

EXHIBIT D

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
ANASTASIO HERÁNDEZ ROJAS AND FAMILY VS. UNITED STATES
CASE NO. P-524-16
AFFIDAVIT IN SUPPORT OF PETITIONERS

I, James Wong, do state and attest in St. Tammany Parish, Louisiana as follows:

1. I have extensive experience as a law enforcement officer and in investigating corruption and misconduct by law enforcement. Before retiring in 2011, I worked for thirty-five years in state and federal law enforcement agencies. For twenty of those years, I had various supervisory roles within Louisiana State Police and within U.S. Customs Service, U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE), the federal agencies responsible for securing U.S. borders to prevent terrorism, illegal immigration, and the movement of contraband. My experience with federal law enforcement agencies includes significant time at field stations along the U.S.-Mexico border.
2. Over the course of more than three decades, I have conducted and supervised hundreds of criminal investigations. While with the U.S. Customs Service, I investigated money laundering, narcotics, arms trafficking, and child pornography. When I was transferred to the Office of Internal Affairs within U.S. Customs, I began investigating corruption and misconduct by federal law enforcement agents. I supervised corruption and misconduct investigations while at U.S. Immigration and Customs Enforcement's Office of Professional Responsibility and after I joined Internal Affairs at the U.S. Customs and Border Protection (CBP). As CBP's Deputy Assistant Commissioner for Internal Affairs, a Senior Executive Service position, I was responsible for criminal and serious misconduct investigations of CBP employees. During this time, I oversaw the investigation of several use-of-force incidents involving active duty CBP agents, including the incident that resulted in the death of Anastasio Hernández Rojas.

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3. I have prepared this affidavit to support the petition filed by the family members of Anastasio Hernández Rojas (Case Number P-524-16) before the Inter-American Commission on Human Rights.

EDUCATIONAL & PROFESSIONAL BACKGROUND

4. I attended Tulane University from 1971 to 1980, graduating with a degree in Sociology and Social Sciences. During that time, I also worked as a military police investigator for the U.S. Army from 1972 to 1975 at Fort Polk, Louisiana and in Berlin, Germany. I conducted felony-level investigations of crimes that involved military property and personnel.
5. While attending Tulane University, I joined the Louisiana state police. I spent two years as a uniformed patrol officer and nine years as an investigator in intelligence and criminal investigations division and was promoted to Sergeant in 1980.
6. In 1987, I joined the U.S. Customs Service, which was the primary agency tasked with stopping the flow of illegal drugs and other contraband through U.S. ports of entry. Investigations were a key component of U.S. Customs Service's interdiction efforts. At the U.S. Customs Service, I investigated smuggling, financial crimes, fraud, narcotics, and child pornography.
7. Over the next fifteen years, I was promoted from criminal investigator, to special agent, to senior special agent, and lastly to supervisory special agent. In 2003, U.S. Customs Service was subsumed into the newly created U.S. Department of Homeland Security (DHS). Between 2003 and 2006, I worked as a supervisory special agent within U.S. Immigration and Customs Enforcement (ICE). ICE's primary mission was to protect national security, public safety, and the integrity of U.S. borders through the criminal and civil enforcement of federal law governing border control, customs, trade, and immigration. I was the supervisor at the ICE's Office of Professional Responsibility (OPR) located in San Diego, California where I oversaw investigations of misconduct involving ICE employees, independent reviews of ICE programs and offices, ICE background investigations, security clearances for ICE employees and contract staff, and

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ICE detention functions for San Diego and satellite offices in Calexico, Long Beach, San Francisco, and Seattle, Washington.

8. In 2006, I joined Internal Affairs at the U.S. Customs and Border Protection (CBP) where I became Special Agent in Charge of one of the agency's initial internal affairs field offices in Dallas, Texas. I was responsible for supervising investigations of wrongdoing by CBP employees and approving and signing investigative reports for all of the Southwestern United States.
9. In November 2008, I began shadowing CBP's Deputy Assistant Commissioner of Internal Affairs (IA) in Washington, D.C. IA handled security and integrity matters within CBP and was in charge of ensuring compliance with CBP-wide programs relating to corruption misconduct and mismanagement. I was officially promoted to Deputy Assistant Commissioner of Internal Affairs in January 2009 where I worked directly under Assistant Commissioner James Tomsheck, the head of IA. I held that position until I retired in December 2011, in part because of my disagreements with CBP leadership.

U.S. CUSTOMS AND BORDER PROTECTION CULTURE

10. The subsection of CBP charged with protection at the border between the ports of entry is known as Border Patrol (BP), which consists largely of field agents. Since September 11, 2001, CBP, primarily through BP agents, has been tasked with the prevention, detection, and apprehension of potential terrorists, illegal immigrants, and contraband between the ports of entry.
11. During periodic field investigations and official discussions with CBP and BP officials, I have often heard agents describe this civilian law enforcement agency's mission in militaristic terms. CBP agents, in particular BP agents, see themselves as members of a "paramilitary organization" and soldiers "on the front line" of a war against criminal organizations and terrorism. Many agents asserted that CBP's mission was to protect the border at all costs, even at the expense of human life. This militaristic understanding of the agency's role is supported by some high-ranking officials. For example, while Deputy Assistant Commissioner of IA, I heard CBP Deputy Commissioner David Aguilar refer to BP as the "Marine Corps of law enforcement."

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12. While Deputy Assistant Commissioner of Internal Affairs and Special Agent in Charge, I spoke with many BP agents who did not want to acknowledge that undocumented individuals had basic human rights. I heard BP agents characterize undocumented migrants as the enemy and undeserving of any legal rights, much less the same rights as U.S. citizens. On at least one occasion, I have heard a BP agent say that "they don't have any rights."
13. I was disturbed to learn from official reports and video evidence collected by nongovernmental groups that BP agents destroyed food and water left in the desert for migrants who were crossing into the United States. Agents justified their actions to me and their supervisors by claiming that migrants were more likely to turn themselves in to U.S. law enforcement if they did not have access to the food and water. This view disregarded the reality that many migrants lost their lives after succumbing to the harsh conditions of the Arizona and Texas desert because they did not have access to food and water.
14. During my time as a CBP agent and investigating CBP misconduct, I was struck by the strength of the BP's *esprit de corps*. BP continued the training of freshly graduated agents at facilities located on the U.S.-Mexico border and continued teaching them to see themselves as members of a paramilitary organization that provides front-line defense of the United States. I heard BP agents refer to themselves as the "Big Green Machine" (in reference to Border Patrol's green uniforms). I encountered daily resistance to my efforts to hold agents engaged in misconduct accountable. I was told that those who had "never worn green" could not understand the challenges of being a BP agent.

PREVENTION OF MISCONDUCT & ABUSE

15. CBP's insular culture was fostered by the agency's approach to recruitment, training, and supervision. As Deputy Assistant Commissioner of IA, I assessed the agency's preventative measures and determined that more intensive scrutiny in the hiring process, better training on proper use of force, and closer monitoring by supervisors would likely reduce excessive use of force incidents. Lax hiring standards meant that not all candidates for Border Patrol (BP) were fully vetted to ensure that they would carry out their duties

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responsibly and with integrity. Improper training further exacerbated this problem because BP agents were not taught about migrants' rights. Simply put, CBP's efforts to prevent abuse and misconduct were inadequate.

16. BP agents were woefully ignorant of the law, including basic due process rights. I have encountered several examples of how BP agents who were unaware of the legal and professional guidelines that they are legally bound to obey. For example, while I was in San Diego with the OPR overseeing BP personnel, I made two worrisome discoveries. First, BP agents had the practice of seizing items from undocumented individuals they detained. Agents should have followed chain of custody procedures established by agency policy to ensure that the items were registered and recorded as evidence in accordance with applicable law. Instead, BP agents stored the guns, knives, marijuana, train tickets, currency, and other items they seized in their office drawers and lockers. Second, I discovered that some of the agents used the money they had seized to cover personal expenses.
17. During a field visit, I also discovered that some BP agents ignored the right to privacy and due process by conducting illegal searches. I observed that many BP agents have no concept of what constituted "reasonable suspicion" or "probable cause." By law, BP has the authority to enter onto private land without a warrant within 25 miles of the border. They are, however, prohibited from going into someone's house unless they have a search warrant based on probable cause that evidence of a crime is contained within the house. I spoke to several BP agents who continued to assert their rights to warrantless searches.
18. In another incident, I observed a BP agent using equipment to intercept cell phone conversations. Wire intercepts by law enforcement require a court order and may only be performed while a supervisor is on site. This BP agent was driving around in a van by himself using equipment to intercept phone calls with no authority and no supervision. He told me that the Patriot Act, federal legislation passed after 9-11, authorized this conduct. It did not.
19. During my tenure with CBP from 2006-2011, the main measure used to prevent misconduct and abuse by BP agents was supervision. The reality was that during their careers, most BP agents spent some time in remote areas with little supervision. When

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they were not in an urban environment, basically they were by themselves, and they thought they can get away with a lot. They had a mindset of "I am one agent out here by myself, I have miles to patrol. I'm god, and I make all the decisions." There was supposed to be one supervisor for every eight subordinates. In theory, the supervisor was supposed to monitor agents in the field, but this rarely seemed to happen.

20. Deputy Commissioner Aguilar was against anything that Internal Affairs tried to do to improve supervision. For example, outgoing CBP Commissioner Ralph Basham tried to monitor the conduct of an agent under investigation for misconduct using undercover agents. Deputy Commissioner Aguilar opposed this measure. Commissioner Tomscheck and I suggested that agents wear body cameras and the installation of a GPS system in patrol cars to more closely track agents' whereabouts and activities. Deputy Commissioner Aguilar opposed these measures, like many others that could improve the supervision of BP agents.

ACCOUNTABILITY

21. In comparison to the other agencies I served during my thirty-five years in state and federal law enforcement, CBP had the worst accountability measures. This was by design; CBP was allowed to operate as a rogue agency within the U.S. government. My official role as Deputy Assistant Commissioner of Internal Affairs (IA) was to ensure compliance with all CBP-wide programs relating to corruption, misconduct, and mismanagement, but I was not allowed to do my job. CBP leadership was reluctant to hold agents and others within the agency accountable for their actions, including if they were involved in criminal activity. CBP leadership's priority was to protect the reputation of the agency, even if it meant allowing misconduct and corruption to go unpunished.
22. In my experience, CBP and BP agents did not feel like they had to follow the same rules as civilian law enforcement agencies. In my role as Deputy Assistant Commissioner of IA, I became aware of many instances when agents used violence against undocumented individuals without fear of repercussion. In one particularly case that I oversaw, a BP agent physically abused a handcuffed undocumented minor because he thought he could get away with it. While Deputy Assistant Commissioner, I read reports about agents

shooting across the border into Mexico without knowing who or what they were shooting at and without concern for innocent bystanders. CBP and BP agents justified their actions under a “fog of war” mentality.

