

The Honorable Barack Obama
President of the United States
White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

CC: The Honorable Jeh Johnson, Secretary, U.S. Department of Homeland Security
The Honorable Alejandro Mayorkas, DHS Deputy Secretary
The Honorable R. Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection
The Honorable Cecilia Muñoz, Assistant to the President, Director of the Domestic Policy Council
Megan H. Mack, DHS Officer for Civil Rights and Civil Liberties
John Roth, DHS Inspector General

August 27, 2014

Dear President Obama:

We write as groups representing and defending the rights of border communities to urge that your humane enforcement review address badly needed reforms to border enforcement. We appreciate that Secretary Johnson and CBP Commissioner Kerlikowske have brought new leadership and fresh perspectives. Many of the undersigned presented the Commissioner in May with recommendations to promote humane border enforcement policy and practice.¹ Border residents, who number in the tens of millions, need to see tangible changes in the way CBP's operations affect their daily lives.

Extensive, sustained advocacy and media coverage have brought to light institutional concerns about CBP, an agency which your enforcement review can reshape in a positive and humane manner without sacrificing border security. Indeed, the quality of life, safety, and prosperity of border communities would only be enhanced by measures that align CBP, the nation's largest law enforcement agency, with best law-enforcement practices.

Recent interviews given by James Tomsheck, formerly CBP's Assistant Commissioner for the Office of Internal Affairs and currently a senior Border Patrol official,ⁱ reveal the most serious allegations yet of improperly investigated, covered-up excessive uses of force and corruption. Tomsheck cites a culture of impunity at CBP, noting that Border Patrol officials have consistently tried to change or distort facts to make fatal shootings by agents appear to be "a good shoot." Perhaps most alarmingly of all, Tomsheck said he believes that thousands of employees hired by CBP during an unprecedented expansion of the agency after 9/11 are potentially unfit to carry a badge and gun.ⁱⁱ

¹ Letter of May 27, 2014 to the Honorable R. Gil Kerlikowske, available at <http://soboco.org/wp-content/uploads/2014/05/Kerlikowske-CBP-reforms-sign-on-FINAL-w-signatures.pdf>

While all our prior recommendations continue to be priorities – in particular CBP reforms to its custody standards and complaint procedures – we limit ourselves here to emphasizing four changes necessary to making DHS’s border enforcement more humane:

- Prompt deployment of body-worn and dashboard cameras to record CBP officers’ and agents’ interactions with the public, using a framework of appropriate privacy protection and limited data retention.
- Revision of CBP’s Consequence Delivery System: (i) to permit the appropriate exercise of prosecutorial discretion for persons with equities apprehended by CBP; and (ii) to deemphasize criminal prosecution of migrants absent significant aggravating factors.
- Reduction of CBP’s 100-mile zone of operations, including shrinking the 25-mile limit for entry onto private property without a warrant.
- Significant expansion of rescue beacon deployment to save migrants’ lives.

We discuss each of these reforms in turn and trust that your review will treat our border regions equitably, putting in place a more humane enforcement regime that has been sorely lacking.

I. Body-worn and dashboard cameras

Body-worn and dashboard cameras – deployed within an appropriate policy framework that protects the recordings’ integrity from improper use and includes strong privacy protections for officers and the public – should be mandated and funded from existing appropriations for all CBP enforcement encounters with the public. These cameras are fast becoming a standard, cost-effective best law-enforcement practice in police jurisdictions across the country. They are a “win-win” for law enforcement and the public because false accusations can be quickly disproved, while abuses are recorded to avoid reliance on the parties’ statements. A study of the Rialto, California, Police Department spearheaded by Chief Tony Farrar showed that the use of officer-mounted cameras resulted in an 88% decrease in complaints filed against officers and a 60% decrease in incidents where officers used force, with those officers not wearing cameras being twice as likely to use force.ⁱⁱⁱ CBP must fast-track its year-old promise to pilot cameras.^{iv}

