



May 9, 2012

Tamara Kessler  
Acting Officer for Civil Rights and  
Civil Liberties  
Department of Homeland Security  
Office of Civil Rights and Civil Liberties  
245 Murray Lane, SW  
Building 410  
Washington, D.C. 20528

Charles K. Edwards  
Acting Inspector General  
Department of Homeland Security  
Office of Inspector General  
245 Murray Lane, SW  
Building 410  
Washington, D.C. 20528

*via Federal Express*

**Re: Complaint and request for investigation of abuse of power, excessive force, coercion, and unlawful confiscation of property by Customs and Border Protection at ports of entry along the U.S.-Mexico border.**

Dear Ms. Kessler and Mr. Edwards:

We write to express serious concerns about abuses committed by U.S. Customs and Border Protection ("CBP") officials against travelers at ports of entry ("POEs") on the United States' border with Mexico. We represent the four southern border affiliates of the American Civil Liberties Union, the ACLU Immigrants' Rights Project ("IRP"), and the ACLU Human Rights Program ("HRP") (collectively "ACLU"). The ACLU is a non-partisan, non-profit, nation-wide organization that works daily in courts, communities, and legislatures across the country to protect and preserve the rights and liberties established by the Bill of Rights and state and federal law.

The ACLU has a particular commitment to ensuring that fundamental constitutional protections of due process and equal protection are extended to every person, regardless of citizenship or immigration status. While the federal government has the unquestioned authority to control our nation's borders and to regulate immigration, it must do so in compliance with national and international legal norms and standards. It is imperative that CBP officials, as employees of the nation's largest law enforcement agency, are trained in and held to the highest professional law enforcement standards.

A number of very serious incidents have recently drawn public awareness to the conduct of CBP officers at or near the POEs on the U.S.-Mexico border.<sup>1</sup> For example, in May 2010, Anastasio Hernandez-Rojas, a 42-year-old construction worker and father of five died after being beaten and then shocked by a Taser by a group of CBP officers at the San Ysidro POE near San Diego. One online videotape shows bystanders calling on the officers to stop beating Mr. Hernandez-Rojas as he pleads for help; another shows an officer firing a Taser at Mr. Hernandez-Rojas as he lies handcuffed on the ground surrounded by more than a dozen officers. Mr. Hernandez-Rojas' death was ultimately ruled a homicide.<sup>2</sup> In June 2010, Sergio Adrián Hernández Güereca, a 15-year-old boy, was fatally shot by a CBP officer after reportedly throwing rocks at officers near the El Paso POE. Online videotape of the incident is inconsistent with the government's assertion that the boy was threatening the officers. The Mexican government formally requested an "in depth, impartial and objective" investigation into the deaths<sup>3</sup> and the families of both Mr. Hernandez-Rojas and Adrian Hernandez Güereca have filed lawsuits against the U.S. government.<sup>4</sup>

In addition to these high-profile cases, the ACLU is disturbed by an increase in first-hand reports indicating that CBP officers engage in widespread abuse of travelers at POEs along the U.S.-Mexico border. Specifically, the ACLU has become aware of multiple complaints about incidents at southwest-border POEs involving excessive force; unwarranted, invasive and humiliating personal searches; unjustified and repeated detentions based on misidentification; and the use of coercion to force individuals to surrender their legal rights, citizenship documents, and property. A number of these complaints are recited in detail below, along with the applicable legal framework and a case study on the lack of effective procedures for travelers to seek redress.

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<sup>1</sup> As you know, there are 24 designated land Ports of Entry ("POEs") on the U.S. – Mexico border, five of which are in California; six in Arizona; two in New Mexico; and eleven in Texas. The California Ports of Entries are: Andrade, Calexico, Otay Mesa, San Ysidro, and Tecate. The Arizona POEs are: Douglas, Lukeville, Naco, Nogales, San Luis, Sasabe. The New Mexico POEs are: Columbus and Santa Teresa. The Texas POEs are: Brownsville; Del Rio; Eagle Pass; El Paso; Fabens; Hidalgo; Laredo; Presidio; Progreso; Rio Grande City; and Roma. The greatest number of crossings occur in Texas, with more than 80 million passenger/pedestrian crossings reported in 2010, followed by California, with more than 60 million passenger/pedestrian crossings during the same period; Arizona with more than 22 million passenger/pedestrian crossings; and New Mexico with more than two million passenger/pedestrian crossings. See U.S. Department of Transportation, Research and Innovative Technology Administration, Bureau of Transportation Statistics, based on data from the Department of Homeland Security, U.S. Customs and Border Protection, Office of Field Operations, [http://www.bts.gov/programs/international/transborder/TBDR\\_BC/TBDR\\_BCQ.html](http://www.bts.gov/programs/international/transborder/TBDR_BC/TBDR_BCQ.html).

<sup>2</sup> *Mexican Detainee Death Ruled a Homicide*, CNN, June 2, 2010, [http://articles.cnn.com/2010-06-02/us/california.detainee.death\\_1\\_tasered-san-ysidro-port-san-diego?\\_s=PM:US](http://articles.cnn.com/2010-06-02/us/california.detainee.death_1_tasered-san-ysidro-port-san-diego?_s=PM:US).

<sup>3</sup> Daniel Borunda and Diana Washintgon Valdez, "Feds investigate shooting: Border agent's slaying of Juarez teen triggers civil-rights case," EL PASO TIMES, June 11, 2010. The Department of Justice recently declined to file criminal charges against the agent who shot Sergio Hernández Güereca, concluding that the agent's actions were consistent with Border Patrol policy and training. "Federal officials close investigation into the death of Sergio Hernandez-Guerca, April 27, 2012, <http://www.justice.gov/opa/pr/2012/April/12-crt-553.html>.

<sup>4</sup> *Estate of Anastacio Hernandez-Rojas, et al. v. United States of America*, No. 11-CV-0522-L (S.D. Cal., filed March 6, 2011); *Hernandez v. United States of America*, No. 6:11-CV00013 (W.D. Tex., filed August 11, 2011).