23. High-ranking CBP officials took steps to shield CBP agents from accountability even in the most egregious cases such as the over dozen lethal force incidents involving CBP agents that occurred between 2010 and 2011. It did not matter if the victim was a child or if there was clear video evidence of misconduct, such as in the case of Sergio Adrian Hernández Guereca. Supervising officials would protect implicated agents, and upper-management ignored the problems. In 2011, while I was Deputy Assistant Commissioner of IA, Deputy Commissioner Aguilar asked IA to take over investigations in every CBP incident where deadly force was used. In the United States, state and local police forces have jurisdiction over criminal investigations of use of force at the border that implicate CBP or other federal agencies. At most, CBP had authority to secure a crime scene until the competent investigating authorities arrived. Commissioner Tomsheck and I had to explain to Deputy Commissioner Aguilar that when BP agents use force against individuals, local law enforcement, and not CBP, had jurisdiction to investigate.
24. Deputy Commissioner Aguilar defaulted to insisting that CBP and BP were not involved whenever IA received information on use of force incidents at the border. If CBP or BP’s involvement was confirmed, Deputy Commissioner Aguilar would assume the agent had used reasonable force. At meetings when we would be brief on the incident, he would insist, “It’s a good shooting! It’s a good shooting,” even before basic facts about the incident were available. The victims of deadly use of force were assumed to be at fault. I heard officials claim that the victims had thrown rocks or were criminals who were “up to no good.” No remorse was ever expressed.
25. During my tenure as Deputy Assistant Commissioner in IA, Commissioner Tomsheck and I attempted to address problematic policies in CBP that fostered the culture of impunity. This included developing strategies to root out agents engaged in misconduct and abuse and increasing information sharing with other agencies. In furtherance of these goals, we attempted to forge stronger relationships with other federal agencies. While with state police, U.S. Customs, ICE, and CBP—in every position I ever held—I always tried to use force multipliers, i.e., find ways to increase the reach and effectiveness of the

agency. One common strategy, for example, was to create a task force with the participation of multiple agencies. I was always looking for ways to collaborate with anybody who could help me accomplish a job. CBP was the first organization I was ever part of that refused to work with other agencies. They did not play well with others. In 2011, CBP superiors went so far as to sign a memorandum of understanding with the Department of Homeland Security Office of Inspector General (DHS OIG) prohibiting IA from sharing any information with any other agency, including the FBI. This new policy further exacerbated tenuous relationships and made it difficult, and at times impossible, to effectively work in partnership with these agencies to investigate misconduct. This meant that the only consistent way to find out about misconduct was to rely on reports from direct CBP supervisors. But they often covered for those under their command, meaning there was no effective way to detect and prevent abuse.

26. Deputy Commissioner Aguilar and other senior CBP officials would routinely thwart any effort by IA to be a truly independent office. They attempted to strong-arm me into carrying out their orders without question. For example, on one occasion Deputy Commissioner Aguilar instructed Commissioner Tomsheck and me to “cook the books” in order to falsely reduce statistics related to corruption. IA Commissioner Tomsheck and I had compiled alarming statistics related to incidents of corruption committed by CBP agents. During a closed-door meeting on April 15, 2010, Deputy Commissioner Aguilar tried to pressure us to redefine corruption in order to reduce the number of incidents. He insisted that we only include mission-critical compromises, such as taking bribes or other payments in order to aid drug traffickers and human smugglers, and exclude offenses like sexual assault, physical abuse, or even misappropriating money from the definition of corruption. This nonsensical and disingenuous approach would reduce the number of corruption cases by nearly a third. We refused to follow Deputy Commissioner Aguilar’s order.
27. The reporting systems used by CBP to track the investigation of use-of-force incidents failed to prevent abuse. These reporting systems were used to track investigations as they unfolded. Agents conducting the investigation uploaded their reports into a reporting system. Then, their supervisors and superiors reviewed these reports. IA had its own electronic reporting system called the Joint Intake Management System that recorded all

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changes made in the system in order to prevent tampering with evidence or disrupting the chain of evidence. BP had a separate reporting system. In contrast to IA's system, BP reports could be altered without leaving an electronic fingerprint, which undermined the integrity of the system and made it easy to change official versions of an incident.

28. I have direct knowledge of multiple instances when reports uploaded onto BP's reporting system were later significantly changed from their original version. Commissioner Tomsheck methodically printed out versions of BP reports to determine if any changes were made. There were multiple times when he would find changes to the BP reports by comparing them to these earlier printed-out versions. For example, after one active-duty shooting incident, a report stating that BP agents had returned fire was changed to say that the shooters were unknown. Another example involved an agent who shot an unarmed Mexican teenager on the U.S. side of the border in 2010. According to the original report, the agent had said, "I am screwed, I am going to jail." These statements were omitted from a subsequent version of the report, which instead asserted that the agent had said that the agent had feared for his life.
29. I am aware of other ways that agents were shielded from accountability. For example, a video of an active-duty shooting incident involving BP agents I watched later disappeared.

ANASTASIO HERNANDEZ ROJAS CASE

30. When Anastasio Hernández Rojas was beaten and tased on May 28, 2010, I was the Deputy Assistant Commissioner of the U.S. Customs and Border Protection's Office of Internal Affairs. I was alerted to the incident late that night or very early the next morning. The next morning Internal Affairs had a meeting with the Deputy Commissioner David Aguilar. His initial reaction to the reports of the Hernández Rojas's incident was his typical reaction. He denied CBP's involvement even before all the facts regarding the incident were available.
31. It later became clear that there were several deviations from standard protocol in the Hernández Rojas's case. For instance, Border Patrol (BP) used an administrative subpoena to obtain a copy of Mr. Hernández Rojas's autopsy. This is an improper if not a

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criminal use of an administrative subpoena, which is only authorized for immigration matters. I routinely used administrative subpoenas when I was an ICE supervisory special agent but never in this manner. BP did not have jurisdiction to intervene in the investigation of Mr. Hernández Rojas's death. It is incredible that they attempted to get this information through that channel and problematic that the tactic worked. These subpoenas are administrative in nature and not supposed to allow access to something like an autopsy report. Agents received training on how to use these summons, but the protocol was not followed. After discussing this problem with Commissioner Tomsheck, we spoke with either Deputy Commissioner Aguilar or Chief of BP Michael Fisher because we were concerned that it was an abuse of power, and perhaps even criminal. We were told that the matter would be handled internally. And that was the end of that.

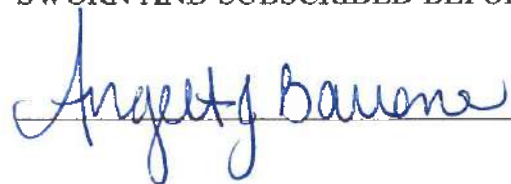
32. I also find it troubling that BP agents erased eye-witnesses video footage taken of the beating of Mr. Hernández Rojas from the pedestrian footbridge. It is protocol to secure the scene after an incident like this. It is not protocol to delete evidence taken by onlookers. It may have been proper for these videos to be copied and preserved by Border Patrol. However, by destroying the videos, agents tampered with evidence and should have been prosecuted for that conduct.
33. It is also strange but unsurprising that the San Diego Police Department was not immediately notified of the incident but learned about it the next day although local police has jurisdiction to investigate. CBP often took into their own hands investigations they had no authority to conduct.

I affirm that the statements contained in this affidavit are true to the best of my knowledge and belief.



James Wong

SWORN AND SUBSCRIBED BEFORE ME THIS 18th DAY OF MAY, 2018.



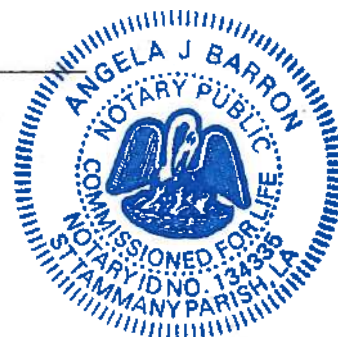


EXHIBIT E

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
ANASTASIO HERÁNDEZ ROJAS AND FAMILY VS. UNITED STATES

CASE NO. P-524-16

AFFIDAVIT IN SUPPORT OF PETITIONERS

I, James F. Tomsheck, do state and attest as follows:

1. During my 40-year and 4-month career in law enforcement, I held a wide range of employment positions at state and federal law enforcement agencies, which allowed me to gain extensive knowledge regarding investigative procedures, policies, and protocols. As a police officer and Secret Service agent, I have personally implemented and enforced best practices in law enforcement, and conducted numerous criminal investigations, including looking into fatal shootings involving law enforcement personnel. Moreover, from my time as a Secret Service agent stationed in Vancouver, Canada, I have experience with border security issues and transnational crime groups.
2. I was Assistant Commissioner of Customs and Border Protection (CBP) Internal Affairs Office (IA) for eight years and also the Chief Security Officer. Notably, when the Anastasio Hernandez Rojas's incident occurred in 2010, I was Assistant Commissioner and I have personal knowledge of the events and investigation that followed the incident.
3. I remain a recognized expert on various law enforcement topics, such as the appropriate use of force by officers because of my extensive career-based knowledge and close interactions with other policing agencies. I have testified before congressional committees about the importance of conserving the polygraph test for CBP agents and about integrity issues, and have spoken about CBP's high corruption rates. In 2016, I submitted an Amicus Brief to the Supreme Court for the case, *Hernandez v. Mesa*, in support of the family members of the 16-year old boy who was fatally shot by a Border Patrol agent two weeks after the Anastasio Hernandez Rojas incident. I have frequently spoken at law enforcement conferences both as a panelist and speaker and have conducted several interviews with media outlets discussing CBP's corruption and discrepancies in reporting its agents' use of force.

4. I have prepared this affidavit to support the petition filed by the family members of Anastasio Hernandez Rojas (Case Number P-524-16) before the Inter-American Commission on Human Rights.
5. The information contained in this affidavit is based upon my personal recollection of the Anastasio Hernandez Rojas incident. In preparation for this affidavit, I reviewed information shared with me about the case and documents from the police investigation of the incident.

I. EDUCATIONAL & PROFESSIONAL BACKGROUND

6. I graduated from the University of Nebraska at Omaha with a bachelor's degree in criminal justice.
7. I began my law enforcement career as a police officer at the Omaha Police Department in Omaha, Nebraska. I served as a police officer for 8 years and 8 months from October 1974 to May 1983. My responsibilities as an Omaha police officer ranged from patrol to complex investigative duties. I was a detective for 6 of those years.
8. My career in law enforcement continued when I joined the U.S. Secret Service and was an agent for 23 years. My duties while a Secret Service agent consisted of a range of investigative, protective, and intelligence assignments that included a four-year assignment to the Presidential Protective Division. The Secret Service was the first federal agency that required pre-employment polygraph tests. I was assigned to the agency's polygraph program for more than six years. I administered the first two special-agent polygraph programs. While in the Secret Service, I was also stationed at the Canadian border for more than nine years, dealing with criminal investigative and protective issues. I opened an office at the US consulate in Vancouver, British Columbia to deal with Secret Service investigative and protective responsibilities that involved transnational crime groups from China, Taiwan, and the Philippines who were engaged in the manufacturing of counterfeit currency, credit cards, and other financial crimes.
9. In 2006, my position in the Secret Service was as a Deputy Assistant Director in the Office of Investigations. As a Deputy Assistant Director, I directed the assistance to the Department of Homeland Security's Office of Inspector General (DHS OIG) with the

hundreds of Katrina fraud cases that were occurring not just in New Orleans, but also in locations across the country. DHS OIG requested support from Secret Service with these fraud cases. From this experience, I came away shocked as to how unprepared DHS OIG was in conducting investigations and writing arrest search warrant affidavits. Overall, DHS OIG agents seemed to have very little experience.

