



DEFENDING HUMAN DIGNITY AT THE U.S. - MEXICO BORDER:

U.S. Customs and Border Protection's
Ongoing Discrimination, Violence, and Impunity

Report for the 2023 Review of U.S. Compliance with the
International Covenant on Civil and Political Rights

Southern Border Communities Coalition



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About the Southern Border Communities Coalition

Formed in March 2011, SBCC brings together organizations from across the southwest border region within the United States. SBCC is made up of more than 100 organizations and is governed by a Steering Committee composed of representatives from California, Arizona, New Mexico, and Texas. SBCC’s primary mission is 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.

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TABLE OF CONTENTS

HUMAN RIGHTS IN U.S. BORDER COMMUNITIES MATTER	4
U.S. CUSTOMS AND BORDER PROTECTION’S FAILURE TO COMPLY WITH ICCPR	5
A. Racial and Identity-Based Discrimination (Article 26)	5
B. Arbitrary Policing Through Warrantless Searches (Art. 9)	7
C. Excessive Force and Inhumane Policing (Arts. 6-7)	8
D. Impunity and Lack of an Effective Remedy (Articles 2, 50)	11
SUGGESTED QUESTIONS & RECOMMENDATIONS	14
APPENDICES	15
A. Declaration of Dr. Janine Bouey, California	15
B. Declaration of Marisol Garcia Alcántara, Arizona	17
C. Declaration of Jovanny Sebastián Hernández, New Mexico	19
D. Declaration of Ramona Casas, Texas	20
ENDNOTES	22

HUMAN RIGHTS IN U.S. BORDER COMMUNITIES MATTER

U.S. Customs and Border Protection (CBP) is the largest law enforcement agency in the United States with over 60,000 employees.¹ Over 85% of agents of the U.S. Border Patrol, a component of CBP, are deployed at the U.S.-Mexico border.² CBP asserts the authority to conduct warrantless stops and seizures anywhere within 100 miles of U.S. land or sea borders, an area that covers approximately two-thirds of the U.S. population.³ Border agents act without warrant to set up checkpoints, search vehicles and public transportation, enter private property, and racially profile and interrogate anyone suspected of not being a citizen.⁴

CBP agents are routinely accused of a range of abuses, including racial profiling, illegal stops and searches, mistreatment, and excessive use of force. More than 270 U.S. citizens and foreign nationals have died in encounters with CBP agents since 2010. Most of the victims are Latin American, specifically Mexican nationals.⁵ Use of force incidents by border agents have increased from about 600 to over 900 incidents a year in the last three years.⁶

Victims of killings by border agents and their relatives struggle to access justice in the United States. Successful disciplinary, civil, or criminal actions against U.S. border agents are exceedingly rare for killings: CBP's system for handling complaints of abuse and misconduct is patently ineffective; their National Use of Force Review Board has exonerated every killing;⁷ the Supreme Court has ruled there is no right to sue in civil court for constitutional violations like deprivation of life until and unless Congress legislates to allow it, and it has not;⁸ and the U.S. Department of Justice has closed all but one criminal investigation of a border killing without

pursuing charges.⁹ No federal border agent has ever been convicted for taking a life while on duty.

While the United States promotes human rights around the world, CBP agents are permitted to racially profile, arrest, and kill with impunity. For the 19 million people living in U.S. border communities in California, Arizona, New Mexico, and Texas,¹⁰ the fundamental human rights enshrined in the International Covenant on Civil and Political Rights (ICCPR) exist only on paper. The United States has consistently disregarded its binding legal obligations under the ICCPR despite having ratified the Covenant in 1992 and despite the exhortations of the Human Rights Committee ("Committee" or "HRC").¹¹

The Southern Border Communities Coalition (SBCC) submits this Shadow Report to highlight U.S. Customs and Border Protection's failure to adhere to the ICCPR in four key areas:

- Racial and identity discrimination
- Arbitrary warrantless searches
- Excessive force
- Impunity and lack of effective remedy

In drafting this report, SBCC collaborated with members of its Coalition across all four U.S. southwest border states: California, Arizona, New Mexico, and Texas. The report contains examples from each of these states that illustrate the United States' failure to comply with the ICCPR. SBCC also engaged with representatives of the United States at four civil society consultations convened by the U.S. Department of State in April, May, June, and July of 2023. SBCC addresses the U.S. Fifth Periodic Report, submitted in 2021, to the HRC on compliance with the ICCPR

when applicable .

Human Dignity is the equal value and worth that all human beings are born with. Dignity is inherent and inalienable, which means we don't have to do or be anything to earn it, and it cannot be taken away either. To honor these principles, the United States must recommit to protecting the human rights of people at home. It must start with dignity.

To ensure the United States respects the inherent dignity of all people in border

communities, we urge this Honorable Committee to consider the information in this Shadow Report and question the U.S. about the failures by CBP, the nation's largest law enforcement agency, to adhere to international protections established by the ICCPR. We further urge the Committee to make the recommendations below to bring the United States into compliance with its treaty obligations. Border communities deserve no less.

U.S. CUSTOMS AND BORDER PROTECTION'S FAILURE TO COMPLY WITH ICCPR

The United States has failed to adhere to Articles 2, 6, 7, 9, 26 and 50 by engaging in impermissible racial and identity discrimination, arbitrary enforcement, inhumane policing — including killing an increasing number of border residents and migrating people — and shielding CBP agents from accountability.

A. RACIAL AND IDENTITY-BASED DISCRIMINATION (ARTICLE 26)

Despite the international prohibition against discrimination and admonitions from the HRC, CBP asserts the right to engage in racial and identity profiling under federal law.

Article 26 of the ICCPR establishes the right to equal protection and prohibits discrimination on the basis of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."¹² In accordance with Article 4 of the ICCPR, no derogation from the prohibition against discrimination is permitted.¹³

Since 2006, the HRC has called on the United States to address racial profiling by law enforcement with urgency.¹⁴ This

Honorable Committee's most recent concluding observations again urged the United States "to effectively combat and eliminate racial profiling by federal, state and local law enforcement officials."¹⁵ Specifically, the HRC called on the United States to enact reforms that "expand[] protection against profiling on the basis of religion, religious appearance or national origin" and improve law enforcement training.¹⁶ The U.S. Fifth Periodic Report did not address racial discrimination or disparities by CBP, despite the agency being the largest law enforcement agency in the U.S.¹⁷

For decades, U.S. federal law has permitted immigration agents to engage in racial profiling,¹⁸ with current CBP policy permitting agents to "use race or ethnicity when a compelling governmental interest is present and its use is narrowly tailored to that interest" where "[n]ational security is per se a compelling interest".¹⁹ On May 25, 2023, the United States Department of Justice (DOJ) issued updated guidance limiting profiling by federal law enforcement agencies, but preserved an exception for border areas. The DOJ memo recognizes that federal law prohibits racial and identity

discrimination but “does not apply [this] to interdiction activities at the border or its functional equivalent”.²⁰

CBP is a component agency of the U.S. Department of Homeland Security (DHS). Although DHS plans to update its policy on racial discrimination in 2023, the revision is unlikely to eliminate racial profiling by CBP in compliance with the ICCPR.²¹ During civil society consultations with SBCC earlier this year, a DHS representative declined to address the border exception to the federal ban on racial and identity profiling or offer details about how DHS planned to bring its discrimination policy into compliance with international standards.²²

The U.S. border agency’s embrace of racial discrimination is rooted in a long history of racial violence against Mexican, Latin American, Black and Indigenous people across the United States. The United States Border Patrol, the subagency responsible for immigration enforcement between ports of entry, was founded in 1924, a time of rampant “nativist violence and extremism” in the United States.²³ Created explicitly to prevent the “mongrelization” of the country, the early Border Patrol recruited from the ranks of the Klu Klux Klan and the Texas Rangers, both groups notorious for lynchings and racial hatred.²⁴

Today, this culture of racial violence continues unabated. The agency’s causal use of dehumanized and racialized slurs for migrants is well documented. In 2018, litigation publicly disclosed texts between agents describing migrants as “subhuman shit”, “mindless”, “murdering”, and “savages.”²⁵ A 2019 report revealed a private Facebook group for border agents with nearly 10,000 members used to share posts that mocked members of Congress of Latin American descent and ridiculed a Salvadoran father and baby daughter who drowned in the Rio Grande River attempting to migrate to the United States.²⁶

