



May 9, 2012

Tamara Kessler
Acting Officer for Civil Rights and
Civil Liberties
Department of Homeland Security
Office of Civil Rights and Civil Liberties
245 Murray Lane, SW
Building 410
Washington, D.C. 20528

Charles K. Edwards
Acting Inspector General
Department of Homeland Security
Office of Inspector General
245 Murray Lane, SW
Building 410
Washington, D.C. 20528

via Federal Express

Re: Complaint and request for investigation of abuse of power, excessive force, coercion, and unlawful confiscation of property by Customs and Border Protection at ports of entry along the U.S.-Mexico border.

Dear Ms. Kessler and Mr. Edwards:

We write to express serious concerns about abuses committed by U.S. Customs and Border Protection ("CBP") officials against travelers at ports of entry ("POEs") on the United States' border with Mexico. We represent the southern border affiliates of the American Civil Liberties Union, the ACLU Immigrants' Rights Project ("IRP"), and the ACLU Human Rights Program ("HRP") (collectively "ACLU"). The ACLU is a non-partisan, non-profit, nation-wide organization that works daily in courts, communities, and legislatures across the country to protect and preserve the rights and liberties established by the Bill of Rights and state and federal law.

The ACLU has a particular commitment to ensuring that fundamental constitutional protections of due process and equal protection are extended to every person, regardless of citizenship or immigration status. While the federal government has the unquestioned authority to control our nation's borders and to regulate immigration, it must do so in compliance with the highest national and international legal norms and standards. It is imperative that CBP professional law enforcement standards.

We request that you promptly investigate these ~~vidial~~ allegations of abuse ~~and~~

At the secondary inspection area, Mr. Cuevas was inspected by a canine unit without incident and he was told to wait for an officer to change his entry document. A CBP officer began questioning Mr. Cuevas about his car and checking the contents of his car and wallet. The officer threw the contents of Mr. Cuevas's wallet and other of Mr. Cuevas's documents into a pile. The officer became visibly frustrated as he failed to find anything suspicious and began pulling up the carpets and liners of Mr. Cuevas's car. Mr. Cuevas told the officer that he was damaging the car and asked to speak to a supervisor. In response, the officer handcuffed Mr. Cuevas. Mr. Cuevas tried to reason with the officer, telling him that his actions were completely unnecessary given that Mr. Cuevas was cooperating and had only requested to speak to a supervisor to file a complaint. The officer told him that he was moving him to a "secure facility" and took him to what appeared to be an interrogation room.

In the interrogation room, the officer strip searched Mr. Cuevas. The officer told Mr. Cuevas this was the "normal procedure" because he believed that he was trying to "enter the country illegally." He then took Mr. Cuevas into the main office, made him kneel painfully on a metal bench while removing his handcuffs, and then chained his big toe to a metal bench. Mr. Cuevas requested a phone call to his attorney via the Chilean consulate but was informed that he was not allowed any phone calls.

Mr. Cuevas remained chained to the bench for 90 minutes without explanation. Even though it was a hot day, CBP officers ignored his requests for water. The officer who detained him refused to release him even when Officer Lopez arrived and confirmed that Mr. Cuevas had given him an I-94 the previous day. When the supervisor arrived she told Mr. Cuevas that he was not in violation of his visa, but that the officer who detained him had sole discretion to decide whether to allow him to enter the United States. One of the officers finally gave him water after he had been detained for more than two-and-a-half hours.

Since CBP would not allow Mr. Cuevas to enter the United States, he suggested that they release him back into Mexico. He was finally released after about three-and-a-half hours of detention, but not before the officer who initiated his detention told him, "I don't give a fuck for your educated manners and all your corporate bullshit. This is my country now and when you are here, you listen to me. I don't like your kind that takes our jobs and uses our system."

The next day, Mr. Cuevas drove to Tijuana and stayed there. He was provided an I-94 and admitted to the country after explaining to the CBP officer there what had happened in Calexico. Mr. Cuevas's attempts to receive an apology through diplomatic channels have proven unsuccessful.

4. Brownsville, TX POE: Castro Family, Alanis Fajana and Rodrigo Ortiz

CBP officers at the Brownsville & Matamoros International (B&M) Bridge POE in Brownsville, Texas have repeatedly coerced United States citizens into "confessing" that they were not born in the United States during lengthy, abusive interrogations; denied them entry; and confiscated their documents, without ever providing them a hearing or any form of due process.

On August 24, 2009, Trinidad Muraira de Castro, daughters Yuliana and Laura, and Yuliana's four-week old daughter Camila Abigail Galvez presented their documentation for entry at the B&M Bridge POE in Brownsville, Texas. Ms. Muraira de Castro is a Mexican citizen with a border crossing card (or "laser Visa")⁵ permitting her entry to the United States. Laura, Yuliana, and Camila are all U.S. citizens. CBP Officer Eliseo Cabrera sent the family to secondary inspection, allegedly because Yuliana's birth certificate indicated that she was delivered by a midwife. The family was detained and interrogated, during which time CBP officer Cabrera intimidated them, threatened to seize them, and made false representations to coerce Laura and Yuliana to "admit" they were not U.S. citizens and to force Trinidad to admit her daughters were not born in the United States. After approximately ten hours, Ms. Muraira de Castro broke down and "confessed" that her daughters were not born in the United States even though her daughters were in fact born in the United States. Based on this coerced confession, Laura and Yuliana were denied entry to the United States and Ms. Muraira de Castro's laser visa was confiscated.