10. While I was still a Deputy Assistant Director in the Secret Service, Ralph Basham, then the Director of the Secret Service, asked me to assume the Assistant Commissioner position for CBP's Office of Internal Affairs (CBP IA). Basham told me he believed that my experience as a Secret Service agent at the Canadian border and my experience administering the Secret Service polygraph program made me the right person for this position. I agreed to assume the position of Assistant Commissioner for CBP IA. During my career in the Secret Service, I had achieved Senior Executive status, which is the civilian equivalent to becoming an admiral or general. I maintained that status at CBP. I retired from the Secret Service on June of 2006.
11. I served as Assistant Commissioner of CBP IA for eight years, from 2006 until 2014. I simultaneously held the titles of Chief Security Officer, responsible for all personnel and physical security concerns for CBP, and Senior Component Accountability Official, responsible for serving as the primary point of contact and CBP liaison for all external audits. During my time at CBP IA, I oversaw a surge in hiring of about 10,000 Border Patrol agents and the creation of 20 Internal Affairs field offices, and I directed a variety of investigative and security programs, including background clearances. When I arrived in IA, there were less than 10 investigators and all of them were stationed in D.C. with the exception of one investigator who was in Dallas, Texas. By late 2008, IA had about 230 investigators, many of whom were re-hired annuitants from agencies like the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), and the Secret Service. In later years, when budget cutbacks occurred, many of these agents were forced to retire. When I left CBP IA there were around 170 investigators.
12. I currently serve as President of Integrated Integrity Strategies LLC, from 2016 to the present.

II. CREATION OF CBP INTERNAL AFFAIRS

13. Founded in 2002, the Department of Homeland Security safeguards the American homeland by enhancing public security, which includes preventing terrorism, ensuring resilience to natural disasters, enforcing and administering immigration laws, and securing and managing the U.S. borders. The DHS Office of Inspector General (DHS OIG) conducts investigations of all DHS programs and operations with the goal to deter, identify, and address fraud, abuse, mismanagement, and waste of taxpayer funds. U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) are two of the 22 agencies within DHS.
14. ICE was created in 2003 and enforces federal immigration laws and gathers intelligence on national and international activities that threaten the security of the homeland. It is the largest investigative agency in DHS..
15. Founded in 2003, CBP is the law enforcement agency in the U.S. government that is responsible for protecting our nation's borders to stop threats from entering the United States, and for facilitating the flow of legitimate travel and trade. CBP is the nation's largest law enforcement organization with more than 60,000 employees. The U.S. Border Patrol (BP) is a unit of CBP and is made up of mobile, on-the-ground agents who prevent undocumented migrants, terrorists, and contraband from entering into the United States between the ports of entry. BP is specifically responsible for patrolling nearly 6,000 miles of Mexican and Canadian international land borders and over 2,000 miles of coastal waters.
16. CBP Office of Internal Affairs came into existence when former CBP Commissioner Robert Bonner, Deputy Secretary of DHS Michael Jackson, and designated CBP Commissioner Ralph Basham held discussions where Bonner expressed concern about the rapid expansion of Border Patrol in particular and how that would create integrity-related threats. Many people were hired in a short amount of time, as BP hired roughly 10,000 people over two years. Nothing like that had ever been done in U.S. law enforcement history. This was the largest and most rapid expansion of a law enforcement agency in U.S. history.

17. When I was still part of the Secret Service, Basham asked if I would consider assuming a new position in CBP IA to start up this office. He believed this office had to exist. I agreed and retired from the Secret Service to accept the position at CBP.
18. At first, DHS Office of Inspector General remained neutral about whether CBP IA should be able to exist as an investigative unit. Later, DHS OIG made it clear that they did not support the creation of the IA and would not give up their investigative authority.
19. In 2006, Border Patrol Chief David Aguilar did not want to staff up an integrity unit like CBP IA. Border Patrol deeply resented the decision to create an IA unit in CBP and did everything they could to undermine the office.
20. It was in this context of opposition that CBP IA was created.
21. While I was Assistant Commissioner, CBP Internal Affairs was charged with maintaining the integrity of the CBP workforce. It conducted investigations of alleged serious non-criminal misconduct of CBP employees and assisted the DHS OIG, U.S. Immigration and Customs Enforcement Office of Professional Responsibility (ICE OPR), the Federal Bureau of Investigations, and numerous other federal, state, and local law enforcement authorities in criminal misconduct investigations.
22. CBP IA oversaw all integrity concerns for CBP personnel and facilities. IA was also responsible for ensuring compliance with all CBP-wide programs and policies relating to corruption, misconduct, or mismanagement and for executing the internal security, integrity, and management inspections program. IA also screened potential CBP employees for suitability; educated employees concerning integrity responsibilities; evaluated physical security threats to CBP employees, facilities, and sensitive information; and inspected CBP operations and processes for managerial effectiveness and improvements.
23. CBP IA had nothing to do with recommending discipline. IA initiated investigations to establish facts and then reports these facts to CBP Human Resources (HR) and the component agency where the incident of alleged misconduct occurred. If HR needed more information in misconduct incidents, HR might have asked IA to go out and re-interview witnesses or new witnesses. IA did not recommend discipline.
24. Discipline is a combination of actions taken by Human Resources and leadership or management within the component agencies.

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25. During my time at IA, I noted that CBP component agencies like the Office of Field Operations appropriately disciplined employees. But repeatedly, Border Patrol would not follow what Human Resources recommended. In egregious circumstances where HR recommended removal, BP would often suspend an agent instead, or use a downward departure to reduce recommended discipline, as directed by BP leadership.

III. BORDER PATROL CULTURE OF INSTITUTIONAL PROTECTION

A. Independence from rest of CBP

26. From my personal experiences in law enforcement agencies, CBP is different than any other agency I have been involved with. Specifically, I have never seen an institution like one of its component agencies, the Border Patrol. Every U.S. Federal Law Enforcement Agency I know of is interested in identifying all the facts of an incident of wrongdoing by one of its officers. The leadership in those agencies makes a genuine effort to find out what happened. In this case, BP often tried to distort and spin many incidents, so that it would not damage its reputation. I have never seen an agency so consumed with its reputation and image. It is afflicted by an institutional narcissism.
27. As I witnessed it, the culture at Border Patrol is one where whatever is necessary is done to preserve the image of BP and promote the notion that BP is the nation's premier law enforcement agency. The institutional narcissism at BP has inevitably been used to justify excessive use of force incidents and to cover up corruption.
28. Beginning when he was the Border Patrol Chief and continuing when he became the Deputy Commissioner for CBP, David Aguilar advanced the notion that BP should become a domestic national police force, and be involved in more than immigration enforcement. Aguilar advanced the idea of BP as the national police force frequently at senior leadership meetings when he was Deputy CBP Commissioner.
29. Aguilar and Border Patrol leadership were always concerned that I was going to interfere with BP's image and culture because my reports, testimony, congressional briefings and statements did not reflect the "corporate message" and the notion that Aguilar was trying to advance of BP as the premier national police force.

B. Falsification of incident reports

30. There were many instances when I suspected that Border Patrol reports were modified to accommodate the wishes of BP leadership. In every use-of-force incident report involving BP, there was always a BP spin, it may not have been wholly deceptive, but it might have been a distortion or omission of information to represent that the incident had occurred in such a way that the use of force was legal and appropriate. This BP spin included making allegations regarding characteristics or elements about the victim. For David Aguilar, every shoot was a "good shoot." I recall meeting with Deborah Spero, then Deputy Commissioner at CBP, after a shooting incident and she was trembling because she was mad and concerned and asked why it was always a "good shoot." I agreed. It was highly suspect that BP very quickly came to the same conclusion that it was a good shoot every time. I never once heard Aguilar say that it was not a good shoot.
31. I cannot recall the specific date, but after 2010, CBP IA came to have a more structured initial reporting in place, which was required of everyone in the field. It took a few months to put this system in place, but essentially the structure was fill-in-the-blank answers and a quick narrative.
32. At the time of the incident involving Mr. Hernandez Rojas, CBP IA's goal was to capture as many facts as possible and report it either through email or the Joint Intake Case Management System (JICMS). Typically, the initial reporting was a series of emails and briefings from the field agent as the events unraveled in front of the agent. CBP IA and ICE reports were put into JICMS, but Border Patrol reports were in a stand-alone system. However, IA reports at times made reference to the BP reports. If something needed to be amended in the IA incident report, a supplementary report would be submitted. Initial reports tend to be less detailed, but as supplementary reports are written and more information is learned, the subsequent reports become increasingly detailed.
33. I was aware of at least one Border Patrol Situation Report (SIT) being altered after being created, which was brought to my attention by James Wong, the Deputy Assistant Commissioner at IA. The report was on the Juan Mendez use-of-force incident, where a BP agent shot and killed Mendez as he was running away. The initial SIT report accurately captured foot pursuit and shots fired, but later another version of the report changed it to make it appear as a justification for use of force. Wong made me aware that

the original reports had been changed. The initial report was very clear in suggesting that agent was almost certainly in the wrong, and included the following statement from the agent, 'I am going to be prosecuted for this,' which was later taken out of the initial report.

34. Another example of incident report being altered is the Sergio Hernandez case. This case is an excellent example. A week after Mr. Hernandez Rojas's death, an incident occurred in El Paso, Texas where Sergio Hernandez was shot and killed in Juarez, Mexico by a border agent. The initial Border Patrol report in the morning after the incident stated that Sergio Hernandez, a 15-year old boy, had illegally entered the United States and had struggled with a BP agent who had apprehended one of his friends. The report further stated that while the BP agent was trying to fend off Sergio, the agent's gun went off accidentally, striking Sergio. BP reported that Sergio stumbled back across the Rio Grande River and collapsed on the Mexico side. However, the information I received from CBP IA staff and the finding from an initial autopsy report indicated that Sergio had sustained a gunshot wound in the middle of the forehead.
35. When Border Patrol briefed its report on the incident, I challenged BP and they objected. I had been in law enforcement for more than 30-years at this point and in my experience, I had never seen someone shot in the forehead and stumble anywhere. When someone is shot in the forehead, typically instantaneous or near instantaneous death occurs. It was evident that Sergio was hit in the head with a 40-caliber bullet and fell where he was shot. BP management was furious that I had challenged them and they did not believe I had the right to do so. The next day, BP conceded that Sergio was on the U.S. side of the border when the gun accidentally went off and that he collapsed on U.S. soil, but they were adamant that Mexican police officers illegally entered and dragged his body back to Mexico soil. Only after Union Pacific Railroad security camera video surfaced did BP's story change. The video showed the BP agent firing three rounds into Mexico.
36. In another incident, Border Patrol was opaque about what happened in the Jose Antonio Elena Rodriguez case. This is a good example of BP injecting false information or manipulating information to give the impression that this was a good shoot. Jose, a 16-year-old boy was shot 10 times and killed in Nogales, Sonora, Mexico. The next morning, BP briefed the incident not only as a rock throwing case, but suggested that Jose was

supervising two marijuana smugglers. However, the marijuana smuggling allegations related to Jose Antonio Elena Rodriguez were not proven. Both CBP IA and the FBI saw video of the incident, but the original video was later "accidentally" erased.

C. Pushback on IA's attempts to strengthen accountability in use-of-force policy

37. A new use-of-force policy for CBP was finalized in the last months I was in CBP IA in late 2013 or early 2014. During the process to develop this policy, portions of the use-of-force policy came to my office for review and comment. Repeatedly, we would comment with most of the suggestions having to do with notification of use-of-force incidents. The comments would go to Border Patrol. Then many months would go by before another version came back to IA. Changes from our office were ignored or removed.

