



The ACLU's Border Litigation Project investigates, documents, and litigates civil and human rights violations in the U.S.-Mexico border region.

June 28, 2016

Matthew Klein
Assistant Commissioner
Office of Professional Responsibility
U.S. Customs and Border Protection
U.S. Department of Homeland Security
1300 Pennsylvania Ave.
Washington, D.C. 20229

Re: Complaint and Request for Investigation Regarding Unlawful Searches and Seizures of Innocent Residents by Agents of U.S. Border Patrol

Dear Assistant Commissioner Klein:

We submit to you for investigation the following ten complaints regarding civil rights violations by U.S. Border Patrol officials in Arizona. These complaints were reported to the ACLU of Arizona by local residents over the past year, and are representative of scores of other, similar reports of Border Patrol abuse that we receive on a regular basis.¹

Most of the complaints described below involve unlawful search and seizure in the course of Border Patrol's interior checkpoint and roving patrol operations—including detentions and searches based on false "alerts" by K-9s—but several go much further: they describe local residents swept up and detained for days in deplorable conditions in Border Patrol detention facilities before being released without charge, explanation, or apology.² This includes three people who were detained between one and three nights in

¹ See ACLU OF ARIZONA, RECORD OF ABUSE: LAWLESSNESS AND IMPUNITY IN BORDER PATROL'S INTERIOR ENFORCEMENT OPERATIONS (2015), available at <http://bit.ly/1qsDtNC>; ACLU OF ARIZONA COMPLAINT AND REQUEST FOR INVESTIGATION, Jan. 15, 2014, available at <http://bit.ly/1NgZAJq>; ACLU OF ARIZONA COMPLAINT AND REQUEST FOR INVESTIGATION, Oct. 9, 2013, available at <http://bit.ly/1oOBYEz>.

² The consistently brutal and abusive conditions in Border Patrol detention facilities are well-documented. See *Unknown Parties v. Johnson*, No. 15-00250 (D. Arizona filed June 8, 2015) (class action challenge to constitutionality of conditions in Border Patrol's Tucson Sector detention facilities); LETTER FROM ACLU BORDER LITIGATION PROJECT ET AL. TO MEGAN MACK ET

Border Patrol custody in Tucson before being deposited abruptly at a nearby gas station. None of those individuals were charged with any offense, and yet their personal property was confiscated or destroyed and each was forced to sign “Hold Harmless” agreements.³ Two of them had to pay thousands of dollars to recover their vehicle after it was wrongfully seized by Border Patrol; they too were never charged with any crime or immigration offense.

Additionally, two individuals report living in fear after sustained harassment by agents entering onto their private property in vehicles and on foot; both of these individuals describe Border Patrol helicopters buzzing their homes at extremely low altitude on a regular basis.

We urge the Office of Professional Responsibility (OPR) to recognize that many of these allegations involve serious misconduct and not mere “performance” issues. We therefore urge that OPR conduct its own prompt investigation of each of these complaints and *not* delegate investigatory responsibility to sector-level supervisors or other components. We concur with the recent findings of CBP’s Integrity Advisory Panel that past oversight efforts have not deterred Border Patrol abuse and corruption due in part to long delays in investigations, among other problems⁴ (CBP’s failure to hold agents accountable for past abuses has also been a major impediment to increased accountability).⁵ OPR should take responsibility for investigating and responding to the allegations of misconduct, including rights violations of local residents by individual Border Patrol agents. In addition, we believe it would be appropriate for DHS-OIG to investigate some of the more systemic problems referenced herein⁶—Border Patrol’s practice of detaining and seizing property from individuals not charged with any crime, for example—and to take remedial action, including issuance of Management Implication Reports (MIRs) to improve policies and practices as needed.

AL. RE: SYSTEMIC ABUSE OF UNACCOMPANIED IMMIGRANT CHILDREN BY U.S. CUSTOMS AND BORDER PROTECTION, June 11, 2014, *available at* <http://bit.ly/1Qar7ii>.

³ Border Patrol forces immigrant detainees to sign the same document prior to confiscating their belongings (researchers estimate one third of deported immigrants are removed from the U.S. without their belongings being returned to them). *See* ACLU of New Mexico et al., COMPLAINT AND REQUEST TO INVESTIGATE, April 6, 2016, *available at* <http://bit.ly/23IMn8o>; Daniel E. Martínez, Jeremy Slack, and Josiah Heyman, PART II: POSSESSIONS TAKEN AND NOT RETURNED, IN BORDERING ON CRIMINAL: THE ROUTINE ABUSE OF MIGRANTS IN THE REMOVAL SYSTEM (2013), *available at* <http://bit.ly/1A6nW7S>; NO MORE DEATHS, SHAKEDOWN: HOW DEPORTATION ROBS IMMIGRANTS OF THEIR MONEY AND BELONGINGS (2014), *available at* <http://bit.ly/1CBYxpH>.

⁴ *See* Homeland Security Advisory Counsel, Final Report of the CBP Integrity Advisory Panel, March 15, 2016, *available at* <http://1.usa.gov/1SZzguL>; *see also* Brian Bennett, *Report Finds Little Progress at Curbing Border Patrol Abuses*, LA TIMES, March 14, 2016, *available at* <http://lat.ms/1Sin6js>.

⁵ *See, e.g.,* Brian Bennett, *Border Patrol Absolves Itself in Dozens of Cases of Lethal Force*, LA TIMES, June 15, 2015, *available at* <http://lat.ms/1qKricD>.

⁶ Consistent with OIG’s mission to “deter, identify and address fraud, abuse, mismanagement, and waste of taxpayer funds invested in Homeland Security.”

Lastly, we request that you assign each of these complaints a unique incident number, and that you notify us and each of the complainants of any actions undertaken to investigate and discipline agents involved in wrongdoing.

