

**United States Customs And Border Protection Engages In Excessive Force
For Which There Is No Accountability**

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I. SUMMARY

1. This report addresses the United States Government's Customs and Border Protection's ("CBP") use of excessive force, lack of accountability for excessive force incidents, and lack of transparency. Specifically, this report notes that recent policy developments on CBP use of force policy, while positive, insufficiently address accountability and require ongoing monitoring.

2. There has been significant scrutiny of CBP's excessive force and lack of accountability. As will be discussed below, CBP's excessive force has been a constant theme in various media outlets in the United States. CBP's excessive force has also been an international concern. For instance, on March 10, 2014, a coalition letter drafted by the American Civil Liberties Union ("ACLU") and signed by over fifty organizations and individuals was sent to the Chairperson of the UN Human Rights Committee urging the Committee to assess U.S. compliance with the International Covenant on Civil and Political Rights (ICCPR) as it relates to the use of excessive force by CBP officials.¹ During the ICCPR Review, UN Human Rights Committee members repeatedly raised questions regarding CBP's use of excessive force and lack of transparency. The Committee later criticized the United States in this regard, as discussed below.

3. Similarly, the 2008 Convention on the Elimination of All Forms of Racial Discrimination ("CERD") Committee's Concluding Observations and Recommendations expressed concerns of police brutality and excessive force and a lack of accountability for such incidents and recommended the U.S. Government take steps to remedy the Committee's concerns. The Committee explicitly stated that it "remains concerned about allegations of brutality and use of excessive or deadly force by law enforcement officials against persons belonging to racial, ethnic or national minorities, in particular Latino and African American persons and undocumented migrants crossing the U.S.-Mexico border." The Committee also expressed concerns about a lack of accountability for these incidents.² Recently, in August 2014, the CERD Committee conducted another review of the United States and "reiterate[d] its previous concern at the brutality and excessive use of force by law enforcement officials against members of racial and ethnic minorities" and expressed its continued concern regarding the impunity for abuses committed by CBP against Hispanic and undocumented migrants.³

4. The research conducted by UCI Law's International Justice Clinic (IJC), involving information provided by the ACLU as well as publicly available information, led us to conclude that, despite continued scrutiny against the CBP, the organization engages in excessive force and lacks accountability and transparency. Moreover, strong evidence suggests that the CBP's conduct is targeted towards Hispanic individuals.

¹ Jamil Dakwar and Victoria Gaubeca, Coalition Letter to Sir Nigel Rodley, *Re: Periodic Review of United States' ICCPR Compliance at its International Borders*, March 10, 2014 available at https://www.aclu.org/sites/default/files/assets/us_iccpr_review_sign_on_re_border_abuse_final2_w_signatures_0.pdf

² Comm. on the Elimination of Racial Discrimination, Geneva, Switz. February 18 – March 7, 2008, *Concluding observations of the Comm. on the Elimination of Racial Discrimination*, U.N. Doc. CERD/C/USA/CO/6, ¶25 (2008).

³ Comm. on the Elimination of Racial Discrimination, Geneva, Switz. August 29, 2014, *Concluding observations on the combined seventh to ninth periodic reports of the United States of America*, U.N. Doc. CERD/C/USA/CO/7-9, ¶17 (2014).

5. IJC recommends the following:

- a. Numerous organizations have expressed concern regarding the lack of diligent investigations of excessive force. Even in cases where an investigation was conducted, sometimes officers were found to have not violated CBP policy despite the officer's use of deadly force being questionable. As the overarching federal agency, the DHS should implement policies that would require thorough investigation of each allegation of excessive force and use of deadly force.
- b. There has been a trend of secrecy within CBP and a cloak of silence regarding the disclosure of details of use of deadly force incidents. The investigatory procedure should require disclosure of the specifics of use of deadly force incidents to allow victims to seek remedy and to deter officers from engaging in excessive force. Moreover, the disclosure of the details will subject CBP to public scrutiny and encourage diligent investigation. In addition, the Council should recommend that CBP develop a meaningful complaint process and deploy dashboard and body-worn cameras to record all interactions with the public, with appropriate privacy and detention guidelines.
- c. A major concern shared by organizations is the lack of accountability for officers engaging in excessive force. There is very limited public evidence that the Department of Justice has pursued investigations of serious use of force abuses. The Council should encourage full and transparent criminal investigations to hold those responsible accountable