On September 17, 2009, Rodrigo Sampayo Ortiz, a citizen, presented his documentation for entry into the United States at the B&M Bridge POE in Brownsville, Texas. Mr. Ortiz was detained for more than eight hours when a CBP officer threatened and intimidated him into falsely confessing he was not born in the United States, even though he was in fact born in the United States. Mr. Ortiz's documents were confiscated.

On October 31, 2009, Ana Maria Alanis and her daughter Jessica Alanis Garcia presented their documentation for entry at the B&M Bridge POE. Like the Castro family and Mr. Ortiz, Ms. Alanis and her daughter were detained for hours and threatened with separation. Ms. Alanis refused to "confess" that her daughter was not born in the United States because Jessica was in fact born in the United States. The CBP officer denied Jessica entry into the United States until her citizenship was adjudicated by an Immigration Judge.

The Castro family, the Alanis family, and Mr. Ortiz have filed suit in the Southern District of Texas, alleging that their Fourth and Fifth Amendment rights were violated.⁵

B. Unwarranted and Excessive Use of Force

1. San Ysidro, CA POE: Marc Ballin

On February 25, 2011, at about 4:15 p.m., Marc Ballin, a U.S. citizen returning from Mexico, was in the pedestrian line at the San Ysidro POE. The line was moving slowly and Mr. Ballin was in a hurry so he attempted to cut in line. CBP officers Vargas and Trabucco saw him, approached, and asked Ballin to step out of line so they could speak to him. Mr. Ballin apologized and handed Officers Vargas and Trabucco his passport. The officers told Mr. Ballin to go to the back of the line.

While Mr. Ballin waited to retrieve his passport, Officers Vargas and Trabucco, unprovoked, placed Mr. Ballin's arms behind his back and handcuffed him, and slammed his head down on a desk. Vargas and Trabucco then pushed Ballin against a concrete wall. The

⁵ *Castro et al. v. Cabrera*, CV No. 1:11-CV-87 (S.D. Tex.- filed September 2009).

officers punched and kicked Mr. Ballin even though he was already in handcuffs. Mr. Ballin sustained a shoulder injury and his wrists began to bleed.

Unknown officers moved Mr. Ballin to another building across the street from the checkpoint, out of public view. Mr. Ballin sat on a bench for about an hour, until Officer Novinsky approached and threatened to shock him with a Taser if he did not provide fingerprints and submit to a photo. (n)-0.956417(g)9.065365831

Mr. Vasquez in the face and chest a few more times then threw him onto the floor. Other officers surrounded Mr. Vasquez, who now lay on the ground in the fetal position, hands covering his face. One officer told Mr. Vasquez that he would do as he's told or that he'd be tasered.

Mr. Vasquez sat back up on the bench. Officer Hernandez came over and asked if Mr. Vasquez had reported his license plate stolen. Vasquez replied that he had not. Officer Hernandez told Mr. Vasquez that his plates were reported stolen and that was what caused his detention. Officer Hernandez then told him he should see to the problem but that he was free to go.

Before leaving, Mr. Vasquez asked to speak to Officer Hernandez again. Officer Hernandez apologized for the way the other officers treated him, but said that if she went against them it could jeopardize her career. Mr. Vasquez asked her if she could give him the other officers' names. At that point, Officer DeJesus came over and identified himself as a supervisor. Mr. Vasquez asked DeJesus for the names of the other officers responsible. Officer DeJesus said he would not divulge names and that was nothing Mr. Vasquez could do about it. "The rules are different here," Officer DeJesus said. "We're protected by the Patriot Act."

Mr. Vasquez went directly to the VA Medical Center in La Jolla. He received treatment for bruises on his chest, face, and eye, and had his wrist in a cast. He has medical records to substantiate this treatment.

3. Otay Mesa, CA POE: Michael Studdard

Michael Studdard, a U.S. citizen, was crossing the border through the Otay Mesa Port of Entry on foot on June 7, 2011, at about 6:30 a.m. on his way to work. Officers tried to stop Mr. Studdard and he asked the officers for a reason. The officers responded that they did not need to provide a reason. Mr. Studdard asked again if the officers said they were allowed to make stops for various reasons, such as to search people for weapons. During this encounter, Mr. Studdard held a voice recorder in his hand because he was concerned about the possibility of his rights being violated.

documentation of his arrest and no photographs or fingerprints were taken. On multiple occasions, Mr. Garcia asked to go to the restroom but was denied, and no water or food was provided to him. On at least one of these occasions, Mr. Garcia asked to speak to an attorney but was denied a phone call. During each of these incidents CBP officers inspected Mr. Garcia's vehicle, and each time Mr. Garcia was released without charges filed.