1) Border Patrol roving patrol stop, detention without charge, and seizure of property of Marlo Paipa - May 7, 2015

Marlo Paipa is a resident of Tucson, Arizona. On the afternoon of May 7, 2015, Ms. Paipa and her two friends were returning to Tucson from a sightseeing trip to the Buenos Aires National Wildlife Refuge in Arivaca, Arizona. As they arrived to the intersection of Highway 286 and Highway 86 in Three Points, Arizona, roughly forty miles north of the U.S.-Mexico border, they were pulled over by multiple Border Patrol vehicles. Ms. Paipa, who is Native American, was approached by an Officer Perez, who ran up to her vehicle with his hand on his firearm. Ms. Paipa asked the reason for the stop and Officer Perez responded, "Immigration check."

Approximately forty-five minutes into the stop, Officer Perez directed Ms. Paipa to open the trunk of her vehicle. She complied. Approximately ten minutes later, the agent asked Ms. Paipa and the other occupants to step out of the vehicle and placed them in handcuffs. Ms. Paipa demanded an explanation and was told she would find out when she "got to the station." Ms. Paipa and her friends were driven to the Tucson Border Patrol Station. Ms. Paipa continued to ask for an explanation but the agents she encountered in Tucson did not know why she was there. One agent simply said, "Well, you're here for some reason."

Ms. Paipa was detained in a crowded, frigid cell with only a thin aluminum sheet for cover. The only drinking water available was in a dirty thermos which she was afraid to use. After six hours, Ms. Paipa was informed she was being arrested for transportation of a controlled substance, but was not given any further explanation, other than that she would be going to court in the morning. Ms. Paipa was detained overnight in the cell and struggled to sleep on a cold, concrete bench. At three separate times in the early morning hours, agents entered the cell to have Ms. Paipa sign paperwork. Ms. Paipa did not understand what she was signing, just that it related to forfeiture of her vehicle.

The next morning, an agent arrived and informed Ms. Paipa that she was being released. When she again demanded an explanation for her overnight detention, an agent replied, "The prosecutor told us there is no evidence to make a case." Ms. Paipa asked about her personal belongings and her vehicle, and in response the agent gave her a phone number to call. Ms. Paipa was then driven to a Circle K gas station and released along with her two companions and a few other detained individuals.

The next week, Ms. Paipa returned to the station to retrieve property from her vehicle, which was still impounded. She found that Border Patrol had thrown away the belongings in her trunk—including tools, the vehicle manual, and some blankets, along

with her birth certificate and other personal paperwork that had been in the vehicle at the time. An official told her that it was standard “procedure” to discard the contents of seized vehicles.

On May 18, 2015, Ms. Paipa received a letter about her vehicle being subject to forfeiture and giving her thirty days to contest the seizure. Two months after her ordeal, Ms. Paipa recovered her vehicle—but Border Patrol only released the vehicle on the condition that Ms. Paipa sign a “Hold Harmless” agreement stating she could not pursue legal action in connection with her detention.

Request for Investigation

Ms. Paipa requests a full investigation of the circumstances of her stop and prolonged detention, including investigation of what if any basis agents had to 1) conduct a stop of her vehicle, 2) search her vehicle, 3) detain her overnight in harsh and inhumane conditions, 4) seize and dispose of her personal property, and 5) require her to sign a “Hold Harmless” agreement in order to recover her vehicle despite the fact she was not charged with any offense. In addition, Ms. Paipa is requesting that she be compensated for her lost property.⁷

Ms. Paipa further requests that DHS and/or CBP investigate Border Patrol’s practice of detaining and seizing property of individuals who are not charged with any offense,⁸ including the practice of forcing those individuals to sign “Hold Harmless” agreements.

Ms. Paipa requests that DHS and/or CBP notify her of the outcome of the investigation, including any disciplinary and remedial actions taken.

⁷ Ordinarily, when Border Patrol agents lose or damage individuals’ property, the only recourse the agency offers is for the individual to file a Federal Torts Claims Act claim. CBP routinely ignores or denies those claims, forcing individuals to pursue lawsuits in federal court in order to recover for lost or damaged property. Many people cannot afford to do that. CBP should not put effectively insurmountable burdens on individuals seeking to recover for damage or loss caused by Border Patrol agents.

⁸ These practices do not appear to be limited to Arizona and in at least some cases involve the improper seizure of significant sums of money. See e.g., Yanan Wong, ‘You are a fugitive’: ACLU alleges ‘unchecked abuse’ against Americans at U.S.-Mexico border, WASH. POST, May 18, 2016, available at <http://wapo.st/1Tk7HdA>; Tim Cushing, Lawsuit: CBP Took \$240,000 From Man And Refused To Respond To His Forfeiture Challenge Until It Had Already Processed It, TECH DIRT, May 4, 2016, available at <http://bit.ly/1OqmNfs>.

2) Border Patrol checkpoint stop, destruction of property, and detention without charge of Jesus Loreto, Jr. – June 6, 2015

Jesus Loreto Jr. is a resident of Bisbee, Arizona. On Saturday, June 6, 2015, Mr. Loreto and a friend were driving to Tucson to meet Mr. Loreto's two sons. The two men were driving in Mr. Loreto's wife's truck. They arrived at the Highway 90 Border Patrol checkpoint north of Sierra Vista at approximately 9:00 a.m. Mr. Loreto and the other occupant identified themselves as U.S. citizens. A male agent informed them that a K-9 had "hit" on the vehicle, and instructed Mr. Loreto to pull into the secondary inspection area. A female agent instructed them to exit the vehicle and to produce identification. Mr. Loreto and his companion complied.