We request that you promptly investigate these individual allegations of abuse *and* undertake a comprehensive investigation of POE complaints involving CBP officers to determine whether CBP Office of Field Operations officers are complying with their obligations under the U.S. Constitution, international law, and agency guidelines. We believe that significant changes in CBP training, oversight, and accountability are needed, and we urge you to make recommendations for such changes consistent with your institutional mission in order to prevent further abuses.

## **I. Individual Complaints of Abuse**

### **A. Abuse of Power and Lack of Due Process**

#### **1. Calexico/Mexicali, CA POE: Edith Collins-George**

On March 23, 2010, at around 5:30 p.m., Edith Collins-George, a U.S. citizen, drove into the Calexico/Mexicali POE. She was returning from visiting her mother in Mexico where she had also picked up a desk chair for her home. CBP Officer Lopez asked Ms. Collins-George what was in the back of her car and Collins-George told her it was a desk chair. Officer Lopez referred her to secondary inspection.

At secondary, Officer Handy asked Ms. Collins-George for her passport. When Ms. Collins-George gave it to him, he asked her to pull over and park. A canine unit approached and the officer with the canine asked Ms. Collins-George to open her trunk and step out of the car. The officer had the canine enter Ms. Collins-George's car without permission. The dog grew excited inside in the car.

Suddenly, Ms. Collins-George felt a strong pull from behind and her arms go behind her back as handcuffs slipped over her wrists. Another officer had handcuffed Ms. Collins-George and began pushing her into the office. Ms. Collins-George was shocked and could not walk, but the officer kept pushing her to move. Ms. Collins-George kept asking why they were arresting her, growing frustrated when they refused to answer and kept pushing her.

Once inside the office, nobody answered Ms. Collins-George's questions and officers pushed her into a small room. She became afraid and told the officers that she was an U.S. citizen with rights. "You don't have rights here," a different Officer Lopez responded.

In the room, both Officers Lopez and another unknown officer questioned Ms. Collins-George, asking her why she had been in Mexico and what she had brought back. Ms. Collins-George became weak and afraid, and unable to answer any questions, said she had to sit down. Officer Lopez asked Ms. Collins-George if she was taking any medication, but she did not respond. When Ms. Collins-George did not reply, the officers picked her up, pushed her against the wall and searched her body, touching her breasts and genitals. Ms. Collins-George, feeling molested, began crying, and praying.

The officers tried to calm Ms. Collins-George down but she could not stop crying and was no longer able to respond to them. She continued to cry for about an hour. Afterwards,

officers took her out of the room and sat her on a bench, handcuffing her ankle to a pole. Ms. Collins-George asked to speak to a lawyer, but received no response.

Ms. Collins-George sat on the bench for another hour, crying, until an officer approached and told her she could leave. Ms. Collins-George, now outraged, demanded to speak to a supervisor. Officer Handy approached, told Ms. Collins-George they had found nothing in her car, that there was no report, and that she was free to go. Officer Handy turned and walked away without answering any more of her questions.

Frustrated and in pain, Ms. Collins-George drove to the hospital. A doctor told her she had suffered a panic attack. At home, Ms. Collins-George told her husband what happened. He tried calling the POE, but an officer hung up on him when he mentioned his wife's name. Ms. Collins-George was traumatized by the ordeal and continues to have nightmares about it.

## 2. El Paso, TX POE: Jane Doe

On July 15, 2011, Jane Doe arrived at the CBP offices at the Ysleta-Zaragoza POE. She was there to meet with Sgt. Felipe Gonzalez, a New Mexico State sheriff, about an ongoing criminal investigation into an alleged sexual assault that had been perpetrated on her by a CBP officer while detained at a fixed checkpoint near Truth or Consequences, NM. The meeting had been arranged in advance with CBP officials at the POE by Sgt. Gonzalez, thus CBP was aware of the nature of the meeting (as Ms. Doe is not able to cross into the United States legally, and Sgt. Gonzalez is prohibited from crossing into Mexico, the POE was the only feasible location for their meeting).

This marked Ms. Doe's second meeting at the Zaragoza POE. Both times, Ms. Doe had traveled from Chihuahua, Mexico to attend the meetings. The first meeting had occurred on June 8, 2011, during which time Ms. Doe had met with investigators from ICE's Office of Professional Responsibility (OPR) who were conducting an internal investigation into the alleged assault. That meeting transpired without incident.

On the morning of July 15, 2011, Ms. Doe arrived for a second meeting at the Zaragoza POE. She was accompanied by her husband, aunt and a representative from the ACLU. Ms. Doe sat with her husband and aunt in a waiting room just outside the offices while the ACLU representative notified an officer at one of the service windows of their arrival and the purpose of the visit. Ms. Doe was nervous, both because she was about to have to recount her ordeal in detention and because, since the incident, she felt extremely uncomfortable around CBP officers.

Sgt. Gonzalez arrived a couple of minutes later, and joined them in the waiting room. The CBP officer at the window then notified the ACLU representative that they would have to undergo a "pat-down" prior to entering the offices. When the ACLU representative asked the officer why they had not been searched during their previous visit to the offices on June 8, he responded that there had been a "policy change." The ACLU representative then notified Ms. Doe that they would all be patted down prior to entering the offices, and Ms. Doe hesitantly nodded her head "okay." The ACLU representative told her not to worry and assured her that everything would be fine.

Ms. Doe, her relatives, the ACLU representative and Sgt. Gonzalez then entered the CBP offices and were asked to sit in some chairs right near the entrance. At that point, it was made clear that *only* Ms. Doe and her relatives would be patted-down in a private, enclosed and windowless room adjacent to the main entrance. Ms. Doe began to cry at the thought of being left alone again with CBP officers while they searched her. Roughly six to eight CBP officers stood nearby, surrounding the seated group and staring at them in a menacing fashion, and with their arms crossed. The ACLU representative got up to go over to Ms. Doe and comfort her, but one officer commanded her to “sit back down.”

