



An Agency Out Of Control:
Widespread Border Patrol Abuses in Southwest Border Communities

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Congressional Ad-Hoc Hearing:
“Redefining Border Security: Border Communities Demand
To Be Heard In the Comprehensive Immigration Debate”

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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. The American Civil Liberties Union (ACLU) is a nationwide, non-partisan organization of more than a half-million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to preserving and defending the fundamental rights of individuals under the Constitution and laws of the United States. The ACLU of Arizona is the 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, including abuses committed by U.S. immigration officials.

Current immigration reform proposals have generally assumed that the continued expansion of U.S. Customs and Border Protection (CBP) and additional border enforcement measures are either a prerequisite for, or 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.

In the last years six years, CBP’s budget has nearly doubled from a \$6 billion in FY 2006 to more than \$11.7 billion in FY 2012.¹ The ranks of Border Patrol agents have swelled from approximately 12,000 in 2006 to over 21,000 today, with roughly 85 percent deployed at the

U.S.-Mexico border. U.S. taxpayers now spend \$18 billion on immigration enforcement agencies – more than on the FBI, DEA, ATF, U.S. Marshals, and Secret Service *combined*.ⁱⁱ

At the same time, apprehensions by the Border Patrol have declined more than 72 percent over the last decade, and are now at a 40-year low.ⁱⁱⁱ Unauthorized migration from Mexico has decreased dramatically and net migration from Mexico is zero or slightly negative.^{iv} Crossing-related deaths, however, are now at an all-time high.^v

The unprecedented proliferation of border enforcement measures in recent years has resulted in an alarming increase in reported Border Patrol abuses in the Arizona-Sonora region and nationally.^{vi} The rise in civil and human rights violations can be attributed in part to the fact that the expansion of the Border Patrol has not been accompanied by a commensurate growth in training, oversight, and accountability mechanisms; to the contrary, Border Patrol representatives have acknowledged that the agency lowered its training and admissions standards to take on so many new agents, and the meager appropriations for oversight bodies like the Department of Homeland Security's (DHS) Office of Inspector General (OIG) and Office for Civil Rights and Civil Liberties (CRCL) – each lacking in both enforcement authority and internal transparency – have failed to keep pace with the rapid growth of CBP.

These problems are exacerbated by the expanded authority CBP claims to conduct its operations in regions far removed from the border. CBP currently claims authority to conduct warrantless stops and seizures anywhere within 100 miles of our borders – including U.S. coastlines – an area that covers roughly two-thirds of the U.S. population and nine of our ten largest cities. Existing law thus empowers CBP agents to operate in regions where there is minimal likelihood of encountering recent border-crossers. As a consequence, CBP routinely stops and searches U.S. residents, including U.S. citizens and lawful residents, without justification. Such activity is beyond the scope of CBP's stated mission of securing the U.S. border.

CBP is now the largest law enforcement agency in the country, claiming extra-constitutional immigration enforcement 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 federal and state law enforcement agencies across the country to reduce abuses and complaints.

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.

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 and human rights violations by CBP personnel. These include the following general areas:

A. Abuses at Ports of Entry

The ACLU has received numerous complaints from U.S. citizens and lawful residents who have suffered abuse at Arizona Ports of Entry. In May 2012, the ACLU submitted a complaint to DHS on behalf of eleven individuals who experienced extreme mistreatment at Ports of Entry along the southern border; it included accounts of unprovoked assaults and verbal abuse, the unwarranted use of handcuffs and shackles, extended and recurring detention, invasive searches, property destruction and confiscation, and denial of food, water, and legal representation.^{vii} One of these complainants, Alberto Garcia, reported being pulled from his vehicle, handcuffed and detained for hours on end, on multiple occasions, at the Lukeville and Nogales, Arizona Ports of Entry. His repeated mistreatment was believed to be the result of mistaken identity; however, the only remedy offered by the CBP officials who detained him was the suggestion that he change his name. Mr. Garcia has since been handcuffed, detained, and questioned on six additional occasions. More than a year later, DHS has yet to respond to the allegations in eight of the eleven cases reported.