While the female agent interrogated Mr. Loreto and his companion, the male Border Patrol agent conducted a scan of the truck using some kind of scanning equipment. After approximately twenty minutes, the agent then retrieved tools from a storage area and proceeded to dismantle the truck bed. When Mr. Loreto objected to the damage the agent was causing to the vehicle, the female agent said that Border Patrol would compensate him for any damage and directed him to "be quiet and let the officer do his duty." Though the stated rationale for the search was a K-9 alert, no K-9 approached the vehicle while it was parked in the secondary inspection area.

After approximately forty-five minutes, an Agent Thompson approached and began whispering to the other agents. When Mr. Loreto demanded an explanation for the search and continued detention, the female agent placed her hand on her firearm, directed the men to put their hands behind their heads, handcuffed them, and told them they were under arrest. When Mr. Loreto again asked for an explanation the agent said, "Contraband in your vehicle, you know what was in there, don't act dumb." Mr. Loreto asked to see the alleged contraband but the agents ignored him.

Mr. Loreto and his companion were transported to the Willcox Border Patrol Station. One agent advised Mr. Loreto not to talk and to get a lawyer, adding, "These guys can do anything to you."

The men were fingerprinted and photographed and then placed in separate hold rooms, where they were detained for the remainder of the day without any further explanation. Mr. Loreto says the temperature in his hold room was "freezing." Mr. Loreto has arthritis, and the extreme cold caused him severe pain. Mr. Loreto pleaded with agents to turn down the air conditioning but they ignored him.

Around 11:00 p.m., Mr. Loreto was taken out of the cell and brought to an interview room with two agents. One of the agents directed him to sign a document he believed to be related to the forfeiture of the vehicle. Mr. Loreto stated that the vehicle belonged to his wife, and that he could not sign what he did not understand. The agent became aggressive and said that if Mr. Loreto did not sign, he would not be allowed to retrieve the property. The agent told him, "We can sit here all night until you sign, buddy." Mr.

Loreto finally signed the document, informing both agents he was doing so while under duress and without understanding what the document was.

Mr. Loreto and his friend were then loaded onto a bus and driven to the Tucson Border Patrol Station. On arrival, an agent handed him a thin aluminum sheet; at first Mr. Loreto said he did not want it but the agent told him to take it, advising, "You're going to need it."

Mr. Loreto and his friend were detained in a hold room with a posted maximum occupancy of roughly 30 people in which more than twice that many people were detained. The conditions were filthy and overcrowded; one of the toilets was backed up and overflowing. As in Willcox, the temperature was frigid; at one point, Mr. Loreto resorted to trying to warm himself with a microwave burrito, which other than a few crackers was the only "meal" provided. Mr. Loreto was extremely hungry from not receiving adequate food. When he asked for an explanation, one agent told Mr. Loreto he could not provide any information; another yelled at Mr. Loreto, "Shut up!"

Mr. Loreto was detained for two days and two nights. On the afternoon of June 8, 2015, agents removed Mr. Loreto from the cell, put him in a van with four other U.S. citizens with whom he had been detained. An agent drove the men to a McDonald's one mile east of the detention facility, and then yelled at them to, "Get the hell out of my van," adding, "You're not welcome here!"

Even though Mr. Loreto was not charged with a crime, Border Patrol seized his wife's vehicle. Mr. Loreto tried to retain legal counsel to contest the seizure but was ultimately forced to sign a "Hold Harmless" agreement and pay \$3,500.00 to recover the vehicle. When he finally did recover his wife's vehicle, approximately four months after he was detained, it had sustained significant damage as a result of Border Patrol's search. Other personal property, including electronic devices in Mr. Loreto's possession at the time of his arrest was also damaged. Mr. Loreto is now afraid to leave Bisbee because he fears passing through another Border Patrol checkpoint and being subjected to the same abuse and expense.

Request for Investigation

Mr. Loreto requests a full investigation of the circumstances of his stop and prolonged detention, including investigation of what if any basis agents had to 1) conduct a search of his wife's vehicle, including the agents' claims that the search was based on a K-9 alert,⁹ 2) cause damage to the vehicle, 3) detain him overnight in harsh and inhumane conditions, 4) coerce him into signing documents he did not understand, 5) seize his personal property, and 6) require him to sign a "Hold Harmless" agreement

⁹ Despite recurring complaints of this nature, Border Patrol does not track false K-9 alerts or base K-9 certification on field performance. See RECORD OF ABUSE, *supra* note 1.

and pay \$3,500.00 in order to recover his vehicle despite the fact he was not charged with any offense.

Mr. Loreto also requests an investigation of Border Patrol's practice of seizing property of innocent people who are not charged with any offense. In addition to a full investigation, Mr. Loreto is requesting that CBP return the \$3,500.00 he was required to pay to recover his wife's vehicle.

Mr. Loreto requests that DHS and/or CBP notify him of the outcome of the investigation, including any disciplinary and remedial actions taken.

3) Border Patrol roving patrol stop, detention without charge, and seizure of property of Francisco Baca – Aug. 7, 2015

Francisco Baca is a resident of Phoenix, Arizona. On Friday, August 7, 2016, Mr. Baca picked up a hitchhiker outside of a Tucson-area restaurant. Approximately twenty minutes later, around 6:30 p.m., a Border Patrol agent initiated a stop of Mr. Baca's vehicle east of Tucson on Interstate 10. The agent did not provide an explanation for the stop but ordered Mr. Baca to get out of the vehicle. The agent asked Mr. Baca if his passenger was a hitchhiker, which Mr. Baca confirmed. Another agent arrived and notified Mr. Baca that the hitchhiker was undocumented. Despite the fact that Mr. Baca had no knowledge of his passenger's legal status, the agents arrested Mr. Baca and drove him to the local Border Patrol station.

