



REGIONAL CENTER FOR
BORDER RIGHTS



May 17, 2016

John Roth
Inspector General
Office of Inspector General
MAIL STOP 0305
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528-0305

Matthew Klein
Assistant Commissioner
Office of Professional Responsibility
U.S. Customs and Border Protection
U.S. Department of Homeland Security
1300 Pennsylvania Ave. NW
Washington, DC 20229

Re: Complaint and Request for Investigation of Coercion, Abuse of Power, and Excessive Force by Customs and Border Protection at Ports of Entry along the U.S.-Mexico Border

Dear Inspector General Roth and Assistant Commissioner Klein:

The American Civil Liberties Union of New Mexico Regional Center for Border Rights (“RCBR”), the ACLU Foundation of Texas (“ACLU-TX”) and the Southern Border Communities Coalition (“SBCC”) submit this complaint on behalf of individuals who suffered abuses committed by U.S. Customs and Border Protection (“CBP”) officers at ports of entry (“POE”) in the El Paso and Southern New Mexico region on the United States’ border with Mexico.

The American Civil Liberties Union is a non-partisan, non-profit, nationwide 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. RCBR, located in Las Cruces, represents ACLU of New Mexico in the southern region of the state and works in conjunction with ACLU state affiliates and immigrant rights advocates to address civil and human rights violations that stem from border-related immigration policies. We are committed to ensuring that fundamental constitutional protections of due process and equal protection are extended to every person, regardless of their citizenship or immigration status.

The ACLU Foundation of Texas, a U.S. 501(c)(3) non-profit organization, is the Texas’ preeminent civil rights organization, dedicated to protecting and defending the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in Texas, regardless of immigration or refugee status. The ACLU of Texas works daily in the courts, the state legislature, and communities to fight abuses in the Texas-Mexico border.

The Southern Border Communities Coalition brings together more than 60 organizations from San Diego, California, to Brownsville, Texas, to ensure that border enforcement policies and practices are accountable and fair, respect human dignity and human rights, and prevent the loss of life in the region.

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.

This complaint includes multiple individual complaints of abuse at Southwest border POEs involving excessive force; the use of coercion to force individuals to surrender their legal rights and citizenship documents; and the lack of a clear, transparent, and complaint process for individuals to seek redress. The individual complaints reflect broader patterns of unchecked abuse within CBP.

We request that you promptly investigate these individual allegations of abuse and undertake a comprehensive investigation of POE complaints involving CBP Office of Field Operations (OFO) officers to address these officers' failure to comply with their obligations under the U.S. Constitution, international law, and agency policy. To end the systemic abuse documented here and in several reports, CBP must make significant changes in its training, oversight, and accountability measures. To prevent further abuses, we urge you to make changes consistent with your institutional mission.

I. Individual Complaints of Abuse

A. Coercive Interrogation

1. Amanda Rodríguez Varela

**Ysleta/Zaragoza POE and Paso del Norte POE – El Paso, TX
September 1, 2015, and October 21, 2015**

On two occasions in the fall of 2015, CBP officers at the Ysleta POE harassed and threatened Amanda Rodríguez Varela, a 51-year-old Mexican citizen and women's rights advocate from Ciudad Juárez. The officers falsely accused her of being a sex worker in the United States and implied that she had sexually transmitted diseases. One officer called her a whore. The CBP officers threatened her with criminal charges for prostitution and belittled her work for gender equality. One said that her work was a "waste of time." On Ms. Rodríguez' last trip to the Ysleta POE, CBP officers detained and interrogated her for nearly ten hours. At the end of the interrogation, the officers presented Ms. Rodríguez with a choice: they claimed that she would face criminal charges and one year of jail for prostitution—a crime that she never committed—or she could admit to the false charges of prostitution and sign an English-language form whose contents and consequences she did not understand. Feeling extremely coerced, scared about the threats of jail time, and demoralized by the interrogations, Ms. Rodríguez signed the English-language Department of Homeland Security (DHS) "Notice to Alien Ordered

Removed/Departure Verification” form. After she signed the form, Ms. Rodríguez learned that CBP officers appended documents to the form containing fabricated admissions of prostitution and a false transcript of an interrogation between her and a CBP officer. Most significantly, Ms. Rodríguez learned that the form the CBP officers had coerced her into signing meant that she was barred from entering the United States for five years.

First Incident of OFO Officers’ Harassment

On September 1, 2015, at approximately 6:00 a.m., Ms. Rodríguez Varela crossed the Ysleta POE through the pedestrian lane. After Ms. Rodríguez Varela showed her valid visa, CBP officers sent her to an interrogation room for further questioning.

A female CBP officer asked Ms. Rodríguez Varela where she was heading., Ms. Rodríguez Varela said that she was going to Walmart to shop. The officer then asked her how much money she had. She answered that she had about \$100 dollars. When asked where she worked, she said that she worked part-time for a women’s rights non-profit organization in Ciudad Juarez.

Then the CBP officers began to harass Ms. Rodríguez Varela. Addressing Ms. Rodríguez Varela, one of the officers said, “You look so friendly and attractive to be crossing only for that reason [to shop in the United States].”

Ms. Rodríguez Varela jokingly answered, “Well, models need to cross into the U.S. too.”

The officer probed further, asking Ms. Rodríguez Varela if she did “favors” in the U.S.

Not understanding that the officer was alluding to sexual favors, Ms. Rodríguez Varela responded affirmatively: “Yes, sometimes I do.”

The officer aggressively accused Ms. Rodríguez Varela of being a prostitute: “Andas de puta,” the CBP officer said. You are being a whore.

Ms. Rodríguez Varela was shocked. She rightly insisted to the officers that she had never worked as a prostitute. The officers ignored Ms. Rodríguez Varela’s denials and crudely asked if she had syphilis or gonorrhea. Because she did not have these diseases, she denied having them. The officers then told Ms. Rodríguez Varela that she should remain calm and assured her that she would be free to leave shortly. The officers left the interrogation room. After having detained Ms. Rodríguez Varela for an hour, the officers returned and told her that she could cross.