Historically, the prototypical target of CBP’s discrimination has been summed up as “Mexican Brown”, described by one CBP officer as “Mexican male; about 5’5” to 5’8”; dark brown hair; brown eyes; dark complexion”.²⁷ In 2021, a federal court in Nevada found that law enforcement engaged in racial discrimination by relentlessly pursuing Mexican migrants who crossed into the United States, detailing that “over 97% percent of persons apprehended at the border in 2000 were of Mexican descent, 86% in 2005, and 87% in 2010.”²⁸

In Texas’s Rio Grande Valley which borders Mexico, border residents of color, including U.S. citizens like Ramona Casas, navigate CBP and Border Patrol’s racial discrimination on a daily basis. A naturalized U.S. citizen born in Ocotlán, Jalisco, Mexico, Ramona never leaves home without her U.S. passport even when she is not planning to cross an international border or leave her town in Texas.²⁹ As a brown-skinned woman who speaks English with a Spanish accent, she knows any encounter with law enforcement could mean a lengthy interrogation about immigration status that could lead to detention and even deportation to Mexico if she cannot prove her citizenship status on the spot.³⁰ Because of the especially close relationship between Border Patrol and local and state police in Texas, a simple traffic stop routinely leads to detention by immigration authorities and immediate deportation.³¹

Dr. Janine Bouey is a Black U.S. citizen and retired Los Angeles Police Department officer who CBP subjected to racially motivated sexual assault at the Otay Mesa Port of Entry in California when she was attempting to return home from a routine visit to Tijuana, Mexico.³² When Dr. Bouey rejected a CBP agent’s sexual harassment while waiting to enter the country through a port of entry, CBP subjected her to interrogation and multiple invasive body

cavity searches in view of other officers.³³ She believes that she was targeted “because I am a woman of color” and that was the reason why the CBP agent who targeted her “felt comfortable doing this.”³⁴ In later litigation, one CBP agent said Dr. Bouey was targeted because she “appeared to be homeless and was traveling alone”.³⁵

B. ARBITRARY POLICING THROUGH WARRANTLESS SEARCHES (ART. 9)

The racial and identity profiling that CBP engages in is often combined with the agency’s arbitrary searches using their warrantless search powers granted under federal law.

Article 9 of the ICCPR prohibits arbitrary arrest and detention. In accordance with the HRC’s General Comment 35, these protections extend to “everyone”, including “aliens, refugees and asylum seekers, stateless persons, [and] migrant workers”.³⁶ The HRC noted that “mandatory detention of immigrants for prolonged periods of time without regard to the individual case may raise issues under article 9 of the Covenant.”³⁷

U.S. law grants CBP broad warrantless arrest powers under federal domestic law at 8 U.S.C. 1357(a)(3) in contravention of not only the ICCPR, but also the U.S. Constitution’s Fourth Amendment, which prohibits unreasonable searches and seizures. As a result of the exception carved out by Congress for CBP, border agents stop people and especially people of color, ask for their papers, and search them without cause, undermining the protections established by Article 9.

CBP has invoked its statutory warrantless powers under 1357(a)(3) as the legal basis to set up an array of more than 100 Border Patrol checkpoints within 100 miles of U.S. borders. At these checkpoints, which are positioned “on major U.S. highways

and secondary roads [...] between 25 and 100 miles inland”,³⁸ border agents stop motorists, including U.S. citizens, and subject them to interrogation and detention, which can range from a brief conversation to prolonged detention in squalid cells.³⁹

Aside from severely limiting freedom of movement within the United States, Border Patrol’s warrantless powers to stop and arrest anyone combined with their license to discriminate based on race and identity make the checkpoints sites of rampant abuse for millions of border region residents and travelers. In a survey of U.S. citizens, drawn from a representative sample of voters in the states of Texas, New Mexico, Arizona, and California, nearly one-third of voters statewide had been stopped at an interior checkpoint.⁴⁰ Based on the current number of voters, one-third of that number amounts to 15 million U.S. citizens who are potentially stopped inside their own country and asked for papers proving their legal status.⁴¹ This estimate does not include



“Due to racial discrimination, I personally always carry my United States passport with me everywhere I go around town, even though I am an American citizen and am not planning on traveling outside of the country. I know if I do not do this, I could be interrogated and Border Patrol won’t believe I am a U.S. citizen due to my skin color and accent.”

- Ramona Casas, Texas

the people stopped who have permanent resident status, visas, or who may not have any documentation at all.

In 2022, the General Accountability Office (GAO), the U.S. federal watchdog agency, reviewed 443 complaints about interior checkpoints involving “alleged racial profiling, agent misconduct, and unauthorized searches and seizures”, submitted between 2016 and 2020 to the DHS Office of the Inspector General.⁴² GAO found wide variation in checkpoint operations throughout the border region, with about two-thirds of checkpoint apprehensions concentrated in the Texas regions of Laredo and the Rio Grande Valley.⁴³ GAO concluded that “Border Patrol does not have the information it needs to assess checkpoint effectiveness, ensure proper resource allocation, or explain checkpoint operations” due to data collection problems.⁴⁴

GAO recognized that its review of complaints about checkpoints was incomplete because the agency was “not able to quantify the number of complaints related to search and seizure activities at checkpoints that each entity, or all entities, received” due to numerous data problems with DHS’s deficient systems.⁴⁵

For Jovanny Hernandez, a U.S. citizen residing in Las Cruces, New Mexico, living in a border community means facing constant harassment and racial discrimination by Border Patrol, which surrounds the city of about 100,000 with six checkpoints, all inside the United States.⁴⁶ Leaving town in any direction requires passing through a Border Patrol checkpoint, which Jovanny must do to visit his own family in another town inside the country. Each checkpoint experience is “primarily hostile”, with agents speaking “to me in a dehumanizing way because of the way that I look.”⁴⁷ He recounts that “the way they look and speak to me makes me feel less than and makes me feel like a criminal for traveling in my own home.”⁴⁸

In the region, “there is always an element of fear in the community” that the “presence of Border Patrol only serves to increase”.⁴⁹

C. EXCESSIVE FORCE AND INHUMANE POLICING (ARTS. 6-7)

The Committee has expressed deep and long-standing concern with reports of excessive use of force by CBP agents⁵⁰ and has urged the United States to comply with the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; to enforce agency directives on use of deadly force, and to improve the reporting and investigation of use of force and prosecution and punishment of those responsible.⁵¹ In accordance with HRC’s General Comment 36, Article 6 requires state parties to bring domestic law into compliance “to prevent arbitrary deprivation of life by their law enforcement officials” by incorporating international principles on use of force.⁵² The Committee has further observed that “all operations of law enforcement officials should comply with relevant international standards, including the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”.⁵³

In the context of the current review, the Committee requested information about “what steps the State party is taking to limit excessive use of force by law enforcement officials against civilians, particularly those belonging to racial minorities”,⁵⁴ “the mechanisms in place to hold law enforcement officials who use excessive force accountable”, “the relevant laws and [] legal standards under domestic law on the appropriate use of force” and U.S. compliance “in law and in practice, with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”.⁵⁵ The Committee also raised questions regarding “whether any investigations have commenced into the deaths of migrant children in the care and custody of the Customs and Border Protection authorities, and whether there are

any newly enacted safeguards to ensure that such deaths do not happen again.”⁵⁶ Finally the HRC has raised concerns about “the recently reported use of force by Customs and Border Protection officers at the southern border, including the use of tear gas, smoke and pepper spray on migrants, and” asked the U.S. to “describe any oversight mechanisms in place to limit the use of force by such authorities.”⁵⁷

In its most recent reply to this Honorable Committee, the United States cited constitutional case law to affirm that U.S. law enforcement personnel are not advised to comply with the “necessary and proportionate” standard but the “objectively reasonable” standard instead.⁵⁸ In civil society consultations with the U.S. government, the White House special advisor indicated that U.S. law on use of force is deficient by stating that the President would support changing the standard if Congress passed legislation.⁵⁹ This is welcome, but frustrating news. The president can act now to change the standard for federal law enforcement agents like border agents, but he has not. In fact, the Department of Homeland Security, CBP’s parent agency, just issued new use of force policies this year reiterating the “reasonableness” standard and advising that there is no duty “to meet force with equal or lesser force.”⁶⁰

Deadly encounters with CBP agents along the U.S.-Mexico border are on the rise.⁶¹ Since 2010, more than 270 U.S. citizens and other nationals have died in encounters with border agents. Most of the victims are Latinos, specifically Mexican nationals.⁶² Use of force incidents by border agents have increased from nearly 600 to 900 incidents a year in the last three years, and are on pace in 2023 to hit a new high.⁶³

Despite the rising rates of killings and incidents, CBP continues to ignore human rights standards and instead relies on deficient use of force policies. Federal law does not establish a national use of

force standard. Instead, U.S. courts have narrowly relied on the Fourth Amendment in a line of cases following *Graham v. Connor*, 490 U.S. 386 (1989), to articulate a standard of “objective reasonableness” to determine whether a law enforcement officer has engaged in excessive force.