Mr. Baca was detained for fourteen hours in two different cells, both of which were extremely cold and uncomfortable. Agents gave Mr. Baca a thin aluminum sheet but it was not sufficient to keep warm. In one cell, there were approximately forty other people and there was not enough room for everyone to sit on the benches provided. Mr. Baca was unable to sleep due to the cold, crowding, and discomfort.

In the morning, agents removed Mr. Baca from the cell and drove him to the Pima County Jail, where he was booked. Mr. Baca spent two nights in custody and on Monday morning Border Patrol agents returned to drive him back to the Border Patrol station where he was detained an additional four hours in another overcrowded cell. Agents finally removed Mr. Baca from the cell and drove him along with three other individuals to a nearby Circle K gas station where he was released without explanation.

Despite releasing him without charge, Border Patrol seized Mr. Baca's vehicle. Mr. Baca has GPS SkyLink installed in his vehicle, which indicated agents drove the car from the scene of the stop (after indicating it would be towed), and continued to turn the vehicle on and off over a period of several days.

On August 17, Mr. Baca received a notice from Asset Forfeiture Officer Dino Moreno indicating Mr. Baca's vehicle was subject to forfeiture under 8 U.S.C. Section 1324(b) for attempting to violate 8 U.S.C. Section 1324(a)(1)(A)(ii). Mr. Baca did not understand the

notice, which provided a list of options, including the option to file an “offer to compromise” with an offer of payment to CBP. Mr. Baca could not afford to pay a lawyer to contest the seizure, so he ultimately paid \$3,000.00 to CBP to recover his vehicle weeks later. Additionally, he was required to sign a Hold Harmless agreement indicating he could not pursue a legal action in connection with his detention and seizure.

Request for Investigation

Mr. Baca requests a full investigation of the circumstances of his stop and prolonged detention, including investigation of what if any basis agents had to 1) detain him overnight in harsh and inhumane conditions, 2) seize his personal property, and 3) require him to pay \$3,000.00 in order to recover his vehicle despite the fact he was not charged with any offense.

Mr. Baca additionally requests DHS and/or CBP investigate the extent to which Border Patrol is arresting and detaining individuals not charged with any offense, including but not limited to individuals accused of—but not charged with—violation of 8 U.S.C. Section 1324(a)(1)(A)(ii),¹⁰ as well as the extent to which Border Patrol is seizing private property based on facts that do not sustain criminal charges. Mr. Baca further requests that DHS or CBP refund the \$3,000.00 he was forced to pay to recover his vehicle.

Mr. Baca requests that DHS and/or CBP notify him of the outcome of the investigation, including any disciplinary and remedial actions taken.

¹⁰ 8 U.S.C. § 1324(a)(1)(A)(ii) makes criminally liable any person who “knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of the law, transports or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law.” Courts have long emphasized that transportation must be “in furtherance of” unlawful entry, and that mere transportation of an unlawfully present individual is not sufficient to constitute a violation of the law. *See U.S. v. Moreno*, 561 F.2d 1321, 1323 (9th Cir. 1977) (“A broader interpretation of the transportation section would render the qualification placed there by Congress a nullity. To do this would potentially have tragic consequences for many American citizens who come into daily contact with undocumented aliens and who, with no evil or criminal intent, intermingle with them socially or otherwise. It could only exacerbate the plight of these aliens and, without adding anything significant to solving the problem, create, in effect judicially, a new crime and a new class of criminals. All of our freedom and dignity as people would be so reduced.”). It appears from this and other similar incidents we have documented that Tucson Sector Border Patrol is abusing this provision, in effect, to criminalize hitchhiking. Agents did not even make an effort to determine whether Mr. Baca had any knowledge of the immigration status of his passenger or any alleged unlawful entry before or after they seized his vehicle and detained him for three days before finally releasing him.

4) Border Patrol roving patrol stop of Linda Ann and Brock Bergman – Oct. 10, 2015

Linda Ann and Brock Bergman are residents of Yuma, Arizona. Brock, who works as a government contractor is Native American and Linda, who teaches elementary school, is Caucasian. On October 10, 2015, the Bergmans were stopped around 5:45 a.m. on Interstate 8 while they were en route to Tucson, Arizona. The Bergmans' customary route from the Yuma area to Tucson—also the fastest route—runs through Dome Valley, Arizona. On this occasion, while passing through Dome Valley, the Bergmans passed a Border Patrol agent parked on the side of the road. That agent took no action, but when the Bergmans arrived to I-8, after about five miles they were pulled over by a different Border Patrol agent.

Mr. Bergman asked why they were stopped, and the agent responded, “You drove through Dome Valley and I didn't recognize your vehicle.” Ms. Bergman observed, correctly, that that did not provide legal basis for a vehicle stop, but the agent insisted that it did.¹¹ The agent told the Bergmans they were not free to leave until they told him where they were coming from and where they were going. The Bergmans subsequently filed a complaint with Border Patrol, which responded to say that the stop was justified.

The Bergmans have been detained by Border Patrol on several other occasions, including vehicle searches of three different vehicles at Border Patrol checkpoints on Highway 95 in the past several years—each search resulting from a false K-9 “alert.” On one occasion, Ms. Bergman was told that her thyroid medication had set the dog off. Ms. Bergman has observed that she has never been stopped or searched when traveling by herself, only when traveling with her Native American husband.

Request for Investigation

Mr. and Mrs. Bergman request a full investigation of the circumstances of the stop as well as the local Border Patrol's response that the stop was justified. An agent's inability to “recognize” a given vehicle on a public roadway does not provide reasonable suspicion to initiate a stop. That this is a common justification offered by agents indicates that Border Patrol agents are still conducting—and their supervisors are condoning—roving patrol stops without regard for Fourth Amendment norms.

Mr. and Mrs. Bergman request that DHS and/or CBP notify them of the outcome of the investigation, including any disciplinary and remedial actions taken.

¹¹ Roving patrol stops cannot be justified 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).