II. LEGAL FRAMEWORK

6. In the 2010 Universal Periodic Review (“UPR”) of the United States, multiple delegations acknowledged the issue of police brutality and racial discrimination.⁴ Specifically, the delegation of Cyprus recommended that the United States Government “[i]ncrease its efforts to eliminate alleged brutality and use of excessive force by law enforcement officials against, inter alia, Latino and African American persons and undocumented migrants, and to ensure that relevant allegations are investigated and that perpetrators are prosecuted.”⁵ The delegation of Sudan also specifically addressed concerns about police brutality against individuals of Latin American origin.⁶

7. In the general comments of its response, the U.S. Government noted that, although it is making serious efforts to address the issue of police brutality, it also “recognize[s], realistically, that the United States may never completely accomplish” that goal.⁷ The United States Government partially accepted Cyprus’s recommendation, stating that the U.S. Government

⁴ See Human Rights Council, Universal Period Review, January 4, 2011, *Report of the Working Group on the Universal Periodic Review United States of America*, U.N. Doc. A/HRC/16/11, ¶¶ 92.105, 92.144, 92.150, 92.151, 92.209.

⁵ *Id.* at ¶ 92.144.

⁶ *Id.* at ¶ 92.209.

⁷ *Id.*

“supports this recommendation insofar as it allows for the exercise of prosecutorial discretion.”⁸ Moreover, the U.S. Government partially accepted Sudan’s recommendation stating that “[l]aw enforcement and immigration officers are lawfully permitted to use deadly force under certain exceptional circumstances; e.g., self-defense or defense of another person.”⁹

8. This report aims to show that although the United States Government claims that it has addressed the issues of police brutality and accountability and the CBP has taken some steps toward that goal, there is still concern of use of excessive force by CBP officers and a lack of accountability.

III. U.S. COMPLIANCE WITH ITS INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Issue 1: Excessive Force and Police Brutality

9. Excessive force has been a continuing problem since the 2010 UPR. The vast majority of victims of CBP’s excessive force have been of Hispanic descent.¹⁰ Until very recently, the U.S. Government had not addressed the concerns regarding CBP officers’ use of excessive force. As will be seen in this report, the United States has been taking steps in 2014 to address problems in its use of force policy. However, determining the potential impact of those steps requires first assessing, in brief, CBP actions since 2010.

10. In February of 2013, an investigation conducted by the Police Executive Research Forum (PERF) – a nonprofit, nonpartisan law enforcement policy think tank – concluded that CBP officers violate the organization’s use of force policy and at times use deadly force as a result of frustration rather than necessity.¹¹ PERF examined sixty-seven case files arising between January 2010 and October 2012 and concluded that CBP officers (1) intentionally stood in front of moving vehicles as a pretext to opening fire and (2) did not avoid rock-throwers in situations where they would be able to do so.¹² The PERF Report noted cases in which officers engaged in use of deadly force where non-lethal options were available.¹³

11. A number of organizations and media outlets have highlighted instances of CBP’s excessive use of force. For instance, the ACLU, which has devoted substantial resources to legal problems

⁸ *UPR Recommendations Supported by the U.S. Government*, June 2014 available at <http://www.state.gov/j/drl/upr/recommendations/index.htm> (last visited 8/25/2014)

⁹ *Id.*

¹⁰ See American Civil Liberties Union, *List of Dead and Injured by CBO Officials since January 2010 (as of September 1, 2014)* (Attachment 1). See also Terri Burke et al, *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*, May 9, 2012, (hereinafter “ACLU Complaint”). See also Bob Ortega and Rob O’Dell, *Deadly border agent incidents cloaked in silence*, The AZ. Central, Dec. 16, 2013, available at <http://www.azcentral.com/news/politics/articles/20131212arizona-border-patrol-deadly-force-investigation.html>. See also Steve Inskeep, *After Shootings, Extended Silence: What The Border Patrol Hasn’t Said*, NPR, June 9, 2014, available at <http://www.npr.org/2014/06/09/320220093/foi-request-sheds-some-light-on-border-patrol-shootings>.

¹¹ See Police Exec. Research Forum (PERF), *U.S. Customs And Border Protection Use of Force Review: Cases and Policies*, 8 – 9, (2013) (hereinafter “PERF Report”), available at <http://1.usa.gov/1nKOBQS>.

