



American Civil Liberties Union (ACLU) Statement on:

Human Rights Violations on the United States-Mexico Border

**Submitted to Office of the United Nations High Commissioner for Human Rights
Side Event on**

3+XPDQ 5LJKWV DW , QWHUQDWLRQDO %RUGHU

25 October, 2012

67th Session of the United Nations General Assembly

The following statement is submitted on behalf of the American Civil Liberties Union¹ (ACLU), a non-partisan, non-profit, nation-wide organization that has worked daily in courts, communities and legislatures across the United States since 1920 to protect and preserve the fundamental rights and liberties of individuals set forth in the Bill of Rights of the U.S. Constitution, ratified treaties, federal and state law. The ACLU is committed to ensuring that the fundamental protections of due process, equal protection and the rights to human dignity, physical integrity and freedom from abuse and lethal use of force by authorities are extended to every person in the United States or subject to its effective control or power, regardless of immigration status.

These rights, among others, are not only guaranteed to individuals without discrimination in (discr)4(im)-3(inat)]

do so in compliance with national laws and international legal obligations.

In the last decade, the United States has relied heavily on enforcement-only approaches to address migration, using deterrence-based border security strategies to control its borders. The 8 6 JRYHUQPHQW KDV H[SDQG HG WKH SRZHUV R/LUHQWHUDORU 3 & RQ V)W H W X W R Q V Z L W K and sea border and has increasingly criminalized unauthorized migration by expanding criminal prosecution of individuals who violate federal immigration laws rather than relying on the extensive federal civil enforcement VFKHPH 7KH FUHDWLRQ RI DQ 3H[FHSWLRQDOL]HG´ V SDFH I migration have served to justify the militarization of the U.S.-Mexico border and the promulgation of border security policies and practices that lead to extensive civil and human rights abuses, including the deaths of more than 5,600 unauthorized border crossers. In addition, at least 18 individuals have died since January 2010 as the result of alleged excessive use of force by U.S. Customs and Border Protection (CBP) officials, including six who were under the age of 21 and five who were U.S. citizens. At least two other individuals survived serious injuries inflicted by CBP officers in the same timeframe.

To block consideration of pragmatic immigration policies, elected officials have developed a national narrative around immigration that emphasizes criminality, using buzzwords such as

approximately \$1.02 billion annually according to Grassroots Leadership^{9 2} for committing the crime of looking for the opportunity to support their families or reunite with family members already living in the United States. Operation Streamline has led to unprecedented mass incarceration of Hispanics and Latinos, who in the last year of available statistics were the majority of those sent to federal prison despite constituting only 16 percent of the population.¹⁰

Abuse and Impunity for U.S. Customs and Border Protection (CBP)

7KH 8QLWHG 6W DWHV¶ sed BFDx security strategies, criminalization of XQGRFXPHQWHG LPPLJUDQWV E\ PHDQV RI 32SHUDWLRQ 6W reluctance to create a common-sense immigration process has created a deadly situation on the U.S.-Mexico border. Rights advocates have long documented the rising numbers of migrant deaths. In 2009, the ACLU of San Diego and Imperial Counties released a joint report¹¹ with 0H[LFR¶ UxtÁ HRd LFLH ° € U eriTg3<0046>4ireport

KH DUW DW WDFN ³ VHYHUDO ORRVH WHHWK EUXLVLQJ WR K
H\HOLGV ILYH EURNHQ ULEV DQG D GDPDJHG VSLQH '

Deeply concerned by the revelations of the PBS special, 16 members of Congress submitted a letter demanding an investigation to DHS Secretary Janet Napolitano,¹⁵ DHS Acting Inspector General Charles K. Edwards,¹⁶ and Attorney General Eric Holder.¹⁷ It took two years² and 3%⁶ of the federal budget to fund the program.¹⁸

On May 9, 2012, the ACLU filed an administrative complaint with the DHS Office of Inspector General and Office for Civil Rights and Civil Liberties documenting 11 cases of such abuse that occurred at ports of entry along the U.S.-Mexico border.²³ The cases represent a pattern of abuse by CBP at ports of entry against individuals of varying immigration statuses, including many U.S. citizens.

, Q RQH F DVH GRFXPHQWHG LQ WKH \$ & / 8 ¶ V 0 D \ DGPLQLV
E \ 3 % 6 ¶ V ³ 1 H H G W R . Q R Z ´ S U R J U D P D % R U G H U 3 D W U R O D J H
³ - D Q H ´ R H ´ D W D F K H F N S R L Q W Q R U W K R I / D V 8 U X F H V 1 H Z
to conduct an investigation into the assault, Ms. Doe was intimidated by CBP officials at a port of entry in El Paso, Texas, who insisted she be subjected to a private pat-down before meeting with investigators despite protests from a state police officer who was investigating the case and an ACLU representative. Re-traumatized by the ensuing search and questioning by CBP officials, Ms. Doe requested that the criminal investigation be dropped.

