



WRITTEN STATEMENT OF
THE AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

“Study in Contrasts: House and Senate Approaches to Border Security”

**Submitted to the Subcommittee on Border and Maritime Security
of the U.S. House Committee on Homeland Security**

July 23, 2013

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I. Introduction

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's Washington Legislative Office (WLO) conducts legislative and administrative advocacy to advance the organization's goal to protect immigrants' rights, including supporting a roadmap to citizenship for aspiring Americans. The Immigrants' Rights Project (IRP) of the ACLU engages in a nationwide program of litigation, advocacy, and public education to enforce and protect the constitutional and civil rights of immigrants. The ACLU of New Mexico's Regional Center for Border Rights (RCBR) addresses civil and human rights violations arising from border-related immigration policies. RCBR works in conjunction with ACLU affiliates in California, Arizona, and Texas, as well as immigrants' rights advocates throughout the border region.

The ACLU submits this statement to the Subcommittee on Border and Maritime Security of the U.S. House of Representatives' Committee on Homeland Security for its hearing: "Study in Contrasts: House and Senate Approaches to Border Security." As our prior submission for this Subcommittee's February hearing titled "What Does a Secure Border Look Like?" did, this statement aims to provide the Subcommittee with an appraisal of the civil liberties implications of border security. For elaboration on how current border enforcement policies affect mixed-status families along the border, we also respectfully refer the Subcommittee to the record of the April 10, 2013 Congressional Ad-Hoc Hearing: "Lines That Divide US: Failure to Preserve Family Unity in the Context of Immigration Enforcement at the Border."¹

Since the Subcommittee's February hearing, the Senate's passage of S.744, the Border Security, Economic Opportunity, and Immigration Modernization Act, has provided a stark template of how *not* to tackle border security. The Senate chose to dismiss the House's careful approach based on H.R. 1417, the Border Security Results Act of 2013, an approach described by Subcommittee Chairman Candice Miller (R-MI) as requiring "a strategy and an implementation plan to be produced before additional resources are expended."² The last-minute addition to S.744 of an amendment sponsored by Senators Corker (R-Tenn.) and Hoeven (R-N.D.), known as the border "surge," added an estimated \$38 billion in resource spending on border security to the \$8.3 billion already contained in the bill that went to the Senate floor.³

¹ See, e.g., Written Statement of Vicki B. Gaubeca, Director, ACLU of New Mexico Regional Center for Border Rights (April 10, 2013), available at http://www.aclu.org/files/assets/vicki_gaubeca_written_statement-final.pdf

² See statement of July 19, 2013, available at <http://homeland.house.gov/press-release/week-ahead-house-homeland-security-committee-july-22-26-2013>

³ Congressional Budget Office, Letter to Senator Patrick J. Leahy (July 3, 2013), 3, available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/s744aspassed.pdf>

While the ACLU supported S.744 because of its overall impact on civil liberties, particularly its roadmap to citizenship for what the Congressional Budget Office (CBO) estimates to be 8 million aspiring Americans,⁴ we made clear that the “surge” was anathema to sensible border security policy because it would cause massive deterioration in the civil and human rights of migrants and border residents.⁵ The ACLU continues to support expansive immigration reform that provides a welcoming pathway of citizenship to the millions of aspiring citizens who contribute daily to their American communities, including for many raising their U.S. citizen children and supporting their U.S. citizen family members. Border security must not stand in the way of these aspirations.

The data-driven, bipartisan approach of H.R. 1417 should not be undermined by transforming its provisions into a “trigger” preventing aspiring citizens from earning legal status, or used as an excuse to avoid commitment to a pathway for citizenship. H.R. 1417 is flawed, however, in assuming a need to achieve a 90 percent “illegal border crossing effectiveness rate” across the southwest border. Such benchmarks must only be contemplated upon completion of a thorough study of border needs, including documentation and mitigation of the civil liberties costs associated with pursuing such a goal through expanded resources like drones and other means of surveillance. The extent of Congress’ focus on border security is truly misplaced at a time when border enforcement is at an all-time high and continues to have a detrimental impact on border communities. That being said, H.R. 1417 is an improvement over proposals which seek to increase border resources based on no concrete analysis.

