

March 10, 2014

Sir Nigel Rodley, Chairperson
United Nations Human Rights Committee
UNOG-OHCHR
CH-1211 Geneva 10 (Switzerland)

Re: Periodic Review of United States' ICCPR Compliance at its International Borders

Dear Sir Nigel,

We, the undersigned social justice, civil rights, civil liberties, and human rights advocates and organizations, urge the U.N. Human Rights Committee to conduct a thorough assessment of U.S. compliance with the International Covenant on Civil and Political Rights (ICCPR) as it relates to human rights violations at its international borders. In particular, we call attention to the expanded militarization of border communities, which has led to an alarming rise in deaths along the border in potential violation of the right to life (Article 6); abuses in detention that may amount to torture or cruel, inhuman or degrading treatment or punishment (Article 7); and traumatic family separations that raise human rights concerns (Article 17 and Article 23).

These abuses are occurring at the hands of officers and agents of Customs and Border Protection (CBP), an agency within the U.S. Department of Homeland Security that oversees border security, and deploys agents for border security and immigration enforcement, including detention operations.ⁱ

Despite the fact that border crossings are near 40-year lows, crossing-related deaths are at historic highs. At least 477 people died crossing the border in 2012, a 27 percent increase from the year before. These deaths are a consequence of U.S. border enforcement policies designed to funnel migrants into remote and deadly regions along the U.S.-Mexico border.ⁱⁱ

Since January 2010, at least 27 civilians have died following incidents of use of force by CBP personnel. These include numerous cases of individuals being shot in the back, across international borders, and in response to alleged rock throwing. One-third of the deaths are of U.S. citizens and one-third of minors. The newspaper *The Arizona Republic* recently noted that of the 42 CBP-involved deaths since February 2005, in no case is any CBP agent known to have faced any consequences from CBP or any criminal or civil courts.ⁱⁱⁱ

CBP's fundamental lack of oversight, accountability and transparency creates a culture of impunity for agents who violate agency policy or their domestic and international legal obligations. CBP rejected some core changes to its use-of-force policies recommended by national law-enforcement experts and has refused to release those recommendations publicly.^{iv} Meanwhile, a government review concluded that many CBP agents do not even understand the agency's use-of-force policies.^v

Human rights violations committed by CBP are not limited to excessive use of force. For example, numerous civil society organizations have documented wide-ranging abuses in CBP detention facilities, including verbal and physical abuse, denial of medical care, inadequate food and water, exposure to harsh temperatures, extreme overcrowding, denial of bedding and sanitary supplies, denial of due process, coercive and misleading tactics in removal, and permanent confiscation of personal items such as legal documents, medication and identification.^{vi} These abuses result from the absence of enforceable detention standards and meaningful oversight.

The culture of cruelty within CBP must be recognized as a product of expanded border militarization paired with a corresponding lack of oversight and accountability mechanisms. The United States' disproportionate focus on border security and criminalization of migrants—particularly the increased criminal prosecution and incarceration of border crossers^{vii}—has led to significant human rights violations at its international borders, including widespread, traumatic family separations that tear apart the fabric of border communities.

We urge the Human Rights Committee to send a clear message to the U.S. Government and international community that border security interests do not justify human rights violations, including of the right to life, right

to humane treatment and right to family. In particular, we ask that the Committee's review reflect, but not be limited to, the following priorities^{viii}:

- Ensure CBP's use-of-force policy and practice fall in line with the highest professional law enforcement standards and comply with international human rights standards on law enforcement conduct, with particular emphasis on improving accountability and increasing transparency with the general public and directly impacted families and individuals.
- Review the extent to which U.S. foreign policy as well as border enforcement strategies contribute to migrant deaths and identify and implement all reasonable measures to prevent unnecessary loss of life of migrants crossing the U.S.-Mexico border.
- Implement enforceable CBP detention standards, effective oversight, and consistent, transparent complaint mechanisms to identify problematic areas, communicate findings back to complainants and ensure the right to an effective remedy for human rights violations (Article 2).
- End the widespread criminal prosecution and incarceration of border-crossers, reserving the criminal justice system for only those individuals who have convictions for serious, violent felonies.