The “objective reasonableness” standard has become the cornerstone of U.S. law and policy regulating the use of force, including CBP use of force policy. According to the U.S. Supreme Court, the objective reasonableness standard lacks “precise definition.”⁶⁴ Rather, courts must “balance the nature and quality of the intrusion on the individual’s” constitutional rights “against the importance of the governmental interests alleged to justify the intrusion.”⁶⁵ Under the “objective reasonableness” standard, U.S. courts examine the conduct of law enforcement



“Where I live in New Mexico, I am surrounded by six Border Patrol checkpoints, all inside the U.S. I have to cross a checkpoint every time I want to see my family in another town, even though I am traveling inside the country. My experience with border agents is primarily hostile. When approaching the checkpoint, Border Patrol speaks to me in a dehumanizing way because of the way that I look. The way they look and speak to me makes me feel less than and makes me feel like a criminal for traveling in my own home.”

- Jovanny Hernández, New Mexico

officers “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”⁶⁶ The question of whether the force was necessary and proportional to an actual threat is not a part of the evaluation.⁶⁷

International human rights standards on use of force are guided by the imperative of protecting the right to life—a supreme, non-derogable right—from arbitrary deprivation by the State. International standards limit the use of force—including less-lethal force—to principles of legality, precaution, necessity, proportionality, and non-discrimination. In 1979, the United Nations General Assembly adopted the Code of Conduct for Law Enforcement Officials, stating that “law enforcement officials may use force only when strictly necessary and to the extent required” (Article 3).⁶⁸ It also states that “no law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment” and national security cannot be invoked as an excuse. (Article 5).⁶⁹

In 1990, the United Nations promulgated the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which adopted the modern “necessary and proportionate” use of force standard, stating that “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.”⁷⁰

Instead, “[t]hey may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: [...] Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved [and] Minimize damage and injury, and respect and preserve human life”.⁷¹

The United States has never required federal, state, or local law enforcement to abide by these basic rules, even though it made a commitment to do so decades ago. CBP’s recent use of force policies and training uphold the objective reasonableness standard.⁷² “In all instances [] covered in [CBP] policy,” including the use of chokeholds, batons, and Electric Control Weapons, an agent’s perception, not the victim’s rights, determines the legality of the force used.⁷³ CBP policy even allows less-lethal use of force in defense of the degradation of physical barriers along ports of entry.⁷⁴ Although CBP policy now states that agents “shall employ de-escalation tactics and techniques,”⁷⁵ under DHS policy, CBP agents have no duty “to meet force with equal or lesser force,” “retreat to avoid the reasonable use of force,” or “wait for an attack before using reasonable force to stop a threat.”⁷⁶

Under these permissive standards, border agents continue to use disproportionate and unnecessary force. CBP uses force against migrants and border residents,⁷⁷ including Marisol García Alcántara,⁷⁸ that is excessive under international human rights law without consequences.

On June 15, 2021, Marisol García Alcántara survived a shooting by a Border Patrol agent in Nogales, Arizona while she was sitting in the back seat of a vehicle Border Patrol had stopped.⁷⁹ She recalls feeling something hit her head, then everything going dark.⁸⁰ After being taken to the hospital, she learned a bullet was lodged in her head.⁸¹ Only days after having major surgery, immigration authorities transferred her to a detention center in Florence, Arizona where she was denied medical treatment and detained for 22 days.⁸² She was then deported to Mexico, and doctors there later learned that she still has bullet fragments that were not removed.⁸³ Marisol suffers from a host of lasting medical conditions inducing headaches, memory loss, and insomnia with a high probability of epileptic seizures.⁸⁴ She is unable to work, and does not understand why the Border Patrol

shot her.⁸⁵

In 2020, Dr. Janine Bouey was sexually assaulted by CBP during a routine border crossing at the Otay Mesa Port of Entry in California.⁸⁶ Contradicting all training she had ever received herself as a former police officer, a CBP agent penetrated her genitals multiple times, which is never appropriate, and despite no indication of the presence of drugs on her body.⁸⁷ She continues to suffer from Post-Traumatic Stress Disorder from the episodes due to CBP’s excessive use of force.⁸⁸

D. IMPUNITY AND LACK OF AN EFFECTIVE REMEDY (ARTICLES 2, 50)

This Honorable Committee has underscored the United States’ obligation to independently and impartially investigate incidents of ill-treatment, torture, and killings by law enforcement⁸⁹ and to provide victims access to “effective remedies”.⁹⁰ The United States cannot avoid these binding legal obligations by arguing that international protections are incompatible with constitutional law.⁹¹ All branches and all levels of government have the obligation to abide by the nation’s treaty obligations.⁹² Upon ratification of the ICCPR, the United States was required to bring domestic laws and practices into compliance with the standards established by the treaty.⁹³ The United States has failed to comply with these obligations.

The HRC requested information from the U.S. about “the extent to and manner in which the Covenant has been incorporated into domestic law at the federal, state and local levels”, as well as “the mechanisms in place to hold law enforcement officials who use excessive force accountable”.⁹⁴ The Committee raised questions about incidents involving use of force by CBP, oversight mechanisms that limit use of force by border agents,⁹⁵ and investigations of in-custody deaths.⁹⁶

The United States’s response to this Honorable Committee’s questions is inaccurate and incomplete. The U.S. asserts a strong record on accountability and oversight referring to CBP-created National Use of Force Review Boards (NUFRB).⁹⁷ Established in 2014, these review boards were designed to determine whether use of force is “consistent with” CBP’s objectively reasonable standard and make recommendations concerning policy and misconduct following use of force incidents. The NUFRB has reviewed only 63 use of force incidents since 2010,⁹⁸ applying the same permissive use of force standard, objective reasonableness, that is out of step with international human rights obligations. It is unsurprising that the NUFRB determined that in all but two incidents, neither of which resulted in death, agents acted in compliance with policy. Despite the U.S. government touting this body, the NUFRB is not an effective accountability and oversight mechanism, nor is it a timely one. The last incident that



“The CBP agent pulled me out of the line at the port of entry because I did not react to his sexual harassment the way he wanted, and I believe he felt comfortable doing this because I am a woman of color. He lied and told his supervisor that the dog alerted to drugs in my genitals. That was why I was subjected to another sexual assault. What happened to me shouldn’t happen to anybody.

- Dr. Janine Bouey, California

the NUFRB reviewed was in June 2021, more than two years ago.⁹⁹

Weak oversight and accountability has fostered violence. CBP is engaged in a record level of use of force. According to its own data, the agency is on pace to record more than 1,100 incidents of use of force for 2023, which is almost twice as many incidents as occurred in 2020.¹⁰⁰ This cannot be excused by assaults on officers, which have only increased modestly in that same period,¹⁰¹ but rather a culture of violence within the agency that is unchecked and results in impunity. The use of force equates to three incidents a day, and there may be more incidents that go unreported.

CBP abuse and impunity presents a significant risk to the people they encounter, including citizens, migrants and visitors. Despite this, CBP agents investigate themselves and no agent has

ever been prosecuted for taking a life while on duty. Ever.¹⁰²

In the 100 year history of Border Patrol, not a single agent has been convicted for any of the thousands of on-duty killings. In 2022, CBP announced plans to eliminate Border Patrol Critical Incident Teams (“BPCITs”) after SBCC exposed these units as operating to protect agents and the agency from criminal prosecution and civil liability for excessive use of force.¹⁰³ For decades, BPCITs worked to limit liability for Border Patrol agents, inserting agents into the investigatory process after use of force incidents and obstructing justice by altering, withholding, or destroying evidence.¹⁰⁴

Although CBP nominally ended the use of BPCITs in October 2022, CBP continues to investigate its own agents under a loophole that left the door open for Border Patrol to stay involved, which runs counter to best practices and undermines those investigations.¹⁰⁵ Border Patrol should never be involved as they are neither criminal investigators nor internal affairs investigators. Instead, the agency continues to engage in self-investigation through the use of Border Patrol “management teams” and CBP has hired former BPCIT agents as part of its Office of Professional Responsibility (OPR),¹⁰⁶ which is responsible for CBP internal affairs investigations.¹⁰⁷ Any involvement by Border Patrol to investigate its own this way undermines the entire process.