Border security resources should be guided by principles of fiscal responsibility, accountability and oversight, and attention to the true needs of border communities currently suffering from a wasteful, militarized enforcement regime. Experts, including those from the Department of Homeland Security, agree that the border is more secure than ever.⁶ Border security benchmarks of prior proposed or enacted legislation (in 2006, 2007, and 2010) have already been met or exceeded.⁷ Congress should proceed unimpeded by border security obstacles to the vital task of providing a roadmap to citizenship for aspiring Americans in a way that advances our Constitution’s principles and American values of family unity and due process.

II. The Senate’s border security approach in S.744 is fundamentally flawed. The House should not adopt these excessive, wasteful border enforcement provisions.

⁴ Congressional Budget Office, Cost Estimate re: S.744. (June 18, 2013), available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/s744.pdf>

⁵ Laura W. Murphy, “Our Stance on the Immigration Reform Bill: Support for Many Civil Liberties Provisions and Opposition to New Border Measures.” (June 24, 2013), available at <http://www.aclu.org/blog/immigrants-rights/our-stance-immigration-reform-bill-support-many-civil-liberties-provisions>

⁶ Testimony of DHS Secretary Napolitano to the Senate Judiciary Committee (Feb. 13, 2013), available at <http://www.judiciary.senate.gov/pdf/2-13-13NapolitanoTestimony.pdf>.

⁷ Chen, Greg and Kim, Su. “Border Security: Moving Beyond Past Benchmarks,” American Immigration Lawyers Association, (Jan. 30, 2013). Available at: <http://www.aila.org/content/default.aspx?bc=25667|43061>

Quality of life in border communities is guaranteed to suffer should the Corker-Hoeven provisions become law. As amended, S.744 now requires tens of billions of dollars in personnel and equipment deployment at the border, including drones and other surveillance to monitor not only the southwest border itself, but also areas extending 100 miles in, exposing American lands, dwellings, and citizens to unreasonable searches and surveillance without the legal protections enjoyed by the rest of the country. The U.S. government has expanded the powers of federal authorities to survey and enter private property, board buses and trains, and maintain vehicle checkpoints far from any land or sea border by creating “Constitution-Light” or “Constitution-Free” zones adjacent to land and sea borders. In these zones, Customs and Border Protection (CBP) personnel claim they have surveillance, stop, and search authority that would be unconstitutional in other parts of the country, despite the fact that two-thirds of the American population resides within 100 miles of these borders.⁸

The border “surge” would increase the number of southwest border patrol agents by 19,200 to a total exceeding 38,000—or one for every 270 feet of the southwest border. As Sen. Tom Coburn (R-Okla.), said on the Senate floor, the nation does not need another 20,000 border patrol agents: “What we need is a coherent, smart strategy.”⁹ The border “surge” would also require the completion of 700 miles of border fencing, widely recognized by most lawmakers as a failed and costly enterprise, and spend \$3.2 billion on equipment and technology like that used by U.S. forces in Iraq and Afghanistan, such as advanced surveillance systems, manned and unmanned aerial vehicles, drones, radar, and much more.¹⁰ It would forever change and militarize border communities like El Paso and San Diego, which are among the safest cities in America.¹¹ Senator John McCain commented: “We’ll be the most militarized border since the fall of the Berlin Wall.”¹² In fact, this was an understatement: the wall between the U.S. and Mexico would become seven times longer than the Berlin Wall, with four times as many personnel.¹³

Border spending has already grown exponentially over the last decade, resulting in widespread and abusive militarization of border communities. Last year, House Appropriations Committee Chairman Hal Rogers (R-KY), presciently warned about the irrationality of southwest

⁸ See ACLU Vote Recommendation Supporting Leahy Amendment 1410 to S. 744 (June 20, 2013), available at http://www.aclu.org/files/assets/aclu_vote_recommendation_re_leahy_1410_to_s_744_final_6_20_13.pdf

⁹ Remarks of Sen. Coburn (June 20, 2013), available at <http://www.youtube.com/watch?v=iz3c2gcAOgQ>

