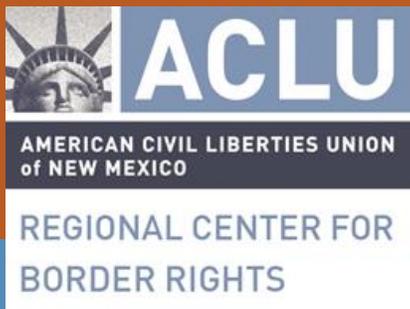




Guilty Until Proven Innocent:

LIVING IN NEW MEXICO'S 100-MILE ZONE

MAY 2015



1300 EL PASEO, SUITE G, BOX 148 LAS CRUCES, NM 88001
WWW.ACLU-NM.ORG

ACKNOWLEDGEMENTS

In addition to the border residents who came forward with their testimonials, we thank the many community leaders, educators, advocates, organizers and professionals who welcomed the ACLU of New Mexico Regional Center for Border Rights staff and provided space for Know Your Rights education and dialogue in their homes, community centers, places of worship and classrooms.

We also want to thank the Four Freedoms Fund, the EMA Foundation, and the Lannan Foundation. Without their generous support, our work to bring justice and defend human dignity in border communities would not be possible. Finally, we thank Robert Yee who produced the short videos that accompany this report, which allow readers to hear directly from community members who came forward to report their concerns of abuse. Visit us on [Facebook](#), [Twitter](#) and on the ACLU-NM web page for this report to watch the videos and share:

<https://www.aclu-nm.org/guiltyuntilproveninnocent>

Please Note: Where requested to do so, we have used pseudonyms and omitted specific identifying factors and locations to protect the identity of those who came forward to report abuse but who wanted to remain anonymous.

Cover photo: Jorge, a student at New Mexico State University in Las Cruces, NM travels through a Border Patrol checkpoint every time he goes home to his family who lives near Hatch, NM, a 45-minute drive north from Las Cruces. Jorge holds an orange gerbera daisy, a symbol of revitalization, in front of the checkpoint on State Highway 185 as part of the “[Revitalize Not Militarize](#)” campaign. The campaign seeks to encourage common sense investment into border communities that improves the quality of life for border residents while improving trade for the nation.



Guilty Until Proven Innocent:

LIVING IN NEW MEXICO'S 100-MILE ZONE

The principle of fundamental fairness for all—one of our most cherished values—is enshrined in both the U.S. Constitution and international law. In many American communities, however, Border Patrol agents treat residents they encounter as “guilty until proven innocent” in the community they call home.

One New Mexican used these exact words to describe the feeling of traveling through a Border Patrol interior checkpoint. The sentiment reflects a shared experience by many of the more than fifty complaints that community members reported to our office in 2014. These concerned citizens, many of whom felt racially profiled, reported that U.S. Customs and Border Protection (CBP) officers or agents—the umbrella agency that includes the Border Patrol—unfairly singled them out for unjustified stops, questioning, searches and other abuses as they went about their daily lives: driving to work, commuting to school, or even while providing life-saving emergency care.

In the past decade, Congressional and Presidential initiatives focused solely on enforcement transformed CBP into our nation’s largest law enforcement agency, and one that operates with little meaningful oversight or accountability. Now with more than 21,000 agents nationwide, Border Patrol views itself as a paramilitary unit that can operate “outside of constitutional constraints.”

Our nation is currently soul searching as police brutality by overly militarized departments and discriminatory policing of communities of color tear apart the fabric of communities. Sadly, this too is the story for border communities, where the federal government too often condones the same tactics used by Border Patrol that it condemns for local police.

When the Department of Justice recently took a stand against racial profiling by federal and local police, it effectively exempted Border Patrol from the same standards. And while the Obama Administration rightfully seeks to identify police best practices, such as transparent data collection to increase accountability to communities for police departments with a history of racial profiling, they remain silent about implementing these same reforms to stop discriminatory policing by agencies under their own roof. Border Patrol’s failure to collect any data on stops or searches not resulting in arrest makes it impossible to detect or deter unlawful and counter-productive conduct by agents.

Through community surveys and reported incidents of abuse, this briefing tells the story of how implementing military-style policing in our nation’s safest communities and making exceptions to racially profile not only leads to discriminatory policing that is unconstitutional and offensive to



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American values of fairness and equality, but also hurts public safety as an ineffective policing strategy that drives a wedge between communities and law enforcement.

No one should live in fear of law enforcement in their own community. The voices heard in this report join a chorus nationwide who demand trust, transparency and accountability from law enforcement. As Congress, the Obama Administration, and the American people consider nationwide police reforms, we must not exclude our nation's largest law enforcement agency, CBP, from the discussion. Meaningful action to implement oversight and accountability mechanisms at CBP is long overdue. Fundamental fairness and the safety and freedom of our communities is at stake.