IV. BORDER PATROL CORRUPTION

A. Since inception

38. In March 2008, CBP IA conducted a baseline study to compare arrests and corruption at CBP compared to other agencies like FBI, Secret Service, Federal Air Marshall Service, DEA, ATF, ICE, and U.S. Marshall Service. It was a measure of corruption from October 2003 to 2008. The total number in CBP, I believe, was approximately 40. For statistical comparison, it was less than 10 in all of the other agencies combined. CBP is a larger organization, but in total number of officers it was smaller than the total number of personnel in other agencies at the time. This was a genuine statistical finding and a clear indication there was a significant problem in CBP that needed to be addressed. The rate of corruption in CBP was 7 to 10 times higher than those of other agencies. The legacy components (customs, immigration) always had a corruption problem. It has to be said: the border environment, especially in the southwest, has the highest threat for corruption. There is a concerted ongoing effort to compromise government officials on both sides of the border from transnational organized crime groups.

B. Aguilar's order to redefine corruption

39. In April 2010, I received a phone call from a staff assistant of then CBP Deputy Commission David Aguilar saying he wanted to see James Wong and me. It was just the

three of us in the room in this meeting. Within moments of us sitting down, Aguilar wrote down a number (either 27 or 21) on a piece of paper. He tapped the paper with a pen and told us that would be the number of corruption arrests we would report, even though the actual number was approximately 80 at the time. He said that we wrongly defined corruption. He accused us of including off-duty events. I countered that by saying that was not the case because we clearly differentiated between off-duty misconduct and corruption, which is defined by federal statute, and that definition is used by everyone in federal law enforcement. It was the same definition used by ICE, the Department of Justice, FBI, and Congress. Aguilar, pointing at the number he had written, was trying to get us to reduce the number of corruption cases. Wong and I were clear saying we would not redefine corruption to lower the number.

40. Back in our office, Wong and I looked at each other with the same response. Both of us had 35-plus years in law enforcement and had never seen anything like this. I was a police officer for more than eight years in Omaha and a Secret Service agent for 23 years, and I didn't believe things like that would really happen. The Deputy Commissioner in the nation's largest federal law enforcement agency had just given us an illegal order telling us to manipulate the number of corruption arrests. But I was adamant we would not stop accurately reporting corruption.
41. At another meeting around that time, Aguilar expressed intense rage towards me because I testified at a Senate hearing largely about the polygraph program. I was frequently in congressional staff briefings. I was in those meetings about every five or six weeks where I was transparent and candid about corruption in CBP. At that point, more than 55 percent of applicants for CBP officers or BP agents failed the polygraph, which is shocking.
42. Following my Senate testimony, Aguilar summoned us to his office. Aguilar repeatedly stated that my testimony had not reflected the corporate message on corruption. It was never clear what exactly the corporate message was, but it was something other than what I said. What was clear was that Aguilar wanted us to diminish the reported numbers of corruption by falsifying corruption statistics. Later in a news article, Aguilar stated he was directed by DHS senior leadership to redefine corruption. There was a series of

meetings about the corporate message on corruption and integrity over the course of a month.

V. BORDER PATROL POLYGRAPH AND BACKGROUND CHECKS

43. The Secret Service was the first federal law enforcement agency to require pre-employment polygraph. The first pre-employment polygraphs for Secret Service Special Agent applications were administered in the spring of 1987. I personally administered those polygraphs. I was assigned to the polygraph program in the Secret Service for six years. During that time I administered hundreds of polygraph examinations and, for a time, was the Acting Director of the program. My extensive experience with polygraph contributed to my decision to bring pre-employment polygraphs to the CBP pre-employment screening process. The pre-employment polygraph confirmed that many CBP applicants were engaged in felony crimes. Some were confirmed to be infiltrators with direct connections to cartels. When CBP began using polygraphs in February 2008, Border Patrol made every effort to prevent us from expanding the program. CBP withheld funds and attempted to undermine the program.
44. In January 2011, as the result of my briefings to congressional staff and my testimony to Congress about corruption and the value of the polygraph, President Barack Obama signed anticorruption legislation that mandated that all CBP applicants clear polygraphs before they were hired.
45. In 2012, I tasked CBP IA analysts to conduct a research project to evaluate hiring practices for law enforcement positions and evaluate what happened as thousands of polygraph tests were administered after background checks were conducted. One of the findings was that 65% of the time, applicants who cleared the background check failed the polygraph. Moreover, the reason that these applicants were failing the polygraph included revelations that some were infiltrators, part of cartels, involved in drug smuggling, or had committed felony crimes that the background check did not identify. The research project resulted in a proposal to eliminate the form of background checks conducted because they were both extremely costly and ineffective.

46. Over \$360 million were spent between August 2006 to 2012 to conduct background checks that the evaluation showed did not screen out cartel members and criminals. The proposal to eliminate background checks was distributed throughout DHS, but only the Chief Security Officer (CSO) approved it. The CSO warned me that many in DHS opposed the proposal. He expressed concern that background investigations contractors would be very angry.

VI. PROBLEMS WITH INVESTIGATION IN CASE OF
ANASTASIO HERNANDEZ ROJAS

47. CBP IA had limited investigative powers in the Anastasio Hernandez Rojas case, which was conducted largely by DHS OIG. OIG was supposed to share investigative findings, but they did not always do so.

A. How investigation protocol is supposed to work

48. Every allegation of corruption, misconduct, or excessive use of force was initially reviewed by DHS OIG. If OIG declined, then ICE Office of Professional Responsibility had the option to take the case. If they declined, then CBP IA could take the case. BP had no authority to investigate, but it nonetheless constantly tried to assert investigate authority, and very frequently interfered with legitimate investigations.
49. When DHS OIG produced a report, CBP IA would have an opportunity to see OIG's report, but could not offer comments. A proper OIG report was supposed to describe the incident in sufficient detail to allow those who can discipline the agents involved to properly decide what action to take. The report should just be a statement of the facts (reporting the investigation and what the investigators did) with no judgment at the end.
50. After DHS OIG completed its investigations, OIG was supposed to give its report of the case to agency leadership and refer for prosecution if appropriate. OIG does not prosecute. Analyzing whether policy was violated is the responsibility of Human Relations and the operational components. They evaluate the facts that were established in OIG's report to determine discipline. CBP IA did not have any role in discipline.

51. Through a series of leadership meetings, a taskforce coordinated efforts to address discipline across CBP, and I participated in some of those meetings to represent IA's findings. I observed that Border Patrol agents were very frequently not properly disciplined, especially when compared to other CBP components. I raised the issue and was told that it was not my area of responsibility and my opinions were "neither solicited nor appreciated." Other CBP components consistently disciplined agents, but BP was remarkably inconsistent in how they disciplined. It appeared to come down to how much they liked you. If they liked you, you could engage in misconduct and not be disciplined. If they didn't like you, you could engage in relatively minor misconduct and they would severely discipline you.

B. How CBP IA learned about Anastasio's incident

52. There is protocol for when CBP officers must notify other agencies about an incident like that of Anastasio Hernandez Rojas. Internally, CBP officers have an obligation to report to leadership and to IA management. Externally, CBP is supposed to report the incident to the state or local agency that has jurisdiction over the incident. Where there is injury or death, the state or local agencies would have the lead in the investigation. In the Anastasio case, CBP officers did not fully follow protocol by not immediately communicating with local police with jurisdiction over the area until the next day.
53. CBP IA was notified the night of the event. I was briefed several hours later, around 7:30 in the morning before attending the Commissioner's morning brief. I was briefed on the incident by CBP IA Deputy Commissioner James Wong and other staff in DC, who received information from staff at the San Diego IA office. The case was also mentioned in the intelligence and operational briefing that went to CBP leadership. This included a briefing from CBP Office of Field Operation.
54. In the morning briefing, and subsequent briefings, Border Patrol repeatedly stated that Anastasio was not restrained, that he was standing, and that he was combative when he was Tased. The initial briefing also mentioned that Anastasio Hernandez Rojas appeared to be under the influence of something or suffering some mental problem that caused him to become noncompliant and combative after having been more than somewhat cooperative during other stages of his detainment

55. This was the info received by the San Diego IA Field Office, presented to headquarters staff for CBP IA, knowing there would be a briefing before the Commissioner. The CBP Field Operation reports stated that Anastasio Hernandez Rojas was restrained on the ground.
56. The CBP Field Operations reports and the Border Patrol reports were the first indication that something was wrong in how the Anastasio Hernandez Rojas incident was being reported. All of the Field Operations reports clearly stated that Mr. Hernandez Rojas was face down on the ground and handcuffed when Tased. Jerry Vales, the CBP officer who Tased Mr. Hernandez Rojas, stated this in his own report. None of the Border Patrol reports reflected this. During the Commissioner's morning briefing when the incident was discussed, David Aguilar stated that all reporting of this incident would reflect that Mr. Hernandez Rojas was standing, unrestrained, and combative when he was Tasered.
57. I challenged Aguilar's assertions by stating that there are reports that reflected otherwise. Aguilar was furious with me for pointing that out. In addition, I informed Aguilar that I had already approved CBP IA reports that noted that Mr. Hernandez Rojas was on the ground and handcuffed when Tasered. Aguilar very clearly did not want any reports from IA or anywhere else that did not reflect anything other than Mr. Hernandez Rojas standing, unrestrained, and combative when he was Tasered. I understood that Aguilar wanted me to falsify reports and did not want this critical portion of events to be accurately documented.
58. During one of the incident meetings, there was agreement among many that Taser use is appropriate when a person is non-complaint, but there was no discussion about whether Taser use is appropriate when a person is handcuffed or not. Aguilar did not want to accept the reality that Mr. Hernandez Rojas was on the ground handcuffed.

C. DHS OIG's refusal to share information

59. CBP IA had a small supportive role with FBI involvement in the Anastasio Hernandez Rojas case. However, IA was walled off from information by DHS OIG. Subsequently, Commissioner Bersin asked IA to conduct a fact-finding investigation. There was significant resistance from DHS OIG because they stated they would establish the facts. This demonstrated how dysfunctional the relationship between DHS OIG and IA was.

OIG would conduct its own investigation with no direct line reporting to the Commissioner.

60. In Anastasio Hernandez Rojas's case, DHS OIG were the initial investigators on the ground. They have an office in San Diego and were on the scene that night. CBP IA was also present with a San Diego field office headed by Kathryn (Kathy) Butterfield and staffed by nearly 20 agents. But CBP IA got there after DHS OIG had already arrived. At this point, DHS OIG could have interviewed witnesses, and I believe they did. They were not going to share information.
61. Within two or three days of the incident involving Anastasio Hernandez Rojas, CBP Commissioner Bersin personally gave me an order that departed from previous incidents. At the time, Bersin had been in place for about eight to nine weeks, and he was frustrated that DHS OIG was on the case and would not share information until they completed the investigation. Bersin directed me to have IA conduct the fact-finding investigation that would monitor DHS OIG's investigation to learn as much as possible. Bersin told me to report directly to him whatever IA was able to confirm.
62. Following this order, IA agents from the San Diego office engaged with DHS OIG investigators and Border Patrol agents. This is when I first discovered that the Border Patrol was conducting its own unauthorized investigation. It was then that DHS-OIG told us that Bersin did not have the authority to direct IA to conduct fact finding. This was an attempt to prevent CBP IA from having any involvement.
63. In San Diego, Special Agent Butterfield was in charge of the CBP IA investigation. I directed her to do fact-finding as requested by the Commissioner. I had conversations with her more than once a day. In all these conversations, she reported that she was receiving extreme resistance from Border Patrol and DHS OIG.
64. Outside of IA, CBP personnel should not be investigating integrity issues. Border Patrol, without authority, aggressively conducted their own investigations that interfered with other investigations.
65. In a conversation with DHS Assistant Inspector General, John Dupuy, who came into that position after the initial investigation was conducted when the FBI reentered the investigation, Dupuy said the initial investigation was riddled with errors and poorly done.