II. Consequence Delivery System

We urge a thorough review of CBP’s “consequence delivery system” for punishing apprehended persons to: (i) reduce the number of deportations without hearings and (ii) significantly curtail the criminalization of migrants. Deportations initiated by CBP frequently lack due process by depriving individuals of hearings before an immigration judge. The use of expedited removal, where a single CBP officer or agent can decide to deport someone, has long raised the concern that individuals potentially eligible for asylum or other relief are mistakenly deported. The U.S. Court of Appeals for the Seventh Circuit commented that expedited removal is “fraught with risk of arbitrary, mistaken, or discriminatory behavior” because a CBP officer can decide to remove someone “free from the risk of judicial oversight.”^v

A humane enforcement regime would also not rely on wasteful “zero tolerance” programs like Operation Streamline to overprosecute and criminalize migrants, and then confine them in substandard private prisons. Short of ending its participation in Operation Streamline, DHS should deprioritize § 1325 (illegal entry) and § 1326 (illegal reentry) referrals for individuals who have not, within the previous five years, completed sentences for serious, violent felonies.^{vi}

Finally, persons apprehended by CBP should be treated equally with those apprehended by ICE for purposes of prosecutorial discretion. It is inconsistent with efficient prioritization of resources, arbitrary, and unfair to make deportation decisions based on the happenstance of where or by which agency an individual is apprehended.^{vii} Rather, individual equities such as length of residence in the United States, family ties to this country, and hardship considerations must carry equal weight for border residents who contribute daily to the prosperity of their communities. Families should not be torn apart anywhere: Our border regions cannot continue to be treated as open-season areas for mass deportation of longtime residents who are parents and children of valued community members.

III. 100-Mile Zone

CBP’s 100-mile zone of operations from any land or sea border represents a distance that has no statutory basis and originated 60 years ago. Regulations require CBP to define “reasonable distance” using “topography, confluence of arteries of transportation leading from external boundaries, density of population, possible inconvenience to the traveling public, types of conveyances used, and reliable information as to movements of persons effecting illegal entry into the United States.”^{viii} The default 100-mile zone CBP uses includes two-thirds of the U.S. population, entire states like Maine and Florida, and almost all of the country’s top cities.

Within this zone, constitutional protections are, in practice, attenuated. CBP maintains interior checkpoints and roving patrols located far from the border to apprehend individuals who are not “recent border crossers” by any stretch of the imagination. The 100-mile zone has converted CBP into an interior enforcement agency, disrupting residents’ lives and adding military equipment like drones. CBP frequently disregards any geographic limitation, including the current 25-mile limit on entering private lands without a warrant.^{ix}

By setting up checkpoints and conducting roving patrols many miles from the border, CBP does little to further border security goals^x but much to harm the quality of life of those who live and work in the border region.^{xi} Residents often experience abuses including unjustified detentions, unlawful searches, racial profiling, harassment, and assault.^{xii} Sector by sector, DHS must reduce CBP’s 100-mile zone of operations, including shrinking the 25-mile limit for entry

onto private property without a warrant (the zone was reduced to 25 miles at the northern border - 10 miles for private property - in the Senate's immigration bill, S.744).

IV. Rescue Beacons

Foreign Affairs has reported that “[s]ince 1998, according to the U.S. Department of Homeland Security, approximately 5,000 migrants have died crossing the border. Most human rights organizations estimate that number is closer to 8,000, since many remains are never recovered. According to Border Patrol statistics, while there were 268 southwest border deaths in 1998, there were 463 deaths reported for fiscal year 2012.”^{xiii} Migrants crossing the border succumb to dehydration and exposure to desert elements, with very little chance of rescue.

Rescue beacons—transmission towers with an emergency button that sends out a distress signal to CBP when activated—are a crucial lifesaving tool for migrants in need. Yet the vast expanse of southern border sectors compared with the limited number of rescue beacons in many high-traffic areas has led to migrant deaths. Last year the Tucson sector, with 22 rescue beacons for over 90,000 square miles, had 177 migrant deaths. The Rio Grande Valley, with 6 rescue beacons for over 18,500 square miles, had 150 migrant deaths in 2012. We are encouraged about the expansion of rescue beacons in the Tucson sector and urge that more beacons be deployed promptly with water drums, radio call buttons, and 911 cell-relay.