DOCUMENTING LIFE IN THE BORDER REGION

The American Civil Liberties Union of New Mexico's Regional Center for Border Rights (RCBR) stands with border communities to defend and protect America's constitutional guarantees of equality and justice for all families to live freely, safely and with dignity.

In "Know Your Rights" presentations, we inform community members gathered in classrooms or places of worship of the rights afforded by the U.S. Constitution to all individuals regardless of immigration status, such as the right to be free from arbitrary search and seizure and treated fairly with due process. These presentations create dialogue and help identify incidents where border and immigration enforcement policies and practices threaten our basic rights.

From January – July 2014, the RCBR provided 54 presentations reaching 1,105 residents throughout Southern New Mexico and El Paso, TX. We also administered an optional survey to 334 individuals asking attendees to describe any recent experiences, both positive and negative, they, a family member or a friend had with local or federal law enforcement. The survey also asked attendees if they trusted law enforcement and if they felt comfortable traveling through U.S. Border Patrol checkpoints.

In 2014, the RCBR also deployed four Know Your Rights checkpoints to inform motorists and pedestrians of their rights while passing through CBP ports of entry or Border Patrol interior



Sister Maria Teresa at a community meeting in Chaparral, NM

checkpoints. At these direct actions, we held signs immediately after Border Patrol checkpoints or CBP ports of entry that invited community members to stop for know your rights materials and to report abuse.

In total, the RCBR collected 56 reports of abuse that inform the findings and recommendations in this briefing. Our deepest gratitude goes to those who stepped forward to tell their story, many of whom expressed very real fears of law enforcement. For this reason and based on the consent of those who agreed to tell their story for this campaign, many of the names in this briefing have been changed. Their stories represent the experiences of many people living in Southern New Mexico.



'Know Your Rights' Checkpoint on I-25

SUMMARY OF FINDINGS

The testimonies in this briefing illustrate a broad range of abusive behavior by CBP officers and agents: racial profiling, unjustified detentions and searches, verbal abuse, intimidation, physical abuse, and interfering with the delivery of emergency medical treatment that puts lives at risk and results in unnecessary deaths. Some of these abuses occurred at ports of entry run by CBP, while the majority of abuses occurred at the hands of Border Patrol agents who widely patrol communities through roving patrols and interior checkpoints.

Border Patrol claims incredible authority to stop, question and search individuals within a “reasonable distance” of our international borders. Federal regulations created several decades ago and without any public debate or scrutiny defined this distance as 100 miles. Based largely on this authority, Border Patrol agents operate interior checkpoints where they require all motorists, without any suspicion of wrongdoing, to stop for questioning about their citizenship or immigration status. Agents also conduct roving patrols in communities throughout this 100-mile zone and beyond. Within 25 miles of the border, agents even claim the authority to enter private land, not dwellings, without a warrant. The map on page six illustrates the 100-mile zone in New Mexico, with shading to show how far into the interior this zone extends. The red stars show the location of Border Patrol checkpoints.

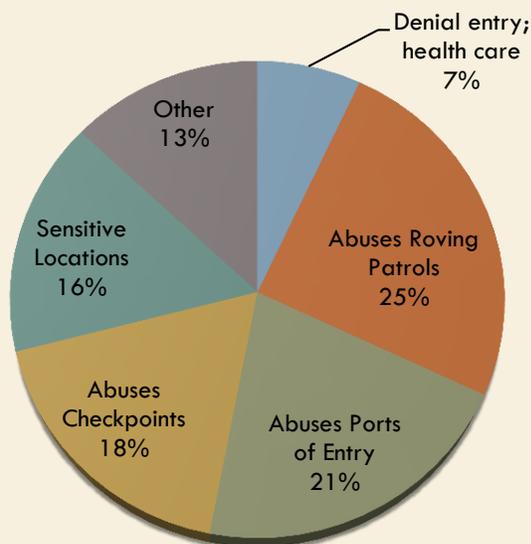
As a result of this authority, Border Patrol agents’ abusive behavior increasingly affects residents not engaged in any wrongdoing in locations far removed from the physical border. Worse yet, federal guidance on profiling from the Department of Justice in 2003, and most recently in December 2014, largely exempt CBP and allow the agency to write its own rules as to when, how and where their officers and agents should be allowed to profile.



Ninety percent of abuses ... were reported by U.S. citizens... about 81 percent... considered themselves Hispanic or Latino.



Breakdown of Cases



Ninety percent of the abuses in this report at checkpoints, ports of entry and during roving patrols were reported by U.S. citizens and about 81 percent were of individuals who consider themselves Hispanic or Latino. Community members, whose accounts can be found in the following sections, profoundly feel singled out due to Border Patrol’s license to racially profile innocent residents.