5) Border Patrol roving patrol and checkpoint stops of Joshua Garcia – Oct. 12, 2015 and June 2015

Joshua Garcia is a resident of Tucson, Arizona and a member of the Tohono O’odham Indian Nation. On October 12, 2015, Mr. Garcia and a group of journalists were detained by Border Patrol agents on the Tohono O’odham Indian Reservation. After the group pulled over to the side of the road to confer, a Border Patrol vehicle pulled in behind them. Mr. Garcia identified himself as a tribal member and explained that he was showing his companions around the Reservation. More agents arrived on the scene; one agent questioned Mr. Garcia’s claim to tribal membership. Officers from the Tohono O’odham Police Department arrived and advised Mr. Garcia to leave for his “own safety.” After an hour, Mr. Garcia and his companions were released without explanation.

Mr. Garcia has been stopped and detained by Border Patrol agents on at least three other occasions in recent years, both on and off of the Reservation. For example, around August 2013, Mr. Garcia was driving northbound on Highway 286 when he was stopped by Border Patrol approximately one mile south of Border Patrol’s Highway 286 checkpoint and roughly thirty miles north of the border. A Border Patrol agent explained that Mr. Garcia had been stopped because agents did not recognize his vehicle,¹² that agents “don’t see many cars [they] don’t recognize on this road,” and that all of the cars on the road are “either smugglers or residents.” Mr. Garcia was detained for approximately twenty minutes and released.

Mr. Garcia has also been detained and interrogated on multiple occasions at Border Patrol interior checkpoints. In June 2015, Mr. Garcia, an advisor for the Tohono O’odham Youth Council, was driving with two juvenile passengers when they arrived at the Border Patrol checkpoint on Highway 86. An agent directed them to the secondary inspection area and told them to exit the car. An agent then proceeded to open the car doors and conduct a K-9 inspection of the interior of the vehicle, including the children’s backpacks. When Mr. Garcia objected, an agent yelled at him to stay away, while another agent approached Mr. Garcia with a baton, swearing at and physically pushing Mr. Garcia. Mr. Garcia and the children were detained for over an hour. Mr. Garcia submitted complaints regarding the incident to Border Patrol as well as O’odham leadership, but has still received no response.

Mr. Garcia has had similar experiences at the Highway 86 checkpoints—agents have detained Mr. Garcia and searched his vehicle without reasonable suspicion to prolong Mr. Garcia’s detention or probable cause to search his vehicle. For example, in the fall of 2013, Mr. Garcia and a friend arrived at the same Highway 86 checkpoint around midnight. An agent asked Mr. Garcia for a driver’s license, and then directed him to the secondary inspection area where he was told to exit the vehicle. Agents opened the vehicle and allowed a K-9 to inspect the interior. Mr. Garcia objected to the search and

¹² See *supra* note 11.

asked the agents for their names, which the agents refused to give. Mr. Garcia's friend attempted to video record the search, but an agent approached and tried to wrestle the phone from him. Another agent intervened and Mr. Garcia and his friend were eventually released.

In recent years, members of Mr. Garcia's family have also been detained and interrogated in the course of roving patrol stops and checkpoint inspections, both on the Reservation and in other parts of Tucson Sector.

Request for Investigation

Mr. Garcia requests a full investigation of the circumstances of the October 12, 2015 roving patrol stop, including agents' basis for initiating the stop. Mr. Garcia also requests a full investigation of his stop and detention in June 2015 at the Highway 86 checkpoint, including agents' basis for 1) referring him for secondary inspection, and 2) conducting a K-9 inspection of the interior of his vehicle. Mr. Garcia notes that the Highway 86 checkpoint has been the subject of numerous complaints by other tribal members reporting similar harassment and intimidation by Border Patrol agents, and requests a full and independent investigation of those allegations as well.¹³

Mr. Garcia requests that DHS and/or CBP notify him of the outcome of the investigation, including any disciplinary and remedial actions taken.

6) Border Patrol trespassing and harassment of Betty Lindstrom – Dec. 21, 2015, October 2015, and continuing.

Betty Lindstrom is a resident of Bisbee, Arizona. As a landowner whose property is adjacent to the U.S.-Mexico border, she experiences frequent intrusions onto her land—not by border crossers, but by Border Patrol agents, who are frequently present, alone and in groups, in the vicinity of her home, as well as by speeding Border Patrol vehicles and low flying helicopters.

In October, Ms. Lindstrom's daughter witnessed three men in camouflage exiting the trunk of a vehicle with assault rifles on the border road to the west of the property. She called the Sheriff's Department as well as Border Patrol to report the incident. Later that day, Ms. Lindstrom encountered a man in camouflage and carrying an assault rifle on her property. The man said he was a Border Patrol agent and that he was "tracking bodies." Ms. Lindstrom asked for identification and the man said it was "up the hill" on her property. Ms. Lindstrom went to the location indicated and found two more men in camouflage with assault rifles. Though they were standing by unmarked vehicles with government license plates, the men would not show identification and claimed Ms. Lindstrom was racially profiling them.

¹³ See RECORD OF ABUSE, *supra* note 1 at 13.

Ms. Lindstrom learned subsequently that she had encountered a joint training exercise between Border Patrol and the U.S. military. Despite the fact that at least some of that exercise took place on her property, she was not notified in advance.

On December 21, 2015, Ms. Lindstrom returned home to find a bullet hole in the window above her kitchen sink. Ms. Lindstrom called the Cochise County Sheriff's Department to report the incident, but Sheriffs were unable to find a shell casing (the case Incident Number is C399549).