The ACLU representative tried to intervene on Ms. Doe’s behalf, telling the CBP officer who seemed to be in charge, an older gentleman with gray hair, that Ms. Doe had been the victim of a crime, and asked if they could forego searching her for that reason. He refused. Sgt. Gonzalez then took the same officer aside and told him the nature of the investigation – that he was investigating an alleged sexual assault by a CBP officer – to try to persuade him not to search Ms. Doe. He still refused. The ACLU representative then asked if she could be present during the search. That request was refused as well.

Ms. Doe was taken into a private room by two female Border Patrol officers. Both officers had on reflective sunglasses so that Ms. Doe was unable to see their eyes. They were both much bigger than the petite, five foot Ms. Doe. Ms. Doe was in the room with them for about five minutes. Their demeanor was intimidating. They interrogated her several times about the reason for her visit. They asked her how she had traveled there, and with whom she had traveled. They asked her the same questions over and over again, and told her not to lie to them. They patted her down, searched the inside of her pockets and counted all of the money in her pockets. They made her take off her sneakers and searched the insides. When Ms. Doe finally emerged, tears were streaming down her face. The officers next searched Ms. Doe’s husband and aunt in a similar fashion.

After all three individuals had been searched, they escorted the group to the conference room for their meeting, after which Sgt. Gonzalez escorted Ms. Doe and her relatives back out to the Mexican side of the POE, and they went on their way. Following that meeting, Ms. Doe, traumatized by what had occurred on that day, no longer wanted to proceed with the criminal investigation. She asked Sgt. Gonzalez to close the investigation, which he did.

### 3. Calexico/Mexicali, CA POE: Hernan Cuevas

Hernan Cuevas is a Chilean businessman who has lived lawfully in the United States in the past and frequently travels here in his current capacity as vice president for the U.S. market for INDURA, a Chilean multinational corporation. On May 19, 2011, he crossed from the United States into Mexico at Calexico, giving his I-94 to CBP Officer Lopez at the POE. The next day, May 20, he sought to return to the United States at Calexico after visiting a prospective client in Mexico. He requested a new I-94 to enter the country on his valid visa and was referred to the secondary inspection area.

At the secondary inspection area, Mr. Cuevas' car was inspected by a canine unit without incident and he was told to wait for an officer to arrange his entry document. A CBP officer began questioning Mr. Cuevas about his car and inspecting the contents of his car and wallet. The officer threw the contents of Mr. Cuevas's wallet and other of Mr. Cuevas's documents into a pile. The officer became visibly frustrated as he failed to find anything suspicious and began pulling up the carpets and liners of Mr. Cuevas' car. Mr. Cuevas told the officer that he was damaging the car and asked to speak to a supervisor. In response, the officer handcuffed Mr. Cuevas. Mr. Cuevas tried to reason with the officer, telling him that his actions were completely unnecessary given that Mr. Cuevas was cooperating and had only requested to speak to a supervisor to file a complaint. The officer told him that he was moving him to a "secure facility" and took him to what appeared to be an interrogation room.

In the interrogation room, the officer strip searched Mr. Cuevas. The officer told Mr. Cuevas this was the "normal procedure" because he believed that he was trying to "enter the country illegally." He then took Mr. Cuevas into the main office, made him kneel painfully on a metal bench while removing his handcuffs, and then chained his big toe to a metal bench. Mr. Cuevas requested a phone call to his attorneys or the Chilean consulate but was informed that he was not allowed any phone calls.

Mr. Cuevas remained chained to the bench for over 90 minutes without explanation. Even though it was a hot day, CBP officers ignored his requests for water. The officer who detained him refused to release him even when Officer Lopez arrived and confirmed that Mr. Cuevas had given him an I-94 the previous day. When a supervisor arrived she told Mr. Cuevas that he was not in violation of his visa, but that the officer who detained him had sole discretion to decide whether to allow him to enter the United States. One of the officers finally gave him water after he had been detained for more than two-and-a-half hours.

Since CBP would not allow Mr. Cuevas to enter the United States, he suggested that they release him back into Mexico. He was finally released after about three-and-a-half hours of detention, but not before the officer who initiated his detention told him, "I don't give a fuck for your educated manners and all your corporate bullshit. This is my country now and when you are here, you listen to me. I don't like your kind that takes our jobs and uses our system."

The next day, Mr. Cuevas drove to Tijuana and sought entry there. He was provided an I-94 and admitted to the country after explaining to the CBP officer there what had happened in Calexico. Mr. Cuevas's attempts to receive an explanation through diplomatic channels have proven unsuccessful.

#### 4. Brownsville, TX POE: Castro Family, Alanis Family, and Rodrigo Ortiz

CBP officers at the Brownsville & Matamoros International (B&M) Bridge POE in Brownsville, Texas have repeatedly coerced United States citizens into "confessing" that they were not born in the United States during lengthy, abusive interrogations; denied them entry; and confiscated their documents, without ever providing them a hearing or any form of due process.

On August 24, 2009, Trinidad Muraira de Castro, her daughters Yuliana and Laura, and Yuliana's four-week old daughter Camila Abigail Gonzalez presented their documentation for entry at the B&M Bridge POE in Brownsville, Texas. Ms. Muraira de Castro is a Mexican citizen with a border crossing card (or "laser visa") permitting her entry to the United States. Laura, Yuliana, and Camila are all U.S. citizens. CBP Officer Eliseo Cabrera sent the family to secondary inspection, allegedly because Yuliana's Texas birth certificate indicated that she was delivered by a midwife. The family was detained and interrogated, during which time CBP officer Cabrera intimidated them, threatened to separate them, and made false representations to coerce Laura and Yuliana to "admit" they were not U.S. citizens and to force Trinidad to admit her daughters were not born in the United States. After approximately ten hours, Ms. Muraira de Castro broke down and "confessed" that her daughters were not born in the United States even though her daughters were in fact born in the United States. Based on this coerced confession, Laura and Yuliana were denied entry to the United States and Ms. Muraira de Castro's laser visa was confiscated.

