



Implementing Law Enforcement Best Practices for our Nation's Biggest Police Force

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The Customs and Border Protection Integrity Advisory Panel—peer law-enforcement experts reporting to the DHS Secretary's Homeland Security Advisory Council—completed an interim report in June 2015 highlighting deficiencies in transparency, oversight, and accountability at CBP.¹ The Integrity Advisory Panel, co-chaired by NYPD Commissioner William Bratton and former DEA Administrator Karen Tandy, pointed out that with “more than 44,000 arms-carrying, sworn law enforcement officers,” CBP is our nation's largest police force.

The administration's Task Force on 21st Century Policing has also called on federal law enforcement agencies to review and implement recommendations put forward in its final report,² including a nationwide initiative to increase transparent data-collection by state and local police.³ The ACLU urges CBP to adopt the reforms listed below from both reports in order to implement best policing practices.

The need for reform: CBP's trust deficit in border communities

Roughly 2/3 of the American population lives within the 100-mile zone where CBP officers and agents—particularly the Border Patrol—claim and exercise extraordinary power based on outdated and ill-defined legal authority to stop, question, and detain border residents as they go about their daily lives.⁴ Border residents on both our southern and northern borders report that Border Patrol agents harass and profile them for stops and searches via roving patrols, interior checkpoints, and transportation checks within this 100-mile zone and beyond.⁵

In Arivaca, AZ, community members monitored 2,379 stops at an interior checkpoint and found that Border Patrol agents were 26 times more likely to ask Latino motorists for identification and 20 times more likely to detain them for searches in secondary inspection than white motorists.⁶ In the Sandusky Bay region of Ohio, Latinos represented 85 percent of those arrested by Border Patrol despite constituting only 3 percent of the general population. By way of comparison, Latinos made up over 60

CBP Discrimination Nationwide

El Paso, TX: Isaac approached ACLU-NM in 2014 to report concerns about constant harassment faced at Border Patrol checkpoints. He travels through them weekly for his small business buying and selling motorcycles. Isaac estimates agents refer him for searches with dogs and x-ray technology half of the time and that 80% of their questions have nothing to do with his U.S. citizenship. In his own words, Border Patrol treats Isaac “like a brown man driving a truck,” causing him to feel scared and demeaned and to lose business while detained at checkpoints.

Rio Grande Valley, TX: Celia Crespo, a U.S. citizen, provided her passport to agents who stopped her car without providing any reason in August 2014. She said agents pulled her over immediately after she made two 90-degree turns. After inquiries into the status of her 13 and 18-year-old children, a U.S. Citizen and Lawful Permanent Resident respectively, Celia was released. She told the ACLU of Texas that many others like her in the community are pulled over for minor infractions or no reason whatsoever.

Fallbrook, CA: Day laborers report constant stops by Border Patrol for “being brown.” While returning home from work in June 2015, Alonso told the ACLU of San Diego and Imperial Counties that Border Patrol stalked the vehicle he was riding in from the interstate all the way to Alonso's home. As he walked in the door, Border Patrol pulled up to ask him and others in the car whether they had I.D. and “were legal.” Alonso was the only one detained that day by Border Patrol agents, who treated him badly and cursed at him because he didn't speak English.

Chateauguay, NY: Lucia Rogers, a U.S. citizen of Mexican descent, worked for a community health organization when Border Patrol agents stopped her in Dec. 2011 for a “citizenship checkup.” They handcuffed, arrested, invasively searched, detained, and interrogated her at the Ogdensburg CBP station for several traumatic hours. Ms. Rogers told the NYCLU that “I should be able to go to work or go to the gym without having to constantly worry about being stopped by Border Patrol agents simply because of the color of my skin.”

percent of arrests in 2010 and 2011 while “less than a quarter of 1 percent of those stopped by agents were Canadian.”⁷

The ACLU has filed administrative complaints with DHS oversight agencies on behalf of numerous border residents, describing unlawful roving patrol stops⁸ and improper detentions and searches at checkpoints.⁹ These include many complaints of racial profiling by agents. In September 2013, the ACLU of Washington settled a lawsuit in which a Border Patrol agent stopped one plaintiff, Ernest Grimes, an African-American correctional officer and part-time police officer, without any stated cause. The Border Patrol agent approached the vehicle with his hand on his firearm and interrogated Mr. Grimes about his immigration status while Mr. Grimes was in his correctional officer uniform. As part of that settlement, CBP agreed to retrain agents in that sector on the Fourth Amendment and provide stop data to the ACLU for a limited time.