66. In Anastasio Hernandez Rojas's case, CBP IA relied on the DHS OIG report. IA saw it, sometime in 2011, close to a year after the death of Anstasio Hernandez Rojas. I recall it relied on the autopsy report that stated his death was attributed to preexisting medical condition, the physical stress of being in an altercation, being Tasered three times, and methamphetamine intoxication. It is this combination that the report stated contributed to cause of death.
67. When I first saw the initial DHS OIG report, I was in disbelief. I didn't believe it was a well-written report. I didn't believe it was thorough or complete. I believe in most instances OIG reports were lacking in specificity and clearly establishing information that had been obtained through various interviews. I've been reading and writing investigative reports for over 30 years at this point. I found DHS OIG reports to be poorly written and not reflecting a sufficient level of investigation. I found this report to be consistent with previous OIG reports. I had concerns about all DHS OIG investigations.

D. Order from Aguilar to have reports state Anastasio was standing and combative

68. Aguilar ordered me at least twice to reflect that Anastasio Hernandez Rojas was unrestrained when he was combative, even though I informed Aguilar that this was not the case based on the facts reported. I had statements from CBP officers that said Anastasio Hernandez Rojas was facedown on the ground and handcuffed behind his back when Tasered.
69. Periodically during the week following the tragedy, Aguilar ordered me under different circumstances that no reports authored by anyone in IA should mention this. Aguilar wanted all reports to falsely reflect that instead Anastasio Hernandez Rojas was standing and combative. When I was ordered to do this, I told Aguilar that IA already issued reports correctly stating otherwise.
70. There are only two instances where, in my 40 years in law enforcement, was I ordered to falsify reports. In both of these instances David Aguilar gave me that order.
71. It was standard practice for Border Patrol to defend incidents in use of force, to always make it appear that it was justified. This was frequently done by distorting or falsifying information that justified use of force. Border Patrol frequently attempted to spin incidents involving use of force that ended in death.

72. In one meeting, David Aguilar insisted that Anastasio was standing and combative. Aguilar essentially said to repeat, "he was standing and combative," In the room was the Assistant Inspector General (AIG) and deputy AIG at DHS OIG, but no one wanted to correct Aguilar, and everyone went along with him even though I already knew, we all knew, that that was not the case. Bersin let Aguilar demand from the DHS-OIG Special Agent in Charge in San Diego over the phone that he agree with Aguilar that Anastasio was standing and combative. Nobody else spoke up.

VII. FBI AND IA's COLLABORATIVE RELATIONSHIP; TENSION WITH DHS OIG

73. The Federal Bureau of Investigation (FBI) is the main federal law enforcement agency in the United States dealing with corruption, misconduct and executive use of force. It is part of the U.S. Department of Justice (DOJ), which is the federal executive department responsible for the administration of justice. The FBI frequently partners with the Department of Homeland Security (DHS), sharing information about investigations and threats to the United States.
74. During one of the first Commissioner's morning briefings following the incident, I recall a discussion about contacting the FBI for them to consider bringing assault charges against Hernandez Rojas for assaulting border agents. I do not recall who presented this idea, but I believe it could have either been Aguilar or another Border Patrol official. This idea did not cause a reaction in the room because in every use-of-force incident, the FBI was asked to consider bringing assault charges. This was not entirely unusual or atypical, but in cases where the alleged perpetrator is deceased or dying, it becomes more unusual.
75. There were many instances where CBP IA worked in a collaborative way with other agencies, but rarely did that occur with DHS-OIG in the timeframe of 2010, during Anastasio Hernandez Rojas case. In some instances, the FBI would take cases, and in every instance I am aware of, the FBI would work in a fully collaborative way with IA. IA worked well with FBI, which intensified the conflicts between IA and DHS OIG, which deeply resented that IA cooperated with the FBI. This was frequently stated in meetings after meeting after meeting: DHS OIG took the position that the FBI should only be involved when DHS wanted FBI to be involved, and this was an incident that DHS-OIG did not want the FBI to be involved. There was a strong desire on the side of

DHS to not let the integrity problems of DHS end up in the hands of the Department of Justice.

VIII. UNAUTHORIZED INTERFERENCE IN THE INVESTIGATION

A. Obstruction of justice

76. There is a policy for preserving evidence at the scene of an incident in every law enforcement agency. At that time, CBP did not have an agency-wide policy, but I believe the components of CBP did have such a policy. In any event, it was standard practice in law enforcement.
77. Based on my personal knowledge of the events, CBP officers disbursed witnesses the night of Mr. Hernandez Rojas's death and destroyed eyewitness video documenting the incident. In every law enforcement agency, the presumption is that evidence should be preserved in best way possible. Taking away cell phone and video from witnesses to an incident is in violation of standard practice and policy. CBP officers justified the disbursal of witnesses and the destruction of eyewitness video based on a CBP policy that prevents civilians from videotaping operations at the ports of entry. Erasing these devices is an inappropriate application of this policy. When I heard the justification, I knew that it was contrived and absurd. When it was revealed at the Commissioner's morning briefs that Border Patrol agents and CBP officers used this policy as a justification, Alan Bersin, Commissioner of CBP at the time, pointed out that should have never happened. Similarly, Thomas Winkowski, Assistant Commissioner for CBP Field Operations, knew it should not have happened, but also knew why it had happened. In Winkowski's opinion, he stated the officers were choosing the wrong of two policies where evidence should have been preserved.
78. Based on my law enforcement experience, the appropriate thing to do would have been to identify the witnesses, asked them to remain at the scene to facilitate interviews, and documented their interviews. CBP personnel outside of IA should not have been doing any interviews. Seizing the phone, downloading the video, and then deleting the video off the phone was not the appropriate thing to do here. While it would have been an inconvenience to the witnesses, I would not have attempted to download the video. I would have asked a forensic expert to download the video.

79. Knowing what I know now, I believe there was an effort to conceal the video footage of the event from SDPD. Former Acting Commissioner Jayson Ahern was passionate that everything that CBP did should be captured by video to benefit CBP. This would serve to confirm that CBP is doing things properly. Far more often than not, the video supports what CBP officers are doing at the port of entry. CBP IA, through the security management division, was responsible for placing videos throughout the organization and coordinating with operational components. However, because of budget constraints, many of the video cameras within CBP were in a state of disrepair. For example, there was a point when more than 70% of the security cameras at CBP headquarters in the Ronald Reagan building in DC were not working and could not be fixed for budget reasons. It was outrageous that these federal buildings did not have functioning cameras. This situation did not improve until my final months when CBP-IA obtained the required funding to fix the cameras.

B. Failure to abide by policies

80. I assumed that SDPD was notified of the incident immediately because that was protocol. Later, I was informed that there was a delay in notifying SDPD, which struck me as very odd. For me, it is hard to believe that this delay was just an oversight. I suspect that this was used to buy time, enabling Border Patrol to create a false narrative. I was also aware of another incident, in the trial of a Border Patrol agent in Arizona, where there was a BP delay in contacting the local investigative agency. The BP agent was tried for manslaughter for a use-of-force incident that occurred before I came to CBP.
81. Previously, Aguilar and Border Patrol staff had informed me that they wanted CBP IA to be in charge of all use-of-force incidents and not allow state or local authorities to investigate. Aguilar stated that he wanted it to be the same way as in the Secret Service. I informed Aguilar that in the Secret Service use-of-force incidents are investigated by the local authority.

C. Intrusion into SDPD investigation

82. The SDPD's situation report indicating that they were coordinating their investigation with BP and ICE was problematic. Border Patrol in particular had no role in conducting an investigation, but nonetheless they aggressively pursued an investigation.
83. During Mr. Hernandez Rojas's autopsy, Border Patrol was present. I believe that their presence was inappropriate and in violation of policy, but this incident is like countless others, BP improperly trying to assert themselves in events that had potential to embarrass the agency. I was constantly insisting that BP was inserting themselves into scenarios they had no appropriate place.

D. Illegal use of immigration subpoena

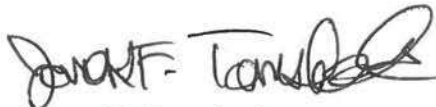
84. During the investigation, Border Patrol used an administrative immigration subpoena to obtain Mr. Hernandez Rojas's autopsy report. BP's use of the immigration subpoena was more than inappropriate: it was illegal. Obtaining the autopsy report using an administrative subpoena is illegal and potentially obstruction of justice.
85. Those BP Agents who accessed the autopsy report should have faced consequences, but there were none. I found out later that then Chief of Border Patrol Michael Fisher ordered San Diego agents to use the subpoena to get the autopsy. I am aware of Border Patrol inappropriately using the subpoena power in another incident as well. I raised concerns about this practice, pointing out that this was highly improper and there should be consequences for the misuse of the subpoena. Disciplinary action should have occurred, but never did. Every time I made recommendation about a disciplinary process, I was told that it was not my area of concern.

IX. CLOSING

86. Following the death of Anastasio Hernandez Rojas, CBP IA, under my direction, made every effort to establish facts, document and communicate those facts, and provide assistance to all agencies legitimately engaged in the investigation of the death. I personally directed that the actions of CBP IA would be conducted in a manner that promoted transparency and accountability. These efforts of CBP IA were significantly frustrated by the leadership of both CBP and the Border Patrol as they instead attempted

to present a false narrative intended to obscure the facts. In an effort to preserve and enhance their authority, DHS OIG also interfered with CBP IA when conducting their investigation in a manner to accommodate CBP and Border Patrol leadership.

I affirm that the statements contained in this affidavit are true to the best of my knowledge and belief.



James F. Tomsheck

SWORN AND SUBSCRIBED BEFORE ME THIS 13th DAY OF AUGUST 2018.



Notary Public - Enrique Luna

Enrique Luna, Notary Public
Montgomery County, Bethesda, Maryland
My Commission Expires Aug. 04, 2019

EXHIBIT F

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
ANASTASIO HERÁNDEZ ROJAS AND FAMILY VS. UNITED STATES
CASE NO. P-524-16
AFFIDAVIT IN SUPPORT OF PETITIONERS

I, John Edward Dupuy, do state and attest as follows:

1. I am a U.S. civil servant and currently the Deputy Director Inspector at the Office of Enterprise Assessments at the U.S. Department of Energy. I have been a civil servant for the past twenty-eight years working in the Office of the Inspector General (“OIG”) at different U.S. Departments. I have extensive experience with the mandates and protocols for investigations carried out by the OIG, including those with allegations of excessive use of force by U.S. federal agents.
2. I have prepared this affidavit to support the petition filed by the family members of Anastasio Hernández Rojas (Case Number P-524-16) before the Inter-American Commission on Human Rights.
3. I provide this affidavit to share my knowledge of the OIG investigation into the use of force and death of Mr. Hernández Rojas. When I reviewed the investigation file two years after the incident I was shocked to see what I believe was a lack of diligence and thoroughness. From my recollection, the OIG relied entirely on the County of San Diego’s Police report to conclude that an OIG investigation was not warranted. The OIG did not do a criminal or misconduct investigation in this case. In my opinion, the OIG should have opened a criminal or, at the very least, a misconduct investigation. An autopsy report is probative but should not be dispositive. The OIG is responsible for investigating the facts and this did not happen in Mr. Hernández Rojas’s case. This case is an example of a pattern of dereliction of duty that I

observed from the DHS OIG Office of Investigation San Diego field office in investigations involving allegations of use of force by federal agents.