During one of these arrests at the Lukeville POE, Mr. Garcia was chained by one foot to a concrete bench and one hand to a wall for the duration of his detention. On another occasion at the Nogales POE, Mr. Garcia was pulled from his truck, thrown to the ground, handcuffed, taken to a cell for interrogation, shackled by hand and foot to a concrete bench for four hours. He was not allowed to sit or use a restroom, nor was he given water. While Mr. Garcia was detained, his young son sat alone in a room, crying.

The most recent of these incidents occurred on September 24, 2011, when Mr. Garcia was returning to Arizona following dental appointments with his son and daughter. Once again ()-0.478208

Ms. Ascencio was removed from her bus and taken to a room where two female officers interrogated her about her immigration documents wh

In the accounts recited above, many of those stopped and detained by CBP were subjected to unnecessary pain and suffering through the use of needless handcuffing, physical and verbal assaults, and other rough treatment. They were deprived of basic human needs like food and water during their detentions by CBP, subjected to coercive interrogation. Most of them clearly should never have been subject to prolonged detention in the first place.

While in some instances, Fourth Amendment rights are circumscribed at POEs, *e.g.*, *United States v. Flores-Montano*, 541 U.S. 149 (2004) (noting expanded authority to search automobiles at the border), government officials also have no expanded authority to use excessive force at the border, even against non-citizens with no prior connection to the United States. In *Lynch*, the Fifth Circuit held that even excludable aliens have a right to humane treatment and “to be free of gross physical abuse at the hands of state or federal officials.” 810 F.2d at 1373-74. In a later case, the Fifth Circuit extended *Lynch* in an excessive force claim when the alleged excessive force occurred just outside a port of entry. *Martinez-Aguero v. Gonzalez*, 459 F.3d 618, 623 (5th Cir. 2006) (holding that aliens stopped at the border have a right to be free of excessive force). As that court noted, there are identifiable national interests that justify the wanton infliction of pain” by CBP officers. *Id.*

The doctrine that limits the extraterritorial application of the Fourth Amendment, announced in *United States v. Verdugo-Urquidez*, has no relevance to excessive force claims at POEs. 494 U.S. 259, 274-75 (1990) (no extraterritorial application of the Fourth Amendment to searches of non-citizens “with no voluntary attachment to the United States.”). In contrast with *Verdugo-Urquidez*, where the constitutional violation takes place solely in Mexico, *id.* at 264, constitutional violations at POEs take place in the United States. Moreover, unlike *Verdugo-Urquidez*, border-crossers do have a “voluntary connection with the United States.” *Id.* at 264, 273.

Fourth Amendment excessive force claims turn on whether the use of force is reasonable given the totality of the circumstances, weighing the force used against “the countervailing governmental interest at stake.” *Graham v. Connor*, 490 U.S. 386, 396 (1989). Three factors determine the governmental interest: (1) whether the suspect poses an immediate threat to the safety of the officers or others, (2) whether the suspect is actively resisting arrest or attempting to evade arrest by flight, and (3) the severity of the crime. *Id.* at 396-97. In none of the above examples did the individuals involved pose any threat to the safety of the officers or others, resist arrest or attempt to evade arrest, or commit a crime. The excessive treatment to which all of these individuals were subjected was unjustified and clearly unconstitutional.

B. International Human Rights Law

As you are no doubt aware, under Executive Order 13673- which concerns

In recent years, multiple international bodies have expressed grave concerns about CBP abuses in relation to U.S. human rights treaty obligations. In 2008, the U.N. Committee on the Elimination of Racial Discrimination reviewed U.S. compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and expressed concerns “about allegations of brutality and use of excessive or deadly force by law enforcement officials against persons belonging to racial, ethnic national minorities, in particular Latino and African American persons and undocumented migrants crossing the U.S.-Mexico border.”¹³ The Committee recommended that the U.S. increase significantly its efforts to eliminate police brutality and excessive use of force” against persons by establishing adequate systems for monitoring police abuses and developing furthering opportunities for law enforcement officials.” The Committee requested that the U.S. ensure that reports of police brutality and excessive use of force are independently, promptly thoroughly investigated and that perpetrators are prosecuted and appropriately penalized. Again, the stories described above indicate that the Committee’s concerns have not been adequately addressed. CBP provides minimal training and, as the accounts stated herein demonstrate, oversight and accountability mechanisms are inadequate at best.

The abuses documented herein, though confined to incidents arising at POEs, are nonetheless consistent with a pattern of CBP abuse along the border, in detention facilities, and in other parts of the interior. In December 2010, the Inter-American Commission on Human Rights noted in its report on United States immigration detention “the terrible effects of certain immigration policies along the border and to the abuses and excesses committed by officers charged with enforcing the law.”¹⁴ In March 2012 the Commission held a general hearing “the human rights situation of migrants detained and repatriated at the Southern Border of the U.S.” During this hearing, members of the Commission heard about human rights violations

committed against migrants by CBP officers with impunity, as the result of inadequate policies for prosecuting and punishing members of the Border Patrol who commit such acts.¹⁵