The Department of Justice stresses that profiling the public based on intrinsic characteristics is “simply not good law enforcement.”¹⁰ Racial profiling by law enforcement is a flawed policing strategy that offends American values of fairness and justice, wastes time and resources, and reduces public safety by damaging community trust. CBP must adopt policing best practices to operate with transparency and accountability to border communities.

Selected CBP Integrity Advisory Panel and 21st Century Policing Task Force Recommendations

Racial Profiling

- ***Law enforcement agencies should adopt and enforce policies prohibiting profiling and discrimination based on race, ethnicity, national origin, age, gender, gender identity/expression, sexual orientation, immigration status, disability, housing status, occupation, and/or language fluency.*** (Task Force Rec. 2.13)

The Department of Justice’s Guidance on race and other protected characteristics exempts CBP “interdiction” activities in the “vicinity of the border” and “protective, inspection, or screening activities.”¹¹ CBP is currently reviewing its existing policies on the use of race or ethnicity, providing the agency an opportunity to ban discriminatory profiling unless there’s a suspect description.¹²

Data Collection and Accountability at Checkpoints and Roving Patrols

- ***Law enforcement agencies should be encouraged to collect, maintain, and analyze demographic data on all detentions (stops, frisks, searches, summons, and arrests).*** (Task Force Rec. 2.6)
- ***Law enforcement agencies should adopt policies requiring officers to identify themselves by their full name, rank, and command (as applicable) and provide that information in writing to individuals they have stopped. In addition, policies should require officers to state the reason for the stop and the reason for the search if one is conducted.*** (Task Force Rec. 2.11)

CBP does not collect data on stops and searches by Border Patrol agents at interior checkpoints or during roving patrols that do not result in arrest. Agent accountability and the appropriate, efficient use of limited resources cannot be achieved without this data. Community complaints from both borders show Border Patrol agents often fail to provide reasons for stops or searches and, in some cases, escalate situations and use force when individuals ask for clarification. Agents have also frequently refused to identify themselves or fail to wear identifying nametags on their uniforms or outer garments, contrary to CBP policy.

Oversight, Transparency, and Accountability

- *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.* (Task Force Action Item 1.3.1)
- *CBP should consider posting on the internet all high profile policies and guidelines that may be of interest to the media or public, i.e. Use of Force, Pursuit, Internal Affairs, and Domestic Violence with Law Enforcement Officers.* (Advisory Panel Rec. 10a)
- *When serious incidents occur, including those involving alleged police misconduct, agencies should communicate with citizens and the media swiftly, openly, and neutrally, respecting areas where the law requires confidentiality.* (Task Force Action Item 1.3.2)
- *Policies on use of force should also require agencies to collect, maintain, and report data to the Federal Government on all officer-involved shootings, whether fatal or nonfatal, as well as any in-custody death.* (Task Force Action Item 2.2.4)
- *Policies on use of force should clearly state what types of information will be released, when, and in what situation, to maintain transparency.* (Task Force Action Item 2.2.5; Advisory Panel Rec. 11)
- *Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community. Every community should define the appropriate form and structure of civilian oversight to meet the needs of that community.* (Task Force Rec. 2.8)

CBP posts some policies in its FOIA reading room, including the agency's nondiscrimination and use-of-force policies and Commissioner Kerlikowske has made progress towards greater transparency through the release of data on use of force incidents for FY 15 and encouraging greater transparency immediately following use-of-force incidents. However, data released to date does not clearly define "use of force" or sector-level trends.¹³ CBP has also not explicated its "Maximum Disclosure, Minimum Delay" policy, making it unclear how the agency intends to communicate the outcomes of investigations, and any changes made in training, tactics, policy, and equipment based on use-of-force incident reviews.