Isaac, a proud El Pasoan, began to notice trends and feel profiled once he began commuting weekly through Border Patrol checkpoints for his business buying and selling motorcycles. He estimates that 80 percent of agents’ questions have nothing to do with his U.S. citizenship, and agents refer him to

secondary for searches with dogs and x-ray technology nearly half of the time.

Border Patrol agents pulled Jimena over in May 2014 after she picked up her brother who was walking to work. Despite the fact U.S. citizens are not required to carry proof of citizenship, Jimena showed agents her U.S. passport and her children's birth certificates. Her brother also carries his U.S. passport. Jimena explained that agents frequently stop her brother while walking down the street; she believes agents stop him frequently "because he has very dark skin."

In addition to profiling, community members also reported concerns that Border Patrol agents' practices undermine access to critical health services. In one egregious example, Border Patrol agents pulled over an ambulance transporting a patient in critical condition on an EKG monitor because the ambulance went around a checkpoint with lights and sirens blaring. Agents detained the ambulance for seven minutes to confirm they "[had] a body on-board," causing a very real risk of heart attack for the patient.

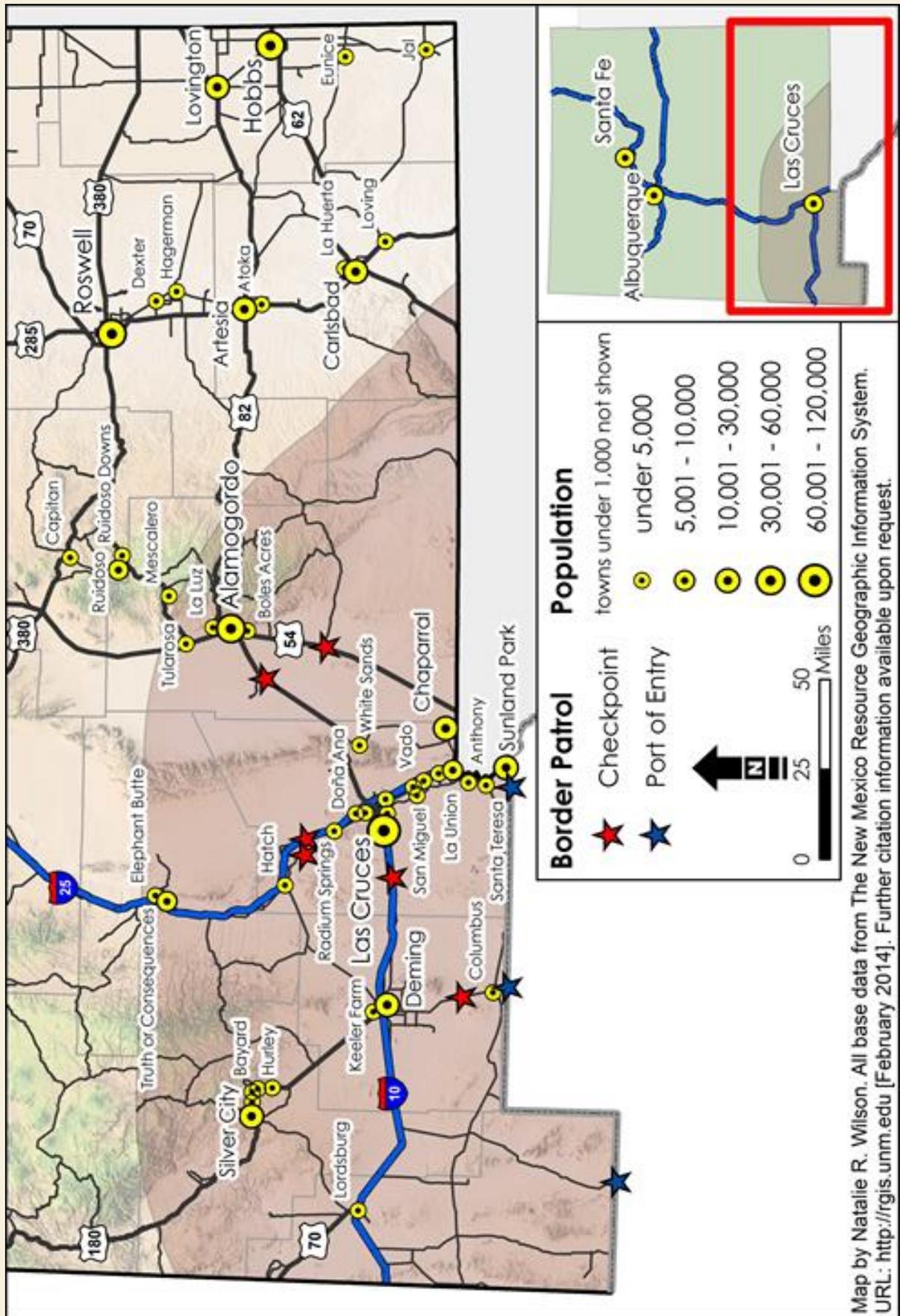
Agents frequently pursued, interrogated and even demanded to search first responders who transport patients through the Border Patrol checkpoint that separates Columbus, NM, from the nearest hospital in Deming, NM. When asked if searches could be done elsewhere than the hospital parking lot, agents responded that "we'll do it any place and any time we want."