¹⁰ See *What’s Included in ‘border surge’ immigration amendment*, CNN, June 21, 2013, <http://politicalticker.blogs.cnn.com/2013/06/21/whats-included-in-border-surge-immigration-amendment/>; see also

¹¹ See Julián Aguilar, *El Paso Again Tops List of Safest U.S. Cities*, The Texas Tribune, Feb. 5, 2013, available at <http://www.texastribune.org/2013/02/05/el-paso-again-ranked-countrys-safest-city/>; see also *2 U.S.-Mexico Border Cities Boast Lowest Crime Rates, New Data Shows*, Huffington Post, Feb. 8, 2013, http://www.huffingtonpost.com/2013/02/08/2-us-mexico-border-cities_n_2647897.html

¹² David Sherfinski, *McCain: We’ll have ‘most militarized border since the fall of the Berlin Wall,’* Washington Times, June 25, 2013, available at <http://www.washingtontimes.com/blog/inside-politics/2013/jun/25/mccain-well-have-most-militarized-border-fall-berl/>

¹³ *New Border Requirements May Not Save Immigration Bill*, CBS Miami, June 25, 2013, available at <http://miami.cbslocal.com/2013/06/25/new-border-requirements-may-not-save-immigration-bill/>

border security 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.”¹⁴ Border spending has skyrocketed over the last decade, far out of proportion to security demands. Between FY2004 and FY2012, the budget for CBP increased by 94 percent to \$11.65 billion, a leap of \$5.65 billion; this followed a 20 percent post-9/11 increase of \$1 billion.¹⁵ By way of comparison, this jump in funding is more than quadruple the growth rate of NASA’s budget and is almost ten times that of the National Institutes of Health. U.S. taxpayers now spend more on border and immigration enforcement agencies (\$18 billion) than on the FBI, DEA, ATF, U.S. Marshals, and Secret Service—*combined*.¹⁶

Because of “zero-tolerance” initiatives like Operation Streamline,¹⁷ which is part of CBP’s Consequence Delivery System, the Department of Homeland Security (DHS) now refers more cases for federal prosecution than the Department of Justice’s (DOJ) law enforcement agencies. 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. 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.¹⁸

CBP’s spending runs directly counter to data on recent and current migration trends. A weaker U.S. economy, strengthened enforcement, and a growing Mexican economy have led to a dramatic decrease in unauthorized migration from Mexico. In fact, net migration from Mexico is now zero or slightly negative (i.e., more people leaving than coming).¹⁹ Apprehensions by the Border Patrol declined more than 72 percent from 2000 to 2010, and are currently near a 40-year

¹⁴ 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>

¹⁵ 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

¹⁶ 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>

¹⁷ See generally ACLU, “Operation Streamline Issue Brief.” (Feb. 25, 2013), available at <http://www.aclu.org/immigrants-rights/operation-streamline-issue-brief>

¹⁸ 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

¹⁹ 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

low.²⁰ Yet, the number of Border Patrol agents has doubled since 2004, from 10,819 to 21,394 in 2012,²¹ with about 85 percent of the force deployed at the U.S.-Mexico border.²²

With so many agents and so few apprehensions, the costs per apprehension are at an all-time high. The Yuma, Arizona sector, for example, has seen a 95 percent decline in apprehensions since 2005 while the number of agents has tripled.²³ Each agent was responsible for interdicting just 8 migrants in 2010, contributing to ballooning per capita costs. While costs vary per sector, each migrant apprehension at the border now costs five times more on average, rising from \$1,400 in 2005 to over \$7,500 in 2011.²⁴ In recent years, agents have reported widespread boredom, and some have even been disciplined for falling asleep on the job.²⁵ Despite Border Patrol's doubling in size since 2004, overtime costs have amounted to \$1.6 billion over the last six years,²⁶ yet in FY2012, Border Patrol apprehended on average 18 people per agent.²⁷

In this context of already-excessive border spending, the Senate's border enforcement buildup would be unacceptably costly in budgetary terms. Moreover, it promises to place enormous burdens on our southwest border communities, especially the daily routines of their brown and black residents, who are already being damaged by a Border Patrol that routinely engages in racial profiling and uses excessive, even deadly, force, including against U.S. citizens.