In recent years, Ms. Lindstrom has seen Border Patrol's footprint on her property expand to an extreme degree. Border Patrol vehicles have overturned on multiple occasions in close proximity to her driveway. Ms. Lindstrom no longer allows her grandchildren to walk to the school bus on her road. Ms. Lindstrom once encountered Border Patrol agents cutting her fences, an occurrence so common that she eventually stopped fencing altogether. When Ms. Lindstrom has called to complain about low flying helicopters, Border Patrol officials have told her that pilots are rotated and don't always know where the residential properties are. Ms. Lindstrom has had difficulty selling portions of the property due to the extreme militarization of the area. Because of the constant presence of Border Patrol, she no longer feels safe in her own home.

Request for Investigation

Ms. Lindstrom requests a full investigation of any unwarranted intrusions onto her property, including the October 2015 "training" exercises. Although Border Patrol agents have authority to enter onto private property within twenty-five miles of the border "for the purpose of patrolling the border," agents do not have authority to do so for the purpose of conducting joint military training exercises. See 8 U.S.C. §1357(a)(3).

Ms. Lindstrom additionally requests an investigation into whether any Tucson Sector agent discharged a weapon in the vicinity of her property on December 21, 2015.

Ms. Lindstrom requests that DHS and/or CBP notify her of the outcome of the investigation, including any disciplinary and remedial actions taken.

7) Border Patrol roving patrol stop, trespassing, and harassment of Clarisa Christiansen – February-March 2016, and continuing.

Clarisa Christiansen is a resident of Three Points, Arizona. On February 16, 2016, Ms. Christiansen was taking her family to the movies when she was pulled over by multiple Border Patrol agents approximately six miles from her home. Border Patrol vehicles blocked the road and one of the agents asked Ms. Christiansen for identification. She complied and requested an explanation for the stop. The agent told her Border Patrol had received a report of a group of suspected migrants entering a vehicle matching her vehicle's description.

The agent asked to search her vehicle and Ms. Christiansen refused, telling agents the only people in the vehicle were her children, including a four-month-old infant, along with her brother and nephew. The agent stated Border Patrol was detaining the family to investigate because the vehicle's windows were tinted and dirty, and threatened to bring a K-9 unit to the scene if Ms. Christiansen did not consent to a search. Ms. Christiansen refused to consent to a search. Border Patrol released the family after approximately thirty minutes. Ms. Christiansen has a video recording of the incident.

This is not the first time Ms. Christiansen and her family have been pulled over without a lawful basis by Border Patrol agents in the vicinity of the family's home. Ms. Christiansen has submitted multiple complaints to DHS and CBP related to a previous roving patrol stop that occurred in May 2013.¹⁴

In addition, Border Patrol agents and vehicles, including low-flying helicopters, regularly trespass onto Ms. Christiansen's private property west of Tucson. Border Patrol helicopters routinely buzz the family's home at extremely low altitudes, causing dwellings to shake, and often disrupting the family's sleep with deafening noise and bright lights. Agents have repeatedly entered the Christiansen's property on foot and on motorized vehicles, despite numerous "No Trespassing" signs posted on the family's land.

For example, early in the morning of February 15, 2016, a Border Patrol helicopter flew just over Ms. Christiansen's house and the houses of her neighbors. That helicopter and other helicopters continued to enter the property for much of the day. A Border Patrol helicopter returned again on February 16, 19, and 25, and again on March 3. Ms. Christiansen has video and photographs of each of these incursions.

Also on February 25, Border Patrol agents parked on a public road adjacent to Ms. Christiansen's property, walked onto the property, and were standing across the (private) road from her house. Ms. Christiansen asked what they were doing and they said they had a "citizen's report" of "people walking around out here." Agents claimed they hadn't seen the private property marker they walked past to enter the property, or the multiple private property signs posted along the public road. Agents left the property, but were then seen driving up and down the adjacent public road, monitoring Ms. Christiansen's house.

¹⁴ In October 2013, Ms. Christiansen submitted a complaint to DHS oversight agencies regarding a roving patrol stop based on a "citizens' report" of suspicious activity in which agents threatened to cut Ms. Christiansen from her seatbelt with a knife. See Clarisa Christiansen, *Why is the Border Patrol Terrorizing Innocent Families?*, ACLU BLOG (Apr. 3, 2014), available at <http://bit.ly/1X54Zo7>. DHS oversight agencies never informed her of the results of their investigation. In May 2015, the ACLU filed a Federal Tort Claims Act claim on behalf of Ms. Christiansen. See Press Release: Claims Filed Against CBP for Unlawful Practices (May 19, 2015), available at <http://bit.ly/1hELo65>. CBP denied the claim in November 2015.

Request for Investigation

Ms. Christiansen requests a full investigation of the circumstances of the February 16 roving patrol stop and detention, including agents' basis for 1) initiating the stop based on a "citizen's report," 2) detaining Ms. Christiansen and her family on the grounds that agents' could not see into her windows, and 3) threatening to detain Ms. Christiansen until a K-9 arrived if she did not consent to a search.

Ms. Christiansen additionally requests a full investigation of Border Patrol's repeated trespass onto her private property, including agents on foot and in low-flying helicopters. Border Patrol agents do not have authority to enter onto private property located more than twenty-five miles from the border. See 8 U.S.C. §1357(a)(3). The Christiansen's property is located roughly forty miles from the U.S.-Mexico border, well outside of the area in which immigration officials can lawfully enter private property.

Ms. Christiansen requests that DHS and/or CBP notify her of the outcome of the investigation, including any disciplinary and remedial actions taken.

8) Border Patrol roving patrol stop and search of Jeffrey Hendricks – March 22, 2016

Jeffrey D. Hendricks is a resident of Long Beach, California. At approximately 7:00 a.m. on March 22, 2016, Mr. Hendricks was driving on the Tohono O'odham Indian Reservation just south of Highway 86, approximately twenty miles north of the U.S.-Mexico border. Mr. Hendricks was driving at the speed limit and in compliance with all traffic laws and vehicle code regulations. A Border Patrol vehicle began to follow Mr. Hendricks as he was driving north from Gu Vo, Arizona, and initiated a stop just south of Highway 86.