B. Checkpoint Abuses

CBP operates 11 vehicle checkpoints in Arizona, the majority of them more than 25 miles north of the border and/or 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. In June 2012, then 96-year-old former Arizona Governor Raul Castro was detained at a Border Patrol checkpoint and forced to wait upwards of an hour in 100 degree heat while agents searched his vehicle.^{viii} While checkpoints are justified as an immigration enforcement measure, roughly eighty percent of checkpoint arrests involve U.S. citizens.^{ix}

C. Unlawful Roving Patrol Stops

The ACLU is also deeply troubled by documented reports of roving patrol stops in which Border Patrol agents pull over and detain motorists based upon a pretext. Although Border Patrol must have reasonable suspicion of an immigration violation to make a vehicle stop, in practice, Border Patrol agents are stopping 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 that an immigration violation has occurred, as federal courts have recognized.^x The ACLU of Washington recently filed suit against the Border Patrol for engaging in similar practices.^{xi}

In May 2013, Clarisa Christiansen, a Tucson-area resident, reported being stopped by Border Patrol 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. In March 2013, Bryan Barrow, a tourist returning from a hike in one of Arizona's National Parks was detained for several hours in the parking lot while Border Patrol dogs caused hundreds of dollars in damage to his vehicle.^{xii} That stop also occurred approximately 60 miles north of the border. In both cases, these individuals submitted detailed complaints yet Border Patrol refused to compensate them for the senseless destruction of their property.

D. Trespassing on Private Property

Equally disturbing are documented reports of landowners whose properties are intruded upon by Border Patrol agents. While Border Patrol claims authority to enter onto private lands within 25 miles of the border without a warrant, the ACLU has received numerous reports of Border Patrol agents unlawfully entering onto private property more than 25 miles north of 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.^{xiii}

In addition, border residents frequently complain of violations to their privacy and damage to the environment and general quality of life as a result of the massive Border Patrol presence in their communities. Rancher Jim McManus described his experience to NPR: "I spend the morning building up fences, putting things back, gathering up my cows, putting the horses where they need to be. All the while, I've got border patrol and the sheriff parked on the hill watching me with glasses, treating me like I am the bad guy...If you conduct business here, you live here, you're always being watched, you're always being stopped, and you're treated as if you're a criminal."^{xiv} Many other border residents, including ranchers, have expressed reluctance to speak out, fearing retaliation.

E. Racial Profiling and Collaboration with State and Local Law Enforcement

Complaints arising out of Border Patrol collaboration with state and local law enforcement through various state and federal programs –including Operation Stonegarden and Secure Communities, as well as Arizona's SB 1070 – are also common. These programs continue to tear communities and families apart;^{xv} 200,000 parents of U.S. citizen children have been deported in the past two years alone. In addition, such policies encourage local law

enforcement officials to engage in racial profiling and unconstitutional stops and seizures of Native Americans, Latinos, and other people of color – many of them U.S. citizens and some who have lived in the region for generations.

The ACLU has documented numerous complaints of Arizona residents who were stopped on a pretext, and in some cases detained solely for the purpose of investigating legal status. Such practices are clearly unconstitutional, as confirmed in a recent Arizona federal court ruling that Maricopa County Sheriff Joe Arpaio's office engaged in systemic racial profiling. As many other law enforcement officials, including the Major Cities Chiefs Association representing the 50 largest American cities, have recognized, these policies also endanger public safety by diverting limited funds from legitimate police priorities to immigration enforcement, and spread fear and distrust of law enforcement in immigrant communities. In a recent study, more than 40 percent of Latinos, and 70 percent of undocumented immigrants reported they are less likely to contact police if they are the victim of a crime because state and local police are increasingly involved in enforcing immigration laws.^{xvi}

F. Abuse in Short-Term CBP 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^{xvii} 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. For example, the University of Arizona's recently-released report,^{xviii} based on more than 1,000 interviews conducted in migrant shelters from Tijuana to Nuevo Laredo (and in Mexico City), found that:

- 11 percent reported physical abuse by U.S. authorities.
- 23 percent reported verbal abuse by U.S. authorities.
- 45 percent did not receive sufficient food while in U.S. custody.
- 39 percent had possessions taken and not returned by U.S. authorities.
- 26 percent had identifying documents taken and not returned by U.S. authorities.

These figures are consistent with findings by other groups, including the humanitarian aid organization No More Deaths, which from 2008 to 2011 conducted interviews with 12,895 individuals released from Border Patrol custody.^{xix} Of those, 10 percent reported physical abuse by CBP agents, including sexual assault, use of chokeholds, and hitting and kicking of detainees, while 13 percent reported verbal abuse, including the use of racial slurs. Only 20 percent of people in custody for more than two days reported receiving food, while the vast majority of those in need of emergency medical care or medications reported being denied treatment. Children reported denial of water at a higher rate than adults. A 2013 report by the Kino Border Initiative reported one in four migrants surveyed alleged abuse at the hands of the Border Patrol,

more than double the rate of reported abuse by Mexican police, criminal gangs, or any other source.^{xx}

The consistent findings in all of these reports, drawn from thousands of interviews with formerly detained individuals, provide overwhelming evidence of systemic, longstanding human rights violations. However, CBP has failed to adequately address these problems, and currently lacks enforceable short-term custody regulations or a robust inspection regime to ensure that facilities meet basic human rights standards.