III. H.R. 1417 commendably includes a requirement that DHS assess its existing border security technologies and practices and “their effect on civil rights, private property rights, privacy, and civil liberties,” as well as review training programs affecting these rights. Congress should prioritize requiring CBP to improve its atrocious record of oversight and accountability.

²⁰ Testimony of DHS Secretary Napolitano to the House Judiciary Committee (July 19, 2012); DHS Fact Sheet, “Apprehensions by the U.S. Border Patrol: 2005–2010.” (July 2011), available at <http://www.dhs.gov/xlibrary/assets/statistics/publications/ois-apprehensions-fs-2005-2010.pdf>; see also Jeffrey Passel and D’Vera Cohn, “U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade.” (Pew Hispanic Center, Sept. 1, 2010), available at <http://pewhispanic.org/reports/report.php?ReportID=126>

²¹ United States Border Patrol: Border Patrol Agent Staffing By Fiscal Year (2012), available at http://www.cbp.gov/linkhandler/cgov/border_security/border_patrol/usbp_statistics/usbp_fy12_stats/staffing_1993_2012.ctt/staffing_1993_2012.pdf

²² 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>

²³ Richard Marosi, “Plunge in border crossings leaves agents fighting boredom.” *Los Angeles Times* (Apr. 21, 2011).

²⁴ Immigration Policy Center, *Second Annual DHS Progress Report*. (Apr. 2011), 26, available at http://www.immigrationpolicy.org/sites/default/files/docs/2011_DHS_Report_041211.pdf

²⁵ Richard Marosi, *Plunge in Border Crossings Leaves Agents Fighting Boredom*, *Los Angeles Times*, Apr. 21, 2011, available at: <http://articles.latimes.com/2011/apr/21/local/la-me-border-boredom-20110421>.

²⁶ “Border Patrol overtime, staffing up; arrests down.” Associated Press (Feb. 5, 2012).

²⁷ Chen and Kim, “Border Security,” supra.

Unprecedented investment in border enforcement without corresponding oversight mechanisms²⁸ has led to an increase in human and civil rights violations, traumatic family separations in border communities, and racial profiling and harassment 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. Stressed border communities are a vital component of the half-trillion dollars in trade between the U.S. and Mexico, and the devastating effects of militarization on them must be addressed in immigration reform. The U.S.-Canada border has experienced an increase in border enforcement resources as well, with northern border residents often complaining about Border Patrol agents conducting roving patrols near schools and churches and asking passengers for their documents on trains and buses traveling far from border crossings.²⁹ Border enforcement must prioritize investment in robust and independent external oversight that includes border communities’ participation.

a. Oversight and Accountability

While the federal government has the authority to control our nation’s borders and regulate immigration, CBP officials must act in compliance with national and international legal norms and standards. As employees of the nation’s largest law enforcement agency, CBP personnel should be trained and held to the highest professional law enforcement standards. Systemic, robust, and permanent oversight and accountability mechanisms for CBP should be integral to border security measures. Indeed, in recent polling, over 90 percent of respondents—regardless of party affiliation—said they support creating “greater oversight and accountability” of CBP.³⁰

Despite the overwhelming support for greater oversight and accountability and the documented history of CBP abuse, investments in oversight and accountability mechanisms have not kept pace with the growth of CBP. For example, while the CBP budget increased by 97 percent from FY 2004 to FY 2012, the DHS Office of Inspector General’s (OIG) budget has increased by only 70 percent during this same time period.³¹ Similarly, from FY 2004 to FY 2011,

²⁸Tim Steller, “Border Patrol faces little accountability,” *Arizona Daily Star* (Dec. 9, 2012), available at: http://azstarnet.com/news/local/border/border-patrol-faces-little-accountability/article_7899cf6d-3f17-53bd-80a8-ad214b384221.html

²⁹New York Civil Liberties Union, NYU Law School Immigrant Rights Clinic, and Families for Freedom, “Justice Derailed: What Raids on New York Trains and Buses Reveal about Border Patrol’s Interior Enforcement Practices” (Nov. 2011), available at <http://www.nyclu.org/news/report-reveals-troubling-border-patrol-tacticsupstate-new-york>

³⁰Belden 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>

³¹DHS 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>

the DHS Office for Civil Rights and Civil Liberties (CRCL) budget increased only 56 percent.³² Overall, the combined budget of the OIG and CRCL accounted for less than .005 percent of the total DHS budget in FY 2011.