There were two Border Patrol agents in the vehicle, one of whom approached Mr. Hendricks and asked him where he was coming from. Mr. Hendricks explained that he had been visiting a friend in Ali Chuk village, and the agent asked him the name of his friend. The agent then asked Mr. Hendricks if he had anyone in the vehicle with him. Mr. Hendricks replied that he did not. The agent asked for identification, and Mr. Hendricks complied. The agent then asked to search the vehicle, and Mr. Hendricks stated that he would not consent to a search. The agent then asked if he could look into the vehicle, and Mr. Hendricks said the agent could look into the car to verify there was no else one in it. Nonetheless, the agent opened the back hatch of the vehicle and again asked if he could search the interior. Mr. Hendricks again said he did not consent to a search.

The agent walked away. Several minutes later, the other agent approached Mr. Hendricks' vehicle, directed him to exit, and notified him that they were waiting for a K-

9 to arrive. Mr. Hendricks asked how long that would take, and the agent responded, “As long as it takes.”

A K-9 arrived at approximately 7:20 a.m. and began to circle the exterior of the vehicle. The dog then started to signal and scratch the door of the vehicle, before jumping into the car through the open passenger window. One of the agents said it was a “hit” for narcotics and “human scent.” The dog then exited the car. The K-9 handler returned to his vehicle with the dog, then brought the dog back to conduct another interior search of Mr. Hendricks’ vehicle.

After approximately forty-five minutes, the agents concluded that Mr. Hendricks was not in possession of any contraband and told him he could leave. The agents involved—identified as Agents L. Youngstead, J. Sikaffy, and D. O’Keffe—never stated the basis for the stop or the search.

Request for Investigation

Mr. Hendricks requests an investigation of the circumstances of his stop and detention, including the agents’ legal basis for 1) initiating the stop, 2) opening Mr. Hendricks’ trunk without probable cause or consent, 3) detaining Mr. Hendricks to wait for a K-9 to arrive, and 4) using the K-9 to search the interior of Mr. Hendricks’ vehicle (a search which did not result in the discovery of any contraband).

Mr. Hendricks also requests an investigation into agents’ recurring practice of prolonging stops absent reasonable suspicion or probable cause solely to await the arrival a service K-9.¹⁵

Mr. Hendricks requests that DHS and/or CBP notify him of the outcome of the investigation, including any disciplinary and remedial actions taken.

9) Border Patrol and Pima County Sheriff checkpoint stop of Terry Bressi – March 26, 2016

Terry Bressi is a resident of Tucson, Arizona. Mr. Bressi’s work requires semi-regular trips to Kitt Peak National Observatory, which in turn requires him to pass through the Highway 86 Border Patrol checkpoint. Mr. Bressi estimates he has driven through the checkpoint several hundred times since it opened in 2008. Mr. Bressi has been harassed and detained on numerous occasions at this checkpoint, and he has videotaped and

¹⁵ The Supreme Court recently held that a traffic stop extended even seven or eight minutes “becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a ticket for the violation.” *Rodriguez v. United States*, 135 S. Ct. 1609, 1612 (2015) (quoting *Illinois v. Caballes*, 125 S. Ct. 834, 837 (2005) (internal quotation marks omitted); see also *Arizona v. Johnson*, 129 S. Ct. 781, 788 (2009) (A seizure remains lawful only “so long as [unrelated] inquiries do not measurably extend the duration of the stop.”).

documented many of these experiences on his website, www.checkpointusa.org. As a result, agents working at the Highway 86 checkpoint know Mr. Bressi or know of him, and he is often waved through without questioning.

On March 26, 2016, Mr. Bressi arrived at the Highway 86 checkpoint. While an Agent Martinez questioned Mr. Bressi about his legal status, an Agent Rivera explicitly identified Mr. Bressi to Field Supervisor Potter. The agents therefore knew who Mr. Bressi was and had no basis to detain him further absent any reasonable suspicion of criminal conduct.

Nonetheless, Field Supervisor Potter insisted that Mr. Bressi answer his questions, and directed Mr. Bressi to roll down his driver's side window. Field Supervisor Potter ordered Mr. Bressi to secondary but had placed a "spike strip" in front of the vehicle preventing Mr. Bressi from moving. Mr. Bressi was detained for over fifteen minutes in the lane of traffic. Field Supervisor Potter returned and Mr. Bressi attempted to hand the agent a copy of an ACLU report regarding unlawful checkpoint practices. The agent let the report fall to the ground and accused Mr. Bressi of "polluting," before picking up the report and looking it over.

After approximately thirty-five minutes, Pima County Sheriff's Deputies arrived to the scene to investigate. After Mr. Bressi refused to answer further questions, Field Supervisor Potter stated that Mr. Bressi was no longer being detained.

Deputy McMillan told Mr. Bressi he could leave the checkpoint but then directed him to pull over to the side of the road. Mr. Bressi complied. Deputies approached Mr. Bressi with one of the Border Patrol agents and asked Mr. Bressi for his license. Mr. Bressi asked why he was being detained, and Deputy McMillan stated that he was being investigated for "criminal littering." Mr. Bressi refused to answer any further questions. Deputy McMillan read Mr. Bressi's Miranda rights and then walked away. Deputy McMillan returned approximately twenty-five minutes later and released Mr. Bressi without charge. In all, Mr. Bressi was detained over an hour. Mr. Bressi has a video recording of the incident and several other similar incidents.

This was the third time the Pima County Sheriff's Department has assisted the Border Patrol in detaining and harassing Mr. Bressi in the past three years. Mr. Bressi has been cited by deputies on two prior occasions—including an April 2014 citation for honking his horn. In each instance, Mr. Bressi successfully challenged the citations in court.