G. Due Process Violations

The ACLU also regularly documents due process violations by CBP and other U.S. 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, a practice which is the subject of a recent ACLU class action lawsuit.^{xxi}

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 proceedings 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. Federal prisons are already 39 percent over capacity, due in large part to indiscriminate prosecution of individuals for crossing the border without authorization, often to rejoin their families in the U.S. The majority of those sentenced to federal prison last year were Hispanics and Latinos, who constitute only 16 percent of the population, but are now held in large numbers in private prisons.^{xxii} The federal government has spent \$5.5 billion dollars incarcerating immigrants convicted on entry charges, outside the immigration detention system since 2005. There is no compelling evidence that this incredible expense of resources is either deterring unauthorized immigration or making the public safer — the two claimed objectives of these prosecutions.

Federal immigration removal proceedings present many additional due process problems, including the absence of guaranteed legal representation in court, and the lack of discretion afforded to immigration judges. These problems are particularly acute for the 30,000 individuals detained each day, and 400,000 people detained every year, in our nation's immigration jails.^{xxiii} Immigrants who do not pose any flight risk or public safety concern are routinely detained pending immigration court hearings, despite the enormous cost to U.S. taxpayers of \$2 billion annually.^{xxiv}

H. Excessive Use of Force

Finally, while the ACLU regularly documents excessive uses of force by CBP personnel in a variety of contexts, most disturbing of all is the recurrence of fatal shootings. Since January 2010, at least 20 individuals^{xxv} 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.^{xxvi} In the Arizona-Sonora region, some of the recent victims include:

- 16-year-old Jose Antonio Elena Rodriguez, who was fatally shot in the back seven times on October 10, 2012, when a CBP agent in Nogales, Arizona, fired across the border;
- 19-year-old U.S. citizen Carlos LaMadrid, who was fatally shot in the back four times on March 21, 2011 while allegedly fleeing to Mexico near Douglas, Arizona; and
- 17-year-old Ramses Barron Torres, who was fatally shot in January 2011 while standing in Mexico

Border Patrol does not publicly share information regarding disciplinary actions involving its agents, but agents rarely face prosecution for excessive use of force. The Department of Justice (DOJ) recently declined to prosecute the agents involved in the LaMadrid and Barron killings.^{xxvii} DOJ's investigation of Jose Elena's killing is ongoing.

II. Recommendations

Congress must heed the voices of Southwest 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. From FY2004 to FY2012, the budget for CBP increased by 94 percent to \$11.65 billion, a leap of \$5.65 billion, following a 20 percent post-9/11 increase of \$1 billion.^{xxviii} Despite Border Patrol's doubling in size since 2004, overtime costs alone have amounted to \$1.6 billion over the last six years.^{xxix} 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. Congress should take seriously House Appropriations Committee Chairman Hal Rogers' warning about the irrationality of runaway border spending: "It is a sort of a mini industrial complex syndrome that has set in there. And we're going to have to guard against it every step of the way."^{xxx}

Without substantial changes to CBP policies and practices, civil and human rights abuses such as those described can be expected to continue and worsen. As such, we offer the following recommendations to prevent abuses and to ensure a more transparent and accountable agency.

1. Increase CBP Oversight, Accountability, and Transparency

Systemic, robust, and permanent oversight and accountability mechanisms are essential for addressing and preventing CBP abuses. In recent polling, over 90% of respondents—across party affiliation—said they support creating “greater oversight and accountability” of CBP.^{xxxvi} Despite the well-documented history of abuses by CBP officers, DHS currently lacks both the policies and resources needed for adequate oversight and accountability of CBP personnel. For example, a December 2011 U.S. Government Accountability Office (GAO) report found that CBP does not have reliable training completion records to ensure officers received required training from the Office of Field Operations.^{xxxvii} Investments in oversight mechanisms, such as the Office for Civil Rights and Civil Liberties (CRCL) and Office of Inspector General (OIG), have not kept pace with the growth in the number of CBP officers. While the CBP budget increased by 97% from FY 2004 to FY 2012,^{xxxviii} the OIG budget has increased by only 70% during this same time period.^{xxxix} Similarly, from FY 2004 to FY 2011, the CRCL budget increased only 56%.^{xl} Overall, the combined budget of the OIG and CRCL accounted for less than .005% of the total DHS budget in FY 2011. DHS has a history of failing to appropriately investigate and respond to complaints. For example, in March 2012, DHS OIG had 2361 open investigative cases. Between October 2011 and March 2012, OIG closed only 730 cases, or less than a third of their open cases.^{xli} To deal with this backlog, the OIG transferred cases back to CBP and ICE for investigation, which raises serious conflict of interest concerns.