CBP policy prohibits agents from taking enforcement action or patrolling at "sensitive community locations," like schools and hospitals, absent written approval from a supervisor. Yet Border Patrol agents often ignore that policy. Community members reported seeing agents patrol, park and even enter schools in Las Cruces, NM, the hospital in Deming, NM, or low cost, community clinics like the Ben Archer health clinic in Doña Ana, NM. In all these cases, first responders and community members expressed grave concern that Border Patrol behavior stokes fear in the community that prevents community members from seeking medical care and community services that maintain quality of life.

Roughly 354,500 New Mexicans live within the 100-mile zone of the U.S.-Mexico border. According to U.S. Census Bureau data, 60 percent of the families in this region consider themselves Hispanic or Latino and about 50 percent speak a language other than English. For New Mexicans, bringing greater oversight and accountability to CBP is critical to rebuild community trust for individuals like those featured in this report who feel singled out in their own community and home. More than a quarter of survey respondents said they do not feel comfortable traveling through a Border Patrol checkpoint. Respondents who answered the surveys in Spanish tended to be more uncomfortable at checkpoints (35 percent) than those who answered the surveys in English (24 percent).

The Obama Administration, CBP leadership and members of Congress should prioritize implementation of the recommendations provided at the end of this briefing. These include a strict ban on racial profiling and other discriminatory policing, nationwide implementation of data collection to detect and deter abuse, a uniform DHS complaint process, enhanced training, and equipping all CBP officers and agents, particularly Border Patrol, with body-worn cameras paired with privacy protections.

100-mile Zone in Southern New Mexico



Agents profile and detain residents for unjustified questioning and searches at interior checkpoints

Isaac, a Hispanic U.S. citizen and resident of El Paso, TX, travels frequently in West Texas and Southern New Mexico for his small business selling motorcycles. He estimates that 80 percent of Border Patrol agents' questions at interior checkpoints have nothing to do with his citizenship. Instead they ask questions like, "Where are you going?" and "What is your address?" Agents even looked at e-mails in his phone to confirm his destination for work. Isaac also estimates that Border Patrol agents refer him to secondary for searches every other time he passes through. Isaac travels for work weekly, and Border Patrol detentions at interior checkpoints have left him feeling humiliated, profiled and caused him to lose business by making him late for appointments.



Isaac, owns a small business in El Paso, TX

His experience reflects a widely reported feeling throughout border communities: Border Patrol agents treat you or your friends and family differently based on appearance. In one study, community members of Arivaca, AZ monitored a local checkpoint for over 100 hours and recorded 2,379 recorded vehicle stops. They found Border Patrol agents were 26 times more likely to ask Latino motorists for identification and 20 times more likely to send them to secondary than White motorists.

RCBR staff documented 14 cases of abuse at interior checkpoints, including profiling and prolonged detentions at interior checkpoints to subject these individuals to aggressive and unnecessary questioning not pertaining to citizenship status and to unjustified, potentially damaging searches with invasive technologies.

Marianne, a U.S. citizen, feels anxious when she passes through Border Patrol interior checkpoints



Marianne and son, Luis, live in Las Cruces, NM

throughout Southern New Mexico, especially when she travels with her son. Marianne is white, non-Hispanic, but says her 16-year-old son, Luis, has a darker complexion that reflects his father's ethnicity. "When he's sitting with me, they ask me questions, but only look at him. [In the border states] we're treated differently from other U.S. citizens and that doesn't seem fair." Her son also travels frequently with his father's family to Las Vegas. Everyone in the car on those trips will be

Hispanic, U.S. citizens. He notes the difference when traveling with his father, adding that it “feels faster when I’m with my mom.”

Eugene frequently faces unnecessary questioning and requests to search his vehicle. Sometimes, agents don’t even bother to inquire about his citizenship and instead demand he open his trunk. He’s Hispanic, a U.S. citizen, and refuses to consent to searches or answer unnecessary questions. On one occasion, after Eugene refused an agent’s questions and request to search his vehicle, the Border Patrol agent stated, “You’re just a bad citizen.”

Border Patrol searches in secondary inspection can be lengthy and invasive. Community members reported detentions lasting up to one hour for agents to x-ray their vehicles with backscatter technology, inspect their motor and gas tank, and run K-9 units around their vehicle. Agents and their dogs rifle through personal belongings and the interior of vehicles. When damages to a vehicle occur, CBP frequently denies financial responsibility even after a formal complaint has been filed.