¹² *Id.*

¹³ *Id.* at 6.

at or near the U.S.-Mexico border, compiled a list of those who died (including one suicide) or were injured following encounters with CBP officials between January 2010 and September 2014. The list includes forty-seven cases, in which at least 14 were U.S. citizens and six were standing in Mexico when fatally shot. CBP use of force was responsible for at least 29 of these deaths. Three of the six who were in Mexico when shot and killed were teen-agers, ages 15, 16, and 17.¹⁴

12. On May 9, 2012, the ACLU submitted a complaint to the U.S. Department of Homeland Security (“DHS”) Office of Civil Rights and Civil Liberties and Office of Inspector General regarding excessive force and police brutality and highlighted four instances of abuse of power and three instances of excessive force.¹⁵ Most of the victims identified were of Hispanic descent.¹⁶ ACLU further addressed excessive force and border-killing concerns in its shadow report to the Fourth Periodic Report of the United States’ Compliance with the International Convention on Civil and Political Rights.¹⁷ There were no transparent investigations of these incidents.¹⁸

13. The *Arizona Republic* published an investigative report on December 16, 2013, which concluded that forty-two individuals had been killed by Border Patrol agents since February 2005. The report addressed in detail eight instances of excessive force and lack of accountability.¹⁹ Each incident involved a similar pattern in which a CBP officer’s use of force was questionable and CBP officials would claim disciplinary action had been taken against the involved officers, but would not disclose the nature and scope of the supposed disciplinary action.²⁰ The article noted that “in none of the 42 deaths is any agent or officer publicly known to have faced consequences—not from the Border Patrol, not from Customs and Border Protection or Homeland Security, not from the Department of Justice, and not, ultimately, from criminal or civil courts.”²¹

14. Recently, a high-ranking CBP official publicly criticized the organization as having a culture of impunity and violence. On August 14, 2014, James F. Tomsheck, former head of CBP internal affairs, made the following claims: CBP sees itself as above reproach and constitutional constraint and shields its agents’ misconduct; Border Patrol officials consistently change facts to cover up wrongdoing in fatal shootings; and thousands of employees are unfit to carry a badge and gun.²²

¹⁴ American Civil Liberties Union, *List of Dead and Injured by CBO Officials since January 2010 (as of September 10, 2014)* (Attachment 1).

¹⁵ ACLU Complaint, *supra* note 10.

¹⁶ *Id.*

¹⁷ See American Civil Liberties Union, *Shadow Report to the Fourth Periodic Report of the United States*, September 13, 2014, available at

https://www.aclu.org/files/assets/american_civil_liberties_union_shadow_report_to_the_u.s._fourth_periodic_report_final.pdf

¹⁸ *Id.*

¹⁹ See Bob Ortega and Rob O’Dell, *supra* note 10. See also Steve Inskeep, *supra* note 10.

²⁰ See *id.*

²¹ See *id.*

²² Chris Rickerd, *Whistleblower Says CBP Has Culture of Impunity and Violence*, American Civil Liberties Union, August 15, 2014, available at <https://www.aclu.org/blog/immigrants-rights-racial-justice/whistleblower-says-cbp-has-culture-impunity-and-violence> (last visited 8/25/2014).

15. In its response to the 2010 UPR, the United States Government did not specifically state how it had addressed this issue. However, CBP released a revised Use of Force Policy Handbook on May 30, 2014, which Commissioner Kerlikowske claims has addressed concerns of use of excessive force.²³ The new handbook includes several important revisions and additions, including:²⁴

- allowing the use of deadly force against operators of vehicles only when the officer/agent has a reasonable belief that the operator poses an imminent danger of serious physical injury or death;
- allowing the use of deadly force against thrown or launched projectiles only when the officer/agent has reasonable belief that there is an imminent danger of serious physical injury or death, while also suggesting officers/agents take cover from projectiles;
- providing guidelines on the use of safe tactics.

16. Despite the update in policy, there is evidence of continued use of excessive force and police brutality, which is strongly indicative that the United States Government has not adequately addressed the concerns expressed in the 2010 UPR. For example, just hours after CBP released the revised Use of Force Policy Handbook and PERF report, an individual was shot and killed as he was fleeing from Border Patrol agents in Green Valley, Arizona. On Sept. 10, the investigating agency decided not to bring criminal charges against the agent despite the fact that the single, mortal wound entered the back of the victim's head, near his left ear.²⁵

17. We recommend the following:

- a. Accountability must begin with external review of CBP's failure to investigate deadly uses of force. Such accountability should be independent and conducted by the U.S. Department of Justice, and it should hold all responsible individuals in the CBP leadership to account.
- b. CBP must initiate a public complaint system that is credible and transparent.
- c. In September 2013, CBP promised to pilot dashboard and body-worn cameras. Such a program remains to be initiated. All CBP interactions with the public should be subject to body-worn and dashboard cameras.