Inadequate oversight and unenforceable custody standards have contributed to cruel, degrading and other ill-treatment of individuals detained and held in the custody of CBP personnel at ports of entry or short-term holding facilities along the U.S.-Mexico border. Non-governmental organizations have extensively documented systemic abuses of migrants in CBP custody. No More Deaths, a non-profit humanitarian organization in Arizona, has conducted two detailed investigations into BP abuse, the most recent of which included 4,130 interviews and resulted in their report *A Culture of Cruelty*, which documented thousands of incidents of abuse from Fall 2008 to Spring 2011.²⁵ No More Deaths submitted the results of this investigation to the Inter-American Commission on Human Rights on March 27, 2012.²⁶ Amnesty International also recently released a report documenting abuses by CBP against migrants in CBP custody.²⁷ In D G G L W L R Q D F R D O L W L R Q R I P L J U D Q W V K H O W H O L D D Q G K X P with the United States, called the Northern Border Initiative Bi-national Advocacy and Defense Program, have been working together to document testimonies of abuse from recently repatriated Mexican nationals.²⁸

These reports point to a pervasive culture of abuse by CBP against migrants in their custody, including: denial of food and water; overcrowding in holding rooms that may also be unreasonably hot or cold; denial of medical care for acute or chronic conditions; verbal abuse ranging from profanity to racial slurs and sexual harassment; physical abuse that borders on torture with individuals forced to remain in prone positions for extended periods of time; psychological abuse often paired with threats or intimidation to coerce individuals into signing legal documents they do not understand; confiscation of personal belongings prior to repatriation, including critical identity documents and currency; and excessive use of force, including deadly force, through beatings, Tasers or firearms.

CBP agents have also been found to engage in other types of criminal misconduct. In testimony provided on May 16, 2012 before a U.S. House Committee on Homeland Security, Subcommittee on Oversight, Investigations, and Management hearing, Deputy Commissioner 7 K R P D V : L Q N R Z V N L V W D W H G ³ 6 L Q F H 2 F W R E H U indicted for acts of corruption including drug smuggling, alien smuggling, money laundering,

- CBP should reform its use-of-force training and policies, including the incorporation of de-escalation techniques commonly used as best practices by police departments in the United States and the provision of defensive equipment that reduces the need to use force.
- CBP should implement mechanisms to prevent Border Patrol and CBP agents from engaging in tactics that coerce individuals into giving up their rights to challenge removal, such as ensuring interpreters and immigration attorneys are available to verify that apprehended individuals understand the documents they are signing and the consequences of signing those documents.
- The U.S. Congress should establish a permanent external, independent oversight commission that is charged with investigating and responding to complaints about CBP abuses.
- DHS should issue enforceable standards governing how CBP agents interact with individuals in short-term custody and in secondary inspection areas at ports-of-entry and interior checkpoints, in order to prevent abuse and ensure constitutionally-guaranteed and humane conditions of confinement and due process.
- DHS should implement video or audio recording mechanisms to record encounters between CBP agents and individuals in short-term custody or in secondary inspection areas at ports-of-entry and interior checkpoints. In addition, dashboard cameras should be installed on CBP moving patrol vehicles and unmarked cars (including BP), as well as officer-mounted cameras for recording away from vehicles.
- Individuals apprehended by immigration officials should not face criminal charges of illegal entry or illegal re-entry. Instead, the U.S. government should refer these individuals to civil immigration proceedings.
- Victims of CBP abuse should be ensured access to information about investigations and the right to judicial and administrative remedies to recover damages, especially in deadly-force incidents.

The ACLU thanks the High Commissioner for Human Rights and her staff for convening government officials, experts and members of civil society to explore the state of human rights at L Q W H U Q D W L R Q D O E R U G H U V D Q G Z H X U J H W K H L Q W H U Q D W L record of ignoring the basic rights of individuals at our international borders.

¹ ACLU statement was drafted by the ACLU Human Rights Program and the ACLU of New Mexico ¶ Regional Center for Border Rights with contributions from the ACLU border affiliate offices of San Diego and Imperial Counties, Arizona, and Texas, as well as the ACLU , P P L J U D Q W V ¶ 5 L J K W V 3 U R M H F W D Q G : D V K L G (WLO).

² OHCHR, *Expert Consultation of Human Rights at International Borders: Exploring Gaps in Policy and Practice*, 22-23 March 2012, available at <http://www.ohchr.org/EN/Issues/Migration/Pages/OHCHRExpertconsultationExploringGapsinPolicyandPractice.aspx>.

³ Department of Homeland Security, *About DHS: Mission: Prevent Terrorism and Enhance Security*, <http://www.dhs.gov/prevent-terrorism-and-enhance-security>.

⁴ Customs and Border Protection Agency, *United States Border Patrol: Border Patrol Agent Staffing by Fiscal Year (Oct. 1st through Sept. 30th)*,