Even before one arrives at a checkpoint or is referred to secondary, extensive cameras and technologies document the

movements of every motorist. Jan and her partner initially changed doctors but eventually chose to move from their retirement home in Silver City, NM, to avoid checkpoints after Jan experienced a searing pain in her ear where she has a surgically implanted titanium hearing aid. The pain reminded her of previous experiences with scanning equipment and raised questions and concern that Border Patrol subjects motorists to scanning technology without warning or posted notification.

None of the individuals who reported concerns at interior checkpoints were engaged in illicit

activity. But in all of these cases, Border Patrol agents detained individuals as they went about their daily lives to buy groceries, attend school, work, or visit their doctor, and subjected them to aggressive, intimidating questioning and searches—often conducted without apparent suspicion of any wrongdoing and on the basis of their perceived race or ethnicity.



Border Patrol agents harass and profile residents during roving patrols

Victoria, a 24-year-old lawful permanent resident, feels constantly harassed by Border Patrol agents. She lives near the border, but works as an administrative assistant at a farm located more than 50 miles from the international boundary and north of Border Patrol interior checkpoints. Agents conducting roving patrols stop her at least once a week on her way to work. Victoria recognizes the agents who pull her over and who ask her where she was born, where she lives, and where she’s going. She finally built up the courage to ask why they stop her so frequently. In spite of the fact that her car has never been searched, the agent responded that they had information that her vehicle had been used to transport illegal substances or people. In March 2014, Border Patrol and ICE agents surrounded her house, entered her property and demanded to see identification. They left without

giving her an explanation for the action. In April and May of 2014, Border Patrol agents drove by her home almost daily. Victoria and her mother, who live together and have never been in trouble with the law, now live in constant fear, not knowing why they are under surveillance.

RCBR staff documented ten cases of Border Patrol agents profiling residents, both U.S. citizens and non-citizens, and conducting unjustified and unnecessary stops, searches and uses of force during roving patrols.

Jimena, a Hispanic woman, was driving to work in Columbus, NM, with her two daughters on or about May 29, 2014, when a Border Patrol agent stopped her. The agent made a quick U-turn after Jimena pulled over to pick up her brother, who was walking to work and had asked for a ride if she happened to pass by. Jimena, her two daughters and her brother are all U.S. citizens.

Jimena's brother asked the agent to let her go on her way so she would not be late for work. The agent ignored the request and asked Jimena, her daughters and her brother about their immigration status and where Jimena worked. While U.S. citizens are not required to carry proof of citizenship, Jimena provided the agent both her U.S. passport and daughters' birth certificates. He also demanded Jimena's brother provide his social security number and questioned him about where he was born. He too showed the agent his U.S. passport. After 30 minutes, the agent allowed them to leave. Jimena explains this isn't the first time Border Patrol has stopped her brother while walking down the street. She believes agents stop him frequently "because he has very dark skin."

Ricardo came to New Mexico from California to visit his brother and father in September 2012. As he and his brother—both U.S. citizens—left a convenience store with sodas they had purchased, Border Patrol agents jumped out of an unmarked van and detained them at gunpoint for questioning and searches. Now he's afraid to return to visit Deming, NM.

Similarly, Sara is frustrated and tired of her experiences with Border Patrol. "Every time I see [Border Patrol] I get shaking," she explains. She owns a motel located less than ten miles north of the U.S.-Mexico border. At least once a month and sometimes several times in one week, Border Patrol or ICE agents come to her hotel and harass her guests. Border Patrol will pick hotel rooms at random, knock on the doors, and question guests without her permission. On one occasion, the agents requested information on a guest staying in a specific room, saying they followed tracks from the border to that room.

In all but one of the cases reported, individuals targeted for stops and searches were Hispanic or Latino. Only one of the individuals stopped was taken into custody for a possible violation of federal immigration law; the rest were U.S. citizens or lawful residents. In almost all of these cases, agents provided no reason for a stop or search, and in limited circumstances, agents' sole justification included reports of a suspicious vehicle.



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Against policy, agents monitor clinics, schools and stop ambulances

On May 30, 2014, Border Patrol pulled over an ambulance after it passed through an interior checkpoint traveling northbound on Highway 11 between Columbus and Deming, NM, with both emergency lights and sirens blaring. Emergency responders were transporting a patient in critical condition on an EKG monitor. Despite these obvious signs of an emergency situation, Bill, a Captain with the fire department, reported that agents detained the ambulance



Ken, 20-year veteran and Chief of the Fire Department in Columbus, NM

for seven minutes to look inside, stating, “Yep, you got a body on-board.” The delay, according to Bill, created a real risk of a heart attack for the patient.