The failure to invest in sufficient oversight and accountability contributes to continued misconduct and corruption within CBP. There are numerous examples of CBP officers making improper arrests, detaining people for days incommunicado, subjecting them to coercive interrogation, and pressuring them to sign away their rights. In addition, a 2012 GAO report found that from 2005 to 2012, CBP had 2,170 reported incidents of arrests for acts of misconduct, such as domestic violence or driving under the influence, and a total of 144 current or former CBP employees that were arrested or indicted for corruption-related activities.³³ The same report found that CBP's Office of Internal Affairs had numerous deficiencies impacting its ability to prevent misconduct and appropriately screen new hires. Considering these findings, proposals to exponentially increase CBP will likely result in increased numbers of CBP officers that have been poorly trained or screened, and contribute to overall abuses within the agency.

Similarly, the insufficient funding of oversight and accountability mechanisms has resulted in a complete failure of the agency to appropriately investigate and respond to complaints. DHS has frequently faced a complaint backlog. For example, in March 2012, DHS OIG had 2361 open investigative cases. Between October 2011 and March 2012, DHS OIG closed only 730 cases, or less than a third of their open cases.³⁴ In order to deal with this backlog, the OIG transferred cases back to CBP and ICE for investigation, which raises serious conflict of interest concerns.

In the absence of robust oversight and accountability measures, CBP will continue to operate without adequate checks on abuses such as racial profiling, excessive use of force, and inhumane short-term custody facilities.

b. Racial Profiling

Racial profiling is rampant as a result of CBP's abuse of its vast authority within 100 miles of any land or sea border. While the southwest border and Florida have been the site of systemic racial profiling, this unlawful and ineffective law enforcement practice extends to the northern border as well. The ACLU of Washington State has brought a class action lawsuit to end the Border Patrol's practice of stopping vehicles and interrogating occupants without legal justification. One of the plaintiffs in the case is an African American corrections officer and part-time police officer who was pulled over for no expressed reason and interrogated about his

³² 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>

³³ GAO-13-59 "Border Security: Additional Actions Needed to Strengthen CBP Efforts to Mitigate Risk of Employee Corruption and Misconduct," Dec 4, 2012.

³⁴ *Id.*

immigration status while wearing his corrections uniform.³⁵ A local business owner said he's "never seen anything like this. Why don't they do it to the white people, to see if they're from Canada or something?"³⁶

CBP also aids and abets state and local police racial profiling practices, ensnaring U.S. citizens. In February 2011, Tiburcio Briceno, a naturalized U.S. citizen, was stopped by a Michigan State Police officer for a traffic violation while driving in a registered company van. Rather than issue him a ticket, the officer interrogated Briceno about his immigration status, apparently based on Briceno's Mexican national origin and limited English. Dissatisfied with Briceno's valid Michigan chauffeur's license, the officer summoned CBP, impounded Briceno's car, and told him he would be deported. Briceno says he reiterated again and again that he was a U.S. citizen, and offered to show his social security card but the officer refused to look.

Briceno was released after CBP officers arrived and confirmed that he was telling the truth. "Becoming a U.S. citizen was a proud moment for me," Briceno has since reflected. "When I took the oath to this country, I felt that I was part of something bigger than myself; I felt that I was a part of a community and that I was finally equal to every other American. Although I still believe in the promise of equality, I know that I have to speak out to make sure it's a reality for me, my family and my community. No American should be made to feel like a criminal simply because of the color of their skin or language abilities."³⁷ Ending CBP's unchecked practices of racial profiling must be a priority of immigration reform.

c. Excessive Use of Force

In addition to racial profiling at and beyond the border, incidents of excessive use of force are on the rise, with at least 19 people killed by CBP officials since January 2010,³⁸ including five