The next time Ms. Rodríguez Varela crossed into the U.S. was on September 17, 2015, through the Ysleta POE. Worried about the abuse she had suffered during the earlier interrogation, this time Ms. Rodríguez Varela carried proof of employment in case the officers decided to detain her again. The CBP officer who checked her visa told her she had been flagged as a prostitute. Yet this officer recognized Ms. Rodríguez Varela and knew that she crossed the border often to shop. The officer told Ms. Rodríguez Varela that he did not understand why the allegations of prostitution had been made in her record, but that he was going to investigate and that she should not worry about it. She was allowed to cross.

Second Incident of OFO Officers' Harassment

On October 21, 2015, at about 8:15 a.m., Ms. Rodríguez Varela attempted to cross again through the Paso Del Norte POE through the pedestrian lane. She presented her visa to a CBP officer who immediately sent her to an interrogation room. There, CBP officers asked how much money she was carrying and where she was going. A male CBP officer with the last name Quintanas interrogated her. Officer Quintanas told Ms. Rodríguez Varela that he knew she was crossing to work as a prostitute. She denied his false accusation. Ms. Rodríguez Varela tried to explain to Officers Quintanas that CBP officers had subjected her to a similar interrogation on September 1, 2015, and that Ms. Rodríguez Varela had not understood that the officer in that interrogation was using the word “favors” to falsely accuse her of working as a prostitute.

Officer Quintanas then asked Ms. Rodríguez Varela where she worked. When Ms. Rodríguez Varela said that she worked with a women’s rights organization, Officer Quintanas became aggressive. He denigrated Ms. Rodríguez Varela’s work as a women’s rights advocate, suggesting that women have already achieved equality. Officer Quintanas pointed to a female colleague. “You see,” Officer Quintanas said, “she carries a gun just like me and smokes cigarettes just like me. So your work for gender equality is a waste of time.”

Officer Quintanas then ordered Ms. Rodríguez Varela to come closer to him. Officer Quintanas asked Ms. Rodríguez Varela, “You prostitute yourself?” Ms. Rodríguez Varela responded that she did not. Officer Quintanas then pressed further: “You do favors, right?” Ms. Rodríguez Varela tried to explain to Officer Quintanas that she had misunderstood the prior CBP officer’s question about “favors” on September 1, 2015. Ms. Rodríguez Varela explained that in Mexican Spanish, the word favor is used to describe helping out a friend, but not in a sexual way. Officer Quintanas told Ms. Rodríguez Varela that the other officers should not have allowed her to cross after September 1, 2015, since her visa was already terminated—an accusation that she did not understand.

The CBP officers then searched Ms. Rodríguez Varela’s body and took her fingerprints.

A CBP officer then threatened Ms. Rodríguez Varela with criminal charges of prostitution. The CBP officer said that Ms. Rodríguez Varela would be incarcerated in the United States for at least a year. Her only way to avoid the charges, the officer claimed, was by signing an English-language DHS form. Afraid of serving jail time, she signed the form she was given, not understanding what the form meant. The CBP officers put Ms. Rodríguez Varela back in a holding room. Only when Ms. Rodríguez Varela gathered the courage to knock on the glass and ask another officer when she would be released did the officers finish her paperwork and release her from their custody. At the end of her detention, CBP informed Ms. Rodríguez Varela that she had lost her visa and was banned from coming to the U.S. for five years. She was given copies of several documents including a “Notice to Alien Ordered Removed/Departure Verification” signed by CBP officer Veronica Garcia and a questionnaire with what was supposedly a typed English-language transcript of her interrogation. Ms. Rodríguez Varela later learned that the transcript included words that she had never said—fabricated admissions about her prostitution in the U.S. CBP officers also gave Ms. Rodríguez Varela Determination of Inadmissibility and an Order of Removal Under Section 235(b)(1) of the Act signed by Supervisory CBP Officer

Javier Renteria and CBP Chief Jose Jr Robles. Having detained Ms. Rodríguez Varela for almost ten hours, CBP officers finally released her into Ciudad Juárez at about 4 p.m.

2. Raúl Humberto Cadena Castillo

Ysleta-Zaragoza POE – El Paso, TX January 25, 2015

On January 25, 2015 at around 5:30 p.m., Raul Humberto Cadena Castillo, a 22-year-old Mexican citizen, arrived at the Ysleta-Zaragoza Port of Entry in El Paso, TX. At the time, he was finishing his engineering degree at a university in Ciudad Juárez and working for a chain supermarket. He intended to request an I-94 permit to travel to the interior of the United States. Mr. Cadena had requested and received this type of permit twice in 2014 and had returned the permits to CBP upon his return.

When he was called to the counter, he told CBP officer Delgado that he was requesting an I-94 to travel to Albuquerque, NM, to visit family members. He presented his Border Crossing Card, recent paychecks, proof of residency, and proof of college enrollment. Officer Delgado asked Mr. Cadena about the previous travel permits he had been granted in 2014 and why his paychecks indicated that he had worked during those exact time periods. Mr. Cadena responded that he had built-in vacation days and his company pays his vacation days, so those days showed up on his paycheck as days he had worked. Officer Delgado then questioned why the paychecks from 2014 looked different from the ones in 2015. Mr. Cadena explained that there had been a fiscal reform in Mexico which meant that many businesses had to change the way paychecks are printed. Officer Delgado abruptly—and wrongly—accused Mr. Cadena of presenting false documents and told Mr. Cadena to come to the back.