This practice not only places in jeopardy the health of a patient, but it also defies a nationwide directive issued by CBP in January 2013 to curtail enforcement actions at or near sensitive community locations. This policy established clear prohibitions on patrolling or monitoring schools, churches, hospitals, and community health or educational centers absent written approval by the Chief Patrol Agent. RCBR staff, however, documented nine cases involving Border Patrol agents within the El Paso Sector, which includes all of New Mexico, patrolling sensitive community locations.

Testimonies include Border Patrol agents pulling over ambulances, impeding and interrogating first responders as they deliver patients to the emergency room of hospitals, demanding to search ambulances in hospital parking lots, or parking next to and surveilling community health centers. Reports also included several instances of Border Patrol agents patrolling slowly around schools and one incident where Border Patrol agents subjected elementary school children to canine searches as they got off their school bus near a port of entry.

Daniel, a paramedic, reported that in March 2014, Border Patrol agents pursued his ambulance and patient all the way to the patient’s room in Mimbres Memorial Hospital in Deming, NM. A Border Patrol agent told him that they have orders to pull over an ambulance if they don’t get a call from central dispatch before the ambulance passes through the Border Patrol checkpoint on Highway 11 between Columbus and Deming, NM. Daniel directed his driver to not stop driving in order to avoid putting the patients’ health at risk.

On numerous occasions, Ken—a 20-year veteran and Chief of the fire department—reported that Border Patrol agents asked to search ambulances transporting patients from Columbus to the hospital in Deming. On one occasion, agents asked to conduct a search while emergency personnel were “backing up to the [hospital] door with the patient still on a gurney.” And on yet another occasion, when EMT personnel asked if a search could be conducted away from the hospital to avoid

undermining community trust in first responders, a Border Patrol agent responded “we’ll do it any place and any time we want.”

Maria Fernanda reported Border Patrol vehicles parked outside the Ben Archer clinic in Doña Ana, NM, a low-cost, community-based health clinic. This occurred once or twice a week for several months prior to July 2014. According to Maria, several of her friends fear attending their doctor's appointments because of this practice.

Finally, community residents reported Border Patrol vehicles patrolling slowly around or parking outside schools. Adrian saw Border Patrol vehicles slowly patrolling the streets near his home and adjacent to the Loma Heights Elementary School in Las Cruces several times a week over the span of several months prior to March 2014. Marianne and her son, Luis, spotted Border Patrol agents on the campus of Centennial High School on three separate occasions from December 2013 to March 2014. On March 11, 2014, they noticed a Border Patrol agent parked his vehicle in a position that “looked like a perfect place to take license plates” as parents leave school with their kids. “It really creeped me out,” Marianne added.

Officers intimidate and abuse lawful travelers at ports of entry

In January 2014, Adriana and Valeria, sisters and both Hispanic U.S. citizens, returned to the United States through the Columbus, NM, port of entry when the CBP officer conducting their inspection crossed the line of professional standards. Each sister had one of their toddler-age children in the vehicle. The officer questioned Adriana and Valeria whether they kidnapped their children, how much it cost to buy them, and ultimately asked, “Did it hurt when you had them?” They were then referred to secondary for an embarrassing search, where CBP ordered they dump out personal items from their purse in plain view of onlookers.

Just one month later while crossing at the same port of entry, a CBP officer repeatedly questioned one of the sister's 12-year-old daughters, asking “why are you laughing?” Her daughter, who was smiling but not laughing or intending disrespect, left feeling intimidated by the officer.

RCBR staff documented 12 cases of CBP officers intimidating lawful travelers at ports of entry, including U.S. citizens, by subjecting individuals to verbal abuse, intensive questioning, uses of force and abusive searches that damaged personal property. CBP regularly provides no explanation of the reasons or outcomes of their investigations.

In February 2014, Paola, a U.S. citizen, reported that twice as she was travelling southbound through the Columbus port of entry into Mexico, CBP subjected her to invasive questioning, verbal abuse and an unjustified search. In the first incident, a CBP official immediately addressed her with rude comments. When she wrote the officer's name down, the official ordered Paola out of her car for x-ray searches of her vehicle. She noted the officer didn't even bother to speak respectfully to her in the presence of a supervisor.

Later, on February 20, a CBP officer asked Paola's daughter to show her teeth after extensive questioning about her travels to El Paso for dentist appointments. From Paola's perspective, “They ask one



Port of Entry in Columbus, NM

question after another... so many questions that are too personal. And even when you answer they still aren't satisfied." Paola added that for a couple weeks following her complaints, CBP officers at the port always referred her to secondary inspection for additional screening.