EDUCATIONAL AND PROFESSIONAL BACKGROUND

4. I attended the University of California, Los Angeles (UCLA) from 1983 thru 1987, graduating with a Bachelor of Arts degree in Political Science. While studying at UCLA, I enrolled in the Army Reserve Officer Training Corps. In 1998, I also graduated in with a law degree from Golden Gate University.
5. Following my graduation from college, I was commissioned as an Army Officer the U.S. Army where I served as a military intelligence officer. I left active service after four years and continued to serve as a reserve officer for an additional four years.
6. In 1991, I began a career as a civil servant in the U.S. federal government. I have spent the past twenty-seven years investigating government corruption and misconduct from within the Office of Inspector General (OIG) of various U.S. federal government departments.
7. The OIG are independent and impartial units of U.S. federal government departments that conduct and supervise audits and investigations relating to the programs and operations of those departments and their component agencies. One of the mandates of the OIG is to prevent and detect fraud and abuse in the agencies' programs and operations. The OIG carries out its mission, in part, through investigations. Each OIG has an Office of Investigations that investigates allegations of misconduct involving the respective department's employees and contractors. All of my positions at the OIG have been in the respective OIG's Office of Investigations.
8. In 1991, I joined the OIG of the U.S. Department of Housing and Urban Development (HUD) as a Special Agent-in-Charge. I held this position, in different field offices, for

fourteen years. As a Special Agent-in Charge, I investigated allegations of criminal, civil, and administrative misconduct against HUD employees, contractors, and grantees.

9. I carried out criminal investigations from intake through to adjudication or declination from a prosecutor. My investigations aimed to establish the facts and determine if there was support for the allegations. To accomplish this goal, I developed extensive knowledge of the U.S. criminal code (known as Title 18), and relevant civil legislation. My training included courses on constitutional protections, such as use of force standards under the Fourth Amendment, and the tools involved in administrative investigations, such as administrative subpoenas.
10. In 2005, I joined the U.S. Department of the Interior as a Deputy Assistant Inspector General for Investigations, and in 2009, I was promoted to the Assistant Inspector General for Investigation at the OIG of the Department of Interior. I held this position until May 2012. As the Assistant Inspector General for Investigations, I was part of the team at Headquarters Operations and was responsible for the day-to-day operations, strategic planning, and supervising the investigating arms of civil, criminal, and misconduct cases. I was also in charge of the policies and procedures for the Office of Investigations and had to ensure that our practices complied with all investigative and ethical guidelines.
11. In May 2012, I joined the U.S. Department of Homeland Security (DHS) as the Assistant Inspector General for Investigations. This is a position at Headquarters. I was responsible for supervising the performance of all investigative activities and overseeing all DHS Internal Affairs units. I was in charge of case management, case selection, and overseeing investigations, which would include making sure the agents followed the guidelines and standards for investigations and handled the evidence properly.

12. Although I was not working at the OIG DHS on May 28, 2010, when the Anastasio Hernández Rojas incident occurred, senior management brought the case to my attention shortly after I started in 2012. I was responsible for overseeing investigations and there was intense congressional and public interest in the case after news coverage revealed new video evidence. I reviewed the file and shared senior management's concern with how this matter was handled. The file was very thin—there was a lack of diligence and activity in investigating this case. I asked the agent in charge of the initial investigation to re-open the case, but I was unsuccessful.
13. In 2015, I became the Assistant Inspector General for Investigations at the OIG at the U.S. Department of Energy, and in November 2016, I was promoted to Deputy Inspector General for Investigations. I remain an active civil servant.

INTERNAL INVESTIGATIONS AT THE DEPARTMENT OF HOMELAND SECURITY

14. The Department of Homeland Security's OIG Office of Investigations is responsible for investigating allegations of criminal, civil, and administrative misconduct involving DHS employees, contractors, grantees, and programs. DHS consists of twenty-two component agencies (or sub-agencies or programs and operations). U.S. Citizenship and Immigration Services, United States Customs and Border Protection, and United States Immigration and Customs Enforcement are three of those component agencies. Allegations involving their employees or contractors fall within the jurisdiction of the DHS OIG Office of Investigations.
15. Investigations conducted by the OIG Office of Investigations can result in criminal prosecutions, fines, civil monetary penalties, administrative sanctions, and personnel actions. The OIG Office of Investigations oversees the Internal Affairs (Offices of Professional

Responsibility) at all DHS agencies. Internal Affairs (or Office of Professional Responsibility) are offices within a DHS sub-agency, which are responsible for investigating allegations of misconduct involving that agency's employees. Internal Affairs offices are not independent. They are part of their respective agency and report to the head of the agency they are investigating.

16. The OIG Office of Investigations has the first right of refusal for investigating all criminal or misconduct matters arising within DHS. For example, when an incident occurs or an allegation is made about a DHS staff or contactor's involvement in excessive use of force, the DHS component agency must bring this to OIG's attention. The OIG then decides whether to: (1) conduct an investigation; (2) conduct an investigation jointly with the relevant component agency; or (3) allow the component agency to carry out the investigation with OIG maintaining a right of supervision. During my time at DHS OIG, we did not have capacity to run all investigations. Our office would typically investigate particularly egregious violations such as excessive use of force allegations.
17. While I was at DHS, the OIG Office of Investigations protocol for an investigation into a use of force allegation was as follows. First, we would open the matter in the case management system. My office then assigned the matter to a specific regional office.. Cases could also originate in the field and they would manage the case. The supervisor for that office, the Special Agent-in Charge, would open the matter and assign it to a case agent, who would be lead on the investigation, with oversight by a first line supervisor and the Special-Agent in Charge. The case agent would investigate the matter to decide whether it should be opened as a criminal and/or administrative misconduct case, or whether it should be closed without further investigation.

18. Case agents are fact-gatherers and were expected to use a number of techniques to collect and analyze evidence. The case agent would conduct interviews with witnesses, victims, and persons involved in the incident and gather non-testimonial evidence. The case agent would document all their investigative activity and evidence gathered and summarize their factual findings in a memorandum, which would be stored in the file in the case management system.
19. OIG offices have concurrent jurisdiction with the Federal Bureau of Investigation (FBI). The Attorney General Guidelines require OIG offices to promptly notify the FBI upon initiating a criminal investigation of alleged civil rights violations. The FBI has primary exclusive jurisdiction: they determine whether to take exclusive control over the criminal aspect of the investigation or investigate jointly with the OIG. DHS OIG also has a Memorandum of Understanding with the Department of Justice, Civil Rights Division, Criminal Section, which requires DHS OIG offices to notify DOJ within 24 hours, or the next business day, of receiving notice of an incident that suggests the possibility of use of excessive force under color of law. If DOJ chooses to investigate the matter, OIG and FBI investigators may work together. When they work together, OIG agents become part of the prosecution team.

THE TOXIC ENVIRONMENT AT THE DEPARTMENT OF HOMELAND SECURITY

20. I started at the DHS OIG in 2012 and stayed for nearly three years. It was a toxic and dysfunctional environment.
21. I was detailed to DHS from Department of the Interior. I was brought in to address the professionalism of the investigations. There was no senior leadership at DHS OIG when I arrived. All OIG supervisory and managerial personnel were on administrative leave or detailed to another agency. The entire leadership team of the DHS OIG was under criminal or

administrative misconduct investigations following the indictment of the former head of the OIG office in McAllen, Texas for fabricating investigative reports. I was brought in and replaced Thomas M. Frost, the OIG's top criminal investigator, who was on leave following the criminal investigation.

22. When I started, the morale at the office was quite low, and the office environment was one of chaos in terms of work, leadership, and budget. The Office had strained relationships externally with Internal Affairs at Customs and Border Patrol, the FBI, and DOJ. The Office was not well respected by other law enforcement entities. The internal relationships between headquarters and field staff were fractured, especially following the removal of leadership at headquarters. When I joined DHS OIG, the office had better relationships with CBP officers—those who they were mandated to investigate for corruption and misconduct--than with Internal Affairs. It should have been the other way around, but there was a turf war with Internal Affairs (now called Office of Professional Responsibility). Relations were strained with Internal Affairs because they wanted control over many of the investigations but OIG had the first right of refusal. I questioned the neutrality of the OIG because of the close relationship the office maintained with CBP.
23. At the case level, across the board, DHS OIG internal investigations did not comply with investigative and ethical standards. There was a lack of documentation in the case management system for open and closed investigations. Files did not include documentation of investigative activity or case notes. Case agents must memorialize their investigative activity. If it is not documented, it is not done. There were cases that had been opened for six months with little documentation. To me, this suggested that the case agents were not moving forward on these files.

24. DHS OIG made claims about its investigations leading to prosecutions, but there were no underlying documents to support these claims. The state of affairs and investigations showed a complete failure of quality standards. It was the result of a management and leadership failure. In fact, the DHS OIG almost failed the Council of the Inspectors General on Integrity and Efficiency (CIGIE) peer review for 2013/2014. CIGIE is a statutorily created independent body that develops policies and standards applied in the investigations by Offices of Inspectors General. CIGIE organizes and conduct peer reviews of those offices. The peer review found a complete failure to implement and abide by quality standards. One particularly worrisome finding was that the reviewers could not find support for about 40% of the criminal investigations that the OIG claimed resulted in indictments or convictions. The OIG was inaccurate in its statistics, and was taking credit for results achieved by the work of component agencies.
25. Although some field offices took civil rights cases seriously and carried out thorough investigations, I saw a lack of diligence and investigative work in San Diego. Before arriving at DHS, I was at the OIG at the Department of Interior. Like DHS, Department of Interior had oversight over law enforcement operations. If allegations of civil rights or use of force arose involving park police, our protocol in administrative misconduct review was to do a use of force analysis (an after-action review). The purpose of the analysis was to look at the agent's compliance with tactics and procedures. An after-action review would look at the root cause and factors that led or allowed this use of force to occur. This analysis would explore: What training the agent received? Did the training permit the force that the agent used? It would assess the agent's resort to force, looking at whether the force was the least amount necessary. It was not the culture or practice at DHS OIG to do these after-action reviews.

OIG's INVESTIGATION OF THE HERNÁNDEZ ROJAS INCIDENT

26. I joined the OIG at DHS in the spring of 2012. Shortly after arriving, within the first quarter, Steve Laferty, the then Assistant Inspector General of DHS OIG brought the Anastasio Hernández Rojas case to my attention, because there was a high level of public and congressional interest in the case. OIG had closed the case in January 2012, but an eyewitness video came out in the news around the time I arrived, which brought attention and interest to the case. The eyewitness video directly contradicted CBP's version of the event. CBP agents had claimed that Mr. Hernández Rojas was standing and combative, but the video showed him handcuffed in a fetal position on the ground, pleading for his life.
27. When Laferty brought the case to my attention he expressed concern with how the investigation was carried out. He felt like something was wrong with the investigation. He said the file was very cursory for a case with congressional and public interest. He was concerned about the lack of diligence and follow up.
28. After Laferty brought the case to my attention, I reviewed the file, and based on what I saw, I shared Laferty's concerns. I was concerned about the lack of diligence in the OIG's investigation. The case file was thin. The only paperwork I saw was a cover memo by the Special Agent in Charge at the San Diego field office, Dennis McGunagle, closing the case. The memo was de minimus: it was not more than a few pages, fell short of investigative standards, and did not follow investigative procedure. This was a transmittal memo attaching the San Diego autopsy report and deeming that no further investigation was required.