Regarding criminal investigations, CBP should not be involved as a matter of investigative integrity. The legal authority to investigate federal employees for criminal offenses, including excessive force, is vested in the U.S. Attorney General. But this same law allows for concurrent jurisdiction of other agencies to investigate their own.¹⁰⁸ In 2016, Congress gave CBP’s Office of Professional Responsibility (OPR) concurrent jurisdiction to conduct criminal investigations of its own agents.¹⁰⁹ As

a result, CBP has been involved in the investigation of every use of force incident, which has led to instances of obstruction of justice.¹¹⁰ This undermines the principles of independent and external investigations.

Marisol García Alcántara, who survived being shot in the head by Border Patrol in 2021, believes the agency considers its agents legally untouchable, stating “Whatever their agents do, nothing happens”.¹¹¹ Her case is a great example. After being shot by Border Patrol agents in Nogales, Arizona, the law enforcement agency with jurisdiction in that area, the Nogales Police Department (NPD) arrived to investigate. According to the NPD Incident Report, BPCIT agents were also there and though they had no jurisdiction, they directed NPD to control the perimeter while BPCIT agents took control of the scene of the incident, giving them the opportunity to interfere with the investigation that they never should have been a part of.¹¹²

There is no record that an actual criminal investigation was conducted into the shooting, and Marisol states that no U.S. government official ever spoke with her about the shooting. She understands that “what Border Patrol does to immigrants is not fair, and they do it because it makes them feel powerful and they believe no one can hold them accountable”.¹¹³ She holds out hope for future justice where none exists today, so that there is “a change in policy so that victims of Border Patrol would be helped.”¹¹⁴

As described above, the NUFRB has not reviewed a case since June 2021, and does not appear to have reviewed the shooting of Marisol, which took place that same month. The NUFRB has nearly always exonerated uses of force by CBP agents. According to a 2015 agency directive that SBCC acquired through a Freedom of Information Act Request and has now been made public, the NUFRB reviews information provided by

Use of Force Incident Teams (UFITs) that explicitly included BPCITs before they were eliminated.¹¹⁵

Additionally, the U.S. reveals the lack of accountability for CBP in its Fifth Periodic Report by choosing to mention only one specific death of a migrant in Border Patrol custody (as opposed to the hundreds who have died in encounters with agents) and then stating that the incident resulted in a finding of “no misconduct or malfeasance by DHS personnel” by the DHS Office of Inspector General (OIG).¹¹⁶

The OIG is a part of the Department of Homeland Security and is not independent or impartial. The OIG has the authority to “initiate, conduct, and supervise [] audits and investigations in the Department of Homeland Security”.¹¹⁷ But OIG is subject to the “authority, direction, and control” of the DHS Secretary who is empowered to prohibit the Inspector General from “carrying out or completing any audit or investigation, from accessing information [...] or from issuing any subpoena” if the Secretary determines that such prohibition is necessary to prevent the disclosure of information it deems sensitive.¹¹⁸ This structurally undermines any integrity that the OIG might have. These structural problems are exacerbated by concerns about unethical and possibly criminal misconduct by the Inspector General who is himself under investigation for destroying government records and engaging in retaliation.¹¹⁹ The OIG does not have the trust of the American people.

Finally, rather than address the gaps between the ICCPR’s guarantees and domestic law, the U.S. generally stated in its report that the country “carefully assessed U.S. laws and regulations to ensure that it could implement” the ICCPR when it adopted the treaty.¹²⁰ But the U.S. has fallen far short of meeting its obligations under the treaty.



“I was shot in the head by a Border Patrol agent. Only two days after the operation to remove some bullet fragments from my brain, I was transferred to a detention center, where I was held for 22 days, and then deported to Mexico. No U.S. government official ever asked me about what happened. To my knowledge, no one investigated the agent who shot me. There was no justice. I still have fragments of bullet in my head and I will always be at risk for epileptic seizures and facial paralysis.”

- Marisol García Alcántara, Arizona / Mexico

SUGGESTED QUESTIONS & RECOMMENDATIONS

We respectfully request that the United Nations Human Rights Committee ask questions and make recommendations that engage the United States to effectively implement the treaty protections against discrimination, arbitrary detention, and excessive use of force, and the treaty obligations to provide an effective remedy, including independent and impartial investigation of incidents involving violence by U.S. law enforcement.

ENDING DISCRIMINATION (ART. 26):

QUESTION: How will the United States change its laws and policies to prohibit discrimination by federal law enforcement in border communities, which is currently permitted under the 2023 Department of Justice Guidance for Federal Law Enforcement Agencies Regarding The Use Of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, Or Gender Identity?

RECOMMENDATION: (1) Amend the DOJ policy to remove the border region exception to the prohibition on profiling. (2) Adopt legislation that codifies the prohibition for all federal law enforcement, including CBP.

ENDING ARBITRARY POLICING (ART. 9):

QUESTION: How will the United States change its laws and policies to prohibit arbitrary enforcement with respect to warrantless searches including interior checkpoints that are currently permitted in border communities under Section 1357(a) (3) of Title 8 of the United States Code?

RECOMMENDATION: Adopt legislation that eliminates warrantless powers granted to CBP at 8 U.S.C. 1357(a)(3).

ENDING EXCESSIVE FORCE (ART. 6, 7):

QUESTION: How will the United States change its use of force standard to limit force to that which is ‘necessary and proportional’ rather than ‘objectively reasonable’ in order to protect life and prevent inhumane treatment pursuant to the ICCPR, the U.N. Code of Conduct for Law Enforcement Officials, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials?

RECOMMENDATION: (1) Incorporate international law on use of force into domestic jurisprudence in the courts. (2) Adopt federal and state legislation that limits use of force to ‘necessary and proportional’ in compliance with U.N. standards. (3) Issue an Executive Order directing all federal agencies to amend their use of force policies to conform with the U.N. Code of Conduct and Basic Principles.

ENDING IMPUNITY (ART. 2, 50):

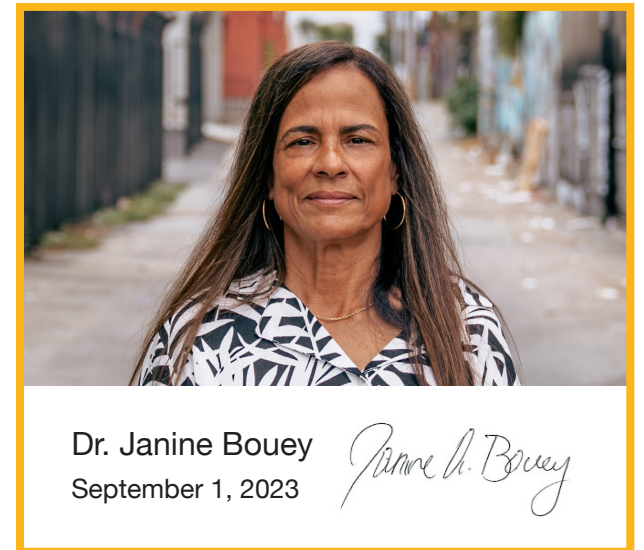
QUESTION: How will the United States change its laws and policies to ensure that criminal investigations of use of force by CBP are independent and impartial and do not involve any CBP or Border Patrol agents or management?

RECOMMENDATION: (1) Issue an Executive Order directing all federal agencies to amend their policies and prohibit involvement in criminal use of force investigations of their own officers. (2) Adopt legislation to protect the integrity of criminal investigations and end the concurrent jurisdiction of agencies to investigate their own officers in 6 U.S.C. 211(j)(3).