Request for Investigation

Mr. Bressi requests a full investigation of the circumstances of his stop and detention, including agents' basis for 1) continuing to detain Mr. Bressi once his citizenship status was known, and 2) detaining Mr. Bressi in order to wait for Sheriff's Deputies to "investigate."

In light of the fact that Border Patrol agents had no question as to Mr. Bressi's citizenship, they had no basis to detain him.¹⁶ Agents' attempts to harass Mr. Bressi with invented "littering" charges is consistent with past harassment of Mr. Bressi as well as numerous reports the ACLU has received of agents vindictively harassing, detaining, and in some cases attempting to charge criminally individuals who legitimately question agents' authority to engage in unlawful searches and seizures.

Mr. Bressi also requests an investigation into prior incidents in which agents have detained him without any question as to his citizenship, including incidents in which agents detained Mr. Bressi in order to wait for Sheriff's Deputies to "investigate." Mr. Bressi additionally requests an investigation into any other efforts by Border Patrol agents to obtain criminal charges or prosecutions of innocent individuals, including charges dismissed or not accepted for prosecution by state and federal prosecutors due to lack of evidence.

Mr. Bressi requests that DHS and/or CBP notify him of the outcome of the investigation, including any disciplinary and remedial actions taken.

10) Border Patrol checkpoint stop and search of Geoffrey Boyce - April 5, 2016

Geoffrey Boyce is a resident of Tucson, Arizona. On April 5, 2016, Mr. Boyce was returning to Tucson from Arivaca, Arizona, with a group of students when he arrived at the Highway 286 checkpoint near Three Points, Arizona. A male agent asked him if he was a U.S. citizen, as well as the "basis" for his citizenship, and then asked to search the trunk of Mr. Boyce's vehicle. Mr. Boyce stated that he did not consent to a search. A female agent then asked Mr. Boyce if he would rather allow agents to search or wait for a K-9 to arrive to conduct an exterior search of the vehicle. Mr. Boyce said he did not approve of either option. The female agent stated that Mr. Boyce was being detained for an investigation. Mr. Boyce asked to know the basis for the detention, but the agent did not respond and directed him to the secondary inspection area.

After he pulled into secondary, the male agent stated that Mr. Boyce was being investigated because his vehicle "bounced low" as it passed over a speed bump entering the checkpoint area, and that there were "finger marks" in the dust near the trunk. The agent later added that Mr. Boyce seemed "upset," and that this made him suspicious.

¹⁶ According to the Supreme Court, Border Patrol checkpoint stops should be "brief," and all that is required of the vehicle's occupants is "a response to a brief question or two and possibly the production of a document evidencing a right to be in the United States." *United States v. Martinez-Fuerte*, 428 U.S. 543, 558 (1976). Referrals to secondary inspection areas should be "made for the sole purpose of conducting a routine and limited inquiry into residence status that cannot feasibly be made of every motorist where the traffic is heavy." *Id.* at 560. Local residents recognized by agents are supposed to be "waved through the checkpoint without inquiry." *Id.* at 550.

Mr. Boyce stated that he was upset at being arbitrarily detained. The agent further added that he was suspicious of Mr. Boyce because he had stated that he was coming from Arivaca.

Mr. Boyce was detained approximately thirty minutes until a K-9 unit arrived. The K-9 agent asked Mr. Boyce if it was “okay” for him to run his K-9 around the vehicle. Mr. Boyce stated he would rather the agent not do that, at which time the agent stated Mr. Boyce was free to go. Mr. Boyce has an audio recording of the incident.

Request for Investigation

Mr. Boyce requests an investigation of the circumstances of his stop and detention, including what basis agents had to detain him to wait for a K-9 search. The factors eventually identified by the agent—the vehicle “bounced low,” had “finger marks” on it, was coming from Arivaca—describe a large percentage of vehicles that pass through the checkpoint daily.¹⁷

Mr. Boyce requests that DHS and/or CBP notify him of the outcome of the investigation, including any disciplinary and remedial actions taken.

Conclusion

The allegations described above are just a representative sample of the many Border Patrol abuse complaints the ACLU receives from border residents on a regular basis. We have reported similar problems previously, and investigations of those complaints were slow and lacking in transparency. The ACLU had to file a FOIA lawsuit in order to obtain even limited information about the status of some of those complaints, and to our knowledge not a single agent faced any disciplinary consequences in relation to those incidents. We also know that these complaints are vastly outnumbered by the

¹⁷ Border Patrol agents cannot extend checkpoint stops for any length of time for non-immigration purposes—including to summon a drug-sniffing dog—unless they have articulable, “reasonable suspicion” that a crime has been committed. *See United States v. Preciado-Robles*, 964 F.2d 882 (9th Cir. 1992); *United States v. Ellis*, 330 F.3d 677 (5th Cir. 2003); *see also Rodriguez v. United States*, 135 S. Ct. 1609, 1612 (2015). Refusal to consent to a search does not provide agents with reasonable suspicion to extend a stop, and 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) (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).

experiences of countless immigrants who are systematically abused during apprehension and while in Border Patrol custody.

The overwhelming volume of these civil rights complaints—the full extent of which the agency conceals from public view¹⁸—highlights the lack of progress on CBP’s promised reforms to increase transparency and accountability. Simply put, Border Patrol continues to operate as if it were above the law. We hope that in this instance you will take swift action to ensure that when agents violate individuals’ constitutional rights, their actions do in fact result in disciplinary action, and that meaningful reforms are implemented to ensure agency practices are aligned with American laws and values.

Please contact me at jlyall@acluaz.org or (602) 650-1854 if you have any questions. We look forward to hearing from you.

Sincerely,



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¹⁸ See RECORD OF ABUSE, *supra* note 1 at 11.