Mr. Cadena was taken to a questioning room and instructed to put everything he had in his pockets on a desk. A CBP officer took Mr. Cadena's phone and began to browse through its contents—contacts, messages, and pictures. Other CBP officers came into the room and also started going through the content of Mr. Cadena's cell phone. The officers started to whisper and laugh at messages he had exchanged with his girlfriend and pictures in the phone. After looking through his phone, an officer asked Mr. Cadena if his girlfriend was living in Hobbs, NM, to which he responded that she did, and the officer told him that he must then be planning on going to look for a job in Hobbs and live there permanently. Mr. Cadena insisted that he had no intention to live or work in the U.S. Mr. Cadena said that he was finishing his degree in Mexico, had a full time job that paid him well, and had many reasons to stay in Mexico. He only wanted the permit to visit his family in Albuquerque, NM for a couple of days.

The CBP officers dismissed what Mr. Cadena said. The officers proceeded to handcuff Mr. Cadena and again claimed that he had presented false documents in order to work in the U.S. He was taken to another inspection room where he was searched by an officer. Afterwards, his picture and fingerprints were taken by Officer Manuel L. Saenz, who then began to ask him questions from a questionnaire. Officer Saenz wrote down Mr. Cadena's answers about his family and background, but also added false information by wrongly stating that Mr. Cadena had

said he intended to find unauthorized employment in the United States—something that Mr. Cadena had no intention of doing and had never said. In fact, Mr. Cadena had only said he was planning on visiting an uncle for a few days in Albuquerque, NM. Officer Saenz also added that Mr. Cadena was planning on going to live with his girlfriend for six months and look for a job in Hobbs, NM—false information that Mr. Cadena never said.

CBP officers repeatedly told Mr. Cadena that he would not be able to leave unless he signed some documents, all of which were in English. Having been detained for nine hours at the POE, from 5:30 p.m. to 2:30 a.m., Mr. Cadena saw no other way out of the detention and finally signed the documents.

CBP officers then told Mr. Cadena that he was banned from entering the U.S. for five years. The officers gave Mr. Cadena copies of a “Notice to Alien Ordered Removed/ Departure Verification” signed by CBP Officer Manuel L. Saenz, a “Determination of Inadmissibility” signed by CBP Officer Carlos Rocha, and an “Order of Removal Under Section 235(b)(1) of the Act” signed by SCBP Officer Wally Terrazas, and CBP Chief Peter E. Anaya.

3. Graciela Vargas Orozco Santa Teresa, NM POE– Santa Teresa, NM October 27, 2014

On October 27, 2014, Graciela Vargas Orozco, a 60-year-old Mexican woman was traveling southbound, towards Mexico, through the Santa Teresa POE. She was in a van with other passengers when CBP officers stopped the van and asked for everyone's passports or visas. After reviewing everyone's documents, CBP officers called Ms. Vargas Orozco's name. She had presented an I-94 permit to travel to the interior—a **permit that was still valid for six more days**. The officer asked Ms. Vargas Orozco why she had spent so much time in the United States and what she had been doing. Ms. Vargas Orozco said that she had spent her time at her church and had stayed with the pastor. The officer then asked Ms. Vargas Orozco if she had been working at the church. She had not. The officer threatened her and warned her not to lie to the officer. Otherwise, the officer claimed, they would put her in jail for up to five years. CBP officers took her out of the vehicle, handcuffed her, and escorted her inside the POE facilities.

CBP officers took her to a bathroom, took off her shoes, and told her to take off her pants for inspection. Ms. Vargas Orozco struggled to remove a safety pin that she had used to secure her pants, so a female CBP officer told her to leave them on, but told her to open her legs. As Ms. Vargas Orozco complied, the officer whispered, “Hopefully you don't have any diseases.” An officer patted down Ms. Vargas Orozco and then took her to a room. While they detained Ms. Vargas Orozco, officers would come in and out of the room, continuing to question her about what she had been doing in the U.S. for four months and if she had been working during that time. Four hours later, the officers brought some documents in English and told her, “You are going to sign these papers so that you can leave.” Ms. Vargas Orozco does not speak or read English, so she asked what the papers meant, to which the officer responded, “Just sign here and we'll let you go.”

The CBP officers had detained her for four hours. When CBP officers presented her with the documents in English, Ms. Vargas Orozco was very afraid her transportation would leave her at this POE, which she was not familiar with and is far removed from Ciudad Juarez. Scared for her safety, Ms. Vargas Orozco signed the papers so that the CBP officers would release her to Mexico. Yet she does not know what the officers wrote on them. CBP officers took her visa away and did not tell Ms. Vargas Orozco anything about what she could do to reclaim her visa or file a complaint.

4. John Doe and Jane Doe Paso Del Norte POE – El Paso, TX February 9, 2015

John Doe is a U.S. citizen and resident of El Paso, TX. On February 9, 2015, at around 2 p.m., Mr. Doe and his fiancé Jane Doe, a Mexican citizen who has a Border Crossing Card, were crossing to El Paso in his truck through the Paso Del Norte POE. Mr. Doe and Ms. Doe would often cross the border to go shopping in downtown El Paso. Mr. Doe pulled up to the gate, and a CBP official began to review their documents. The CBP officer then asked Ms. Doe to step down from the vehicle and escorted her into an inspection room inside the facilities. Mr. Doe remained in the truck and was questioned in a secondary inspection area by a CBP officer for nearly three hours. The officer called Ms. Doe a “wetback” and accused Mr. Doe of illegally paying his fiancée for work in the U.S. Mr. Doe repeatedly said that his fiancée had never worked in the U.S. and he had never given her money for work. They only shared money on a personal level because they were engaged and getting ready to combine their finances. The questioning went on until 5 p.m., and at no point was he allowed to see Ms. Doe.

In the inspection room, the officer took Ms. Doe’s purse and dumped all the contents on the floor. The CBP officer began interrogating her in English. Ms. Doe does not understand much English, which she explained to him with the little English she knew. Nevertheless, the officer continued interrogating her in English, saying, “Oh, you speak English? That’s better for me.”