Thank you for your consideration of these important matters. Please contact Christian Ramirez, Director, Southern Border Communities Coalition, 619.885.1289/christian@alliancesd.org; or Vicki Gaubeca, Director, ACLU of New Mexico Regional Center for Border Rights, 575.527.0664/vgaubeca@aclu-nm.org for further information.

Yours sincerely,

Aguilas Del Desierto
Alliance San Diego
American Civil Liberties Union
American Dream Community Agency/Centro de Legalizacion
American Friends Service Committee
American Immigration Lawyers Association
Amigos de las Mujeres de Juarez
Amnesty International USA
Asian Americans Advancing Justice-Los Angeles
Association of Raza Educators
Black Alliance for Just Immigration
Black Immigration Network
Border Action Network
Catholic Charities Diocese of Las Cruces, Inc. Legal Services Program

Catholic Charities Legal Services Program
Center for Community Change
Christian Church (Disciples of Christ) Refugee & Immigration Ministries
Church World Service
Coalition for Humane Immigrant Rights of Los Angeles
Coalition on Human Needs
Comite de Derecho Humanos Forks, WA
Community Legal Services in East Palo Alto, CA
Community to Community Development
Conversations With Friends - Ending Isolation by Visiting and Supporting Detained immigrants
Detention Watch Network
Dream Action Coalition
Employee Rights Center
ENCUENTRO
Esperanza Immigrant Rights Project
Fallbrook Human Rights Committee
Farmworker Association of Florida, Inc.
Friends of Broward Detainees
Green Valley and Sahuarita Samaritans
Highlander Research and Education Center
Human Rights Coalition of South Texas
Human Rights Council of Oceanside
Human Rights Watch
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Law Center of Minnesota
Interfaith Center for Worker Justice of San Diego County
Interfaith Coalition for Immigrant Rights
Jewish Community Action
La Union del Pueblo Entero
Latin America Working Group
Latino Advocacy
Leadership Conference on Civil and Human Rights
League of United Latin American Citizens
Massachusetts Immigrant and Refugee Advocacy Coalition
Michigan United
Mississippi Human Services Coalition
National Guestworker Alliance
National Immigration Forum
National Immigration Law Center
National Network for Immigrant and Refugee Rights
New Sanctuary Coalition of NY
Northern Borders Coalition
Northern Nevada Latino Alliance
OLÉ
OneAmerica
PALABRA Santa Barbara

Paso del Norte Civil Rights Project
Pax Christi USA
San Diego Immigrant Rights Consortium
Sevice Employees International Union
SOA Watch
South Asian Americans Leading Together
Southern Border Communities Coalition
Sweetwater Zen Center
Team of the Minnesota Conference of the United Church of Christ
United Church of Christ, Justice and Witness Ministries
United Methodist Women Immigrant & Civil Rights Initiative
Vermont Immigration and Asylum Advocates
We Belong Together, Women for Common Sense Immigration Reform
Wilco Justice Alliance
Worker Justice Center of New York

ⁱ Andrew Becker, “Border agency’s former watchdog says officials impeded his efforts.” WASHINGTON POST (Aug. 16, 2014), available at http://www.washingtonpost.com/politics/border-agencys-former-watchdog-says-officials-impeded-his-efforts/2014/08/16/ce143288-2304-11e4-8593-da634b334390_story.html; Anna Werner, “Border Patrol killings face renewed scrutiny.” CBS EVENING NEWS (Aug. 18, 2014), available at <http://www.cbsnews.com/news/investigating-unresolved-deaths-on-the-border/>

ⁱⁱ Andrew Becker, “Ousted chief accuses border agency of shooting cover-ups, corruption.” CENTER FOR INVESTIGATIVE REPORTING (Aug. 14, 2014), available at <https://beta.cironline.org/reports/ousted-chief-accuses-border-agency-of-shooting-cover-ups-corruption/>

ⁱⁱⁱ See ACLU, “Strengthening CBP with the Use of Body-Worn Cameras.” (June 27, 2014), available at <https://www.aclu.org/criminal-law-reform/strengthening-cbp-use-body-worn-cameras>