The United States must take concrete steps to remedy abuses at its international borders in order to fulfill its obligations under the ICCPR to protect and respect the rights of all individuals to life, non-discrimination and human dignity. We call on the Human Rights Committee to seek from the U.S. Government a concrete plan of action that will bring its border policies in line with the ICCPR and other human rights commitments.

For questions or for further information, please do not hesitate to contact Mr. Jamil Dakwar (jdakwar@aclu.org), Director of the American Civil Liberties Union Human Rights Program or Ms. Victoria Gaubeca (vgaubeca@aclu-nm.org), Director of the American Civil Liberties Union Regional Center for Border Rights.

Sincerely,

Endorsements by local, state, regional, national and international organizations and coalitions

Alaska Community Action on Toxics
Allard K. Lowenstein International Human Rights Clinic, Yale Law School
Alliance San Diego
American Civil Liberties Union
American Friends Service Committee – US/Mexico Border Program
American Gateways
Americans for Immigrant Justice
Annunciation House, Inc.
Best Practices Policy Project
Border Action Network
Catholic Charities of the Diocese of Las Cruces
Center for Justice & Accountability
Colonias Development Council
Employee Rights Center
Fanm Ayisyen Nan Miyami, Inc.—Haitian Women of Miami
First Peoples Human Rights Coalition
Florida Legal Services, Inc., Community Justice Project
Friends Committee on National Legislation
Grassroots Leadership
The Human Dignity Council
Human Rights Advocates
Humanitarian Border Solutions, Bisbee AZ
Interfaith Center for Worker Justice of San Diego County
Justice Strategies
Kent State Truth Tribunal

Labour, Health and Human Rights Development Centre (Lagos, Nigeria)
Las Cruces Friends Meeting, Committee on Peace, Social and Environmental Concerns
Mennonite Central Committee U.S. Washington Office
National Immigrant Justice Center
National Immigration Project of the National Lawyers Guild
National Latina Institute for Reproductive Health
No More Deaths
Northwest Immigrant Rights Project
Pan African Network of People with Psychosocial Disabilities
Pangea Legal Services
Paso del Norte Civil Rights Project
Reformed Church of Highland Park, New Jersey
Refugee & Immigration Ministries, Christian Church (Disciples of Christ)
San Diego Immigrant Rights Consortium
Sex Workers Outreach Project, Phoenix Chapter
South Texas Adult Resource and Training Center
Southern Border Communities Coalition
Transgender Law Center
T'ruah: The Rabbinic Call for Human Rights
Unitarian Universalist Justice Arizona Network (UUJAZ)
Unitarian Universalist Refugee and Immigrant Services and Education (UURISE)
University of Miami School of Law Human Rights Clinic
US Human Rights Network
Washington Office on Latin America
Women's Refugee Commission

Endorsements by Individuals*

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Denise Gilman, Clinical Professor and Co-Director of Immigration Clinic, University of Texas School of Law
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Josiah Heyman, Professor of Anthropology and Endowed Professor of Border Trade Issues, University of Texas at El Paso
Lauren E. Bartlett, Local Human Rights Lawyering Project Director, American University Washington College of Law
Lisa A. Crooms-Robinson, Professor of Law & Dean for Academic Affairs, Howard University School of Law
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Neil Harvey PhD, Department of Government, New Mexico State University
Olga Pedroza, Las Cruces City Councillor
Pat Acosta, La Casa Domestic Violence Shelter
Patricia Bauerle
Paul M. Barby, member of No More Deaths
Paula McPheeters, Tucson, Arizona

Pedro A. Malavet, Professor of Law and Director, LL.M. in Comparative Law Program, University of Florida
Peggy Plews, blog author on behalf of voices represented in Arizona Prison Watch & Survivors of Prison Violence-
AZ

Peter W. Brown, Minnesota Tenants Union
Tim Reed, Society of Friends in Las Cruces, NM

**NOTE: organizational affiliation noted with individual endorsements is informational and does not necessarily reflect endorsement by the organization.*

ⁱ American Civil Liberties Union, *Shadow Report to the Fourth Periodic Report of the United States* (Sept. 13, 2013) available at: https://www.aclu.org/sites/default/files/assets/american_civil_liberties_union_shadow_report_to_the_u.s._fourth_periodic_report_final.pdf