Over the course of approximately eight hours, CBP agents questioned her. They accused her of working illegally for her fiancée in the U.S., but Ms. Doe tried to explain that she was employed in Ciudad Juarez and could prove it. The officers found Mr. Doe’s business card in her purse, and asked her why she would have it if she didn’t work for him. She replied that she kept it solely for sentimental reasons.

Throughout the many hours in the inspection room, Ms. Doe was strip searched three times by female officers. CBP officers did not request permission for any of the searches, nor did Ms. Doe verbally consent. She found the searches to be extremely invasive.

Ms. Doe suffers from diabetes and had bronchitis at the time. She asked the officer if she could retrieve her diabetes medication from the truck and a sweater, since it was cold in the room, but the officers refused her request. She was given a burrito and water while she detained in the room, but CBP denied access to her medication in the truck, causing her to feel more ill during her custody.

Throughout their questioning, CBP officers tried to persuade her to sign a document in English, which she didn't understand. After eight hours of interrogation, abusive treatment, and invasive searches, she eventually broke down and signed it. She was never explained what the document stated nor was she explained her legal rights. Her visa was taken away and the officers told her she had a five year bar from entering the U.S.

Mr. Doe and Ms. Doe married in March 2015, but cannot live together because of the immigration bar as a result of CBP's false accusations lodged against them without evidence. Both continue to suffer from the traumatic experience and want nothing more than to be able to finally live together as husband and wife in El Paso.

5. Margarita Rodríguez
Bridge of the Americas POE – El Paso, TX
January 12, 2013

Margarita Rodríguez is a 59-year-old woman who lives in El Paso, TX and has been a U.S. Legal Permanent Resident (LPR) for 35 years. On Saturday, January 12, 2013, Ms. Rodríguez crossed from Ciudad Juarez to El Paso in her truck through the Bridge of the Americas POE. She approached the CBP gate and produced her LPR card to a female customs officer with the last name Morales. Officer Morales looked at Ms. Rodríguez' LPR card and the CBP computer screen for a considerably long time and then sent Ms. Rodríguez to secondary inspection. Ms. Rodríguez sat in her car for approximately 15 minutes before Officer Morales asked her to get out of her truck. She asked if Ms. Rodríguez was responsible for her truck and all of its contents, to which she responded she was. Ms. Rodríguez was instructed to sit outside on the concrete while the officer took her fingerprints. The officers then brought Ms. Rodríguez into an inspection room where there were two more officers. The officers took off Ms. Rodríguez' jacket and scarf, handcuffed her, and sat her in the room.

Ms. Rodríguez had provided her driver's license and Social Security card to an older officer, and the officers claimed that the papers weren't hers and that her fingerprints didn't match the documents. She responded that she received the documents at the same time she received her Social Security card—35 years ago when she became a lawful permanent resident. She stayed in the room handcuffed to a chair for over an hour.

Another male officer entered the room and asked Ms. Rodríguez who María Carrillo was. Ms. Rodríguez said she didn't know. Again the officer asked if she knew María Carrillo, and again she denied knowing that person. Another female officer entered and called her "María Margarita." Margarita had never had any other name, so she didn't respond. The officer continued to scream, "Why don't you declare that you are Maria Carrillo? Tell the truth! You are a fugitive." Ms. Rodríguez, shocked by the false accusation, did not respond. The officer stepped on her foot forcefully and yelled, "Why aren't you answering me?"

The officers escorted Ms. Rodríguez out of the room to take her fingerprints and multiple "mug shot" pictures. They continued to say her fingerprints did not match and they handcuffed her again. Although Ms. Rodríguez had never been arrested, the officers asked her why she had been arrested twice, to which she responded she had never been arrested. An officer said he had

proof right there that she had been arrested twice, but Ms. Rodríguez continued to deny it. One male officer said “Tell us the truth ma’am because if you lie you will have a lot more trouble, because this passport isn’t yours.” She continued to insist that those were her legal documents.

Many hours passed in the inspection room. Ms. Rodríguez has severe diabetes and was starting to feel poorly. She needed to use the restroom, asked if she could use one, but was denied the use of a toilet. Two female officers took Ms. Rodríguez to a separate room and searched her entire body including her genitalia. At one point, one of the officers kicked her leg hard to get her to open her legs more during the search. They dumped everything out of her bag and began asking her questions about her children and where she worked. They asked if she had ever been deported. She responded that she had been deported when she was 15 or 16 years old but she had not gone to jail. She was finally allowed to go to the bathroom and then they moved her back into the initial inspection room.

Ms. Rodríguez was beginning to develop a problem in her eye and could not see very clearly. She informed the officers of her diabetes and her eye problem, but no help was provided and she was not allowed to retrieve her medicine from the truck. An officer said to another “What do you say, shall we deport her?” and then gave her a document to sign. Ms. Rodríguez asked what the document was since she could not read it. The officer told her it was a deportation form. She was alarmed and asked, “What have I done?” The officer continued to insist that she sign the document. She told them she would not sign before speaking to her children or an attorney. Eventually, the officers returned her documents and released her into the United States. One officer warned her to never cross from Mexico again.

Ms. Rodríguez continues to feel traumatized and humiliated by this incident. She has been scared to return to Mexico, although she wants to go and visit her ill sister in Ciudad Juarez. She does not understand why she was put through that trauma when the officers had no evidence that she was a fugitive running from the law.

6. John Doe
Paso Del Norte POE – El Paso, TX
June 2014

John Doe is a Mexican citizen who has a Border Crossing Card and crosses about three times a week to shop in El Paso, TX. In June 2014, the CBP officer on duty at the Paso del Norte POE pedestrian lane alleged Mr. Doe was coming to work, not to shop. CBP officers escorted him to their back office in handcuffs. Without asking consent, they pushed him up against the wall to conduct a search. They made him remove all of his clothes down to his socks and underwear and conducted a pat down. For three hours, CBP officers, including a supervisor, intimidated Mr. Doe and sought to coerce him into admitting he works illegally in the United States. Officers used abusive language, including comments like “no seas pendejo” (don’t be an idiot) and threatened to call the police and lock him up in jail if he didn't confess.