^{iv} See CBP, “Use of Force Reviews, Recommendations and Next Steps.” (Sept. 2013), available at <http://www.cbp.gov/sites/default/files/documents/Use%20of%20Force%20Two%20Pager-FINAL.PDF>

^v *Khan v. Holder*, 608 F.3d 325, 329, 330 (7th Cir. 2010)

^{vi} See ACLU, “Operation Streamline Recommendations.” (2014), available at <https://www.aclu.org/immigrants-rights/operation-streamline-recommendations>

^{vii} Chris Rickerd, “Many deported ‘recent border crossers’ aren’t recent — or near the border.” MSNBC.com (July 22, 2014), available at <http://www.msnbc.com/msnbc/many-deported-recent-border-crossers-arent-recent-or-near-the-border>

^{viii} 8 C.F.R. § 287.1(b).

^{ix} See, e.g., James Lyall, “The Constitution-Free Agency.” POLITICO MAGAZINE (July 29, 2014), available at <http://www.politico.com/magazine/story/2014/07/border-patrol-constitution-free-agency-109375.html#.U-vUUBBdW7w>; Todd Miller, War on the Border, NY TIMES (Aug. 18, 2013), available at http://www.nytimes.com/2013/08/18/opinion/sunday/war-on-the-border.html?pagewanted=all&_r=0 (describing checkpoint stop of Senator Patrick Leahy 125 miles from the border in New York state: “When Mr. Leahy asked what authority the agent had to detain him, the agent pointed to his gun and said, ‘That’s all the authority I need.’”); Michelle Garcia, *Securing the Border Imposes a Toll on Life in Texas*, AL JAZEERA AMERICA (Sept. 25, 2013), available at http://america.aljazeera.com/articles/2013/9/25/living-under-the-law-of-border-security.html#mainpar_adaptiveimage_0 (“[W]hen it was pointed out that [Alice, Texas] sits more than 100 miles from the border, [a Border Patrol spokesman] explained that ‘the law does not say that we cannot patrol. Our jurisdiction kinda changes.’”); David Antón Armendáriz, *On the Border Patrol and Its Use of Illegal Roving Patrol Stops*, 14 SCHOLAR 553 (2012) (describing numerous roving patrol stops occurring more than 100 miles from the border).

^x Andrew Becker, et al., *Four of five Border Patrol drug busts involve U.S. citizens, records show*, Center for Investigative Reporting (Mar. 26, 2013), <http://cironline.org/reports/four-five-border-patrol-drug-busts-involve-us-citizens-records-show-4312>.

^{xi}Bob Ortega, *Border patrol hit with abuse complaints*, AZ Central (Oct. 8, 2013), <http://www.azcentral.com/news/articles/20131008border-patrol-hit-abuse-complaints.html>.

^{xii}See “Border Communities Under Siege,” (landing page), at <https://www.aclu.org/border-communities-under-siege-border-patrol-agents-ride-roughshod-over-civil-rights>; Complaint and request for investigation of abuses at U.S. Border Patrol interior checkpoints in southern Arizona, including unlawful search and seizure, excessive force, and racial profiling, ACLU of Arizona and ACLU Border Litigation Project (Jan. 15, 2014), <http://www.acluaz.org/sites/default/files/documents/ACLU%20AZ%20Complaint%20re%20CBP%20Checkpoints%20%202014%2001%2015.pdf>; Complaint and request for investigation of unlawful roving patrol stops by U.S. Border Patrol in southern Arizona including unlawful search and seizure, racial profiling, trespassing, excessive force, and destruction of personal property, ACLU of Arizona and ACLU Border Litigation Project (Oct. 9, 2013), <http://www.acluaz.org/sites/default/files/documents/ACLU%20AZ%20Complaint%20re%20CBP%20Roving%20Patrols%20Oct%209%202013.pdf>

^{xiii} Amanda Rose, “The Bones Speak: The Border Wars and South Texas’ Missing.” FOREIGN AFFAIRS (Dec. 16, 2013), available at <http://www.foreignaffairs.com/articles/140562/ananda-rose/the-bones-speak>; see also Weather Films, *The Real Death Valley: The Untold Story of Mass Graves and Migrant Deaths in South Texas* (2014), available at <http://stories.weather.com/realdeathvalley>