In order to address the current lack of oversight, Congress should:

- a. *Require DHS to procure equipment and promulgate regulations for the routine recording of CBP encounters - including through body-worn, dashboard, and station cameras - along with privacy protections. Encounters with civilians should be recorded from beginning to end, and the tapes maintained for at least two years for inspection. Such measures have been shown in urban police departments to drastically reduce the occurrence of use-of-force incidents.*^{xlii}
- b. *Create a new DHS Ombudsman for Immigration Related Concerns, and expand the purview of the CIS Ombudsman to cover ICE and CBP. Grant the Ombudsmen full access to ICE and CBP internal documents and information, and require quarterly public reports.*
- c. *Significantly increase investments in oversight mechanisms, such as the Office of Inspector General and Office for Civil Rights and Civil Liberties, to keep pace with increases in CBP personnel.*
- d. *Expand the authority of CRCL to issue subpoenas, with appropriate due process protections, discipline officers it believes have acted improperly, provide individual redress, and compel policy changes.*
- e. *Require DHS to provide all complainants with the outcomes of investigations, including findings of fact, conclusions of law, and a description of a remedy for*

each violation found. Require that complainants shall be informed of the receipt of their complaint by DHS within 30 days, and of the results of an investigation, or in the case of reasonable delay an explanation, within 60 days, and the results of use-of-force investigations within 120 days.

2. Implement Policies for Preventing Excessive Use of Force Incidents

The recurrence of fatal Border Patrol use of force incidents has already attracted international scrutiny, with the government of Mexico, the Inter-American Commission on Human Rights, and the Office of the United Nations High Commissioner for Human Rights registering objections.^{xxxviii} Members of Congress wrote to DHS and DOJ demanding greater accountability and improvements to CBP use-of-force policies^{xxxix} following the May 2010 death of Anastasio Hernandez-Rojas, a 42-year-old construction worker and father of five who died after being beaten and then shocked by a Taser at the San Ysidro, California Port of Entry in May 2010. An April 2012 PBS documentary features video footage of an officer firing a Taser at Mr. Hernandez-Rojas as he lies handcuffed on the ground surrounded by more than a dozen officers, contradicting CBP's official version of the events.^{xl} To date, none of the agents involved have been charged. Nineteen other individuals have been killed by Border Patrol in the past three years alone.

To prevent and properly address excessive use-of-force incidents, Congress should:

- a. Require DHS to collect and make public data on all use-of-force incidents by DHS personnel or contractors.*
- b. Require DHS, in consultation with the Department of Justice, to develop procedures for investigating complaints, disciplining CBP officers, and reviewing use of force incidents. Such procedures should require the agency to provide complainants with the outcome of any use-of-force investigations within one year.*
- c. Require DHS OIG to report annually to Congress on training, complaints, disciplinary actions, and other information and data relating to use-of-force by DHS component agencies, including CBP, ICE, National Guard, and Coast Guard. Such reports should be made publicly available.*
- d. Direct CBP to revise its use-of-force policy to include, inter alia, training and certification on intermediate force devices (such as pepper spray and Tasers); the use of tactical approaches and tactical withdrawal techniques to keep agents away from situations where they place themselves and others in danger, with an emphasis on de-escalation methods that are reinforced post-academy; and the appropriate use-of-force response in cross-border incidents.*

3. Address the Epidemic of Border Crossing Deaths

In 2012, 463 migrants died in the United States while attempting to cross the border, a near record number – at a time when crossings are near 40-year lows. This death toll isn't

projected to decrease. Migrants crossing the border succumb to dehydration and exposure to the desert elements, with very little chance of rescue on the vast southern border. Despite a massive Border Patrol presence along the southwest border, insufficient resources are devoted to lifesaving measures, including the use of Borstar responders and rescue beacons—transmission towers with an emergency button that sends out a distress signal to CBP when activated. Worse, humanitarian aid groups report that Border Patrol agents regularly destroy humanitarian aid supplies, subjecting border crossers to greater risk of death and injury.^{xli} Dangerous repatriation practices, such as lateral repatriation and failure to return property and identity documents compound the risk of harm to migrants.

To address these problems and prevent deaths on the border, Congress should:

- a. Require CBP to increase the ranks of Borstar agents to better respond to migrants in distress.*
- b. Require, and grant DHS funding to deploy, 1000 solar-powered distress beacons in the desert with water drums, radio call buttons, and 911 cell relay to enable migrants and others to access emergency personnel.*
- c. Direct GAO to conduct a study of southwest border enforcement operations since 2001 and the relationship between such operations and death rates on the US-Mexico border.*
- d. Publicly prohibit, investigate, and impose penalties for the willful destruction of humanitarian aid supplies*
- e. Limit deportations to daylight hours, and require DHS to consult with the Department of State and local service providers operating at ports of entry to ensure that Local Arrangements for Repatriation are responsive to the availability of services and evolving security situations in northern Mexican cities.*
- f. Establish inter-agency protocols to ensure return of personal property to migrants prior to repatriation.*

4. Issue Enforceable CBP Short-Term Custody Standards and Appropriately Inspect Short-Term Custody Facilities

As noted above, despite the overwhelming consistency with which numerous organizations have documented systemic human rights abuses in short-term Border Patrol custody, Border Patrol has not adequately addressed these recurrent problems.