Helena, a U.S. citizen from the Midwest, retired to Columbus, NM, where she crosses the port of entry regularly to provide humanitarian aid. On November 8, 2013, a CBP officer detained her with Christmas gifts for friends and family to question her extensively about the presents and her work with a humanitarian organization and to search her vehicle, including the gifts. On her next trip through the port three days later, CBP sent her to secondary for a search. When asked why, the CBP officer stated it was due to a problem with her passport. After filing a complaint, DHS provided Helena a "redress control number" and instructed her to use it when she books air travel. DHS, including CBP, never explained to Helena why or how her passport ended up flagged for additional screening.

Finally, CBP officers used physical force against lawful permanent resident Maria on May 26, 2014. Officers pulled her from the vehicle she was riding in, handcuffed her, and initiated a pat down and search. When Maria tried to explain to officers that the search while handcuffed was hurting her, they told her to shut up. After an hour of detention and taking her fingerprints, CBP officers told her she was free to go without any explanation. She, like others who reported incidents, felt intimidated and affected psychologically by the experience.

Ports of entry on the U.S.-Mexico border divide truly bi-national communities, where residents cross frequently for daily errands, doctors' appointments, work, or to visit family. When CBP officers abuse lawful travelers, including U.S. citizens, through intimidating detentions and searches, many leave fearful of crossing again to the detriment of important cultural and economic exchanges that benefit not only local communities, but the nation.

CBP officers deny entry to people seeking emergency medical care

In 2012, EMT personnel responded to the Columbus, NM, port of entry to provide emergency care to a woman who arrived at the port in labor. CBP denied her entry and emergency transport to the nearest hospital in Deming, NM. Ken was on scene that day and later found out that the woman's baby died when she was forced to give birth in her family car while her husband frantically drove to Ciudad Juarez.

RCBR staff documented four cases in the past two years where CBP officers denied entry to individuals seeking medical care at the port of entry in Columbus, NM. The nearest hospital for residents of Palomas, Mexico, is located in Deming, NM. At the request of CBP, central dispatch often calls upon emergency responders from Columbus to provide emergency assistance at the port of entry and transport the patients to Deming. However, the RCBR found that CBP officers—who are not trained medical professionals—have not been consistent in determining who would be allowed into the country to receive emergency treatment and who wouldn't be, placing lives at risk and potentially resulting in the death of women and children in at least two cases.



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“It’s about who’s on duty, their personalities,”... many CBP officers see themselves as “above reproach and above the law.”

Under a joint agreement between the states of Chihuahua and New Mexico, CBP officers should allow emergency transport to the nearest hospital in Deming for people who arrive at the port of entry with a note from the clinic in Palomas, Mexico, explaining their need for emergency care. First responders noted an apparent shift in practice shortly after the agreement went into effect, however, where CBP officers exercise significant discretion as to whether or not to allow emergency transport.

★★★★★★★★★★
On July 21, 2014, CBP officers initially refused emergency transport for a woman who approached the port of entry in labor, having seizures, and in critical condition. After subsequently reporting to the clinic in Palomas, where she was informed they were unable to provide adequate treatment, the woman returned to the port in worse condition with the help of a bystander who saw her collapse. CBP officers then allowed emergency transport to Deming.

In May 2014, CBP officers called central dispatch requesting emergency medical services at the Columbus port of entry for a woman who had arrived with her husband. While on scene providing care, the woman expressed five separate times to both first responders and CBP officers that she had experienced domestic violence. Bill, the first responder on scene, called the sheriff’s office as required by mandatory reporting requirements. The CBP officer on scene became very upset that he made a report to local sheriffs and chastised both the woman and Bill. The officer’s demeanor raised concern about her commitment to provide due process to potential victims of violence.

First responders find puzzling that rather than rely on their professional opinion, CBP officers decide to deny entry in cases where CBP determined it necessary to call for emergency care in the first place. Ken quipped, “It baffles me—why did [CBP] call us?” Bill described an incident in November 2013 where CBP called for emergency care at the port for a woman with diabetes. CBP officers eventually refused to allow emergency transport to the nearest hospital in Deming, NM. He later learned that the woman fell into a diabetic coma and died while en route to Ciudad Juarez. Reflecting on this case, he opined, “It’s about who’s on duty, their personalities,” adding that many CBP officers see themselves as “above reproach and above the law.”

THE U.S. CONSTITUTION STILL APPLIES AT THE BORDER

No one should live in fear or feel constantly monitored, harassed, and treated with suspicion by law enforcement in his or her own community, and certainly not because of the color of their skin or the community in which they live. At a time of national engagement on issues of police accountability, Border Patrol agents who view border community residents as “guilty until proven innocent” and whose hostile treatment of individuals communicates blatant disregard for their dignity should be of great concern in the work to restore trust and accountability between law enforcement and communities.