APPENDICES

APPENDIX A — DECLARATION OF DR. JANINE BOUEY, CALIFORNIA

1. My name is Dr. Janine Bouey and I live in Los Angeles, California. I was born in Fontainebleau, France, I am a U.S. citizen and a Black woman. I hold a Doctorate of Education in Organizational Leadership from the University of La Verne and am a retired Los Angeles Police Department (LAPD) officer. I am also a veteran. I was in the Army and my Military Occupational Specialty (MOS) was Signals Intelligence Analyst (98C).
2. On June 16, 2020, I was returning home to Los Angeles after visiting my regular dentist, Dr. David Mendoza in Tijuana, Mexico. I was approached by U.S. Customs and Border Protection (CBP) agent Troy LaPierre at the pedestrian crossing at the Otay Mesa Port of Entry while waiting in line to go through Customs. LaPierre began to question me.
3. The questions started out uneventfully, with LaPierre asking where I was coming from and where I was going and requesting to see my passport and driver's license, which I provided. I said I was going to Los Angeles.
4. When I told LaPierre I was going to Los Angeles he said, “If I told you I lived in San Diego, which I do, you would not know how to get to my house.” I was not interested in knowing how to get to his house and remained silent. LaPierre then asked for my home address and I told him I did not think he needed to know where I lived as he had my driver's license. In California, current or retired police officers are not required to put their residence address on their driver's license for their protection.
5. At this point, LaPierre took me out of line and walked me towards the main CBP building. I was subjected to a body search where I had to put my hands up against the wall and spread my legs. A female CBP agent sexually assaulted me during the search. This involved her penetrating my genitals with her fingers.
6. During my time as a Los Angeles police officer, I learned how to perform searches. The way CBP invasively body searched me contradicted everything I learned with LAPD. What they did to me was sexual assault.
7. After the body search, LaPierre reappeared and took me to primary inspection and gave the CBP agent my U.S. passport. The CBP agent sent me to secondary inspection to have my immigration status checked! I was placed in an immigrant holding pen. While in the pen, I could see LaPierre talking to other agents and one then came over to the pen with my passport in his hand and quizzed me on the details of my passport. When I told the CBP agent my birthdate, the agent wanted to know how old that would make me, as if he did not believe my passport was really mine. I told him how old I was and added that if they ran my information, they would see that I am a retired LAPD officer. Almost



immediately I heard a voice on an intercom say they did not have to run “any fucking body!” During the questioning, the CBP agent asked me detailed questions about my time at the LAPD, which I also answered.

8. Soon after, LaPierre spoke to a CBP dog handler, then a dog and the handler quickly came into the immigration pen. Without any instructions from the agents on what to expect, the dog quickly jammed his snout into my buttocks for about 20 seconds. This caused me to turn my upper body around to see what was happening. I heard someone yell at me telling me to turn back around. I was nervous and scared because I had never been searched by a canine before and never expected that the dog would make contact with my person - let alone jam his snout up my buttocks. In a video tape that was released during later litigation, the dog handler could be seen bending down behind me with his face squarely an inch or two from my buttocks.
9. After this, three or four CBP agents came in and handcuffed me, taking me out of the holding pen and to the security office. They began searching my personal items again, and the same female CBP agent who sexually assaulted me during the first search sexually assaulted me again in the same manner.
10. After they finished searching me and my items, they handcuffed me to a bench. While handcuffed, a female CBP agent came up to me and asked me to open my mouth. I assumed this was to see whether they believed I really went to the dentist in Mexico. I had paperwork in my purse related to the root canal I had just had at my dentist's office. I remember being asked where the pain medication was. I told the agent because I declined any pain medication offered to me by my doctor, I did not have any nor did I take any while at my dentist's office.
11. CBP agents then unhandcuffed me and took me into a jail cell, where the officer that had sexually assaulted me told me that I had to disrobe. She said I had to take everything off, but I could keep on my bra and underwear. When I stripped down to my bra and underwear, the CBP agent told me that I had to take off all of my clothes. I could hear people outside the door. I could tell that the door was open and people could see me. I asked the agent to close the door but she did not. In the videotapes released as part of later litigation, the CBP agent who quizzed me about my passport and my assignments on LAPD while I was in the immigrant pen can be clearly seen trying to peek into the jail cell where I was ordered to disrobe.
12. I was then told by the CBP agent who had sexually assaulted me twice now, to turn around and face the wall. She made me squat multiple times while she was right behind me shining a flashlight at my private parts. She told me to squat about five more times. They then told me I could put my clothes back on, which I did. They took me out of the cell and handcuffed me to the bench again in the security office, where I sat for a while.
13. Then, one of the officers came and uncuffed me, and took me back up to the counter to fingerprint me. Before they did, the officer who was fingerprinting me said, “we need to find out if you have any warrants out for your arrest.” After fingerprinting me, they handcuffed me to the bench again, where I stayed for a while.
14. Finally, the supervisor came to the front desk and said, we're going to let you go.
15. While I was in the immigration pen, my first fear was that I wasn't going home. I tried not to think about the sexual assault. It was really an uncomfortable experience. I was so agitated by what had happened to me that I tried to sit down and immediately had to stand up because I just didn't want to think about what had just happened to me. I was so agitated and feeling overloaded with stress at the disbelief that I had just been sexually

assaulted and was now in an immigrant pen. This is when I first began to suspect they had or were going to plant drugs in my purse. In the videotapes released as part of later litigation, I can be seen self-soothing by repeatedly touching the back of my head as in a patting motion in an attempt to calm myself down and reduce the overwhelming anxiety I was experiencing.

16. Within two weeks after the incident, I was diagnosed with Post Traumatic Stress Disorder, and began experiencing symptoms including months of diarrhea until I was placed on medication. I lost a lot of weight, my hair fell out, and my lower intestines were no longer absorbing nutrients. I also suffered from recurrent nightmares. The first one occurred the day after my horrific experience at the border.
17. This created a lot of difficulty for me as I had just finished the first year of my doctoral program. I became afraid to leave my house with anxiety and became a recluse. I did not even attend my own graduation when my peers were presented with our doctoral degrees.
18. I later sued the government for what happened to me and learned that the dog never alerted to drugs on or in my body. Instead, CBP Agent LaPierre lied and told his supervisor that the dog alerted to drugs in my genitals. That was why I was subjected to another search, another sexual assault, and why I was strip body cavity searched.
19. CBP Agent LaPierre is responsible for what happened to me and the trauma I still experience. LaPierre later said he didn't remember anything about the incident and did not recognize me, although I remember him being there throughout the incident.
20. Additionally, a female CBP officer working with LaPierre that day said I was targeted because I appeared to be homeless and was traveling alone.
21. I believe the reason LaPierre pulled me out of the line was because I did not react to his sexual harassment the way he wanted, and I believe he felt comfortable doing this because I am a woman of color. I feel that if I were a white woman with blonde hair and blue eyes, he would not have dared to do that to me.
22. I am certain the other officers – the canine officer, the officer who was trying to peek into the jail cell where I was being ordered to strip, the agent at primary inspection who sent me to secondary so my immigration status could be checked after looking at my U.S. passport, the female officer who sexually assaulted me – I don't believe any of them would have participated in what happened to me that day if I were perceived as being white.
23. What happened to me should have never happened and it shouldn't happen to anybody traveling to the United States. I would like to see that changed so this doesn't happen to anybody else.

APPENDIX B — DECLARATION OF MARISOL GARCÍA ALCÁNTARA, ARIZONA

1. My name is Marisol García Alcántara and I



Marisol García
Alcántara
August 31, 2023

Marisol GA

am from Mexico City, Mexico.

2. On June 15, 2021, I traveled to Nogales, Arizona. There, I was shot in the head by a Border Patrol agent.
3. I remember being in the car with several others when Border Patrol stopped our vehicle. When I was in the vehicle I just felt something hit my head, and everything went completely dark. I could hear my companions say that they needed help because I was bleeding heavily. A few minutes later I was able to see, and they were telling me not to fall asleep, they were asking me what my name was, how old I was.
4. A few minutes later the ambulance arrived and took me to the hospital. There in the hospital they told me that I had a bullet in my head, that they had shot me in the head. That's how I found out what had happened.
5. They transferred me to another hospital for the operation in Phoenix, Arizona. Only two days after the operation to remove some bullet fragments from my brain, I was transferred to a detention center, where I was held for 22 days, and then deported to Mexico.
6. At the immigration detention center in Florence, Arizona, it was awful because I had just come out of surgery and Border Patrol did not provide me any medical treatment there. The food was nearly inedible and I was only provided headache medicine but it did not help much. They told me there was no special doctor to treat me and I had no medical instructions for them to follow.
7. No U.S. government official ever asked me about what happened. To my knowledge, no one investigated the agent who shot me. There was no justice.
8. The doctors in Mexico told me that I still have fragments of bullet in my head and that I'm at risk for epileptic seizures and facial paralysis. I can't find employment because I forget things and I get dizzy.
9. Thankfully, the Border Patrol Victims Network organization has provided me with medical assistance, and I have received good medical attention in Mexico thanks to them. The consequences I've suffered due to the shooting have been headaches, memory loss, and insomnia. I also have a high probability of having epileptic seizures in the future according to the medical tests done on me.
10. Mentally, it has deeply affected me. I cannot work due to severe anxiety attacks. I am also very sensitive to noises now, both quiet and loud, and that results in intense headaches. For these reasons the doctors have recommended that I do not work.
11. I have had the opportunity to meet other families who are going through similar and even worse situations than me. For some families, Border Patrol has ended their relatives' lives. I have also had the opportunity to meet other people who are united to help those of us who are victims of the Border Patrol, and I am very grateful.
12. What Border Patrol does to immigrants is not fair, and they do it because it makes them feel powerful and they believe no one can hold them accountable. No one is telling them, just because you have a family that you work to provide for, so do we who attempt to migrate to the United States.
13. Unfortunately, even though the President of the United States may be a good person, his border enforcement team is not. Instead of protecting us, they're killing us. I would like to see in the future a government that protects us, or at the very least one that doesn't

shoot us.