29. Based on my review of the file, the investigation did not meet the standard protocol and fell short of meeting the duties and responsibilities of the OIG. I do not recall seeing any documentation of investigative activity. I don't recall if the investigator even conducted any interviews. There should have been interviews and a separate inquiry, but I didn't see any signs of such investigative activity. I also did not see any recommendations regarding whether the matter should be opened as a misconduct case or referred to DOJ for a criminal investigation. This is all within the domain and responsibility of the OIG investigators.
30. It is standard practice to rely on an autopsy report as evidence. An autopsy report may be probative towards a use of force allegation. But the autopsy is not typically dispositive. It is something to consider along with other evidence. Additional work should be done to uncover the facts for the various elements in the civil rights claim and determine whether a criminal investigation was warranted. It would have been appropriate and typical practice to discuss the matter with DOJ/FBI. The OIG investigator could have shared his belief that a criminal investigation was not warranted and asked for their opinion. As far as I can tell, this was not done. Even if a criminal investigation wasn't necessary, the OIG should have done an administrative misconduct investigation to assess how and why use of force was used against Mr. Rojas and whether it was in line with agency policies and training.
31. I did not see an after-action review in the Anastasio Hernández Rojas file. There was no review of the agency's training, tactics, procedures, or protocols, or an assessment of whether CBP handled the matter in accordance with those procedures and protocols. I did not see a review of the agents in charge or an incident response. Based on my previous experience, the OIG investigator should have assessed: agency procedures, protocols, tactics and training; what decisions were made and by who; whether the officer/agents involved followed the

relevant procedures and protocols; and the specific officers/agents training and their use of equipment. In the case of Anastasio Hernández Rojas, the officer should have assessed whether it was appropriate to use a Taser? Why was an intermediate force option not used? The review should be done with the aim of determining whether the agent acted in accordance with the agency rules, procedures, and training.

32. After reviewing the file, I discussed my concerns with Laferty. He had also previously worked at Department of Interior OIG and understood that investigations of use of force cases should include after-action reviews. These reviews were not required by our standards or policies, but, in my opinion, they were essential in understanding what allowed or led to the agent using force and should be done in use of force cases. He told me that there was no culture at DHS OIG at the time to do these types of reviews. He said the view at DHS OIG was that an after-action review was not necessary if the matter was not criminal, and if it was criminal FBI/DOJ would handle it. They did not consider it their job. From my perspective and based on my experience at other OIG offices, this should have been done regardless of whether the FBI took the case or not. The OIG has a role to understand why this happened.
33. In my review of the file, I watched the recently released eyewitness video of the CBP agents beating Mr. Rojas. The video showed Mr. Rojas detained in handcuffs lying on the ground while a CBP officer Tased him. I reviewed media coverage which reported that Mr. Rojas was handcuffed and on the ground as CBP Tased him. There was a significant discrepancy between the OIG file and the video and media reports regarding Mr. Rojas's physical position while being Tased. The OIG file did not report that Mr. Rojas was detained at the time he was Tased. When someone is Tased while detained that is a fact that should be analyzed in a criminal investigation, it goes towards one of the elements of the crime, that the action

happened under the color of law. Or at minimum, OIG should have a discussion about the matter with DOJ or the FBI and get their opinion. And at the very least, use of force against an individual who is detained requires an administrative misconduct review to assess the agent's use of force against agency policies and procedures. I believed that the OIG investigation needed to be reopened to examine this new evidence and the significant discrepancy in Mr. Rojas's physical position while being Tased. We needed to understand how and why an agent Tased someone who was already detained?

34. I raised the idea of re-opening the investigation with Steve Laferty. He explained that there was not much we could do at headquarters. Headquarters was in a state of disarray. The entire leadership team was on criminal or administrative misconduct and so field offices had a lot of discretion.
35. I raised my concerns with the case with Charles Edwards, the Acting Inspector General and Deputy Inspector General of the DHS at the time. I told him that the investigation, or lack thereof, in this case did not follow best practice. This matter should not have been closed without an investigation. Edwards told me that before I arrived, McGunagle, the Special Agent in Charge from OIG's San Diego office, had flown out to DC to give a briefing to members of Congress and legislative staffers. Edwards seemed satisfied by this action and did not see any reason that further investigation or action should be taken.
36. I also spoke with James Tomsheck, Assistant Commissioner of Customs and Border Protection Internal Affairs Officer, about the matter. Internal Affairs received a copy of the OIG's report and Tomsheck had reviewed it. In general, Tomsheck had concerns over CBP's use of force, and felt that management was not being aggressive enough in stopping these practices. In Mr. Rojas's case he had concerns about how or why the incident happened. Who

was in charge? Who failed to stop the incident? He was also concerned about the lack of reporting and that there were discrepancies amongst CBP officers at the time. Tomsheck felt that more should have been done by the OIG/Internal Affairs to properly investigate what happened in Mr. Rojas's case, but he felt constrained and limited in his abilities to do anything.

37. I also raised my concerns with Dennis McGunagle. I asked him about the case and shared my concerns about the lack of due diligence with the investigation. I recommended that the investigation be re-opened. McGunagle refused. He was adamant that nothing more should be done--the case was closed and should not be reopened. He saw no additional value in OIG reopening the case.
38. In my experience prior to DHS, cases could be reopened if there was new evidence or new witnesses. If a case was reopened, we would re-start the investigation process and make sure the new evidence or information is predicated. We would do new interviews and fact gathering. We would also alert DOJ or the FBI about the new evidence.
39. Typically, the Special Agent in Charge of that file would make the decision whether to reopen the file. While in theory, headquarters maintains the ability to direct a Special Agent in Charge to re-open the investigation, as I explained above, headquarters was limited in capacity at the time. DHS OIG headquarters and its field offices had an atypical dynamic where headquarters gave a lot of discretion to the field offices. I felt boxed in by what I could do on this case. I felt that it should have been re-opened, but McGunagle had primary responsibility for that decision. If I forced the investigation to be re-opened, it would have been assigned to him and his case agents, and it seemed to me he had no interest in ensuring a proper investigation was carried out.

40. During my time at DHS, I had other cases involving allegations of use of force overseen by McGunagle brought to my attention due to similar concerns over improper investigations. For example, I remember another case in San Diego that occurred after I arrived, where a state agent shot a woman, Valeria Tachiquin Alvarado, through the windshield of her car. The investigation file showed a similar lack of diligence and activity.
41. Laferty and I were both concerned with how McGunagle was handling cases involving use of force. There was a pattern of a lack of thoroughness and diligence for files involving use of force that he oversaw. He showed a lack of interest in these cases. We did an internal quality assessment review of case management and we noted problems with his cases. When we raised this matter with him he blamed it on supervisors, but he was the supervisor for that office. To my knowledge, McGunagle has never faced consequences for failing to carry out his duties and properly investigate cases involving the most serious allegations such as excessive use of force resulting in the death of an individual. Instead, he has been rewarded. In 2015, Dennis McGunagle was promoted to Deputy Assistant Inspector General for DHS's OIG.
42. In my opinion, there was a dereliction of duty by the OIG in Mr. Hernández Rojas's case. A man died and the questions that should have been asked about his death, and the events leading to it, were not asked. The OIG had a duty to properly investigate the matter and uncover the facts that led to the death of Mr. Hernández Rojas. This was not done. From what I remember, the OIG didn't even investigate. The OIG decided to rely on the autopsy report to close the matter, without investigating. A proper investigation should have been carried out at first instance, and that investigation should have uncovered the discrepancies regarding Mr. Rojas's physical position and should have determined whether a criminal or misconduct

investigation was warranted. The failure to carry out a proper investigation in this case is a failure at many levels: the case agent, the first line supervisor, and the Special-Agent in Charge, McGunagle. There are checks in place to make sure case agents carry out proper investigations and all those checks failed in this case. There was a lack of leadership at the time at DHS OIG headquarters, but this is no excuse for how this case was handled.

43. It was a second failure not to reopen the matter. In my opinion, the investigation should have been re-opened based on the lack of diligence and based on the new evidence. The video that came to light showed the victim subdued, on the ground in handcuffs when the officers claimed he was standing and combative. The video showed a man being Tased while detained. This conduct warrants a criminal investigation.

I affirm that the statements contained in this affidavit are true to the best of my knowledge and belief.

Respectfully submitted,



John Edward Dupuy

15 Jan 21

Date

EXHIBIT G

50/15

November 15, 2004

P.O. Box 3188
San Clemente, Ca 92674

MEMORANDUM FOR: ALL SAN CLEMENTE AGENTS
SAN CLEMENTE STATION

FROM: Wes Knippler 
Patrol Agent in Charge

SUBJECT: CBP Interim Use of Force and Firearms Policy Directive

Attached for your review are the CBP Interim Use of Force and Firearms Policy Guidance changes memorandum and related documents. Please address any questions regarding this correspondence through the chain of command and forward to FOS Chavez no later than December 2, 2004. Unit Supervisors will be responsible for ensuring that attachment four has been signed by their subordinates and forwarded to FOS Chavez by the same date.



OBP 50/15-P
OBP 50/5.7-P

U.S. Department of Homeland Security
Washington, DC 20229



U.S. Customs and
Border Protection

NOV 04 2004

MEMORANDUM FOR: ALL SECTOR CHIEF PATROL AGENTS

FROM: David V. Aguilar *David Aguilar V.*
Chief
U.S. Border Patrol

SUBJECT: U.S. Customs and Border Protection Interim Use of Force
and Firearms Policy Directive

Attached are the U.S. Customs and Border Protection Interim Use of Force and Firearms Policy Guidance Changes Memorandum and the guidance documents. Ensure that all personnel under your supervision are provided with a copy of the interim guidance. They must also be provided an opportunity to review the guidance and address any questions they might have through their chain of command.

Once they have received, reviewed, and discussed the guidance, they must sign and submit attachment 4 indicating their understanding of, and expected compliance with, the interim policy. This must be completed by December 6th, 2004. Signed acknowledgment sheets (attachment 4) shall be kept on file locally.

This interim policy will remain in effect until the complete new policy is issued under the Commissioner's signature.

Chief Patrol Agents will submit a memorandum certifying that all required personnel have received and acknowledged receipt of the Interim Policy. This memorandum must be submitted by December 13th, 2004.

Questions regarding this policy may be directed to Assistant Chief Harry James Ruffel at 202-344-1502.

Attachments

U.S. Department of Homeland Security
Washington, DC 20229



U.S. Customs and
Border Protection

SEP 15 2004

MEMORANDUM FOR THE COMMISSIONER:

THROUGH: Acting Deputy Commissioner *DAP*
THROUGH: Chief, Office of Border Patrol *David Aguilar*
THROUGH: *FOR* Assistant Commissioner *William S. Hefflinger*
Office of Field Operations
THROUGH: Chief Counsel
Office of Chief Counsel
FROM: Acting Assistant Commissioner *[Signature]*
Office of Training and Development
SUBJECT: CBP Interim Use of Force and Firearms Policy Guidance
Changes

Recently, the Office of Training and Development forwarded interim guidance to address Use of Force and Firearms policy issues that demand immediate action. The interim guidance is pending release after receiving CBP organizational approval. However, the interim guidance requires modification prior to release for the following reasons:

1. The interim guidance reflected that OFO planned to acquire the Glock Model 17 as the duty handgun for CBP Officers. The DHS Weapons and Ammunition Commodity Council has, however, awarded handgun contracts to Sigarms and Heckler & Koch. OFO is now considering the DHS award in its decision on a duty handgun for the future. This is now reflected in the interim guidance.
2. OFO initially decided that the expandable baton would be the only authorized intermediate force device, but is now reconsidering whether to allow Oleoresin Capsicum (OC) spray as an additional intermediate force device. This is now reflected in the interim guidance.