Mr. Doe refused to sign any documents or say he was working, stating, "With respect, I'm not going to say I work. If you want to take away my passport, go ahead." Mr. Doe works as a taxi driver in Ciudad Juarez. After three hours, CBP officers let him go on his way without

signing any paperwork or confiscating his crossing card. Since the incident, Mr. Doe continues to cross to shop but admits he feels scared. He was not informed of how to file a complaint, but said he would have if officers had informed him at the time of how to file one.

B. Excessive use of force

7. Victor Gómez and 11-year-old son Paso Del Norte POE – El Paso, TX February 4, 2013

Victor Gómez, a 40-year-old U.S. citizen, had his son, an 11-year-old at the time, enrolled at a private school in Ciudad Juarez, where he was succeeding academically and socially. Mr. Gómez has a criminal conviction in a drug case from more than 20 years ago and served his sentence long ago. Every time he crosses the border into the U.S., however, officers are alerted to his prior criminal history. He is handcuffed and put in secondary inspection until they can clear him. He is accustomed to this detention and often warns the officers before they scan his passport that he has a very old prior criminal conviction for which he has served his sentence. Since he crosses on a regular basis, most of the officers at the bridge know him and know what to expect. Mr. Gómez always cooperates and had been crossing with his son for at least five years without incident.

On February 4, 2013, at around noon, Mr. Gómez and his son were crossing back to El Paso through the Paso Del Norte POE in his truck. When they approached the gate, Victor advised the CBP of the usual alert, and another officer said “yeah he is a regular.” The officer asked Victor if he knew the procedure, to which he said “yes.” CBP officers surrounded and handcuffed him as usual. Victor asked that they be careful with his son, as he was recovering from a broken arm injury. Instead of using caution, the official grabbed his son's arm, held his wrist around his back, and yanked him forcefully from the vehicle. Mr. Gómez' son had not provoked the official nor given him any reason to use force.

Both Mr. Gómez and his son were held in secondary inspection for more than one hour, and when he was told they were clear, Mr. Gómez asked to speak to a supervisor. They waited for 30 more minutes, but since Mr. Gómez' son started to complain about severe pain on his arm, Mr. Gómez asked Officer López for the names of the officers involved, to which he was told to ask the supervisor since they were already clear and could leave. Mr. Gómez told the official that he would make a complaint with the agency and then left to take his son to the hospital.

Mr. Gómez took his son to the emergency room at El Paso Children's Hospital, where he was diagnosed with a hairline fracture from the use of force by the CBP officer. The hospital visit left Mr. Gómez with a \$5,000 bill. On February 5, 2013, Mr. Gómez filed a complaint with CBP through the online INFO center, where he received a response asking him to attach a copy of any medical documents concerning his son's injury. He responded by attaching the hospital records he received after he took his son to the hospital immediately after the incident. Since he never heard back, he proceeded to email asking for the status of the complaint. The CBP info center responded they never received the documents, so he sent them again, yet never received a

response. Mr. Gómez wrote to ask for the status again, and CBP claimed they have never received any hospital documentation of his son's injury.

Mr. Gómez' son refuses to cross the border again, afraid and traumatized by the CBP officers' use of force against him. He had to leave the school he had been thriving at and moved to Nevada to live with his mother.

C. Unjust Search

8. Jane Doe Paso del Norte POE – El Paso, TX August 2013

In August 2013, Ms. Doe, a legal permanent resident in her 50s, crossed into the U.S. through the pedestrian lane at the Santa Fe Bridge. While presenting her documents to the female CBP officer, the officer asked Ms. Doe where she was going, to which she responded she was going to work at the municipal court house, where she worked as a cleaner. She was then taken aside and asked if she had ever been arrested or detained. She responded “no.”

Ms. Doe was led into a secondary inspection room where two officers—a younger woman and an older woman—conducted a strip search. They asked her if she had brought any drugs to the border and if she had any diseases, such as tuberculosis. The officers stated the reason for the search was to look for something hidden. They made her lower her pants and underwear to her knees. Ms. Doe was menstruating at the time and found the search extremely humiliating. One of the officers searched the Ms. Doe's hair thoroughly. They took everything out of her handbag and searched the contents. She was also instructed to take off her shoes and the officers examined her feet. She was asked why she was nervous, to which she responded she had to be at work at 8 a.m. and it was already 7:30 a.m. Finally, at 10 a.m., she was told she could leave.

9. Jane Doe Ysleta-Zaragoza POE – El Paso, TX November 2013

In November 2013, Ms. Doe, the same woman as above, crossed again into the U.S. through the vehicle lane at the Ysleta-Zaragoza Bridge. She showed her lawful permanent resident card to the officer at the bridge and was told to pull over to secondary inspection. She was asked to step out of her vehicle and was then handcuffed. Two female officers conducted a strip search in a private room similar to the other detention and search she experienced in August 2013. At the same time, an officer also searched the interior of her car.

Ms. Doe then asked to speak with a supervisor so that she could understand why she had been detained and searched multiple times. The supervisor told her she would need to contact the local police to see if she has a warrant out or is on a list. He also said “If you don't want us to do this, don't go to Mexico.” She was also questioned about her employment and the money that she carried in her purse. The officers belittled her. Ms. Doe had \$25 cash and was asked “If you

work so much, why do you only have \$25?” After being detained for 40 minutes, CBP officers asked Ms. Doe to sign a document and told her she could leave after signing it. Ms. Doe signed the document the officers told her to sign, but does not understand what she signed.

Ms. Doe checked with the local police to make sure there was no error on her criminal record, but the police assured her that she has a clean record. She has never had any arrests or citations—not even for a traffic violation. She works for the municipal court in El Paso and had to go through a background investigation. She would not have been hired if she had any criminal history. These incidents greatly traumatized Ms. Doe. The officers were never clear with her about the reasoning for detaining her. Ms. Doe felt forced to do what they told her and deeply humiliated by the way she was treated.