Issue 2: Lack of Accountability

²³ *Id.*

²⁴ See *Use of Force Policy, Guidelines and Procedures Handbook*, May 2014 (hereinafter "Use of Force Policy") <http://www.cbp.gov/sites/default/files/documents/UseofForcePolicyHandbook.pdf>

²⁵ Shearer, Dan. *BP agent won't face charges in Green Valley shooting*, *Nogales International* (Sept. 10, 2014) available at: http://www.nogalesinternational.com/news/bp-agent-won-t-face-charges-in-green-valley-shooting/article_b24b2ad2-38ff-11e4-a6bb-001a4bcf887a.html

18. CBP is under the organizational authority of DHS. In September 2013, the DHS Office of Inspector General (“OIG”) concluded an investigation regarding CBP’s use of force. According to the OIG Report, CBP’s reporting system did not allow for tracking use of force incidents and CBP did not report assaults against officers in which deadly force was avoided. The OIG report concluded that tracking and analyzing incidents in which deadly force was not used would help CBP implement policies aimed at avoiding excessive force. OIG recommended that CBP implement a method to “identify each use of force allegation” and develop a process that would “incorporate information regarding assaults on agents that did not result in agents using force.”²⁶ Similarly, the PERF report found that although rock-throwing incidents are frequent, only those in which deadly force is used are routinely officially reported. PERF recommended that CBP policy should “require at least an abbreviated report in all cases of attempted assaults against agents,” not only those in which agents use deadly force.²⁷ Furthermore, PERF criticized CBP’s practice in discretionary investigation of deadly force incidents and recommended that all use of deadly force incidents be diligently investigated.²⁸

19. In addition, on May 6, 2014, the American Immigration Council – an immigrants’ rights advocacy group – released a report that analyzed complaints filed with CBP entitled, *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse*. The report, which is based on information received through Freedom of Information Act (FOIA) litigation, addresses the statistical frequency of CBP’s investigations, revealing a startlingly low incidence of meaningful inquiry. Between January 2009 and January 2012, 809 complaints alleging abuse were lodged against CBP’s officers against agents within 100 miles of the Southwest border. Of these complaints, only thirteen (less than two percent) led to disciplinary action.²⁹ CBP’s internal disciplinary authority failed to render disciplinary decisions for forty percent of such complaints, even years after investigatory proceedings had commenced.³⁰ These investigatory inadequacies contribute to a sense of institutional impunity and lack of accountability for CBP officers on the ground.

20. CBP’s lack of diligence in investigating deadly force incidents and holding responsible officers accountable is further highlighted in the 2012 shooting of 16 year old Jose Antonio Elena Rodriguez. On October 10, 2012, Rodriguez was shot by agents behind the border fence during a rock-throwing incident.³¹ An autopsy revealed that the teenager was shot as many as 10 times and all the bullets entered from the back. Despite the questionable nature of the incident, no investigation commenced.³² However, in July of 2014, Rodriguez’s family filed a lawsuit. In

²⁶ Charles K. Edwards, *Dep’t of Homeland Sec. Office of Inspector Gen., CBP Use of Force Training and Actions To Address Use Of Force Incidents (Redacted)*, at 8, 15 September 12, 2013 (hereinafter “DHS OIG Report”), available at http://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-114_Sep13.pdf.

²⁷ PERF Report at 4.

²⁸ *Id.*

²⁹ See Danel E. Martinez, Guillermo Cantor, Walter A. Ewing, *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse* (American Immigration Council) <http://www.immigrationpolicy.org/special-reports/no-action-taken-lack-cbp-accountability-responding-complaints-abuse>

³⁰ *Id.*

³¹ Curt Prendergast, *22 months on, feds arrive at shooting scene*, Nogales International, August 25, 2014 available at http://www.nogalesinternational.com/news/months-on-feds-arrive-at-shooting-scene/article_d739889e-2a0d-11e4-a99e-0019bb2963f4.html#.U_utISMJ73c.twitter (last visited 8/25/2014).