14. The United States does not treat immigrants with dignity, it does not treat us like people and instead the government acts like we're the worst thing that can happen to the country. They do not treat us like human beings.
15. The government should do something that really makes a difference, because now even though it is public that a Border Patrol agent killed someone, no one can fight the Border Patrol. Whatever their agents do, nothing happens. They do not even apologize to families after killing someone.
16. I would like there to be a change in policy so that victims of Border Patrol would be helped. Something must be done so that more people and children are not killed.

APPENDIX C — DECLARATION OF JOVANNY SEBASTIÁN HERNÁNDEZ, NEW MEXICO

1. My name is Jovanny Sebastián Hernández. I'm a field organizer in southern New Mexico for the New Mexico Dream Team. I live and work in Las Cruces, New Mexico and am a U.S. citizen.
2. Southern New Mexico in general is very rural, and as a rural community, we lack access to a lot of things.
3. One of the biggest problems in this region is the extensive presence of Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP), especially Border Patrol agents, in my community.
4. Here in Las Cruces we are surrounded by six Border Patrol checkpoints. We have a Border Patrol station in the middle of the city, and another one in nearby El Paso, Texas. Driving around the region, you'll see Border Patrol agents on the highways, backroads, and public lands, both near and far from the border.
5. To a community that is already so marginalized in a lot of ways, so far from the large population centers in our state, it creates a culture of fear and isolation. It really traps us in a bubble, and whether you can pass through the checkpoints depends on your immigration status.
6. This literally corrals us in a small region, and reduces the ability for our communities to dream of a better future.
7. Having Border Patrol so close all of the time is dangerous, and there is always an element of fear in the community. We're quite literally surrounded by hundreds of miles of nothing. And that feeling of isolation and that massive overwhelming pressure and presence of Border Patrol only serves to increase that fear, worry, and isolation.
8. Because my family lives outside the region, I have to cross at least one Border Patrol checkpoint to see them even though they are also inside the United States. My experiences with them have only ever been primarily hostile. When approaching the



checkpoint, Border Patrol speaks to me in a dehumanizing way because of the way that I look. The way they look and speak to me makes me feel less than and makes me feel like a criminal for traveling in my own home.

9. Border Patrol has stopped me multiple times when traveling through their checkpoint between Alamogordo and Las Cruces, NM. During these stops, Border Patrol has made me get out of my vehicle for no reason.
10. They have searched my vehicle, asked me invasive questions about who I am, my family, and my family history.
11. Unfortunately, experience with the Border Patrol's arbitrary enforcement is nothing new for my family. When my parents crossed into the United States maybe 35 miles southwest of Las Cruces, their experience was awful.
12. My uncles were beaten by Border Patrol agents and separated from their mother, even though they were children at the time. Border Patrol took invasive biometric data from them, including blood samples, fingerprints, and other private information.
13. Border Patrol physically, emotionally, and mentally abused my aunts, uncles, mother, and grandparents, and that abuse leaves scars.
14. These harms and the impunity of Border Patrol are carried over to the younger generation and passed down.
15. The project of border enforcement is to make us think that we have to sit back and take it, that we have no dignity, power, agency and that we mean nothing to Border Patrol. The goal is to make us believe that we cannot speak for ourselves or advocate for our communities. This is a pain that we often ignore and bury deep down.
16. It's an ongoing struggle for me to really believe that dignity is intrinsic to me and my community, and that no government policy made by someone thousands of miles away can change what I deserve, what my family deserves, what my community deserves. And that is dignity, that is respect. And that is the right to live somewhere that we love without that fear.

APPENDIX D — DECLARATION OF RAMONA CASAS, TEXAS

1. My name is Ramona Casas, and I am a co-founder of ARISE Adelante, a community organization working with low-income people in Hidalgo County in the Rio Grande Valley of southern Texas along the US-Mexico border.
2. I am originally from Ocotlán, Jalisco, Mexico, and immigrated to the United States when I was about 13 years old. I am now a United States citizen.
3. For the last 36 years, I have served the immigrant community. In the last five years, the United States' government's attacks on immigrants have worsened. The government has increased surveillance of our community to the point where we feel we



live in a military zone.

4. We have so many Border Patrol agents in our community. They are an intimidating presence and it's getting worse. Police officers are now allowed to ask people about their immigration status, blurring the lines between immigration and criminal law enforcement. This has brought uncertainty to my life as a border resident. If an immigrant is subject to a traffic stop, they not only face high fines, but also the very real prospect of deportation and family separation.
5. I know people who have developed depression, anxiety and diabetes due to living with the anguish of knowing that a traffic stop while going to work could lead to deportation.
6. Due to racial discrimination, I personally always carry my United States passport with me everywhere I go around town, even though I am an American citizen and am not planning on traveling outside of the country. I know if I do not do this, I could be interrogated and Border Patrol or the police won't believe I am a U.S. citizen due to my skin color and accent. This is a common fact of life for many people of color and Spanish speakers in south Texas. Even though I am a citizen of this country, Border Patrol makes me feel like I am always an undocumented immigrant.
7. For those without legal status, the Rio Grande Valley border region feels like a "golden cage" where immigrants are both within the United States yet face rampant immigration surveillance and discrimination at the hands of Border Patrol and the police. Without status, people are unable to travel further north beyond Border Patrol checkpoints 100 miles north of the border. Although we're in the United States, for immigrants this region is a prison.
8. Healthcare is very expensive in the border region, and we have no public hospital. Attempting to cross through the interior checkpoints to access needed specialized medical care in other parts of Texas is nearly impossible for many immigrants, who are not allowed through the checkpoints despite doctors' letters describing their medically necessary travel. This puts the health of people at risk.
9. Within the region we are not free to move where we'd like. Families forgo trips for necessities at the grocery stores or gas stations if Border Patrol is spotted nearby. This is all due to racial and ethnic discrimination, the color of our skin and our accent when speaking English.
10. Although Spanish is commonly spoken in South Texas, many Border Patrol agents do not speak Spanish and regard the language as inherently suspicious. Agents also claim to not understand our accents even when we are speaking English.
11. As part of my work with ARISE, I organize visits to the Texas border region for groups of students and others across the United States. I typically take them to areas in the Rio Grande Valley where they can see part of the border wall, an international Port of Entry bridge between the United States and Mexico, and local landmarks such as public parks and the National Butterfly Center.
12. When I conduct these visits, I always wear my ARISE T-shirt and carry my passport with me because I am often questioned by Border Patrol just for walking in public spaces due to the color of my skin. Immediately after starting our tour, a Border Patrol agent or federal or military agent will inevitably approach and start interrogating me. They will ask, "What are you doing?"; "Why are you here?" "What is your group doing?"

13. Within minutes, Border Patrol will then launch a helicopter and have it hover overhead, surveilling me and my tour group simply visiting a public park.
14. While Border Patrol could question anyone in our group, these tours usually involve me walking with a group of mostly white Americans from outside the border region. Because my skin is darker than the others, I am often questioned the most.
15. This experience is repeated across the Rio Grande Valley every day. In the low-income neighborhoods of the region populated by immigrants and people of color, people do not feel safe to travel to the nearby beach at South Padre Island, the shopping malls, public parks and other public spaces due to fear of Border Patrol.
16. For me, the intimidation that our border communities face fills me with sadness because we are in a highly developed country and we could live differently if the government respected the right to migrate and treated people with the dignity they deserve.
17. It saddens me, but at the same time it motivates me to continue helping my communities and families in need so that they are respected and honored with dignity. The migrant community has a lot of solidarity and has a big heart, but it suffers a lot of oppression by our government.