D. Wrongful detention

10. Mario Molina

Ysleta-Zaragoza POE – El Paso, TX

May 8, 2015

On May 8, 2015 at around 8:30 p.m., Mario Molina, a U.S. citizen, was walking southbound through the Ysleta Bridge in El Paso, TX. As he attempted to cross into Mexico, a white CBP officer called him over from across the street. The officer began asking Mr. Molina basic questions such as, “Where are you going?” and “How much money do you have with you?” To this, Mr. Molina responded “I’m not sure. Enough.” The officer asked again how much money he had on him, so Mr. Molina said “I don’t know. Let’s find out.” He thought that he was carrying between \$170 and \$190 U.S. dollars, but was not certain. As Mr. Molina reached for his wallet to count his money, the officer said “That’s it—you’re under arrest. I’m taking you in for questioning.” Mr. Molina asked what the probable cause was. The officer responded “I don’t need one.” He yanked on Mr. Molina’s arm and handcuffed him. Two Border Patrol agents arrived to help the CBP officer; one had the last name Vasquez.

The three officers led Mr. Molina to a secondary inspection room. On the way there, one officer threatened to put Mr. Molina’s face against the floor to which Mr. Molina responded calmly “Do what you have to do.” In the inspection room all of Mr. Molina’s belongings were taken from him and the officers began questioning him. They asked him obvious questions about his hair color, eye color, and skin color. Mr. Molina made a comment that the answers were obvious. An officer slapped Mr. Molina across the face and said “You better stop playing your fucking silly games with me and do what I tell you to.” He responded “Yes, you will do what you want to do.”

Mr. Molina was told to remove his shirt and shoes so the officers could conduct a search. He was also asked where he was born, to which he replied “Chihuahua.” He also said he was American to which one officer said “oh, you really think you’re American?” Mr. Molina asked to speak with a supervisor, but was told it would take an hour for a supervisor to arrive.

After being detained and waiting to file a complaint for nearly three hours, Mr. Molina finally received a pamphlet about how to file a complaint from a female CBP officer. He was

also returned his belongings, but when Mr. Molina went through these, he noticed a precious silver ring and his cash—almost \$200—were gone. He was released and returned to El Paso.

11. Michelle Fierro
Santa Teresa POE – Santa Teresa, NM
November 26, 2014

On November 26, 2014, Michelle Fierro, a 25-year-old U.S. Citizen, was traveling southbound towards Mexico through the Santa Teresa POE with her brother-in-law and his daughter. CBP officers stopped and detained them before they exited the U.S. and crossed into Mexico. The officers asked her brother-in-law for his visa and asked him to step outside of the vehicle. Agents told Ms. Fierro and her brother-in-law's daughter to park on the side and wait inside the car, while her brother-in-law was taken to an interrogation room.

They waited in the car for a total of six hours. Ms. Fierro, who was 8 months pregnant at the time, was denied water, food or the use of her cellphone. She tried to use the phone to contact a family member and was told by Officer Tobias she could not use it nor could she leave until her brother-in-law returned. It wasn't until Ms. Fierro's mother, concerned about her whereabouts, went to look for her that Ms. Fierro and her niece were released. Officer Molinar told Ms. Fierro's mother, "As long as your daughter continues to cross with these illegals"—a comment that made no sense given the fact that Ms. Fierro had never crossed the border with any undocumented person—"we'll stop her and we can even take away the car." Molinar also warned Ms. Fierro that she should never cross through that port again. Her brother-in-law had a valid I-94, yet CBP revoked his visa. One of the officers told him, "We are going to take away your visa, but tomorrow you can process it again, just so you have to spend money on it again".

Ms. Fierro suffered from gestational diabetes and was later diagnosed by her doctor as being dehydrated as a result of the prolonged detention. Ms. Fierro is afraid of crossing again at this port of entry and experiencing something similar. She is also afraid of Agent Molinar since she knows he also lives in Anthony, and fears retaliation if she speaks up about the incident.

E. Denial of Medical Care

12. Amanda Ortiz

Columbus, NM POE – Columbus, NM

February 19, 2015

Amanda Ortiz is a 33-year-old U.S. Citizen. In February 2015, she was hospitalized for having congestive heart failure and pneumonia at the Deming Hospital for two weeks. After she was released from the hospital on February 19, 2015, she headed to Palomas, Mexico. While in Mexico, she began to have an allergic reaction to her medicine and was having serious trouble breathing. She decided to go back to the hospital in Deming, so she made her way back to the U.S. As she was approaching the port of entry, she called 911 to request an ambulance. The operator told her that she needed to have CBP call 911. When she arrived at the POE, she told the CBP officials that she needed an ambulance, but the 911 operator had told her CBP needed to call to request it. The CBP officer told her, “We’re not calling, you need to call”. Amanda crosses often, and had seen CBP officers request medical care for individuals needing care at the POE. They kept stating that they didn’t need to call and weren’t going to call. Finally, she called 911 again and they dispatched an ambulance to the port of entry.

While waiting for the ambulance in her car at the port of entry, Ms. Ortiz began to have severe stomach pains and to vomit. She could not stay seated in her vehicle, so she lay on the ground in a position where she was more comfortable. One CBP official yelled at her saying “you need to get up and sit in your car, lying around isn’t going to help.” An ambulance eventually arrived and transported her to the Deming Hospital. She was told by the medical staff that her condition was very serious and if that she had waited even 30 minutes longer she might have not survived.