³² *Id.*

August 2014, the United States Attorney's Office commenced an investigation, 22 months after the shooting.³³

21. CBP has taken some steps to address this issue. On June 10, 2014, CBP Commissioner Kerlikowske removed from office the CBP's Internal Affairs chief, James F. Tomsheck, and appointed Mark Morgan, a senior official at the FBI, to head the office on an interim basis. The implication is that Kerlikowske intends to take steps towards greater transparency and that Kerlikowske intends to review cases that had not been previously investigated thoroughly.³⁴ In a press briefing on September 12, 2014, Morgan noted that he was unaware of any Border Patrol agent or CBP officer being formally disciplined for killing someone through the use of force since at least 2004, but he promised transparency.³⁵

22. Further, CBP's revised Use of Force Policy Handbook addresses accountability and transparency.³⁶ The new handbook developed a reporting system specifically for the reporting and tracking of use of deadly force incidents and broadened the guidelines for investigations of use of force incidents. Specifically, CBP has implemented a Use of Force Reporting System (UFRS) in which all uses of deadly force incidents are reported as well as incidents in which the use of less lethal force results in death or serious physical injury.³⁷ The policy has also been modified to include a more comprehensive chapter on the investigation of use-of-force incidents. It suggests that "[a]ny use of force incident involving CBP employees may be reviewed and/or investigated both criminally. . . [and] administratively, in order to ensure compliance with DHS and/or CBP policy."³⁸ However, the policy does not indicate what kind of internal disciplinary authority, if any, is connected to such review. The policy does, however, mention that the Use of Force Center of Excellence ("UFCE") Incident Review Committee must review any use of deadly force by a CBP employee, but the primary role of the review is to analyze the incidents for training and policy purposes, and the "Committee will not make any recommendations concerning disciplinary or adverse actions."³⁹

23. These recent developments may be applauded, but they do not adequately address the use of excessive force and lack of accountability. CBP has a history of a lack of diligence in investigation and a lack of accountability for officers who violate the policy. In numerous instances in which an investigation was conducted, officers were found to have not violated the policy even in incidents in which the use of deadly force was questionable. Thus, even though CBP policy now requires the reporting of all incidents and provides broader investigatory guidelines, it is not clear whether an investigation by CBP will aim to hold officers accountable for violations of law and policy.

³³ *Id.*

³⁴ Bob Ortega, *Border Patrol removes internal-affairs chief*, The AZ Republic, June 10, 2014 available at <http://www.azcentral.com/story/news/arizona/2014/06/10/arizona-border-patrol-internal-affairs-chief-removed/10281891/>

³⁵ Bob Ortega, *CBP: No agents disciplined for deadly force since 2004*, The AZ Republic, September 12, 2014 available at <http://www.azcentral.com/story/news/arizona/investigations/2014/09/12/customs-border-agents-not-disciplined-investigations-continue/15527207/>

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 38.

³⁹ *Id.* at 16.

24. We recommend the following:

- a. Numerous organizations have expressed concern regarding the lack of diligent investigations of excessive force. Even in cases where an investigation was conducted, sometimes officers were found to have not violated CBP policy despite the officer's use of deadly force being questionable. As the overarching federal agency, the DHS should implement policies that would require thorough investigation of each allegation of excessive force and use of deadly force.
- b. A major concern is the lack of accountability for officers engaging in excessive force. There is very limited public evidence that the Department of Justice has pursued investigations of serious use of force abuses. The Committee should encourage full and transparent criminal investigations to hold those responsible accountable

Issue 3: Lack of Transparency

25. CBP offers limited transparency. Steps towards transparency are critical because CBP has long evaded public scrutiny and accountability. Only in recent months has there been a trend indicating CBP may be willing to open up its operations to greater transparency and public scrutiny. For instance, in May 2014, relenting in the face of a lawsuit filed by the ACLU along with international scrutiny, CBP released its use of force policy handbook and the PERF report even though CBP previously resisted, claiming that release of the policy and PERF report might "compromise sensitive law enforcement information and endanger Border Patrol agents."⁴⁰ Additionally, although CBP released the 2013 DHS Office of Inspector General report, it redacted major portions, including those related to key issues such as accountability and use of force.⁴¹ Furthermore, ACLU, *Arizona Republic*, and National Public Radio report that CBP fails to release the names of officers and officers involved in use of force incidents, make public what disciplinary actions are taken, or make public the results of investigations.⁴²