In order to address systemic short-term custody abuses, Congress should:

- a. *Require DHS to create enforceable standards applicable to all CBP short-term custody facilities and hold rooms. These standards should address, inter alia:*
 - *Minimum conditions for detention, including the provision of adequate nutrition, appropriate climate, and medical care;*
 - *Dissemination of legal rights information in commonly-spoken languages;*
 - *Full access to government oversight authorities to make regular inspections and monitor constitutional and agency standards in detention facilities*
 - *Access to lawyers, consular officials, family members, and non-governmental organizations; and*
 - *Enforceable policies for identifying and processing credible fear claims of asylum-seekers.*
- b. *Require the Government Accountability Office (GAO) or Office of Inspector General (OIG) to issue a semi-annual report, including information regarding:*
 - *All current short-term custody locations;*
 - *The extent to which current DHS regulations and inspections ensure humane treatment at short-term custody locations;*
 - *Compliance with existing basic minimum detention standards;*
 - *Violations of basic minimum detention standards at existing short-term custody locations; and*
 - *Recommendations for ensuring humane conditions in CBP short-term custody facilities.*

5. Discourage State and Local Law Enforcement Involvement in Immigration Enforcement

Involving state and local governments in immigration enforcement is a recipe for racial profiling and unlawful policing, diverts attention from traditional law enforcement duties, and undermines public trust and safety, as a growing number of municipalities and law enforcement officials have recognized. A recent Arizona District Court ruling that Maricopa County Sheriff Arpaio engaged in systemic racial profiling and unlawful policing illustrates these dangers. As such, extreme proposals like the SAFE Act – which drastically expands state and local involvement in immigration, as well as mandatory detention and grounds for removability – must be rejected, and existing immigration programs involving state and local law enforcement (including Secure Communities and Operation Stonegarden) should be revisited in light of the many problems they create.

6. Cease Wasteful Federal Prosecutions of Entry-Related Offenses

Programs like Operation Streamline that prosecute people for illegal entry or illegal re-entry without assessing their individual circumstances are wasteful contributors to our over-incarceration crisis. Assembly-line judicial processes that do not allow for full legal representation or judicial discretion undermine our American values of due process and equal and fair treatment under the law. Furthermore, we don't need, and can no longer afford, one-size-fits-all approaches that imprison individuals whose only violation was seeking to find work or

reunite with family in the face of an immigration system in desperate need of reform. Congress should scale back, rather than expand upon, these inhumane and ineffective policies.

7. Reduce CBP's Claimed Zone of Authority From 100 to 25 Miles From the Border

Currently, CBP claims authority to conduct warrantless stops and seizures anywhere within “a reasonable distance from any external boundary of the United States.”^{xlii} Outmoded regulations define this “reasonable distance” as 100 air miles from any external boundary of the U.S., including coastal boundaries.^{xliii} In addition, current law permits CBP to enter onto private land within 25 miles of the border. As a result, Border Patrol agents staff checkpoints miles from ports of entry, conduct investigative vehicle stops that would otherwise be prohibited by the Fourth Amendment, and enter private lands without warrants. Ranchers rightly complain about CBP activities interfering with their enjoyment of private property: these are intrusions that would be trespassing anywhere else and lead to property damage without notice or reliable compensation. In addition, private property owners complain that CBP agents frequently and improperly enter private property even beyond the 25-mile limit.

To address these problems, we recommend that Congress:

- a. *Amend 8 U.S.C. § 1357 to restrict CBP's exceptional authority to within 25 miles of a border, and reduce CBP authority to enter private property to within 10 miles of the border.*
- b. *Restrict use of surveillance technology, including drones.*

ⁱ See Meissner, Doris, Kerwin, Donald M., Chishti, Muzaffar and Bergeron, Claire. *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute, January 2013, available at <http://www.migrationpolicy.org/pubs/enforcementpillars.pdf>.

ⁱⁱ Migration Policy Institute, *Immigration Enforcement*, *supra*.