On September 17, 2009, Rodrigo Sampayo Ortiz, a U.S. citizen, presented his documentation for entry into the United States at the B&M Bridge POE in Brownsville, Texas. Mr. Ortiz was detained for more than eight hours while a CBP officer threatened and intimidated him into falsely confessing he was not born in the United States, even though he was in fact born in the United States. Mr. Ortiz's documents were confiscated.

On October 31, 2009, Ana Maria Alanis and her daughter Jessica Alanis Garcia presented their documentation for entry at the B&M Bridge POE. Like the Castro family and Mr. Ortiz, Ms. Alanis and her daughter were detained for hours and threatened with separation. Ms. Alanis refused to "confess" that her daughter was not born in the United States because Jessica was in fact born in the United States. The CBP official denied Jessica entry into the United States until her citizenship was adjudicated by an Immigration judge.

The Castro family, the Alanis family, and Mr. Ortiz have filed suit in the Southern District of Texas, alleging that their Fourth and Fifth Amendment rights were violated.<sup>5</sup>

## **B. Unwarranted and Excessive Use of Force**

### **1. San Ysidro, CA POE: Marc Ballin**

On February 25, 2011, at about 4:15 p.m., Marc Ballin, a U.S. citizen returning from Mexico, was in the pedestrian line at the San Ysidro POE. The line was moving slowly and Mr. Ballin was in a hurry so he attempted to cut in line. CBP officers Vargas and Trabucco saw him, approached, and asked Ballin to step out of line so they could speak to him. Mr. Ballin apologized and handed Officers Vargas and Trabucco his passport. The officers told Mr. Ballin to go to the back of the line.

While Mr. Ballin waited to retrieve his passport, Officers Vargas and Trabucco, unprovoked, placed Mr. Ballin's arms behind his back, handcuffed him, and slammed his head down on a desk. Vargas and Trabucco then pushed Mr. Ballin against a concrete wall. The

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<sup>5</sup> *Castro et al. v. Cabrera*, CV No. 1:11-CV-87 (S.D. Tex.- filed September 7, 2009).

officers punched and kicked Mr. Ballin even though he was already in handcuffs. Mr. Ballin sustained a shoulder injury and his wrists began to bleed.

Unknown officers moved Mr. Ballin to another building across the street from the checkpoint, out of public view. Mr. Ballin sat on a bench for about an hour, until Officer Novinsky approached and threatened to shock him with a Taser him if he did not provide fingerprints and submit to a photograph. Afraid, Mr. Ballin complied.

Officers then escorted Mr. Ballin out of the building, back to the original pedestrian checkpoint, and gave him a card that said he was free to go. No charges were filed. Mr. Ballin went straight to the hospital where he was treated for his shoulder and wrist injuries. He has medical records to substantiate his injuries.

## 2. Otay Mesa, CA POE: Trosky Vasquez

On April 4, 2009 at about 10:30 p.m., Trosky Vasquez, a U.S. citizen and former Marine, was returning from a dentist's appointment in Mexico. He crossed at the Otay Mesa POE by car with his wife and a friend.

At the checkpoint, CBP officers asked Mr. Vasquez who owned the vehicle. Mr. Vasquez said he did. An officer asked for the registration. Mr. Vasquez did not have his registration, but he did have his proof of insurance and the contract from the dealer. Mr. Vasquez attempted to hand these documents to the officer, but the officer did not take the documents. Instead, the officer asked Mr. Vasquez to pull into secondary inspection. Mr. Vasquez complied.

At secondary, an officer asked Mr. Vasquez and his passengers to step out of the car. Mr. Vasquez asked why and the officer responded, "Do what you're told and shut up." Mr. Vasquez complied and the officer asked him who owned the vehicle. Mr. Vasquez told the officer he'd already answered that question. The officer responded by grabbing Mr. Vasquez, turning him around, and slamming Mr. Vasquez's body onto his car. Then the officer twisted Mr. Vasquez's arm to handcuff him, causing Mr. Vasquez to fall to the ground in pain.

Hoisting Mr. Vasquez up by his now injured wrist, officers took Mr. Vasquez and his passengers inside a building and searched them. An officer again asked Mr. Vasquez who owned the car and Mr. Vasquez recounted the ordeal, including how he had tried to hand an officer his proof of insurance and dealer contract. The officers responded by placing Mr. Vasquez in a small room. There, they again asked Mr. Vasquez who owned the car. When Mr. Vasquez gave the same response, an officer pushed him against a wall and yelled at him to come clean. Mr. Vasquez had no other response.

After about 30 minutes, officers released Mr. Vasquez from the room and reunited him with the rest of his party. Mr. Vasquez and his party sat on wooden benches, but Mr. Vasquez sat on the bench with his legs tucked underneath his body, shins resting against the wood. An officer told Mr. Vasquez to "sit properly." "What exactly is sitting properly?" Mr. Vasquez asked. The officer then sprung at Mr. Vasquez and struck him in the face. The officer struck



Mr. Vasquez in the face and chest a few more times and then threw him onto the floor. Other officers surrounded Mr. Vasquez, who now lay on the ground in the fetal position, hands covering his face. One officer told Mr. Vasquez that he would do as he's told or that he'd be tasered.

Mr. Vasquez sat back up on the bench. Officer Hernandez came over and asked if Mr. Vasquez had reported his license plate stolen. Mr. Vasquez replied that he had not. Officer Hernandez told Mr. Vasquez that his plates were reported stolen and that was what caused his detention. Officer Hernandez then told him he should see to the problem but that he was free to go.

Before leaving, Mr. Vasquez asked to speak to Officer Hernandez again. Officer Hernandez apologized for the way the other officers treated him, but said that if she went against them it could jeopardize her career. Mr. Vasquez asked her if she could give him the other officers' names. At that point, Officer DeJesus walked over and identified himself as a supervisor. Mr. Vasquez asked DeJesus for the names of the other officers responsible. Officer DeJesus said he would not divulge names and that there was nothing Mr. Vasquez could do about it. "The rules are different here," Officer DeJesus said. "We're protected by the Patriot Act."