Border communities are among the safest communities in the nation and celebrate remarkable diversity. Too frequently, however, Border Patrol subjects residents simply going about their daily lives to unjustified harassment, profiling, and other abuse. The abuses documented in this report run contrary to our most deeply held values of fairness and freedom and damage public safety by sowing seeds of mistrust between whole communities and law enforcement.

In this context, it is right for border community residents, local elected officials, faith leaders, business leaders and local law enforcement to question Congressional proposals to endlessly expand military-

like enforcement initiatives, particularly when Border Patrol agents are already “tripping over themselves.”

Border communities are calling for revitalization, and our request is simple: the nation’s largest law enforcement agency should be held to the highest professional standards. The public increasingly recognizes the [deadly consequences](#) of Border Patrol’s culture of abuse and the agency’s failure to implement best practices or meaningful oversight and accountability mechanisms. The Obama Administration, agency officials, and other policy makers must include CBP in the ongoing national dialogue to address police abuse and militarization and insist upon the same police best practices at CBP as at any other agency. Failure to rein in the Border Patrol and turn the page on this shameful chapter in our history of discriminatory policing would condemn yet another generation of border residents to live with an agency that currently flouts constitutional protections for the tens of millions who call border communities home.

RECOMMENDATIONS: ACCOUNTABILITY AND OVERSIGHT

We urge Members of Congress, the Administration, and DHS/CBP headquarters and local leadership to promptly implement the following reforms developed in consultation with community members like those featured in this report.

U.S. Customs and Border Protection (CBP) and the Department of Homeland Security (DHS) must:

- Issue a clear prohibition on the use of race, ethnicity and other protected characteristics under existing Department of Justice guidance as a factor in law enforcement, including but not limited to routine investigatory stops and detentions and searches, except where a reliable, current specific suspect description exists or where there is an affirmatively required statutory determination like asylum eligibility.
- Implement nationwide, comprehensive data collection regarding Border Patrol roving patrol and checkpoint activities, including data related to all roving patrol stops, referrals to secondary inspection areas at checkpoints, searches, the basis for all stops and/or searches as well as the perceived race or ethnicity and immigration status or citizenship of the individuals stopped and/or searched.
- Publicly report aggregate data collected through the above recommendation to establish trust, transparency and accountability to communities. The President’s Task Force on 21st Century Policing recently highlighted, “To embrace a culture of transparency, law enforcement agencies should make all department policies available for public review and regularly post on the department’s website information about stops, summonses, arrests, reported crime and other law enforcement data aggregated by demographics.”
- Establish enhanced initial and annual refresher training for agents, in consultation with independent law enforcement experts and community stakeholders to include nongovernmental organizations, in the area of Fourth Amendment protections against illegal searches and seizures, as well as prohibitions on racial profiling under the Fourteenth Amendment. Training should, among other topics, address the existence and impact of arbitrary classifications, stereotyping, and implicit bias.
- Equip all CBP personnel interacting with the public, particularly the Border Patrol, with [body-worn cameras](#) paired with privacy protections.
- [Reduce the zone of CBP operations](#) to a maximum of 25 miles from a land or sea border, and reduce the area where agents can enter private property without a warrant to 10 miles. CBP

should conduct sector by sector analysis, as required by existing regulations, to determine whether a shorter distance would be reasonable.

- [Create a transparent, uniform DHS process for receiving, processing and investigating all complaints](#) in multiple languages, to align with best practices and joint recommendations submitted recently by nongovernmental organizations. Complaint processing must be transparent, thorough, and prompt, with effective and public remedies for complainants where appropriate.
- Post clear signage in multiple languages directing individuals to the uniform complaint process in all CBP inspection and detention areas of ports of entry, stations, holding cells and checkpoints. Officers and agents should be provided and required to carry business cards that identify the officer/agent and provide instructions on how to file complaints. These cards should be given to all persons with whom the officer or agent has a law enforcement encounter.
- Clarify publicly CBP's existing, nationwide directive severely curtailing enforcement actions at or near sensitive community locations to prohibit enforcement actions inhibiting first responders absent written approval by the Chief Patrol Agent or delegate. Agents must recognize and protect the paramount value of human life and wellbeing by not interfering with ambulance personnel and EMT staff when they are providing medical care and transport.
- Respect existing agreements and/or the professional opinion of first responders at ports of entry when determining whether to allow potentially life-saving medical transport to the nearest hospital, including in the United States.
- Provide refresher training to officers and agents about their obligation to protect and provide due process to possible victims of crime, trafficking, and domestic violence or in need of asylum. Training should instruct officers and agents to coordinate as appropriate with local law enforcement agencies when reportable incidents or investigations arise.

NOTE

Case summaries are available for review at the ACLU of New Mexico's web page for this report:

<https://www.aclu-nm.org/guiltyuntilproveninnocent>