ⁱⁱⁱ *Net Migration from Mexico Falls to Zero – and Perhaps Less*, Pew Research Center, April 23, 20130, available at, <http://www.pewhispanic.org/2012/04/23/net-migration-from-mexico-falls-to-zero-and-perhaps-less/>. The Yuma, Arizona sector, for example, has seen a 95 percent decline in apprehensions since 2005 while the number of agents has tripled. See Richard Marosi, *Plunge in border crossings leaves agents fighting boredom*, LA TIMES, Apr. 21, 2011, available at, <http://articles.latimes.com/2011/apr/21/local/la-me-border-boredom-20110421>

^{iv} Philip E. Wolgin and Ann Garcia, “What Changes in Mexico Mean for U.S. Immigration Policy.” (Center for American Progress, Aug. 8, 2011), available at http://www.americanprogress.org/issues/2011/08/mexico_immigration.html

^v Cindy Carcamo, *In Arizona, Border Crossings Down, But Migrant Deaths on the Rise*, LA TIMES, June 5, 2013, available at, <http://articles.latimes.com/2013/jun/05/nation/la-na-nn-border-immigrant-deaths-20130605>

^{vi} In 2009, while CBP grew by 34%, complaints lodged against CBP increased nearly 50% from the previous year.

^{vii} See https://www.aclu.org/files/assets/aclu_2012_cbp_abuse_complaint_2.pdf

^{viii} Jeff Biggers, *Not the First Time Arizona Governor Stopped*, Salon, July 5, 2012, available at, http://www.salon.com/2012/07/05/not_the_1st_time_ariz_gov_stopped/

^{ix} Andrew Becker, *Four of Five Border Patrol Drug Busts Involve US Citizens*, Records Show, Center for Investigative Reporting, March 26, 2013, available at, <http://cironline.org/reports/four-five-border-patrol-drug-busts-involve-us-citizens-records-show-4312>

^x See e.g., *United States v. Venzor-Castillo*, 991 F.2d 634, 639 (10th Cir. 1993) (“The further one gets from the border, the greater the likelihood the volume of legitimate travelers will increase. Thus, the more attenuated the international border becomes, the greater the significance distance assumes in the equation used to measure the power to stop only on reasonable suspicion when the officer has no knowledge whatsoever about the point of origin of a particular traveler’s route.”); *U.S. v. Rubio-Hernandez*, 39 F.Supp.2d 808, 810 (W.D. Texas 1999) (“If there is no reason to believe that the vehicle has come from the border, i.e., if the ‘vital element’ rule has not been met, all other factors must be examined ‘charily.’ See *U.S. v. Pena-Cantu*, 639 F.2d 1228, 1229 (5th Cir. 1981); *Pallares-Pallares*, 784 F.2d at 1233. Accordingly, the emphasis under these rules is whether the vehicle originated at the border.”)

^{xi} See http://www.aclu-wa.org/sites/default/files/attachments/2012-04-26--Complaint_0.pdf

^{xii} Perla Trevizo, *Hiker Wants Ariz. Park Ranger Fired Over Search*, Arizona Daily Star, May 20, 2013, available at http://azstarnet.com/news/local/govt-and-politics/hiker-wants-ariz-park-ranger-fired-over-search/article_86be1d11-03a6-591a-9661-c71f8f8175a8.html

^{xiii} Todd Miller, *War on the Border*, NY TIMES, August 18, 2013, available at

<http://www.nytimes.com/2013/08/18/opinion/sunday/war-on-the-border.html?pagewanted=all&r=0>

^{xiv} Michel Marizco, *Living Life Under Federal Watch On The Border*, Fronteras/NPR, August 5, 2013, available at, <http://www.fronterasdesk.org/content/living-life-under-federal-watch-border>

^{xv} See Testimony of Vicki Gaubeca, Director of the ACLU’s Regional Center for Border Rights, *Lines That Divide Us: Failure to Preserve Family Unity in the Context of Immigration Enforcement at the Border*, Congressional Ad-Hoc hearing, April 10, 2013, available at https://www.aclu.org/files/assets/vicki_gaubeca_written_statement-final.pdf

^{xvi} Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, University of Illinois at Chicago, May 2013, available at

http://www.uic.edu/cuppa/gci/documents/1213/Insecure_Communities_Report_FINAL.pdf

^{xvii} See Binational Defense and Advocacy Program, Northern Border Initiative, *Human Rights Violations of Mexican Migrants Detained in the United States 2011-2012* (May 2013), available at

<http://programadefensaincidencebinacional.files.wordpress.com/2012/05/2do-informe-violaciones-a-ddh-de-mexicanos-deportados-de-usa.pdf>; Binational Defense and Advocacy Program, Northern Border Initiative, *Human Rights Violations of Mexican Migrants Detained in the United States*, May 2010-2011 (Jan. 2012), available at <http://www.lawg.org/storage/documents/Mexico/informe-violaciones-derechos-humanos-pdib-27marzo12.pdf>; University of Arizona, *In the Shadow of the Wall: Family Separation, Immigration Enforcement and Security*. (Mar. 15, 2013), 24, available at: http://las.arizona.edu/sites/las.arizona.edu/files/UA_Immigration_Report2013web.pdf; Kino Border Initiative, *Documented Failures: The Consequences of Immigration Policy at the U.S.-Mexico Border* (Feb. 13, 2013), available at http://www.jesuit.org/jesuits/wp-content/uploads/Kino_FULL-REPORT_web.pdf; Amnesty International, *In Hostile Terrain: Human Rights Violations in Immigration Enforcement in the US Southwest* (2012), available at http://www.amnestyusa.org/sites/default/files/ai_inhostileterrain_final031412.pdf; Washington Office on Latin America, *Beyond the Border Buildup: Security and Migrants Along the U.S.-Mexico Border* (Apr. 2012),