F. Retaliation for attempting to submit a complaint

13. Pamela Morales

Bridge of the Americas POE – El Paso, TX

September 19, 2014

Pamela Morales, a 25-year-old U.S. Citizen, was crossing in her vehicle through the southbound checkpoint at the Bridge of the Americas POE at approximately 5:30 p.m. on September 19, 2014. She was on her phone as she approached the POE. There, an El Paso police officer shined a flashlight at her. Ms. Morales looked at the police officer and he did not say anything nor make a hand gesture, so she kept driving forward. The police officer then shined the flashlight again.

Without warning, CBP Officer Perez started hammering on Ms. Morales’ car window and yelling at her “don’t you understand you need to stop?”

Ms. Morales rolled down her window and the officer continued badgering her: “what is wrong with you, don’t you understand?”

Ms. Morales did not understand why the officer had stopped her and asked Officer Perez, “excuse me, could you explain what’s happening? You almost broke my window.” Officer Perez then asked for her passport, driver’s license and car insurance. She complied, and he walked away with the documents.

After CBP Officer Perez had taken her documents, the El Paso police officer approached Ms. Morales and asked if she knew why she had been pulled over, to which she replied she did not know. The police officer explained that Ms. Morales had been holding a cell phone. The police officer said that he had to give her a citation, but advised her to go to court to get it dismissed. Ms. Morales told him she had looked at him and since he had not responded, she had kept going.

CBP Officer Perez came back to give Ms. Morales her documents back and then walked away. While the local police officer was still there, Ms. Morales asked him for the CBP officer’s first name in order to submit a complaint about the officer’s abusive treatment. The local police officer did not know and left to ask CBP Officer Perez.

CBP Officer Perez came back asking why Ms. Morales wanted his first name. Ms. Morales said that she wanted to report his abusive behavior through CBP’s online complaint website. CBP Officer Perez responded only by saying, “My name is Perez and I’m not going to give you my first name.” He then ordered Ms. Morales to pull to the side and to give him her car keys and her passport. Officer Perez then said, “If you are going to submit a complaint, you are going to do it here.” Ms. Morales told him she wanted to leave and submit the complaint online at home. Yet Officer Perez continued to insist that she hand over her car keys, so she did.

After waiting for 15 minutes, Ms. Morales stepped out of her vehicle. Immediately Officer Perez yelled at her: “Who told you, you could get out of the car? Get back in your car! No one told you could get out!” Ms. Morales told Officer Perez that she wanted to leave and that she was not going to submit any complaints. He said he had already called his supervisor. Yet Ms. Morales told him that she had never requested to speak to a supervisor. She asked how long the supervisor was going to take, and Officer Perez responded “I don’t know, it could be five minutes, it could be five hours.”

After five minutes, a supervisor arrived and asked Ms. Morales why she wanted to speak with him. She explained that she never asked to speak with him and didn’t want to speak with him. As she tried to explain what had happened, he interrupted her to ask if she was going to submit a complaint. Ms. Morales said she wanted to submit an anonymous complaint online, not in person, and therefore needed Officer’s Perez first name. The supervisor told her the officer’s name was Perez and that he was the only CBP officer in the country with such a last name, therefore it would be sufficient information for the complaint. The supervisor asked again if she was going to submit a complaint, Ms. Morales responded saying “yes” since Officer Perez had unnecessarily and aggressively hit her window at least 6 times and treated her extremely disrespectfully, in stark contrast to the respectful way the El Paso police officer had treated her. The CBP supervisor warned Ms. Morales, “If you submit a complaint against us, I’m going to submit a complaint against you.” The officer returned her documents and left. Ms. Morales

finally left the bridge. Afterwards, overwhelmed by the incident, she felt discouraged from submitting an online complaint against CBP.

One week after the incident Ms. Morales was crossing back to the U.S. through the SENTRI line, when she was told the system indicated her SENTRI pass needed to be taken away. She was not given an explanation as to why, but was only told that she needed to go to the main offices at the Ysleta Port of Entry to figure out what had happened. Ms. Morales went to the main offices, but she was not able to get any explanation. She was told to speak to Officer Felix Castro, but he was never available.

Ms. Morales submitted a complaint through Congressman Beto O'Rourke's office on October 2, 2014 on the basis of "Disrespectful treatment and retaliation against people crossing the border." She had been a SENTRI card holder for over a year, had crossed every weekday and had never had an incident until that day. Days later, she received a phone call and was told to go pick up her SENTRI pass. When she spoke to a CBP officer at the Ysleta POE offices, she was told the supervisor at the Bridge of the Americas has reported that she had refused to cooperate when asked to stop and to provide her driver's license. She was given her SENTRI card but told that she needs to cooperate in the future in order to keep her SENTRI pass.

II. Applicable Law

A. Coercion and Abuse Erode Community Trust in Law Enforcement and Offend Basic Principles of Due Process.

The experiences of the individual complainants reveal a pattern of CBP coercion and abuse that erodes community trust in law enforcement and leads to summary deportations on the border.

Several of the individual complainants were aggressively interrogated by CBP in closed-off interrogation rooms at ports of entry, presented with no information or misinformation about why they were being interrogated, and were then summarily deported from the United States under expedited removal. Hasty decisions by CBP officers about when to use expedited removal have serious consequences for law-abiding border residents—many of whom have strong ties to the United States through family and work.

For over a century, the U.S. Supreme Court has recognized that the Due Process clause of the Fifth Amendment protects people who have been in the United States for a period and whom the U.S. government seeks to deport.¹ Expedited removal as CBP now practices it offends basic principles of due process.² It gives CBP and other immigration officials virtually unchecked power to deport people without giving them any opportunity for review or a hearing before an immigration judge. Before executing expedited removal, the only question that CBP or other

¹ *Yamataya v. Fisher*, 189 U.S. 86, 100-01 (1903).