Mr. Vasquez went directly to the VA Medical Center in La Jolla. He received treatment for bruises on his chest, face, and eye, and doctors placed his wrist in a cast. He has medical records to substantiate this treatment.

### 3. Otay Mesa, CA POE: Michael Studdard

Michael Studdard, a U.S. citizen, was crossing southbound through the Otay Mesa Port of Entry on foot on June 7, 2011, at about 6:30 a.m., on his way to work. Officers tried to stop Mr. Studdard and he asked the officers for a reason. The officers responded that they did not need to provide a reason. Mr. Studdard asked again and the officers said they were allowed to make stops for various reasons, such as to search people for weapons. During this encounter, Mr. Studdard held a voice recorder in his hand because he was concerned about the possibility of his rights being violated.

After about five minutes of this discussion, an officer tried to take Mr. Studdard's voice recorder from his hand. Mr. Studdard jerked his arm back to avoid this. Another officer grabbed Mr. Studdard and threw his body onto a table. A group of officers gathered and handcuffed Mr. Studdard. The handcuffs were applied so tightly that they left marks on his wrists, which remained sore for weeks afterward.

The officers moved Mr. Studdard to a room, asked him to remove his shoes and belt, and then patted him down. Mr. Studdard asked when he could leave and an officer responded that if Mr. Studdard said another word, he would put him into a cell. Mr. Studdard said, "Wait a minute," and was immediately placed in a cell.

About 40 minutes later Mr. Studdard was released without charges or explanation. The initial conversation with CBP officers on his voice recorder had been deleted.

### **C. Repeated Detention and Interrogation Based on Mistaken Identity**

#### **1. San Ysidro, CA POE: Juan Estrada**

Juan Estrada has had a recurring problem at the San Ysidro POE. When his passport is scanned, the record of another man (a wanted criminal) appears, resulting in Mr. Estrada's detention and questioning. Despite officers consistently telling Mr. Estrada that they would resolve the problem, he has been detained and questioned numerous times over the last several years.

The most recent incident occurred on the afternoon of April 9, 2011, as Mr. Estrada arrived to the San Ysidro POE after visiting his family in Mexico. When a CBP officer scanned Mr. Estrada's passport, Mr. Estrada noticed the officer's expression change. Mr. Estrada began protesting that it was not him, aware that the other man's criminal record had likely appeared on the computer screen. Nonetheless, Mr. Estrada was surrounded by about ten officers, with guns drawn and pointed at him. The officers told Mr. Estrada to get out of the car, onto his knees, and to place his hands behind his head. Mr. Estrada complied while protesting that they had mistaken his identity.

Once Mr. Estrada was on his knees, officers approached, handcuffed him, and lifted him up. They walked him into a detention area where officers questioned him. Mr. Estrada told the officers that it was not him, that this has been happening for the last four or five years and that it was all a mistake. One of the officers Mr. Estrada spoke to was Officer Gonzalez.

Eventually, the officers let Mr. Estrada go. However, Mr. Estrada is still traumatized by the incident. He is afraid of police, and afraid of crossing the border. Although he has family in Mexico, and previously visited them often, Mr. Estrada has not been back to Mexico since this incident, and is not sure if he will ever again feel comfortable crossing the border.

#### **2. Lukeville and Nogales, AZ POEs: Alberto Garcia**

Alberto Garcia is a resident of Phoenix and a naturalized U.S. citizen. He is married and has two U.S. citizen children. On four separate occasions over the summer of 2011 Mr. Garcia was forcefully detained and subjected to harsh and improper treatment by CBP officials upon his return to Arizona following family visits and dental appointments in Mexico.

On each of these occasions Mr. Garcia arrived at the Lukeville or Nogales POEs and promptly presented his U.S. passport to the screening officer. On each of these occasions, after scanning his passport, but without any further questioning, CBP officials abruptly dragged Mr. Garcia out of his vehicle and onto the ground and forcefully handcuffed him. Each time, Mr. Garcia was interrogated by CBP officers for approximately four hours concerning his alleged involvement in a drug cartel and remained handcuffed throughout the duration of his detention in a holding cell. At no point during any of these detentions was Mr. Garcia provided

documentation of his arrest and no photographs or fingerprints were taken. On multiple occasions, Mr. Garcia asked to go to the restroom but was denied, and no water or food was provided to him. On at least one of these occasions, Mr. Garcia asked to speak to an attorney but was denied a phone call. During each of these incidents CBP officers inspected Mr. Garcia's vehicle, and each time Mr. Garcia was released with no charges filed.

During one of these arrests at the Lukeville POE, Mr. Garcia was chained by one foot to a concrete bench and one hand to a wall for the entire duration of his detention. On another occasion at the Nogales POE, Mr. Garcia was pulled from his truck, thrown to the ground, handcuffed, taken to a cell for interrogation, and shackled by hand and foot to a concrete bench for four hours. He was not allowed to sit or use the restroom, nor was he given water. While Mr. Garcia was detained, his young son sat alone in a room, crying.

The most recent of these incidents occurred on September 24, 2011, when Mr. Garcia was returning to Arizona following dental appointments with his son and daughter. Once again, when he arrived to the Lukeville POE, Mr. Garcia's passport was scanned and he was promptly taken into an office where he was questioned by several officers. Eventually, he was told by one of the officers that his case was one of mistaken identity. When asked what he should do to resolve this problem, the officer replied to Mr. Garcia that he should change his name.

Mr. Garcia is severely traumatized by these experiences and is afraid of what will happen to him or his family during future trips to Mexico.