http://www.seguridadcondemocracia.org/administrador_de_carpetas/biblioteca_virtual/pdf/beyondborderbuildup_wola.pdf; No More Deaths, *A Culture of Cruelty: Abuse and Impunity In Short-term U.S. Border Patrol Custody* (2011), available at <http://nomoredeaths.org/cultureofcruelty.html>

^{xviii} University of Arizona, *In the Shadow of the Wall*, *supra*

^{xix} No More Deaths, *A Culture of Cruelty*, *supra*

^{xx} Kino Border Initiative, *Documented Failures*, *supra*

^{xxi} Elise Foley, *ACLU Sues Border Patrol, Immigration Officials Over Voluntary Departures Program*, Huffington Post, June 4, 2013, available at http://www.huffingtonpost.com/2013/06/04/aclu-voluntary-departures_n_3384191.html

^{xxii} U.S. Sentencing Commission, 2011 ANNUAL REPORT, Chapter 5, available at

http://www.ussc.gov/Data_and_Statistics/Annual_Reports_and_Sourcebooks/2011/2011_Annual_Report_Chap5.pdf

^{xxiii} Described in greater detail in the testimony of the ACLU’s Ahilan T. Arulanantham, *Building an Immigration System Worthy of America’s Values*, Senate Judiciary Committee, March 20, 2013, available at

https://www.aclu.org/files/assets/testimony_of_ahilan_arulanantham_for_3_20_13_senate_judiciary_committee_hearing_final_3_22_13.pdf

^{xxiv} DHS FY 2012 Budget Justification, ICE Salaries and Expenses, 938, available at <http://www.dhs.gov/xlibrary/assets/dhs-congressional-budget-justification-fy2012.pdf>; Immigration and Customs Enforcement (ICE) Budget Expenditures FY 2005 -FY 2010, Transactional Records Access Clearinghouse, Syracuse University (2010), available at <http://trac.syr.edu/immigration/reports/224/include/3.html>

^{xxv} Jorge A. Solis, 28, shot and killed, Douglas, AZ (Jan. 4, 2010); Victor Santillan de la Cruz, 36, shot and killed, Laredo, TX (March 31, 2010); Anastasio Hernandez Rojas, 32, tortured to death, San Diego, CA (May 28, 2010); Sergio Adrian H. Huereca, 15, shot and killed, El Paso, TX (June 7, 2010); Juan Mendez, 18, shot and killed, Eagle Pass, TX; Jesus E. Castro Romo, 30, survived shooting, Santa Cruz County, AZ (Nov. 16, 2010); Ramses Barron Torres, 17, shot and killed, Nogales, Mexico (Jan. 5, 2011); Roberto Pérez Pérez, beaten while in detention and died due to lack of proper medical care, San Diego, CA (Jan. 13, 2011); Alex Martinez, 30, shot and killed, Whatcom County, WA (Feb. 27, 2011); Carlos Lamadrid, 19, shot and killed, Douglas, AZ (March 21, 2011); Jose Gutierrez Guzman, 41, tased into a comatose state, survived, San Luis port of entry, AZ (March 30, 2011); Jose Alfredo Yañez Reyes, 40, shot and killed, Tijuana, Mexico (June 21, 2011); Gerardo Rico Lozana, 20, shot and killed near Corpus Christi, TX (Nov. 3, 2011); Byron Sosa Orellana, 28, shot and killed near Sells, AZ (Dec. 6, 2011); Alexander Martin, 24, died in car explosion that may have been caused by Border Patrol tasers (March 15, 2012); Charles Robinson, 75, shot and killed, Jackman, ME (June 23, 2012); Juan Pablo Perez Santillán, 30, shot and killed on the banks of the Rio Grande, near Matamoros, Mexico (July 7, 2012); Guillermo Arévalo Pedroza, 36, shot and killed, Nuevo Laredo, Mexico (Sept. 3, 2012); Valerie Tachiquin-Alvarado, 32, shot and killed, Chula Vista, CA (Sept. 28, 2012); José Antonio Elena Rodriguez, shot and killed, Nogales, Sonora (Oct. 11, 2012); an Margarito Lopez Morelos, 19, shot and killed in the Baboquivari Mountains, AZ (Dec. 3, 2012).