26. For one example of a lack of accountability and transparency, on June 7, 2010, a CBP officer shot fifteen-year-old Sergio Adrian Hernandez-Guereca at the U.S.-Mexico border in Juarez, Mexico. CBP officers had received reports that people were trying to sneak across the border. A cellphone video shows CBP officers grabbing a suspect by the collar and other people throwing rocks at the officers. The video next shows an officer aiming his weapon and shooting at Sergio, hitting him below his left eye and killing him. The teenager's family sued, but the case was thrown out of U.S. Court for a lack of standing since the incident occurred in Mexico.⁴³ The

⁴⁰ Brian Bennett, *New guidelines issued to Border Patrol on use of deadly force*, L.A Times, May 31, 2014. <http://www.latimes.com/nation/la-na-border-force-20140531-story.html>. See also *CBP Releases Use of Force Policy Handbook and Police Executive Research Forum Report*, May 30, 2014. <http://www.cbp.gov/newsroom/national-media-release/2014-05-30-000000/cbp-releases-use-force-policy-handbook-and-police>

⁴¹ DHS OIG Report at 16 - 17; Andrew Becker and G.W. Schulz, *Border agency watchdog censurs recommendations to curb deadly force*, The Center For Investigative Reporting, January 29, 2014.

<http://cironline.org/reports/border-agency-watchdog-censurs-recommendations-curb-deadly-force-5761>

⁴² ACLU Complaint, *supra* note 10; Bob Ortega and Rob O'Dell, *supra* note 10; Steve Inskeep, *supra* note 10.

⁴³ Steve Inskeep, *id.*

Arizona Republic obtained documents revealing that CBP's public statement of the account differed from what the officer involved had originally reported. The officer's statement was that he was surrounded by rock throwers and therefore did not have any alternative to using deadly force. However, the incident report does not mention anything about being surrounded by rock throwers. The Justice Department's investigation of the incident concluded that no policy violations occurred and did not disclose how the officer's life was in danger from an unarmed teenager.⁴⁴

27. In preparing this shadow report, IJC made efforts to reach out to CBP officials for an interview to review the issues of excessive force and accountability and recent media reports. IJC reached out to CBP's NGO Liaison on March 14, 2014. After about a month of follow-up emails and phone calls, CBP officials promised to provide an interview and requested a list of topic questions from IJC in order to allow CBP to prepare for the interview. IJC provided a list of six questions. In May 2014, CBP provided a written response to one question and did not further communicate with IJC, without explanation.⁴⁵

28. In sum, CBP has not taken adequate action in increasing transparency. As such, we recommend the following:

- There has been a trend of secrecy within CBP and silence regarding the disclosure of details of use of deadly force incidents. The investigatory procedure should require disclosure of the specifics of use of deadly force incidents to allow victims to seek remedy and to deter officers from engaging in excessive force. Moreover, the disclosure of the details will subject CBP to public scrutiny and encourage diligent investigation.

IV. CONCLUSION

29. CBP has failed to address the 2010 UPR concerns regarding the use of excessive force and police brutality as well as the lack of accountability for such incidents. Despite scrutiny, CBP officers use excessive force and engage in brutality. There is strong evidence to suggest that excessive force is embedded in CBP practice. Furthermore, there is a trend of lack of accountability for fatal incidents involving questionable CBP conduct. A systematic cultural change is needed within the CBP to help eliminate police brutality and increase accountability. As such, we recommend the following:

- a. Numerous organizations have expressed concern regarding the lack of diligent investigations of excessive force. Even in cases where an investigation was conducted, sometimes officers were found to have not violated CBP policy despite the officer's use of deadly force being questionable. As the overarching federal agency, the DHS should implement policies that would require thorough investigation of each allegation of excessive force and use of deadly force.

⁴⁴ *Id.*

⁴⁵ Attachment 2

- b. There has been a trend of secrecy within CBP and a blanket of silence regarding the disclosure of details of use of deadly force incidents. The investigatory procedure should require disclosure of the specifics of use of deadly force incidents to allow victims to seek remedy and to deter officers from engaging in excessive force. Moreover, the disclosure of the details will subject CBP to public scrutiny and encourage diligent investigation. In addition, a meaningful complaint process needs to be developed and implemented, as well as the use of dashboard and body-worn cameras in every interaction with the public, within appropriate privacy and data-retention guidelines.

- c. A major concern shared by organizations is the lack of accountability for officers engaging in excessive force. There is very limited public evidence that the Department of Justice has pursued investigations of serious use of force abuses. The Committee should encourage full and transparent criminal investigations to hold those responsible accountable