#### **D. Seizure of Documents and Property**

##### **1. Brownsville, TX POE: Luis Espinoza**

On June 7, 2009, Luis Espinoza, a 16-year old boy, was crossing the Gateway International Bridge from Matamoros to Brownsville. He presented a wallet-sized Texas Birth Certificate and a receipt from the U.S. Post Office showing that he had applied for his passport. The CBP officer sent Luis to secondary, and kept him in detention for more than two-and-a-half hours during which time officers interrogated him about the validity of his documents. The officer confiscated Luis' birth certificate, declared it fraudulent, and told Luis to "go back to Mexico," leaving Luis without any identification documents and unable to return to his home in the United States. Luis' attorneys filed a writ of habeas corpus and a federal court ordered that he be admitted into the United States to be allowed to prove his citizenship on August 20, 2009. However, the CBP Port Director, Michael Freeman, refused to admit Luis and failed to return to him the confiscated birth certificate as ordered by the court until a motion for contempt was filed and he was ordered to show cause. Luis' citizenship was confirmed, and he was issued a passport on July 20, 2011. The ACLU of Texas has received similar accounts of CBP document seizure from organizations that work with border communities.

##### **2. Nogales, AZ: María Dalia Ascencio Carrillo**

María Dalia Ascencio Carrillo, a 35-year-old Mexican national, arrived to the Nogales, Arizona POE on April 1, 2012, with what she thought was a valid tourist visa. At the border,

Ms. Ascencio was removed from her bus and taken to a room where two female officers interrogated her about her immigration documents while shouting obscenities and racist slurs. The officers referred to Ms. Ascencio as “another Mexican whore” and told her, “shut up or it will go worse for you, stupid Mexican.” During the interrogation, the officers pushed and groped Ms. Ascencio and broke her glasses. The officers then moved Ms. Ascencio to another room where they handcuffed her hands and feet. Ms. Ascencio was then transported to the Santa Cruz jail in Nogales where she was held in a cold jail cell for two days. No one explained to her why she had been detained or allowed her to make a phone call.

Ms. Ascencio was then transported to a Border Patrol short-term detention facility. There, Ms. Ascencio was held in a small cell with approximately 80 other people. Many of the people in Ms. Ascencio’s cell had been detained after many days in the desert and were in need of water, medical attention, and hygiene supplies. Detainees were crying and pleading for medical assistance but were ignored. Instead, Border Patrol officers mocked and yelled insults, calling them “damn wetbacks” and “stupid, ignorant bastards” and telling them, “you’re invading my country,” and “just die you sons of bitches.”

After two days in a crowded cell, Ms. Ascencio was taken to Eloy Detention Center where she was detained for approximately two weeks. Officials told her that her only choice was to fight an asylum case from detention or agree to a voluntary departure. Ms. Ascencio never saw a judge. She signed the paperwork she was given – which was not explained to her and which she now believes was actually a deportation order – and was returned to Mexico around April 20. Her Mexican passport, birth certificate, and other personal documents were confiscated and not returned to her. She is still trying to retrieve them.

## **II. Confiscation of Property of Mexican Nationals: Case Study on Lack of Effective Redress**

Not only are travelers too often subjected to abusive practices at POEs, but, as illustrated by several of the stories above, victims of abuse find themselves without effective means of seeking redress. CBP’s failure to create effective procedures for individuals to recover property that has been taken by CBP officers in El Paso illustrates this problem.

As described to the ACLU’s southern border affiliates by Mexican consular officials and the staff of migrant shelters in northern Mexico, CBP makes it difficult for travelers who wind up in detention to recover their belongings. For example, at El Paso POEs, CBP officials take belongings and provide the owner with an itemized receipt of the belongings taken and a “baggage check.” Assuming the items’ owners are detained, two weeks after detention they will receive a notice (in English) that unclaimed property will be disposed of by CBP after 30 days. Many detainees do not speak or read English well, so they have difficulty taking advantage of the procedures outlined in the notice.

The paperwork they receive requires them to assign a person to pick up their belongings within 30 days. According to the Mexican Consulate, this form is required to be notarized and given to the person designated to pick up the belongings. But in many detention centers, there are no public notaries to assist with this process.

If detained individuals are able to get the form notarized, their designees face the following runaround from CBP when attempting to recover the belongings:

- The designee will arrive at one of the POEs and be told that the belongings are a different port of entry, generally the Ysleta-Zaragoza Bridge.
- At the Ysleta-Zaragoza Bridge, designees are referred to the Bridge of Americas just to be told they need to make an appointment to talk to a CBP Fines, Penalties and Forfeiture (“FPF”) agent.
- Even at an appointment with a FPF agent, the property may not be released to the designee, with the excuse being that only direct family members can pick up items.

In short, the process for reclaiming property is often complicated and hinges on the apparent discretion of CBP officials, making the 30-day limit nearly impossible to satisfy. The result is that personal property is commonly destroyed by CBP. While this issue may seem inconsequential, it has huge repercussions for the owners who are eventually deported to Mexico. Without IDs, cell phones and debit cards, these individuals are extremely vulnerable to exploitation and abuse, and are often left homeless, unable to get a job, and unable to return to their original hometowns in Mexico.

### **III. Applicable Law**

#### **A. U.S. Constitution (Fourth and Fifth Amendments)**

The Fifth Amendment’s Due Process Clause protects all “persons” against arbitrary and abusive government conduct. While due process guarantees are generally “flexible,” *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976), at a minimum they protect individuals against coercive interrogation, *Ashcraft v. Tennessee*, 322 U.S. 143 (1944); loss of property, *Fuentes v. Shevin*, 407 U.S. 67 (1972); infliction of pain, *Whitley v. Albers*, 475 U.S. 312 (1986); deprivation of basic human needs, *Helling v. McKinney*, 509 U.S. 25 (1991); and other inhumane treatment that amounts to punishment, *Bell v. Wolfish*, 441 U.S. 520 (1979).

CBP practices that result in unjustified, extended, and harsh detention are unconstitutional. The Supreme Court recognizes that persons subjected to non-criminal detention are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish. *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982); *cf. Ageyeman v. Corrections Corp. of Amer.*, 390 F.3d 1101, 1104 (9th Cir. 2004) (noting that detention for noncriminal charges “may be a cruel necessity of our immigration policy; but if it must be done, the greatest care must be observed in not treating the innocent like a dangerous criminal”).

