

June 21, 2010

Senator Joseph Lieberman  
Chairman  
U.S. Senate  
Committee on Homeland Security and Governmental Affairs  
340 Dirksen Senate Office Building  
Washington, D.C. 20510

**Re: Border Police Use of Lethal Force**

Dear Chairman Lieberman:

We, the undersigned, write to request a Congressional oversight hearing on the lethal and excessive use of force in immigration enforcement and policing activities along the U.S.-Mexico border.

In recent weeks there have been at least two unjustifiable deaths on the U.S.-Mexico border at the hands of Customs and Border Protection (“CBP”) officers.<sup>i</sup> Excessive, lethal force is always unacceptable, but it is particularly troubling now as 1200 National Guard are being deployed to the southwest border and some members of Congress are calling for increased border security and militarization of the southwest border zone. These incidents will continue unless the federal government regulates the use of force at the border by federal agents. As meaningful security cannot coexist with law enforcement cultures of impunity and recklessness, we urge you to use your oversight responsibilities to ensure that our nation’s CBP officers are adequately trained and that CBP and the Department of Homeland Security (“DHS”) have clear and transparent systems in place to hold accountable officers who do not follow the agency’s rules and procedures. We therefore urge the Senate Homeland Security and Governmental Affairs Committee to hold an oversight hearing to investigate this pressing issue.

- On May 28, federal agents at the San Ysidro Port of Entry near San Diego beat and shocked Anastasio Hernández Rojas, a middle-aged father of five U.S. citizen children, with a stun gun. He died on May 31 and the San Diego County coroner ruled his death a homicide; the local police and the FBI are investigating. He is survived by five U.S. citizen children, including four-year-old twins. It is unclear whether the federal agents involved in the killing were all CBP or whether Immigration and Customs Enforcement (“ICE”) was also involved. The lack of clarity about which agencies were involved in the killing undermines the transparency and credibility of the investigation.
- On June 7, Border Patrol agents used lethal force to shoot and kill Sergio Adrian Hernandez Huereca, a teenager from Ciudad Juárez. At the time of his death he was playing on the Mexican side of the river under a bridge connecting El Paso and Ciudad Juárez. His family in Mexico is outraged at the killing of their adolescent son. Border communities in the United States feel scared by the unchecked violence in their communities at the hands of government agencies and the impunity which ensues. These

deaths, and similar abuses, cast a pall on communities all along the border, making it harder for them to trust U.S. law enforcement and generally undermining the rule of law.

- Also in early June, a Border Patrol agent pled guilty to civil rights violations after assaulting a Mexican national who was in his custody.<sup>ii</sup>

These are not the first deaths at the hands of CBP agents operating in the southwest border region – there has been at least one killing or shooting by CBP agents a year for the last five years. The Mexican Foreign Ministry reported that the number of Mexican nationals injured or killed as a result of use of force by U.S. border agents has increased dramatically from 5 in 2008 to 12 in 2009 to 17 in just the first five months of 2010,<sup>iii</sup> but these numbers significantly understate the scale of the problem as countless incidents go unreported or occur against non-Mexican nationals. This escalating use of violence and threat to civil and human rights by U.S. border enforcement agents all across the southern border is profoundly troubling and can no longer be ignored.

The number of law enforcement agents deployed to the southwest border has increased dramatically in recent years, but training, oversight, and accountability measures for the border enforcement agents have not kept pace. In the past 15 years, the Border Patrol alone has grown from a force of 4,000 agents in 1994 to 10,000 agents in 2004 to approximately 20,000 agents in 2010. During that time, resources allocated to government oversight of border patrol have either remained stagnant or decreased, allowing CBP to act with impunity. We urge the Senate Homeland Security and Governmental Affairs Committee to convene an oversight hearing that will help shed light on DHS activities at the border and investigate the following questions:

- What are the CBP protocols for use of lethal and non-lethal force? How are agents trained on these protocols?
- What is the protocol between agencies within DHS for treatment of agents who are the subjects of complaints or investigations regarding excessive use of force?
- How long were the agents involved in the San Ysidro and El Paso killings employed by CBP before these deaths occurred? Have all involved agents been placed on administrative leave pending the outcome of the investigations?
- What are the oversight mechanisms to hold DHS officers accountable for excessive use of force or other violations of civil and human rights; what bodies have oversight responsibilities, what role does each play, and how do the different bodies interact?
- What measures does DHS headquarters take to refer cases involving excessive use of force outside of DHS for criminal investigation or to ensure cooperation with FBI or DOJ reviews? When will the investigations into these recent deaths be concluded and will the results be made public?
- How many complaints of excessive use of force by border patrol have been filed with Border Patrol, Internal Affairs, DHS Office of Inspector General, DHS Office for Civil

Liberties and Civil Rights, Department of Justice in the last 15 years, how have those complaints been handled and what were the outcomes?

- Has DHS (or the INS) changed its training or its protocols in any way over the last 15 years to correct for instances of excessive use of force?
- What plans, if any, has CBP developed to improve training, oversight and accountability of excessive use of force?
- What is the protocol for collecting and recording information about use of force by law enforcement agencies including by CBP? What protocol and procedures exist for maintaining and documenting contact between federal and local authorities to obtain timely information about all border deaths and injuries caused by use of force by law enforcement agencies?

We urge you to act immediately to call attention to these grave abuses of lethal force, and to ensure respect for human life in the border region. If you have any questions, please contact Joanne Lin, ACLU Legislative Counsel, at 202/675-2317 or [jlin@dcacclu.org](mailto:jlin@dcacclu.org).

Thank you for your consideration,

**National / D.C. Groups**

American Civil Liberties Union  
Amnesty International USA  
Disciples Justice Action Network  
Guatemala Human Rights Commission/USA  
Latin America Working Group  
Maryknoll Office for Global Concerns  
Medical Mission Sisters Alliance for Justice  
National Immigration Forum  
National Plan for Hispanic/Latino Ministry, United Methodist Church  
NETWORK, A National Catholic Social Justice Lobby  
Sister Parish USA, Guatemala and El Salvador  
Washington Office of Public Policy, Women's Division, United Methodist Church  
Washington Office on Latin America

**Regional / State Groups**

8th Day Center for Justice (IL)  
American Friends Service Committee, San Diego (CA)  
Border Action Network (AZ)  
Border Angels (CA)  
Border Network for Human Rights (TX)  
Casa Baltimore/Limay (MD)  
Casa Cornelia Law Center (CA )  
Coalicion de Derechos Humanos (AZ)  
Dominican Sisters of Houston (TX)  
East Bay Sanctuary Covenant (CA)

El Pueblo (MS)  
Georgia Latino Alliance for Human Rights (GA)  
Gloria Dei Step Up Center (RI)  
Humane Borders (AZ)  
The Jubilee Center at St. Matthews/San Mateo Episcopal Church (WA)  
No More Deaths (AZ)  
Pennsylvania Council of Churches (PA)  
San Diego Human Relations Commission (CA)  
Sisters of Humility (IO)  
South Texas Civil Rights Project (TX)  
U.S.-Mexico Border and Immigration Task Force (AZ, TX)

CC. Senate Homeland Security and Governmental Affairs Committee

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<sup>i</sup> CBP includes agents at the ports of entry and Border Patrol, which operates between the ports of entry.

<sup>ii</sup> <http://www.justice.gov/opa/pr/2010/June/10-crt-657.html>

<sup>iii</sup> <http://portal.sre.gob.mx/eua/index.php?option=news&task=viewarticle&sid=439>