § 1357(a)(3).

from any external boundary, including coastal boundaries, and thus encompasses roughly two thirds of the U.S. population and the entirety of several states. In some instances, Border Patrol conducts operations even further inland.<sup>7</sup> However, courts have consistently recognized that roving patrol stops conducted far from the border are unlikely to generate contacts with recent border-crossers, and are thus far less likely to be supported by reasonable suspicion.

As the Supreme Court has long recognized, even roads that are proximate to the border “carry not only aliens seeking to enter the country illegally, but a large volume of legitimate traffic as well.” *Brignoni-Ponce*, 422 U.S. at 882. Proximity to the border is of especially limited value where the border is itself in close proximity to a metropolitan area, or even smaller but densely populated cities. *Sigmond-Ballesteros*, 285 F.3d at 1126; *see also, e.g., Valdez-Vega*, 685 F.3d at 1147–48 (A driver with a Mexican license plate committing a traffic infraction 70 miles north of U.S.-Mexico border, who was driving a pickup truck and failed to look a Border Patrol agent in the eyes, does not fit into a category narrow enough to justify reasonable suspicion that defendant was smuggling drugs or aliens.)

Numerous federal appellate courts have emphasized the importance of proximity to the border in justifying roving patrol stops. In *United States v. Venzor-Castillo*, the Tenth Circuit held, “[T]he more attenuated the international border becomes, the greater the significance distance assumes... when the officer has no knowledge whatsoever about the point of origin of a particular traveler’s route.” 991 F.2d 634, 639 (10th Cir. 1993).<sup>8</sup> In the Fifth Circuit, a “vital element” of the reasonable suspicion analysis is whether the agents making the stop have “reason to believe that the vehicles came from the border.” *Pallares-Pallares*, 784 F.2d 1231, 1233 (5th Cir. 1986) (“The emphasis under these rules is whether the vehicle originated at the border”); *see also United States v. Rubio-Hernandez*, 39 F.Supp.2d 808, 810 (W.D. Texas 1999). When a stop occurs more than fifty miles from the border, that vital element is missing. *See United States v. Moreno-Chaparro*, 157 F.3d 298, 300 (5th Cir.1998).

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<sup>6</sup> 8 C.F.R. § 287.1(b). The Justice Department did not issue regulations defining a “reasonable distance” from the border as 100 miles until 1953. CONGRESSIONAL AND ADMINISTRATIVE NEWS, pp. 2117-18. In 1957, these regulations were then published in the Federal Register, along with other new regulations for the revised INA. *See Field Officers: Powers and Duties*, 22 Fed. Reg., 236, 9808-09 (Dec. 6, 1957) (to be codified at C.F.R. § 287). However, other than their presence in these publications, there is no public history as to why the Justice Department chose 100 miles as the “reasonable distance” from the border under the INA. It may simply be that 100 miles has a history of being the distance considered to be reasonable regarding the availability of witnesses for examination, responses to subpoenas, and numerous other discovery issues under other federal laws. *See, e.g.*, 10 U.S.C.A. § 849; Fed. R. Crim. P. 7; Fed. R. Civ. P. 45.

<sup>7</sup> *See, e.g.*, Michelle Garcia, *Securing the Border Imposes a Toll on Life in Texas*, Al Jazeera America, Sept. 25, 2013, available at [http://america.aljazeera.com/articles/2013/9/25/living-under-the-law-of-border-security.html#mainpar\\_adaptiveimage\\_0](http://america.aljazeera.com/articles/2013/9/25/living-under-the-law-of-border-security.html#mainpar_adaptiveimage_0) (“Efrain Perez, a spokesman for the regional U.S. Customs and Border Patrol station in Laredo, 90 miles away, said Alice [120 miles north of the border] fits within the ‘second tier enforcement.’ But when it was pointed out that the town sits more than 100 miles from the border, he explained that ‘the law does not say that we cannot patrol. Our jurisdiction kinda changes.’”); *see also United States v. Venzor-Castillo*, 991 F.2d 634 (10th Cir. 1993) (finding Border Patrol lacked reasonable suspicion to stop and search vehicle approximately 235 miles from the border where agent had no knowledge regarding the origin of the vehicle).

<sup>8</sup> “The fact the defendant in this case could have entered the highway from any of the three thirteen towns and cities between the closest point of entry on the border and the point of stop, coupled with the equally plausible fact he could have come from a neighboring state, simply inhibits a belief that the defendant and his passengers had recently crossed the Mexican border.”