While non-citizens who have never entered the United States may have diminished due process protections in their immigration proceedings, they are at the very least protected against physical abuse and similar harms. *See Wong v. Imm. & Naturalization Servs.*, 373 F.3d 952, 972-75 (9th Cir. 2004); *Lynch v. Cannatella*, 810 F.2d 1363, 1373-74 (5th Cir. 1987).

In the accounts recited above, many of those stopped and detained by CBP were subjected to unnecessary pain and suffering through the use of needless handcuffing, physical and verbal assaults, and other rough treatment. Others were deprived of basic human needs like food and water during their detentions by CBP, or subjected to coercive interrogation. Most of them clearly should never have been subject to prolonged detention in the first place.

While in some instances, Fourth Amendment rights are circumscribed at POEs, *see, e.g., United States v. Flores-Montano*, 541 U.S. 149 (2004) (noting expanded authority to search automobiles at the border), government officials enjoy no expanded authority to use excessive force at the border, even against non-citizens with no prior connection to the United States. In *Lynch*, the Fifth Circuit held that even excludable aliens have a right to humane treatment and “to be free of gross physical abuse at the hands of state or federal officials.” 810 F.2d at 1373-74. In a later case, the Fifth Circuit extended *Lynch* in an excessive force claim when the alleged excessive force occurred just outside a port of entry. *Martinez-Aguero v. Gonzalez*, 459 F.3d 618, 623 (5th Cir. 2006) (holding that aliens stopped at the border have a right to be free of excessive force). As that court noted, there are “no identifiable national interests that justify the wanton infliction of pain” by CBP officers. *Id.*

The doctrine that limits the extraterritorial application of the Fourth Amendment, announced in *United States v. Verdugo-Urquidez*, has no relevance to excessive force claims at POEs. 494 U.S. 259, 274-75 (1990) (no extraterritorial application of the Fourth Amendment to searches of non-citizens “with no voluntary attachment to the United States.”). In contrast with *Verdugo-Urquidez*, where the constitutional violation takes place “solely in Mexico,” *id.* at 264, constitutional violations at POEs take place in the United States. Moreover, unlike in *Verdugo-Urquidez*, border-crossers do have a “voluntary connection with . . . the United States.” *Id.* at 264, 273.

Fourth Amendment excessive force claims turn on whether the use of force is reasonable given the totality of the circumstances, weighing the force used against “the countervailing governmental interest at stake.” *Graham v. Connor*, 490 U.S. 386, 396 (1989). Three factors determine the governmental interest: (1) whether the suspect poses an immediate threat to the safety of the officers or others, (2) whether the suspect is actively resisting arrest or attempting to evade arrest by flight, and (3) the severity of the crime. *Id.* at 396-97. In none of the above examples did the individuals involved pose any threat to the safety of the officers or others, resist arrest or attempt to evade arrest, or commit a crime. The excessive treatment to which all of these individuals were subjected was unjustified and likely unconstitutional.

## **B. International Human Rights Law**

As you are no doubt aware, under Executive Order 13107 – which concerns implementation of human rights treaties – DHS and OCRCL are obligated to “maintain a current awareness of United States international human rights obligations that are relevant to [its] functions and shall perform such functions so as to respect and implement those obligations fully.”<sup>6</sup> The United States must act in conformity with a host of international human rights

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<sup>6</sup> Exec. Order No. 13107 63 Fed. Reg. 68991 (Dec. 10, 1998) (Implementation of Human Rights Treaties), <http://www.gpo.gov/fdsys/pkg/FR-1998-12-15/pdf/98-33348.pdf>.

obligations in its operations at POEs.<sup>7</sup> The U.S. is obligated to respect and protect the human rights of all persons who cross or attempt to cross U.S. borders, regardless of nationality or immigration status. When individuals are detained by CBP officers, they must always be treated with humanity and respect for their dignity and must not be subjected to physical or psychological treatment amounting to torture or other cruel, inhuman or degrading treatment, including the use of excessive physical restraint or excessive or inappropriate body searches.<sup>8</sup> Additionally, their rights to health and adequate food while in detention must be guaranteed.<sup>9</sup> Special care and attention must be given to vulnerable populations including children, pregnant women, persons with disabilities, and victims of violence and trafficking.<sup>10</sup> The United States is also obligated to “keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons” in CBP facilities with the view of preventing abuse and ill-treatment.<sup>11</sup>

Many of the stories described above suggest that with regards to CBP the U.S. is not acting in accordance with its treaty obligations and Executive Order 13107. Furthermore, these abuses and lack of full, independent and thorough investigation into them stand in stark contrast to repeated bilateral commitments between the governments of the United States and Mexico throughout the past three administrations to treat all migrants in a manner that respects their human rights and dignity, particularly in repatriation arrangements.<sup>12</sup>

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<sup>7</sup> Some of the key international instruments ratified by the United States are: International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, ratified by the United States on June 8, 1992; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), *entered into force* June 26, 1987, ratified by the United States on October 21, 1994; International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, *entered into force* January 4, 1969, ratified by the United States on October 21, 1994.

<sup>8</sup> See Articles 2 and 16 of CAT and Article 7 and 10 of the ICCPR. The UN Basic Principles on the Use of Force and Firearms stipulate that law enforcement officials “shall, as far as possible, apply nonviolent means before resorting to the use of force” and may use force “only if other means remain ineffective.” When the use of force is unavoidable, law enforcement officials must “exercise restraint in such use and act in proportion to the seriousness of the offence.” <http://www2.ohchr.org/english/law/firearms.htm>.

<sup>9</sup> See also U.N. Standard Minimum Rules on the Treatment of Prisoners, adopted by First UN Congress on the Prevention of Crime and the Treatment of Offenders (1955), approved by ECOSOC res. 663 C (XXIV) (July 31, 1957) and 2076 (LXII) (May 13, 1977) and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. Res 43/73 (December 9, 1988).