^{xxvi} See also PBS, “Need to Know: Crossing the Line at the Border,” April 20, 2012, available at <http://www.pbs.org/wnet/need-to-know/security/video-first-look-crossing-the-line/13597/>

^{xxvii} Murphy Woodhouse, *Teen’s Mom Learns from the NI BP Agent Will Not Be Charged*, Nogales International, August 13, 2013, available at http://www.nogalesinternational.com/breaking_news/teen-s-mom-learns-from-the-ni-bp-agent-will/article_d59d1196-01ea-11e3-8fa5-0019bb2963f4.html

^{xxviii} Michele Mittelstadt et al., *Through the Prism of National Security: Major Immigration Policy and Program Changes in the Decade since 9/11*, Migration Policy Institute, Aug. 2011, 3, available at http://www.migrationpolicy.org/pubs/FS23_Post-9-11policy.pdf

^{xxix} *Border Patrol overtime, staffing up; arrests down*, Associated Press, Feb. 5, 2012

^{xxx} Ted Robbins, *U.S. Grows an Industrial Complex Along the Border*, NPR, Sept. 12, 2012, available at <http://www.npr.org/2012/09/12/160758471/u-s-grows-an-industrial-complex-along-the-border>

^{xxxi} Belden Russonello Strategists, *American attitudes on immigration reform, worker protections, due process, and border enforcement*, April 2013, available at, <http://cambio-us.org/wp-content/uploads/2013/04/BRS-Poll-for-CAMBIO-APRIL-16-2013-RELEASE.pdf>

^{xxxii} Government Accountability Office, “Additional Steps Needed to Ensure That Officers Are Fully Trained,” (December 2011), at <http://www.gao.gov/assets/590/587314.pdf>.

^{xxxiii} Michele Mittelstadt et al., *Through the Prism of National Security*, *supra*

^{xxxiv} DHS Office of the Inspector General, *Fiscal Year 2004 Annual Performance Plan, DHS Office of the Inspector General*, pp.6 http://www.oig.dhs.gov/assets/OIG_APP_FY04.pdf; DHS, “FY 2014 Budget in Brief,” pp. 6 <http://www.dhs.gov/sites/default/files/publications/MGMT/FY%202014%20BIB%20-%20FINAL%20-508%20Formatted%20%284%29.pdf>

^{xxxv} DHS Office of Civil Rights and Civil Liberties, *Fiscal Year 2011 and Annual Report to Congress*, pp. 6 (June 2012) <http://www.dhs.gov/xlibrary/assets/crcl-annual-report-fy-2011-final.pdf>

^{xxxvi} *Id.*

^{xxxvii} Ian Lovett, *In California, A Champion for Police Cameras*, NY TIMES, August 21, 2013, available at <http://www.nytimes.com/2013/08/22/us/in-california-a-champion-for-police-cameras.html?pagewanted=all>

^{xxxviii} See, e.g., Bret Stephens, *The Paradoxes of Felipe Calderón*, Wall Street Journal, Sept. 28, 2012, available at http://online.wsj.com/article/SB10000872396390443916104578022440624610104.html?mod=hp_opinion; IACHR condemns the recent death of Mexican national by U.S. Border Patrol Agents, July 24, 2012, available at http://www.oas.org/en/iachr/media_center/PReleases/2012/093.asp; U.N. Radio, *United States urged to probe deaths of Mexican migrants at border*, May 29, 2012, available at,

<http://www.unmultimedia.org/radio/english/2012/05/united-states-urged-to-probe-deaths-of-mexican-migrants-at-border/>

^{xxxix} Congressional sign-on letter sent May 10, 2012 to Secretary Janet Napolitano *available at*:

<http://serrano.house.gov/sites/serrano.house.gov/files/DHSletter.pdf>; letter sent to DHS Inspector General Charles Edwards *available at*: <http://serrano.house.gov/sites/serrano.house.gov/files/DHSIGletter.pdf>; letter sent to DOJ Attorney General Eric Holder *available at*: <http://serrano.house.gov/sites/serrano.house.gov/files/DoJLetter.pdf>

^{xl} PBS, *Need to Know: Crossing the Line at the Border*, April 20, 2012, *available at*, <http://www.pbs.org/wnet/need-to-know/security/video-first-look-crossing-the-line/13597/>

^{xli} *See* No More Deaths, *A Culture of Cruelty*, *supra*; *see also*, PBS, *Need to Know: Crossing the Line, Part 2*, July 20, 2012, I *available at*, <http://www.pbs.org/wnet/need-to-know/video/need-to-know-july-20-2012-crossing-the-line-part-2/14271/>

^{xlii} 8 U.S.C. § 1357(a)(3)

^{xliii} 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; F.R.Crim.P. 7; F.R.C.P. 45.