In the five cases presented herein, respectively, the stops occurred approximately 40, 50, 60, 60, and 8 miles north of the border. In none of these situations did Border Patrol have any indication that the vehicles came from the border. Nor were other factors present to suggest that any of the individuals stopped were engaged in illegal activity or fit a profile other than one applicable to a large category of innocent travelers. In each of these instances, U.S. citizens were subjected to stops unsupported by reasonable suspicion, in some cases followed by unlawful searches, extended detention, excessive use of force, or destruction of personal property.<sup>9</sup>

It is also deeply distressing that Border Patrol is improperly relying on race and ethnicity as factors in stopping residents of southern Arizona. In addition to the stops described above – at least one of which appears to have been motivated by race – the ACLU has received many reports from Latino residents of Tucson and other Arizona cities, as well as Native American residents of the Tohono O’odham Indian Reservation, who have been pulled over or otherwise approached and interrogated by Border Patrol agents for no apparent reason other than their perceived race or ethnicity. Many Latino residents have reported being stopped by local law enforcement on a pretext, detained, and then handed over to Border Patrol for investigation. Such practices are unlawful as well. See *Montero-Camargo*, 208 F.3d 1122; *Melendres v. Arpaio*, 2013 WL 2297173 (D. Ariz. May 24, 2013) (“Thus, there is no legitimate basis for considering a person’s race in forming a belief that he or she is more likely to engage in a criminal violation, and the requisite “exact connection between justification and classification,” in focusing on Hispanic persons in immigration enforcement is lacking.” (internal citation omitted)); see also U.S. Department of Justice, *Guidance Regarding the Use of Race by Federal Law Enforcement Agencies*, June 2003, available at [http://www.justice.gov/crt/about/spl/documents/guidance\\_on\\_race.pdf](http://www.justice.gov/crt/about/spl/documents/guidance_on_race.pdf); DHS Secretary Napolitano Memo: *The Department of Homeland Security’s Commitment to Nondiscriminatory Law Enforcement and Screening Activities*, April 26, 2013, available at [http://www.dhs.gov/sites/default/files/publications/secretary-memo-race-neutrality-2013\\_0.pdf](http://www.dhs.gov/sites/default/files/publications/secretary-memo-race-neutrality-2013_0.pdf)

Finally, the complaint process by which individuals report abuse to CBP and other DHS entities is lacking in consistency and transparency and fails to provide meaningful redress to those whose rights have been violated by federal officials. In several of the cases detailed above, DHS officials failed to provide accurate information to complainants about the complaint and investigatory process or the status of their complaint, and were not responsive to those complainants’ reasonable requests for information. Individuals whose property was destroyed by CBP officials were essentially told to file a federal lawsuit, no matter the sum involved or how egregious the agents’ conduct. Such opaque and unresponsive complaint procedures only reinforce the lack of accountability in CBP and further undermine the public’s trust.

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<sup>9</sup> For example, Border Patrol may not search the interior of a vehicle following a roving patrol stop without probable cause or consent. See *Almedia-Sanchez v. United States*, 413 U.S. 266, 273 (1973) (quoting *Brinegar v. United States*, 338 U.S. 160 (Jackson, J., dissenting): “These (Fourth Amendment rights), I protest, are not mere second-class rights but belong in the catalog of indispensable freedoms. Among deprivations of rights, none is so effective in cowering a population, crushing the spirit of the individual and putting terror in every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government.”).

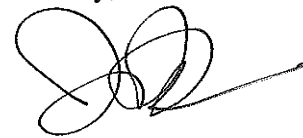
### III. Conclusion

CBP abuses related to unlawful roving patrol stops are longstanding and widespread. The ACLU of Washington's litigation in *Sanchez v. United States Border Patrol* is only one of the latest efforts to address the problem of unconstitutional roving patrol stops by Border Patrol. In the settlement agreement, CBP specifically stated, "Consistent with its commitment to abide by the requirements of federal law, the Border Patrol acknowledges that for vehicle stops made under the Fourth Amendment in non-border search situations...agents must have reasonable suspicion of a violation of the law. Border Patrol acknowledges that in many circumstances it will not be sufficient to establish reasonable suspicion to justify a vehicle stop under *Terry* simply that a vehicle is in an area near an international border."<sup>10</sup> Meanwhile, the same problems identified and ultimately addressed through litigation in Washington and elsewhere have persisted in southern Arizona for years.

We request that you conduct a prompt investigation of these individual allegations of abuse *and* undertake a comprehensive investigation of roving patrol practices involving CBP officers generally to determine whether the Border Patrol is complying with its obligations under the U.S. Constitution, international law, and agency guidelines – **with particular attention to:** 1) lawful application of the "reasonable suspicion" standard; 2) observance of legal limitations on the use of race and prohibitions on racial profiling, and 3) adherence to proper complaint procedures. In cases of unlawful conduct, we urge that the agents responsible be appropriately disciplined and that the results of your investigation be provided to complainants and made public. Finally, as the foregoing accounts make clear, significant changes in CBP training, oversight, and accountability mechanisms are needed, and we urge you to make meaningful recommendations for such changes consistent with your institutional mission so as to provide substantive redress and prevent further abuses.

Please do not hesitate to contact us with any questions or concerns at (602) 650-1854.

Sincerely,



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<sup>10</sup> *Sanchez v. U.S. Border Patrol* Settlement Agreement, available at <http://aclu-wa.org/sites/default/files/attachments/2013-09-23--Fully%20Executed%20Settlement%20Agreement.pdf>