³⁵ Complaint available at http://www.aclu-wa.org/sites/default/files/attachments/2012-04-26--Complaint_0.pdf

³⁶ William Yardley, "In Far Northwest, a New Border Focus on Latinos." *New York Times* (May 29, 2012) (emphasis added), available at <http://www.nytimes.com/2012/05/29/us/hard-by-canada-border-fears-of-crackdown-on-latino-immigration.html?pagewanted=all>

³⁷ ACLU of Michigan, "ACLU Urges State Police to Investigate Racial Profiling Incident." (Mar. 21, 2012) (emphasis added), available at <http://www.aclumich.org/issues/racial-justice/2012-03/1685>

³⁸ 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; 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 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, 16, shot and killed, Nogales, Sonora (Oct. 11, 2012); and Margarito

U.S. citizens and six individuals who were standing in Mexico when fatally shot. On April 20, 2012, PBS's *Need to Know*³⁹ program explored the trend of CBP's excessive use of force, with a focus on Anastasio Hernandez Rojas. New footage depicting a dozen CBP personnel surrounding and repeatedly applying a Taser and other force to Mr. Hernandez – who was shown to be handcuffed and prostrate on the ground contrary to the agency's incident reporting – shocked viewers. The San Diego coroner classified Mr. Hernandez's death as a homicide, noting in addition to a heart attack: "several loose teeth; bruising to his chest, stomach, hips, knees, back, lips, head and eyelids; five broken ribs; and a damaged spine." CBP's version of events described a "combative" person; force was needed to "subdue the individual and maintain officer safety."

Spotlighting another CBP fatality, the *Arizona Republic* reported earlier this year that "[a]n autopsy report raises new questions about the death of a Mexican youth shot by at least one U.S. Border Patrol officer four months ago in Nogales. The Border Patrol has maintained that Jose Antonio Elena Rodriguez, 16, was throwing rocks over the border fence at agents on the U.S. side when an agent fired across the international border the night of Oct. 10. But entry and exit wounds suggest that all but one of as many as 11 bullets that struck the boy entered from behind, according to the report by two medical examiners working for the Sonora Attorney General's Office."⁴⁰

After a Congressional letter signed by 16 Members was sent to DHS Secretary Janet Napolitano, DHS Acting Inspector General Charles Edwards, and Attorney General Eric Holder,⁴¹ on July 12, 2012, the Associated Press reported that a federal grand jury was investigating the death of Anastasio Hernandez.⁴² Border Patrol's use-of-force incidents have attracted international scrutiny with the government of Mexico,⁴³ the Inter-American Commission on Human Rights,⁴⁴ and the Office of the United Nations High Commissioner for Human Rights⁴⁵ weighing in.

Lopez Morelos, 19, shot and killed, Baboquivari Mountains, AZ (Dec. 2, 2012). This count does not include Border Patrol agent Nicholas J. Ivie, 30, who was fatally shot by friendly fire near Bisbee, AZ (Oct. 2, 2012).

³⁹ PBS *Need to Know* special, aired April 20, 2012 and entitled "Crossing the line at the border," available at:

<http://www.pbs.org/wnet/need-to-know/security/video-first-look-crossing-the-line/13597/>

⁴⁰ Bob Ortega, "New theory on Border Patrol killing of boy." *Arizona Republic* (Feb. 7, 2013), available at

<http://www.azcentral.com/news/articles/20130206border-patrol-killing-boy-new-theory.html>

⁴¹ 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>

⁴² Grand Jury Probes Anastasio Hernandez Border Death, available <http://www.kpbs.org/news/2012/jul/12/grand-jury-probes-border-death/>

⁴³ 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

⁴⁴ See "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

⁴⁵ See 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/>

It is past time for CBP to reform its use-of-force policy to conform with best law enforcement practices, including the mandatory use of body-worn cameras by officers, which have been shown to reduce both uses-of-force and unfounded complaints against law enforcement officers.⁴⁶ CBP must also bring transparency to review of use-of-force incidents for disproportionality and unreasonableness.

d. Short-Term Custody

Organizations working with immigrants, asylum-seekers and U.S. citizens who have been held in CBP short-term custody facilities receive regular reports of civil and human rights violations. These include denial of medical care, confiscated medicine such as insulin, being held in detention without access to a phone to communicate with family members or legal counsel, verbal and physical abuse, coercion into signing forms that have not been explained, failure to provide copies of legal documents signed, overcrowding, and failure to return key belongings and personal identity documents prior to repatriation.