Update to the Shadow Report to the Fourth Periodic Report of the United States (Feb. 14, 2014) available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT_CCPR_CSS_USA_16491_E.pdf

ⁱⁱ Anderson, Stuart, *How Many More Deaths? The Moral Case for a Temporary Worker Program*, National Foundation for American Policy (March 2013), available at <http://www.nfap.com/pdf/NFAP%20Policy%20Brief%20Moral%20Case%20For%20a%20Temporary%20Worker%20Program%20March%202013.pdf>

ⁱⁱⁱ Ortega, Bob and O'Dell, Rob. *Deadly border agent incidents cloaked in silence*, The Arizona Republic, Dec. 16, 2013, available at http://www.azcentral.com/news/politics/articles/20131212arizona-border-patrol-deadly-force-investigation.html?nclick_check=1

^{iv} Bennet, Brian, *Border Patrol's use of deadly force criticized in report*, Los Angeles Times, Feb. 27, 2014, available at <http://www.latimes.com/nation/la-na-border-killings-20140227,0,2649003.story#axzz2uWugzp3V>

^v Department of Homeland Security, Office of Inspector General, *CBP Use of Force Training and Actions To Address Use of Force Incidents*, Sept. 2013, Redacted version available at http://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-114_Sep13.pdf

^{vi} University of Arizona, Center for Latin American Studies, *In the Shadow of the Wall: Family Separation, Immigration Enforcement and Security* (2013), available at

http://las.arizona.edu/sites/las.arizona.edu/files/UA_Immigration_Report2013web.pdf;

Human Rights Watch, *Turning Migrants into Criminals: The Harmful Impact of U.S. Border Prosecutions* (2013), available at <http://www.hrw.org/reports/2013/05/22/turning-migrants-criminals-0>;

No More Deaths, *A Culture of Cruelty: Abuse and Impunity in Short-term U.S. Border Patrol Custody* (2011), available at <http://www.nomoredeathsvolunteers.org/Print%20Resources/Abuse%20Doc%20Reports/Culture%20of%20Cruelty/CultureofCrueltyFinal.pdf>;

No More Deaths, *Crossing the Line: Human Rights Abuses of Migrants in Short-term Custody on the Arizona/Sonora Border* (2008), available at <http://www.nomoredeathsvolunteers.org/Print%20Resources/Abuse%20Doc%20Reports/NMD%20-%20Crossing%20the%20Line.pdf>;

Bale, Rachael, *Detained border crossers may find themselves sent to 'the freezers,'* Center for Investigative Reporting (Nov. 18, 2013), available at <http://cironline.org/reports/detained-border-crossers-may-find-themselves-sent-to-freezers-5574>;

"ACLU Suit Targets Border Patrol's Excessive Force, Already Recognized as Problem by Recent Dept. of Homeland Security Report" (Oct. 21, 2013) available at: <http://www.aclutx.org/2013/10/21/aclu-of-texas-sues-feds-for-excessive-use-of-force-and-false-arrest-at-texas-mexico-border/>;

See lawsuit filed jointly between the ACLU of Texas and the ACLU of New Mexico on Dec. 18, 2013, available at: <http://www.aclu-nm.org/wp-content/uploads/2013/12/Complaint-Jane-Doe-v-Variou-Defendants-12-18-13.pdf>.

^{vii} American Civil Liberties Union, *Apply DOJ "Smart on Crime" Principles and Priorities to Border Prosecutions*, Sep. 13, 2013 available at: <https://www.aclu.org/immigrants-rights/operation-streamline-recommendations>

^{viii} U.N. guidelines and documents relevant to listed priorities include:

Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Annex B.2, U.N. Doc. A/CONF/144/28/Rev.1 (1991);

G.A. Res. 43/173, U.N. GAOR, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Annex, U.N. Doc. A/RES/43/173 (Dec. 9, 1988);

E.S.C. Res. 1989/65, U.N. Doc. E/RES/1989/89 (May 24, 1989);

First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Standard Minimum Rules for the Treatment of Prisoners*, Annex 1, U.N. Doc. A/CONF/611 (1955);

G.A. Res. 34/169, U.N. GAOR, 34th Sess. Supp. No. 46, Annex, U.N. Doc. A/RES/34/46, at 186 (Dec. 17, 1979).