ENDNOTES

- ¹ U.S. Customs and Border Protection, On a Typical Day in Fiscal Year 2022, CBP... (Last Modified July 21, 2023), [\(https://www.cbp.gov/newsroom/stats/typical-day-fy2022#:~:text=25%2C836%20CBP%20officers,569%20Air%20interdiction%20agents%20\(pilots\)\)](https://www.cbp.gov/newsroom/stats/typical-day-fy2022#:~:text=25%2C836%20CBP%20officers,569%20Air%20interdiction%20agents%20(pilots)) (noting CBP has 63,843 employees).
- ² U.S. Customs and Border Protection, U.S. Border Patrol Fiscal Year Staffing Statistics (FY 1992 - FY 2020) at 2 (“Border Patrol Agent Nationwide Staffing By Fiscal Year”) (Last Accessed Aug. 23, 2023), <https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/U.S.%20Border%20Patrol%20Fiscal%20Year%20Staffing%20Statistics%20%28FY%201992%20-%20FY%202020%29%20%28508%29.pdf> (noting 16,878 of 19,740 Border Patrol agents were based in Southwest border sectors in 2020).
- ³ Southern Border Communities Coalition, 100-Mile Border Enforcement Zone (Last Accessed Aug. 23, 2023), https://www.southernborder.org/100_mile_border_enforcement_zone; see 8 CFR § 287.1(a)(2).
- ⁴ Southern Border Communities Coalition, 100-Mile Border Enforcement Zone (Last Accessed Aug. 23, 2023), https://www.southernborder.org/100_mile_border_enforcement_zone
- ⁵ See Southern Border Communities Coalition, Deaths by Border Patrol: Track Death and Abuse by Border Patrol, https://www.southernborder.org/deaths_by_border_patrol (last visited Aug. 1, 2023).
- ⁶ U.S. Customs and Border Protection, Assaults and Use of Force Statistics (Last Updated Aug. 18, 2023), <https://www.cbp.gov/newsroom/stats/assaults-use-force>
- ⁷ See U.S. Customs and Border Protection, CBP Use of Force Case Summaries (Last Accessed Aug. 15, 2023), <https://www.cbp.gov/newsroom/stats/cbp-use-force/case-summaries>
- ⁸ *Egbert v. Boule*, 142 S. Ct. 1793 (2022)
- ⁹ *Family Members of Anastasio Hernández-Rojas v. United States of America*, Inter-American Commission of Human Rights Case No. 14.042, Petition at 11 (Mar. 29, 2016), http://d3n8a8pro7vhmx.cloudfront.net/alliancesandiego/legacy_url/1324/Anastasio-Complaint-FI-NAL-160329.pdf?1490744367
- ¹⁰ Southern Border Communities Coalition, The Southern Border Region At A Glance (Last Updated June 28, 2023), https://www.southernborder.org/border_lens_southern_border_region_at_a_glance
- ¹¹ U.N. Human Rights Committee, Concluding Observations: United States of America, para. 4, U.N. Doc. CCPR/C/USA/CO/4 (2014) (Urging United States to “ensure that effective remedies are available for violations of the Covenant, including those that do not, at the same time, constitute violations of the domestic law of the United States”).
- ¹² U.N. Human Rights Committee, General Comment No. 18 (37th Sess., 1989) (stating “that the term ‘discrimination’ as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”).
- ¹³ United Nations General Assembly, International Covenant on Civil and Political Rights, Article 4 (Dec. 16, 1966), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (“States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant [...] provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin”).
- ¹⁴ U.N. Human Rights Committee, Concluding Observations: United States of America, Sec. C, U.N. Doc. CCPR/C/USA/CO/3/Rev.118 (Dec. 2006), <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsijKy20sgGcLSyqccX0g1n->

- mt60Dd983WV9adoHS5ElevRLFLmq6%2B7CUYjEIZEqbAgBGhH35y4ftuUZ%2FIFEq2GVG9W9sw2HDuvVy3Jj83TPCKJHBrvRJAqE2U-gG8SNxT%2BfQ%3D%3D (stating that the U.S. “should continue and intensify its efforts to put an end to racial profiling used by federal as well as state law enforcement officials.”).
- ¹⁵ U.N. Human Rights Committee, Concluding Observations: United States of America, Sec. C. (“Racial Profiling”), U.N. Doc. CCPR/C/USA/CO/4 (2014), <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsijKy20sgGcLSyqccX0g1nnMF-NOUOQBx7X%2BI55yhlwIkDk6CF00Adiqu2L8SNxDB4%2BVRPkf5gZFbTQO3y9dLrUeUaTbS0RrNO7VHzbyxGDJ%2F>
- ¹⁶ *Id.*
- ¹⁷ Gov’t of the United States, Fifth Periodic Report of the United States of America to the United Nations Comm. on Human Rights Concerning the International Covenant on Civil and Political Rights, paras. 17-21 (Nov. 11, 2021) [hereinafter Fifth Periodic Report of the USA], available at <https://www.state.gov/fifth-periodic-report-by-the-united-states-of-america-under-the-international-covenant-on-civil-and-political-rights/#:~:text=The%20United%20States%20is%20undergoing,society%20and%20the%20American%20public.>
- ¹⁸ See *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975); *United States v. Martinez-Fuerte*, 428 U.S. 543, 563 (1976).
- ¹⁹ U.S. Customs and Border Protection, CBP Policy on Nondiscrimination in Law Enforcement Activities and all other Administered Programs (Last Modified May 24, 2022), <https://www.cbp.gov/about/eeo-diversity/policies/nondiscrimination-law-enforcement-activities-and-all-other-administered>
- ²⁰ U.S. Department of Justice, Guidance for Federal Law Enforcement Agencies Regarding the Use Of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, Gender Identity, and Disability at FN 5(c) (May 2023), https://www.justice.gov/d9/2023-05/Sec.%209%28e%29%20-%20Guidance%20for%20Federal%20LEAs%20on%20the%20Use%20of%20Protected%20Characteristics_FINAL%205.25.23_508.pdf
- ²¹ U.S. Department of Homeland Security, Reaffirming the Commitment to Nondiscrimination in Department of Homeland Security Activities, Policy Statement 500-2 (May 25, 2023), https://www.dhs.gov/sites/default/files/2023-06/2023.05.25_S1_Policy%20Statement%20500-02_Reaffirming%20DHS%20Commitment%20to%20Nondiscrimination_508.pdf
- ²² Statement from Shoba Sivaprasad Wadhia, DHS Officer for Civil Rights and Civil Liberties, made during a consultation between civil society organizations and government agencies convened by the U.S. Department of State via Zoom on July 12, 2023.
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⁴⁴ *Id.* (“What GAO Found”).

⁴⁵ *Id.* at FN 108.

⁴⁶ Declaration of Jovanny Sebastian Hernandez.

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⁴⁸ *Id.* ¶ 8.

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⁵⁵ *Id.*

⁵⁶ *Id.* at para. 20.

⁵⁷ *Id.* at para. 21.

⁵⁸ Fifth Periodic Report of the USA para. 52-56.

⁵⁹ Statement from Justin Vail, Special Assistant to the President for Democracy and Civic Participation at The White House, made during a consultation between civil society organizations and government agencies convened by the U.S. Department of State via Zoom on June 7, 2023.

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⁶⁴ *Graham v. Connor*, 490 U.S. 386, 396 (1989) (quoting *Bell v. Wolfish*, 441 U.S. 520, 559 (1979)).

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⁶⁶ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

⁶⁷ Indeed, legal scholars have described the Supreme Court’s Fourth Amendment case law on excessive use of force established in three foundational cases — *Tennessee v. Garner*, *Graham v. Conner*, and *Terry v. Ohio* — as “vague” and “lax.” See e.g., Rachel A. Harmon, When Is Police Violence Justified?, 102 Nw. U. L. Rev. 1119, 1131, 1179-80 (2008) (arguing that “the Graham factors fail to specify how to evaluate whether an officer’s actions were justified in a particular situation, including whether they were reasonable given the spectrum of possible responses”); Jeffrey Fagan & Alexis D. Campbell, Race and Reasonableness in Police Killings, 100 B.U. L. Rev. 951, 964 (2020) (observing that constitutional law allows “police to set their own reasonableness standard based on how the ‘average’ police officer would react in a rapidly evolving situation”).

