

An Agency Out Of Control:

Widespread Border Patrol Abuses in Southwest Border Communities

My name is James Duff Lyall. I am a Staff Attorney at the ACLU of Arizona, where I work in the ACLU's Border Litigation Project.

[Summarize BLP]

Recent immigration reform proposals have generally assumed the continued expansion of U.S. Customs and Border Protection (CBP) and additional border enforcement measures are a necessary component of reform; however, these proposals have largely ignored the experiences of border communities, including the reality that the southwest border is already heavily militarized, at great expense to taxpayers, and abuses by U.S. immigration officials are widespread. Meanwhile, border apprehensions are at 40-year lows while crossing deaths are at historic highs. In this context, proposals to dump billions of additional taxpayer dollars into misguided border security initiatives are a recipe for further waste and abuse.

I. Civil and Human Rights Violations by U.S. Customs and Border Protection (CBP) Officials

In southern Arizona, it has become increasingly common for the ACLU to receive complaints from both citizens and noncitizens reporting civil rights violations by CBP officials. These include the following general areas:

A. Ports of Entry

The ACLU has received numerous complaints from citizens and lawful residents who have suffered abuse at Arizona Ports of Entry. In May of last year, the ACLU submitted a complaint on behalf of eleven individuals who experienced extreme mistreatment at Ports of Entry; it included accounts of unprovoked assaults and verbal abuse, unwarranted use of handcuffs and shackles, extended and recurring detention, invasive searches, property destruction, and denial of food, water, and legal representation. More than a year later, DHS has yet to respond to the allegations in eight of the eleven cases reported.

B. Checkpoints

CBP operates 11 vehicle checkpoints in Arizona, the majority of them over 25 miles north of the border and in close proximity to residential areas. In some towns, border residents must pass through checkpoints multiple times every day, to run errands, buy groceries, or take children to school. The ACLU has received numerous reports of border residents subjected to unlawful vehicle searches, extended detentions, property damage, threats and physical abuse at Border Patrol checkpoints. Multiple individuals have reported being informed by agents that they “have no rights” at checkpoints.

C. Roving Patrols

Although Border Patrol must have reasonable suspicion of an immigration violation to make a vehicle stop, in practice, Border Patrol agents are pulling over Arizona motorists without such reasonable suspicion. In many cases, these stops occur far from the border where Border Patrol is much less likely to have a valid reason to believe an immigration violation has occurred.

In May of this year, Clarisa Christiansen, a Tucson-area resident, reported being stopped by agents approximately 60 miles north of the border, as she was returning home with her young children from school. When she demanded to know the reason she had been stopped, agents threatened her with a Taser, threatened to cut her out of her seatbelt with a knife, slashed her tire, and left her and her children with a flat tire on a remote desert road.

D. Trespassing

Equally disturbing are documented reports of landowners whose properties are intruded upon by Border Patrol. While CBP claims authority to enter onto private lands within 25 miles of the border, the ACLU has received numerous reports of agents unlawfully entering property more than 25 miles from the border and, in some cases, causing property damage and even detaining landowners on their own land. A recent Op-Ed in the New York Times profiled Amado, Arizona rancher Stuart Loew, who was detained on his ranch while agents demanded that he provide identification.

E. Racial Profiling and Collaboration with Local Law Enforcement

Complaints arising out of Border Patrol collaboration with local law enforcement through state and federal programs –including Operation Stonegarden and Secure Communities, as well as Arizona’s SB 1070 – are also common. The ACLU has documented numerous complaints of Arizona residents stopped on a

pretext and detained solely for the purpose of investigating legal status. Such practices are unconstitutional, and as many police officials have recognized, these policies endanger public safety by diverting limited funds from legitimate police priorities, and spreading fear and distrust of law enforcement in immigrant communities.

F. Short-Term Custody

No form of CBP abuse has been documented more thoroughly than the consistent abuse of immigrants in short-term Border Patrol custody. In the past three years alone, no fewer than six separate groups have released reports documenting systemic abuses and inhumane detention conditions, from routine denial of food, water, and medical care to extreme overcrowding, use of severe temperatures, permanent confiscation of personal property, and physical and verbal abuse.

G. Due Process

The ACLU also regularly documents due process violations by CBP and other immigration officials. These include denial of access to counsel, the confiscation of property and legal documents, including valid visas, and the practice of coercing individuals otherwise eligible for immigration relief into signing voluntary departure orders.

Additional due process concerns arise in the context of expanding federal prosecutions of immigrants on entry and re-entry charges, including Operation Streamline, in which large groups of immigrants are tried en masse without being afforded meaningful legal representation. These prosecutions offend fundamental principles of due process and have threatened to overwhelm the federal court system while transferring billions of taxpayer dollars to the private prison industry.

H. Excessive Use of Force

Since January 2010, at least 20 individuals have died as the result of alleged excessive use of force by CBP officials, including seven minors under 21, five U.S. citizens, eight individuals alleged to be throwing rocks, and six individuals killed while on the Mexican side of the border. Agents rarely face prosecution for using lethal force.

CBP is now the largest law enforcement agency in the country, claiming extra-constitutional authority over vast stretches of territory far removed from the border, and yet it lacks effective oversight and accountability mechanisms and has failed to adopt law enforcement “best practices” successfully used by law enforcement agencies across the country to reduce abuses and complaints.

We offer the following recommendations to prevent further abuses and ensure a more transparent and accountable agency:

1. Increase CBP Oversight, Accountability, and Transparency Mechanisms
2. Implement Policies for Preventing Excessive Use of Force Incidents
3. Implement Policies to Address the Epidemic of Border Crossing Deaths
4. Issue Enforceable CBP Short-Term Custody Standards and Appropriately Inspect Detention Facilities
5. Discourage State and Local Police Involvement in Immigration Enforcement
6. Stop Wasteful Federal Prosecutions of Entry-Related Offenses
7. Reduce CBP’s Zone of Operations From 100 Miles From the Border Down to 25 Miles From the Border

Congress must heed the voices of border communities and address systemic Border Patrol abuse and impunity, rather than compounding these problems further. To be clear, the border is already heavily militarized, with devastating consequences for the Constitutional rights of border residents. At a time when migrant apprehensions are lower than at any time since the 1970s and complaints of abuse are on the rise, wasteful spending and misguided border enforcement measures must be reined in.

The time for comprehensive immigration reform is long overdue. However, we must also work to ensure that U.S. immigration officials operate in a manner consistent with our laws and values.

Thank you.