<sup>10</sup> International Commission of Jurists, *Migration and International Human Rights Law*, Practitioner’s Guide No. 6 (2011), [http://www.icj.org/dwn/img\\_prd/PGNo6-ElectronicDistribution1.pdf](http://www.icj.org/dwn/img_prd/PGNo6-ElectronicDistribution1.pdf).

<sup>11</sup> Article 11 read together with Article 16.1 of CAT.

<sup>12</sup> “Memorandum of Understanding Between the Secretariat of Governance and the Secretariat of Foreign Affairs of the United Mexican States and the Department of Homeland Security of the United States of America on the Safe, Orderly, Dignified and Humane Repatriation of Mexican Nationals,” February 20, 2004, <http://www.cppp.org/repatriation/Appendix%20F.pdf>; Administration of William J. Clinton, *Joint Statement on Migration Adopted by the President of the United States and the President of Mexico*, May 6, 1997 (pledging to

In recent years, multiple international bodies have expressed grave concerns about CBP abuses in relation to U.S. human rights treaty obligations. In 2008, the U.N. Committee on the Elimination of Racial Discrimination reviewed U.S. compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and expressed concerns “about allegations of brutality and use of excessive or deadly force by law enforcement officials against persons belonging to racial, ethnic or national minorities, in particular Latino and African American persons and undocumented migrants crossing the U.S.-Mexico border.”<sup>13</sup> The Committee recommended that the U.S. increase “significantly its efforts to eliminate police brutality and excessive use of force” against such persons by establishing adequate systems for monitoring police abuses and developing further training opportunities for law enforcement officials.” The Committee requested that the U.S. ensure that reports of police brutality and excessive use of force are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished. Again, the stories described above indicate that the Committee’s concerns have not been adequately addressed. CBP provides minimal training and, as the accounts stated herein demonstrate, oversight and accountability mechanisms are inadequate at best.

The abuses documented herein, though confined to incidents arising at POEs, are nonetheless consistent with a pattern of CBP abuse along the border, in detention facilities, and in other parts of the interior. In December 2010, the Inter-American Commission on Human Rights noted in its report on United States immigration detention “the terrible effects of certain immigration policies along the border and to the abuses and excesses committed by officers charged with enforcing the law.”<sup>14</sup> In March 2012 the Commission held a general hearing on “the human rights situation of migrants detained and repatriated at the Southern Border of the U.S.” During this hearing, members of the Commission heard about human rights violations

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“[p]rotect the rights of migrants, pursue vigorously the administration of justice in situations in which migrants and border communities register complaints concerning unlawful actions, and respect due process and constitutional guarantees in the implementation of immigration laws”), <http://www.gpo.gov/fdsys/pkg/WCPD-1997-05-12/pdf/WCPD-1997-05-12-Pg662.pdf>; Office of the Press Secretary of George W. Bush, *Joint Statement Between the United States of America and the United Mexican States*, September 6, 2001, <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010906-8.html>; Office of the Press Secretary of Barack H. Obama, *Joint Statement from President Barack Obama and President Felipe Calderon*, May 19, 2010, <http://www.whitehouse.gov/the-press-office/joint-statement-president-barack-obama-and-president-felipe-calderon>.

<sup>13</sup> U.N. Committee on the Elimination of Racial Discrimination (CERD), *Consideration of Reports Submitted by States Parties Under Article 9 of the Convention: Concluding observations of the Committee on the Elimination of Racial Discrimination: United States of America*, U.N. Doc. CERD/C/USA/CO/6 (May 2008).

<sup>14</sup> Inter-American Commission on Human Rights, *Report on Immigration in the United States: Detention and Due Process*, OEA/Ser.L/V/II, Doc. 78/10 (December 30, 2010), <http://cidh.org/countryrep/USImmigration/TOC.htm>; *See also*, Protection of Migrants, G.A. res 63/184 adopted March 17, 2009, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/481/83/PDF/N0848183.pdf?OpenElement> (2009 United Nations General Assembly resolution requesting all governments (including the U.S.) “adopt concrete measures to prevent the violation of the human rights of migrants while in transit, including in ports and airports and at borders and migration checkpoints” by properly training officials and prosecuting rights violations.



committed against migrants by CBP officers with impunity, as the result of inadequate policies for prosecuting and punishing members of the Border Patrol who commit such acts.<sup>15</sup>

#### IV. Conclusion

The government has rightly dedicated significant resources to investigating allegations of corruption among CBP officers. But a similar commitment to investigating abuse of power, and the resulting civil and human rights abuses, by CBP officers is long overdue.

We request that your offices immediately undertake both an investigation of the individual complaints of abuse outlined above and a comprehensive investigation of whether CBP Office of Field Operations officers are complying with their obligations under the U.S. Constitution, international law, and agency guidelines. Consistent with the critical functions performed by your offices, we urge you to make recommendations for institutional changes to CBP training, oversight and accountability mechanisms consistent with your findings in order to prevent further abuses by agency personnel.

Please do not hesitate to contact Vicki Gaubeca at (575) 527-0664 or Sean Riordan at (619) 398-4485 with any questions about this complaint.

Sincerely,

Terri Burke  
ACLU of Texas

Vicki Gaubeca  
ACLU of New Mexico Regional Center for  
Border Rights

Sean Riordan  
ACLU of San Diego & Imperial  
Counties

James Duff Lyall  
ACLU of Arizona

Judy Rabinovitz  
ACLU Immigrants' Rights Project

Jamil Dakwar  
ACLU Human Rights Program

cc: Thomas E. Perez, Assistant Attorney General, Civil Rights Division, U.S.  
*Department of Justice*

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<sup>15</sup> Inter-American Commission on Human Rights, 144<sup>th</sup> regular session (March 19-20, 2012), [http://www.oas.org/en/iachr/media\\_center/PReleases/2012/036a.asp](http://www.oas.org/en/iachr/media_center/PReleases/2012/036a.asp); No More Deaths, *A Culture of Cruelty: Abuse and Impunity in Short-Term U.S. Border Patrol Custody* (2011), [http://www.cultureofcruelty.org/documents/2011\\_report/](http://www.cultureofcruelty.org/documents/2011_report/).