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⁶⁹ *Id.*

⁷⁰ United Nations, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Sept. 7, 1990), <https://www.ohchr.org/sites/default/files/firearms.pdf>

⁷¹ *Id.*

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⁷⁴ *Id.* at 11.

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⁷⁷ Southern Border Communities Coalition, Anastasio Hernández Rojas (last accessed Aug. 11, 2023), https://www.southernborder.org/anastasio_hernandez_rojas response

⁷⁸ See Declaration of Marisol García Alcántara (“García Alcántara Decl.”).

⁷⁹ García Alcántara Decl.

⁸⁰ *Id.* at ¶ 3.

⁸¹ *Id.* at ¶ 4.

⁸² *Id.* at ¶ 5-6.

⁸³ *Id.* at ¶ 5, 8.

⁸⁴ *Id.* at ¶ 9-10.

⁸⁵ *Id.* ¶ 10, 12-16.

⁸⁶ Declaration of Dr. Janine Bouey.

⁸⁷ *Id.* ¶ 5-14, 18-19.

⁸⁸ *Id.* ¶ 15-17.

⁸⁹ U.N. Human Rights Committee, Concluding Observations: United States of America, Sec. C. (“Accountability for past human rights violations”), U.N. Doc. CCPR/C/USA/CO/4 (2014), <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FP-PRiCAqhKb7yhsijKy20sgGcLSyqccX0g1nnMFNOUOQBx7X%2BI55yhlwIkDk6CF0OAdiqu2L8SNxDB4%2BVRPkf5gZFbTQO3y9dL-rUeUaTbS0RrNO7VHzbyxGDJ%2F> (stating that the United States “should ensure that all cases of unlawful killing, torture or other ill-treatment [...] are effectively, independently and impartially investigated, that perpetrators, including, in particular, persons in positions of command, are prosecuted and sanctioned, and that victims are provided with effective remedies. The responsibility of those who provided legal pretexts for manifestly illegal behavior should also be established.”).

⁹⁰ *Id.* (“Applicability of the Covenant at national level”) (urging the United States to “ensure that effective remedies are available for violations of the Covenant, including those that do not, at the same time, constitute violations of the domestic law of the United States of America , and undertake a review of such areas with a view to proposing to Congress implementing legislation to fill any legislative gaps”).

⁹¹ *Id.*

⁹² U.N. Human Rights Committee, General Comment No. 31, para. 4, U.N. Doc. CCPR/C/21/Rev.1/Add. 1326 (May 2004), <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrI-CAqhKb7yhsjYoiCfMKoIRv2FVaVzRkMjTnjRO%2Bfud3cPVrcM9YR0i-W6Ttaxgp3f9kUFpWoq%2FhW%2FTpKi2tPhZsbEJw%2FGeZRASjdFuuJQRnbJEaUhby31WiQPI2mLFDe6ZSwMmvmQGVHA%3D%3D> (noting that “executive branch [...] may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve [itself] from responsibility for the action and consequent incompatibility.”)

⁹³ *Id.* at para 13.

⁹⁴ U.N. Human Rights Committee, List of issues prior to submission of the fifth periodic report of the United States of America, paras. 3, 14 U.N. Doc. CCPR/C/USA/QPR/5 (2019), <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrI-CAqhKb7yhsijKy20sgGcLSyqccX0g1nlyhE7dxYvkfnqbOgGjt0WN%2BV80Vhr%2FCeDA%2FmavqFwov8pSVO80BC2Blh%2F7I%-2BUBsm%2F7%2BuQp4Oidt1KdSgRNH5%2F4>

⁹⁵ *Id.* at para. 21.

⁹⁶ *Id.* at para. 20.

⁹⁷ Fifth Periodic Report of the USA para 91.

⁹⁸ See generally, U.S. Customs and Border Protection, Use of Force Case Summaries, <https://www.cbp.gov/newsroom/stats/cbp-use-force/case-summaries>

⁹⁹ U.S. Customs and Border Protection, June 17, 2021 - Use of Force Incident Near Ajo, Arizona (Last Modified Oct. 5, 2022), <https://www.cbp.gov/newsroom/stats/cbp-use-force/case-summaries/june-17-2021-use-force-incident-near-ajo-arizona>

¹⁰⁰ U.S. Customs and Border Protection, Assaults and Use of Force Statistics (Last Modified August 18, 2023), <https://www.cbp.gov/newsroom/stats/assaults-use-force>

¹⁰¹ *Id.*

¹⁰² See U.S. Customs and Border Protection, CBP Use of Force Case Summaries (Last Accessed Aug. 15, 2023), <https://www.cbp.gov/newsroom/stats/cbp-use-force/case-summaries>

¹⁰³ Southern Border Communities Coalition, BREAKING: CBP Eliminates Border Patrol Cover-Up Units (May 6, 2022), https://www.southernborder.org/for_immediate_release_cbp_eliminate_border_patrol_cover-up_units; See Joe Davidson, Border Patrol disbands units accused of covering up abuse, Washington Post (May 12, 2022), <https://www.washingtonpost.com/politics/2022/05/12/border-patrol-disbands-critical-incident-teams/>

¹⁰⁴ Southern Border Communities Coalition, SBCC Calls for Congressional Investigations into Border Patrol’s Longstanding Cover-Up Units (Oct. 28, 2021), https://www.southernborder.org/sbcc_calls_for_congressional_investigations_into_border_patrols_longstanding_cover_up_units

¹⁰⁵ U.S. Customs and Border Protection, Critical Incident Response Transition and Support (May 3, 2022), https://assets.nationbuilder.com/alliancesandiego/pages/409/attachments/original/1651850948/Critical_Incident_Response_Signed_Distribution_Memo_%28508%29.pdf?1651850948

¹⁰⁶ See Southern Border Communities Coalition, Congressional Letter, “One year after the announced elimination of Border Patrol cover up units, investigations are still compromised, further eroding voter trust in border agents.” (May 4, 2023), https://assets.nationbuilder.com/alliancesandiego/pages/409/attachments/original/1683222516/SBCC_Letter_to_Congress_5.4.23.pdf?1683222516

¹⁰⁷ U.S. Customs and Border Protection, Office of Professional Responsibility (Last Modified July 19, 2023), <https://www.cbp.gov/about/leadership-organization/professional-responsibility>

¹⁰⁸ See 28 U.S.C. 535(a).

¹⁰⁹ See 6 U.S.C. 211(j)(3); Pub.L. 114-125, Title VIII, § 802(a) , Feb. 24, 2016, 130 Stat. 199.

¹¹⁰ See Southern Border Communities Coalition, Congressional Letter, “Request for congressional investigations and oversight hearings on the unlawful operation of the U.S. Border Patrol’s Critical Incident Teams (BPCITs).” (Oct. 27, 2021), https://d3n8a8pro7vhmx.cloudfront.net/alliancesandiego/pages/3292/attachments/original/1635367319/SBCC_letter_to_Congress_Final_10.27.21.pdf?1635367319 (examples of the way CBP’s involvement has obstructed justice).

¹¹¹ García Alcántara Decl. ¶ 15.

¹¹² See Nogales, Arizona Police Department, Officer Report for Incident 210006105 (Aug. 20, 2021), <https://www.dropbox.com/sh/4r5dzam-xq8fjzon/AAbMConSjaFosUR6BRgh88Ula?dl=0&preview=Exhibit+E+-+Nogales+PD+report.pdf>

¹¹³ García Alcántara Decl. ¶ 12.

¹¹⁴ *Id.* ¶ 15-16.

¹¹⁵ U.S. Customs and Border Protection, CBP Directive No. 4510-038, “Response to Use of Force Incidents” (July 27, 2015), <https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/CBP%20Directive%20Directive%204510-038.pdf>

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¹¹⁷ 5 U.S.C. § 417(c).

¹¹⁸ 5 U.S.C. § 417(a)(1)-(2).

¹¹⁹ See Rebecca Beitsch, Archives ignites investigation of DHS inspector general following deleted texts, The Hill (June 15, 2023), <https://thehill.com/policy/national-security/4052456-archives-investigation-cuffari-dhs-inspector-general-deleted-texts/>

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