

December 12, 2013

The Honorable Thomas S. Winkowski
Acting Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Avenue, NW
Washington, DC 20229

Dear Acting Commissioner Winkowski,

On October 30, representatives of non-governmental organizations working at the border met with Assistant Commissioner Chris Hall and other key personnel in charge of developing and conducting Basic Training at the Border Patrol Academy. We appreciated this opportunity to engage with CBP on the topic issue of Basic Training, and write to follow up on several concerns that were raised during the meeting.

Access to Policy and Training Materials

In line with the Administration's commitment to transparency and basic principles of good governance, we request improved information flow regarding CBP policies and training. Access to current policy guidance and training materials enables stakeholders to provide more meaningful feedback, to identify gaps in training curricula, and to increase public awareness about CBP's operations. Without such access, our recommendations are created in a vacuum, with only what we see and experience on the ground to shape our understanding of the guidance that is being transmitted to the field.

While CBP has released certain guidance in recent months through the FOIA process, such as its Directive on Exercise of Discretionary Authority and 2010 Civil Enforcement Priorities, these documents provide only a partial picture of the policy considerations governing CBP's enforcement activities. During the October 30 meeting, we learned that the Border Patrol Academy's basic training curriculum includes many CBP policy directives, musters and other guidance that are not public. We request a complete list of these materials, including materials used in the full training continuum—academy, post-academy, new officer, refresher courses, and supervisory/management curriculum—so that we can identify particular policies relating to the work of our respective organizations.

In the meantime, we also urge CBP to provide a dedicated briefing to NGOs, promised in September, on planned changes to its use of force policy and practices.

Finally, we request that CBP post un-redacted versions of the following documents in its online FOIA Library:

- CBP Use of Force Policy Handbook, as well as the recent internal and Police Executive Research Forum reports on CBP Use of Force;
- The 1984 version of the Border Patrol Handbook and any other versions of the Border Patrol Handbook that are currently in effect; and
- CBP Officer's Reference Tool.

Complaint Process

As the nation's largest law enforcement agency, CBP must provide clear and effective mechanisms through which the public can communicate concerns, with meaningful investigations and resolutions, responses to complainants, and appropriate feedback into training and policy. The current CBP complaint process does not work. This is not only a grave disservice to the hundreds of thousands of individuals with whom CBP interacts annually, but also a missed opportunity for valuable feedback on how the agency's training programs and policies are translated into day-to-day conduct. The necessity of a working feedback system, including adequate training of all staff involved, is particularly pressing given the growth in Border Patrol staffing and the relative inexperience of a large portion of the force. An open and responsive system encourages use and builds confidence among stakeholders that they are being heard.

We urge CBP to:

- Create an ad hoc working group of stakeholders and CBP officials to identify potential improvements to the complaint process. The working group would also advise on mechanisms to channel information obtained through the complaint process into CBP's ongoing training programs.
- Review at the headquarters level any complaint system to result in better training, avenues for redress and corrective actions, and better monitoring of trend across the agency. Any functional complaint system should feed into an agency-wide review and data-management system instead of stopping at the local level.

Training on Fear-Based Protection Claims

CBP officers and agents play a critical role as the first contact for individuals coming to the U.S. borders. In order for the United States to fulfill our commitment to protect those who flee persecution and torture, Border Patrol agents and Field Operations officers must be effectively trained in their legal obligations to refer individuals with a fear of return to U.S. Citizenship and Immigration Services for proper adjudication of the claim. We urge CBP to reexamine its training curriculum to ensure that officers and agents are equipped to screen individuals they encounter to identify asylum seekers or victims of trafficking.

As members and representatives of border communities, we are committed to continuing to build an effective working relationship with CBP. We thank you for your ongoing engagement and look forward to your responses to our recommendations. Please contact Jenny Johnson, jjohnson@lawg.org; Vicki Gaubeca, vgaubeca@aclu-nm.org; or Rebecca Engel, rengel@nyclu.org with any questions or concerns.

Sincerely,

American Civil Liberties Union
American Immigration Council
American Immigration Lawyers Association
Americans for Immigrant Justice
Border Action Network

Jesuit Refugee Service/USA
Josiah Heyman, University of Texas at El Paso (for identification purposed only)
Kino Border Initiative, Nogales AZ; Nogales Sonora, Mexico
Latin America Working Group
Lutheran Immigration and Refugee Service
OneAmerica
National Immigration Forum
No More Deaths
Northern Border Coalition
Southern Border Communities Coalition
Washington Office on Latin America
Women's Refugee Commission

CC:

Rand Beers, Acting Secretary, DHS
Stevan Bunnell, General Counsel, DHS
Molly Groom, Acting Deputy Assistant Secretary for Policy, DHS
Esther Olavarria, Senior Advisor, Office of Immigration and Border Security, Office of Policy, DHS
Megan Mack, Officer for Civil Rights and Civil Liberties, DHS
Chris Hall, Assistant Commissioner, Office of Training and Development, CBP
Anna Hinken, Non-Government Organization Liaison, CBP
Felicia Escobar, Senior Policy Director for Immigration, White House Domestic Policy Council
Tyler Moran, Deputy Policy Director for Immigration, White House Domestic Policy Council