² See generally American Civil Liberties Union, *American Exile: Rapid Deportations that Bypass the Courtroom* (December 2014), https://www.aclu.org/files/assets/120214-expeditedremoval_0.pdf.

immigration officials must ask is whether a person fears returning to his or her country of origin. Although expedited removal is discretionary, DHS now uses it expansively.³ While the U.S. government initially used expedited removal in the late 1990s as a limited strategy to prevent perceived abuses of the asylum system by people who were arriving in the United States for the first time, CBP and other agencies now use expedited removal to deport long-term residents of the United States and other people who may have been able to remain in the United States had they had the opportunity to be represented by an attorney at a fair hearing before an immigration judge.⁴

B. CBP's Practices Violate International Human Rights Law.

Under Executive Order 13107 – which concerns the 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.”⁵ The United States must act in conformity with a host of international human rights obligations in its operations at POEs.⁶ The U.S. must 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 humanely and with 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.⁷ Special care and attention must be given to vulnerable populations including children, pregnant women, persons with disabilities, and victims of violence and trafficking.⁸ The United States must also “keep under systematic review interrogation rules, instructions, methods and practices as well as

³ See American Immigration Council, “Removal Without Recourse: The Growth of Summary Deportations from the United States” (April 28, 2014), <http://www.immigrationpolicy.org/just-facts/removal-without-recourse-growth-summary-deportations-united-states>.

⁴ *Id.*

⁵ 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>.

⁶ 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.

⁷ 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>.

⁸ 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.

arrangements for the custody and treatment of persons” in CBP facilities with the view of preventing abuse and ill-treatment.⁹

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.

III. Recommendations

A subcommittee of peer law enforcement experts convened by the Homeland Security Advisory Council recently completed an interim report that highlights deficiencies in transparency, oversight and accountability at CBP.¹⁰ The CBP Integrity Advisory Panel pointed out that with “more than 44,000 arms carrying, sworn law enforcement officers,” CBP is our nation’s largest police force and the largest component agency within the Department of Homeland Security.

The Task Force on 21st Century Policing, convened by President Obama, has also called on federal law enforcement agencies to review and implement the recommendations put forward in its final report.¹¹

We urge CBP to adopt the recommendations listed in both reports to be held accountable to the highest professional policing practices, and in particular, we urge CBP to:

1. Create a uniform complaint process in consultation with the Secretary of the Department of Homeland Security and nongovernmental recommendations.¹² Specifically, the complaint form and instructions for submitting the complaint should be available in multiple languages. CBP should clearly post signs about how to submit a complaint in inspection and detention areas, holding cells, and vehicle and pedestrian lanes in CBP stations or ports of entry. Finally, CBP should be more transparent about how it processes and investigates complaints and it should provide avenues for redress.
2. Increase CBP Office of Professional Responsibility staffing and capacity to transparently investigate complaints and hold officers accountable.
3. Expand public reporting on uses of force. CBP should use a clear use-of-force definition similar to the definition in the Department of Justice consent decrees.¹³ CBP should

⁹ Article 11 read together with Article 16.1 of CAT

¹⁰ Homeland Security Advisory Council, *Interim Report of the CBP Integrity Advisory Panel*, (June 29, 2015), available at: <https://www.dhs.gov/sites/default/files/publications/DHS-HSAC-CBP-IAP-Interim-Report.pdf>

¹¹ President’s Task Force on 21st Century Policing. 2015. Final Report of the President’s Task Force on 21st Century Policing. Washington, DC: Office of Community Oriented Policing Services. Recommendation 7.1, available at: http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

¹² ACLU et al., *Recommendations to DHS to Improve Complaint Processing*, available at: https://www.aclu.org/files/assets/14_5_5_recommendations_to_dhs_to_improve_complaint_processing_final.pdf

¹³ Department of Justice Settlement with the City of Albuquerque, (Nov. 14, 2014), stating: “Use of force” means physical effort to compel compliance by an unwilling subject above unresisted handcuffing, including pointing a

report incidents of use of force with greater detail, including information about fatal and nonfatal incidents, geographic breakdowns of incidents, disciplinary actions taken, and any trends identified that result in changes to policy, training, equipment and tactics.

4. Issue a clear and explicit prohibition on the use of race, ethnicity and other protected characteristics identified in existing Department of Justice guidance¹⁴ as a factor for conducting routine investigatory stops, detentions and searches, except where a reliable, current specific suspect description exists or where there is an affirmatively required statutory determination like asylum eligibility.
5. Enhance basic and annual refresher trainings for agents, in consultation with independent law enforcement experts and nongovernmental organizations, regarding constitutional protections against illegal searches—such as warrantless, nonconsensual medical searches—and seizures and racial profiling. Training should, among other topics, address the existence and impact of arbitrary classifications, stereotyping, and implicit bias.
6. Establish safeguards to protect due process. Strictly prohibit the use of coercion or pressure to compel people to surrender their legal rights. This should include providing: detailed information in writing, orally and through a 1-800 hotline regarding one’s legal rights and the consequences of agreeing to voluntary return or any other administrative removal and confiscation of legal visas; access to a working telephone and list of legal service providers with at least two hours provided to reach someone; lawyers and nongovernmental organizations with meaningful access to clients detained by CBP.
7. Deploy body-worn cameras within an adequate policy framework promoting accountability, transparency with appropriate privacy protections.¹⁵

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 CBP Office of Field Operations officers’ compliance 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,

firearm at a person,” available at:

http://www.justice.gov/sites/default/files/crt/legacy/2014/12/19/apd_settlement_11-14-14.pdf

¹⁴ U.S. Dep’t of Justice, Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity (Dec. 2014), available at

<http://www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf>.

¹⁵ Jay Stanley, ACLU, “Police Body-mounted cameras: with Right Policies in Place, a Win for All,” available at: <https://www.aclu.org/police-body-mounted-cameras-right-policies-place-win-all>

oversight and accountability mechanisms consistent with your findings in order to prevent further abuses by agency personnel.

We thank you for your prompt attention and await your response. Please contact Vicki B. Gaubeca at vgaubeca@aclu-nm.org or at 575-527-0664, if you have questions or wish to speak directly with the complainants.

Sincerely,



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