Body-Worn Cameras

- *CBP should identify metrics to compare similarly situated officers/agents in order to evaluate the effectiveness of body-worn cameras. Additionally, CBP should continue to consult with stakeholders and review model policies as it considers its final body-worn camera policy in light of the lessons learned during the feasibility study* (Advisory Panel Rec. 8)
- *The implementation of appropriate technology by law enforcement agencies should be designed considering local needs and aligned with national standards.* (Task Force Rec. 3.2)
- *Law enforcement agencies should review and consider the Bureau of Justice Assistance's Body Worn Camera Toolkit to assist in implementing BWCs.* (Task Force Action Item 3.3.3)

Recognizing the positive benefits and growing adoption of body-worn cameras nationwide, "as a method of reducing complaints, de-escalating volatile situations (thus enhancing officer/agent safety) and ensuring compliance with use of force policies," the Integrity Advisory Panel recommended CBP continue its work towards implementation of body-worn cameras that "include[s] a system for supervisory review as well as an auditing program involving random sampling to ensure compliance with the policy and to assess officer/agent actions."¹⁴ Following the Task Force Recommendations, CBP should implement the use of body-worn cameras within a strong policy framework including privacy protections.¹⁵

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- ¹ Homeland Security Advisory Council, Interim Report of the CBP Integrity Advisory Panel 3 (June 29, 2015), *available at* <http://www.dhs.gov/sites/default/files/publications/DHS-HSAC-CBP-IAP-Interim-Report.pdf>.
- ² PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 69 (2015), (Recommendation 7.1), *available at* http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf.
- ³ Megan Smith & Roy L. Austin, Jr., Launching the Police Data Initiative, <https://www.whitehouse.gov/blog/2015/05/18/launching-police-data-initiative> (May 18, 2015).
- ⁴ ACLU, FACTSHEET: CUSTOMS AND BORDER PROTECTION'S (CBP'S) 100-MILE RULE (2014), https://www.aclu.org/sites/default/files/field_document/14_9_15_cbp_100-mile_rule_final.pdf.
- ⁵ ACLU of Arizona, RECORD OF ABUSE: LAWLESSNESS AND IMPUNITY IN BORDER PATROL'S INTERIOR ENFORCEMENT OPERATIONS (Oct. 2015), <http://www.acluaz.org/node/5415>; ACLU of NM Regional Center for Border Rights, GUILTY UNTIL PROVEN INNOCENT: LIVING IN NEW MEXICO'S 100-MILE ZONE (May 2015), <https://www.aclu-nm.org/guiltyuntilproveninnocent/2015/05/>; and NYCLU, JUSTICE DERAILED, (Nov. 2011), http://www.nyclu.org/files/publications/NYCLU_justicederailedweb_0.pdf
- ⁶ Paul Ingram, *Residents claim racial profiling at Border Patrol checkpoint*, TUCSON SENTINEL, Oct. 19, 2014, *available at* http://www.tucsonsentinel.com/local/report/101914_arivaca_observers/residents-claim-racial-profiling-border-patrol-checkpoint/.
- ⁷ Encarnacion Pyle, *Alleging profiling, OSU students help sue Border Patrol*, COLUMBUS DISPATCH, Nov. 19, 2014, *available at* <http://www.dispatch.com/content/stories/local/2014/11/18/OSU-students-help-sue-Border-Patrol.html>.
- ⁸ Complaint from ACLU to DHS Office of Inspector General and Office for Civil Rights and Civil Liberties (Oct. 9, 2013) (Roving Patrols Complaint), *available at* <http://www.acluaz.org/sites/default/files/documents/ACLU%20AZ%20Complaint%20re%20CBP%20Roving%20Patrols%20Oct%209%202013.pdf>.
- ⁹ Complaint from ACLU to DHS Office of Inspector Gen. and Office for Civil Rights and Civil Liberties (Jan. 15, 2014) (Checkpoints Complaint), *available at* <http://www.acluaz.org/sites/default/files/documents/ACLU%20AZ%20Complaint%20re%20CBP%20Checkpoints%20%202014%2001%202015.pdf>.
- ¹⁰ 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>.
- ¹¹ Id.
- ¹² Memorandum from Thomas S. Winkowski, Acting Commissioner, U.S. Customs and Border Protection (Feb. 6, 2014) (Nondiscriminatory Law Enforcement and Screening Activities), *available at* http://www.cbp.gov/sites/default/files/documents/memo_nond_screening.pdf.
- ¹³ U.S. Customs and Border Protection, CBP Use of Force, <http://www.cbp.gov/newsroom/stats/cbp-use-force> (Sept. 30, 2015).
- ¹⁴ Integrity Advisory Panel, *supra*, at 3, 19-20.
- ¹⁵ ACLU, Strengthening CBP with the Use of Body-Worn Cameras (June 27, 2014), <https://www.aclu.org/strengthening-cbp-use-body-worn-cameras>