These violations have been recurring for years and have been widely reported.⁴⁷ For example, the University of Arizona's recently-released report, based on more than 1,000 interviews conducted in migrant shelters from Tijuana to Nuevo Laredo (and in Mexico City), found that:⁴⁸

- 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 were carrying Mexican identifying documents and had at least one document taken and not returned.

⁴⁶ See Spokane, WA Office of the Police Ombudsman, *Body-Worn Video & Law Enforcement: An Overview of the Common Concerns Associated With Its Use* (Feb. 2012), available at <http://www.spdombudsman.com/wp-content/uploads/2012/02/Attachment-G-Body-Camera-Report.pdf>; U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *A Primer on Body-Worn Cameras for Law Enforcement* (Sept. 2012), available at <https://www.justnet.org/pdf/00-Body-Worn-Cameras-508.pdf>; Koppel, Nathan. "Cameras Keep a Close Watch on the Police." *Wall Street Journal* (Feb. 12, 2013), available at <http://online.wsj.com/article/SB10001424127887323511804578298060326177182.html>; Stross, Randall. "Wearing a Badge, and a Video Camera." *New York Times* (Apr. 6, 2013, available at <http://www.nytimes.com/2013/04/07/business/wearable-video-cameras-for-police-officers.html>.

⁴⁷ See for example, No More Deaths. *Crossing the Line: Human Rights Abuses of Migrants in Short Term Custody on the Arizona Sonora Border*. (Sept. 2008), available at: <http://www.nomoredeaths.org/Abuse-Report-Crossing-the-Line/View-category.html>; 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>; Kino Border Initiative. *Documented Failures: the Consequences of Immigration Policy at the U.S.-Mexico Border*. (Feb. 2013), available at: http://www.jesuit.org/jesuits/wp-content/uploads/Kino_FULL-REPORT_web.pdf

⁴⁸ 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

In addition to extensive documentation, organizations have filed numerous administrative complaints and legal claims based on these abuses.⁴⁹ In May 2012, the ACLU submitted an administrative complaint concerning serious abuses against travelers in CBP custody at ports of entry. And in March 2013, Americans for Immigrants Justice filed Federal Tort Claims actions on behalf of four immigrants who were held in CBP custody. Customs and Border Protection should be required to implement and enforce binding short-term custody standards, including minimum conditions for detention, like the provision of adequate nutrition, appropriate climate, and medical care; dissemination of legal rights information in commonly-spoken languages; access to visits by lawyers, consular officials and non-governmental organizations; and enforceable policies for credible fear procedures relating to asylum-seekers.

IV. Conclusion

The ACLU urges the House to reject S.744's wasteful resource splurge on border security as irrational and damaging to border communities. Instead, Congress must prioritize the reduction of abuses in the currently-oppressive immigration and border enforcement system. That profligate enforcement has cost \$219 billion in today's dollars since 1986.⁵⁰ By jettisoning proposals for escalated border security that clash with civil liberties and thereby creating space for genuine immigration reform, Congress can ensure that the roadmap to citizenship for aspiring Americans, which is indispensable to true immigration reform, is a generous one free of unjust obstacles.

⁴⁹ ACLU Demands Federal Investigation Into Charges of Abuse by Border Agents: Abuse of U.S. Citizens and Non-Citizens Alike Necessitates Greater Oversight and Accountability (May 10, 2012), available at <http://www.aclu.org/immigrants-rights/aclu-demands-federal-investigation-charges-abuse-border-agents>; AI Justice Takes Action Against Border Patrol for Abusing Immigrant Women (Mar. 14, 2013), available at <http://aijustice.org/ai-justice-takes-action-against-border-patrol-for-abusing-immigrant-women>

⁵⁰ Robbins, "*U.S. Grows*," supra.