-2-

In your July 6 Memorandum, you asked the Office of Field Operations, the Office of Border Patrol, and the Office of Training and Development to review the newly issued DHS Use of Deadly Force Policy and inform you of the effect that policy would have on the CBP Use of Force Policy. The attached interim guidance complies in full with DHS guidelines and policies relating to the use of deadly force.

In all other respects, this Interim Use of Force and Firearms Policy is identical to the guidance you approved in July 2004. With your approval, it will be incorporated into a multi-policy package set for release to the field on September 19, 2004.

The Office and Training Development, building on the work of the Transition Management Office, is the lead responsible component for the development of this interim policy and the comprehensive CBP Use of Force and Firearms policy that will follow.

Attachments

I Concur

I Do Not Concur

Let's Discuss

RC Banner #

10-11-04

U.S. Customs and Border Protection

**Office of Training and Development
Firearms and Tactical Training Division**

Interim Use of Force and Firearms Guidelines



Interim CBP Use of Force and Firearms Guidelines

Interim Use of Force and Firearms Guidelines

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Interim CBP Use of Force and Firearms Guidelines

Part 1 Interim Use of Force and Firearms Guidelines

A. Scope

1. These interim guidelines provide direction for U.S. Customs and Border Protection (CBP) personnel pending development and issuance of a comprehensive CBP Use of Force and Firearms Policy Directive.
2. These guidelines address issues that require immediate clarification of or deviation from past policy.
3. For interim Use of Force and Firearms Policy issues not specifically addressed in these guidelines, Office of Field Operations personnel shall operate under the provisions of the Legacy Customs Firearms and Use of Force Handbook - CIS HB 4500-01A dated March 2003. Office of Border Patrol personnel shall operate under the provisions of the INS Firearms Policy dated February 2003.

B. Implementation

1. Responsible Officials shall ensure that supervisors disseminate, review and discuss the contents of these interim Use of Force and Firearms Guidelines with subordinates.
2. Responsible Officials shall ensure that all CBP armed officers they supervise acknowledge receipt of this interim Use of Force and Firearms Guidance by signature no later than thirty days after issuance. Signature pages shall be kept on local file.

Interim CBP Use of Force and Firearms Guidelines

Part 2 Handgun Qualifications Requirements

- A. OFO armed personnel shall qualify with firearms on a trimester basis. For OFO Field Officers, the course of fire consists of a total of 30 rounds. OFO Field Officers shall score 80% to pass this course of fire. (See attachment 1)
- B. CBP Officer trainees at the CBP Academy shall score 80% on a 60 round course of fire to pass. (See attachment 2) (On return from the Academy, CBP Officer trainees shall qualify as described in "A" above)
- C. Border Patrol Agents and Border Patrol Agent trainees at the Border Patrol Academy shall qualify with firearms as provided in current guidelines, using the BP legacy course of fire. (See Attachment 3)

Interim CBP Use of Force and Firearms Guidelines

Part 3 Carriage of Firearms

- A. All OFO armed personnel require certification for 24-hour carry authority in accordance with Legacy Customs guidance. 24-hour carry certificates are issued by, and held on file in the CBP Officer's duty Station.
- B. Until a standard handgun for OFO is designated, Legacy Immigration Inspectors shall carry their currently assigned handgun. Legacy Customs Inspectors shall carry the Glock 17, 9-mm pistol.

Interim CBP Use of Force and Firearms Guidelines

Part 4 Special Conditions Governing Carrying and Training with Firearms

- A. Pregnant OFO armed officers may choose to continue to qualify with a doctor's written authorization. They may choose not to qualify, in which case the authorization to carry a firearm and perform duties requiring the carrying of a firearm is temporarily rescinded (in accordance with Legacy Customs Directive 4510-017A, Section 7).
- B. Legacy Immigration Inspectors shall adhere to Legacy Customs Policy regarding the temporary or permanent removal of firearms. There are no changes to the level of authority that may suspend a CBP employee's carry privileges.
- C. CBP armed personnel who presently carry personally owned, service approved weapons while performing official duties may continue to carry that weapon. After receiving a government issued weapon, they shall cease carrying the personally owned, service approved weapon and begin carrying the government issued weapon. No new authorizations for personally owned weapons shall be issued.
- D. OFO armed officers are required to obtain an approval letter, issued by their Port, to fly armed on a commercial aircraft in accordance with established Legacy Customs procedure.
- E. CBP armed personnel are prohibited from consuming alcoholic beverages while carrying service approved weapons, except when engaged in undercover operations necessitating the consumption of alcoholic beverages. In these cases, the consumption of alcoholic beverages will be limited to an amount that does not impair the officer's judgment.
- F. Use of government approved service weapons is limited to organized firearms sporting events, competitions, or commercial, public, or government owned ranges.

Interim CBP Use of Force and Firearms Guidelines

Part 5 Changes affecting Use of Force Policy

- A. OFO officers shall adhere to the Legacy Customs Use of Force Guidelines (including the "Use of Force Continuum") delineated in Chapter 2, Section III of the Legacy Customs Firearms and Use of Force Handbook.
- B. OFO armed personnel shall not fire solely to disable vehicles. They may fire on the driver or other occupant of a moving motor vehicle or vessel only when there is reasonable belief the subject poses an imminent danger of death or serious injury to the officer or another person and the public safety benefits of using such force outweigh the risks to the safety of the officer or other persons.
- C. The Office of Field Operations issued a memorandum dated March 25, 2003, stating that the Collapsible Straight Baton will serve as the official intermediate weapon for OFO. Training in the use of and issuance of the CSB to OFO Officers has not been completed as previously envisioned. Therefore, each OFO Officer is required to carry: OC Spray, if that Officer has successfully completed OC Spray training; the CSB if that Officer has successfully completed CSB training; or both, if that Officer has successfully completed training for both of these intermediate force weapons.

Attachment 1

CUSTOMS AND BORDER PROTECTION (OFO) SEMI-AUTOMATIC PISTOL 30 ROUND COURSE OF FIRE

DISTANCE	STAGE	POSITION	MAGAZINES	SHOTS	TIME	DESCRIPTION/COMMANDS
3 YDS	1	Standing, strong hand only, and support hand only.	Prepare all magazines with six rounds each.	12 Total	25 Sec	Load, and holster with a 6 round magazine. Target faces, draw and fire 6 rounds with strong hand only grip. Combat load, transition to support hand only grip and fire 6 rounds. Perform a combat reload and holster. Note: This course of fire to be conducted on a "Hot Line". The "Hot Line" concept requires the shooter to reload, without command, when his/her handgun is empty. The shooter will not holster an empty weapon until the exercise is over. Barricades will be used for cover and support.
7 YDS	2	Standing, strong hand supported.	Weapon loaded with a 6 round magazine and 1 additional 6 round magazine available for reload.	6 total	3 Sec.	Target faces, draw and fire 2 rounds strong hand supported. When threat edges away, shooter will go to high ready. When target reappears, the shooter will fire 2 rounds. When target edges away, shooter will go to high ready. When the threat reappears, shooter will fire 2 rounds, combat reload a 6 round magazine and holster weapon.
7 YDS	3	Standing strong hand supported, body armor drill.	Weapon loaded with 6 rounds and 1 additional magazine loaded with 6 rounds for reload.	6 total	6 Sec. 4 Sec.	Target faces, draw and fire 2 rounds center mass and 1 round to the head. When threat edges away, shooter will go to high ready. When target reappears, the shooter will fire 2 rounds center mass and 1 round to the head within 4 sec. Combat reload a 6 round and holster weapon.

CUSTOMS AND BORDER PROTECTION (CFO) SEMI-AUTOMATIC PISTOL 30 ROUND COURSE OF FIRE

DISTANCE	STAGE	POSITION	MAGAZINES	SHOTS	TIME	DESCRIPTION/COMMANDS
15 YDS	4	Standing and kneeling, strong hand supported barricade shooting	Weapon loaded with 6 rounds.	6 total	20 Seconds	Step to cover, draw and fire 2 rounds standing support side barricade, transition to strong side standing barricade and fire 2 rounds. Transition to a strong side kneeling barricade and fire 2 rounds. CLEAR WEAPON AND HOLSTER A SAFE AND EMPTY WEAPON BEFORE STANDING.

NOTE:

(U.S. CUSTOMS) CAT #1 TARGET WILL BE USED.

TOTAL ROUNDS = 30
 POSSIBLE SCORE = 150

SCORING:

- 1 Course requires 2 head shots at 7 yard line.
- 2 Score body of target and total.
- 3 Score head shots as 4's and 5's and total. Head shots must be touching or above an imaginary line 10" below the top of the head.
- 4 Deduct 5 points each from the body total for any body shots beyond 30 hits.

Attachment 2

CUSTOMS AND BORDER PROTECTION (CBP ACADEMY) SEMI-AUTOMATIC PISTOL 60 ROUND COURSE OF FIRE

DISTANCE	STAGE	POSITION	MAGAZINES	SHOTS	TIME	DESCRIPTION/COMMANDS
3 YDS	1	Standing	2 Magazines 17 Rounds (+1)	2	3 Sec	Prepare two (2) seventeen round magazines. Load, charge and holster. Top the weapon off with one (1) round. Eye level, two handed. Secure the second magazine in the pouch.
	2	Standing	1 st Facing 2 nd & 3 rd Facing	2	2 Sec	Target faces, draw and fire 2 shots. When target edges, COVER the target. On the next two (2) facings, fire two (2) shots in two (2) seconds on each facing. SCAN AND HOLSTER
			1 st Facing	6	6 Sec	Target faces, draw and fire six (6) shots in six (6) seconds. SCAN AND HOLSTER
7 YDS	1	Standing	1 st Facing	3	6 Sec	Target faces, draw and fire two (2) shots center mass and one (1) shot to the head. When target edges SCAN AND HOLSTER.
			1 st Facing	6	15 Sec	Target faces draw and fire two (2) shots to the center mass and one (1) shot to the head, COMBAT RELOAD and fire two (2) shots center mass and one (1) shot to the head. SCAN AND HOLSTER. TOP OFF THE MAGAZINE.
			1 st Facing	3	6 Sec	Draw and fire two (2) shot center mass and one (1) shot to the head. SCAN AND HOLSTER.
	2	Standing	1 st Facing	2	4 Sec	Target faces, draw and fire two (2) shots center mass in four (4) seconds. When target edges, COVER THE TARGET.
	3	Standing	On 2 nd & 3 rd Facing	2	3 Sec	On the next two (2) facings, fire two (2) shots center mass in three (3) seconds on each facing. COME TO READY PISTOL, TRANSFER THE WEAPON TO THE WEAK HAND.
	4	Standing	1 st Facing	6	12 Sec	Bring the pistol to high search. Target faces, fire six (6) shots center mass WEAK HAND ONLY. EXECUTE PROPER CLEARING PROCEDURES AND HOLSTER A SAFE AND EMPTY WEAPON.
				(24 Rds) Total		

CUSTOMS AND BORDER PROTECTION (CBP ACADEMY) SEMI-AUTOMATIC PISTOL 60 ROUND COURSE OF FIRE

DISTANCE	STAGE	POSITION	MAGAZINES	SHOTS	TIME	DESCRIPTION/COMMANDS
15 YDS	1	Standing Weak Side/ Kneeling Strong Side Barricade	2 Magazines 6 Rounds Each	12 (12Rds) Total	35 Sec	Prepare two (2) magazines with six (6) rounds each. Secure one (1) magazine in magazine pouch. Load, charge and holster with a six (6) round magazine. Target faces, fire six (6) shots from the standing weak side barricade position, COMBAT RELOAD with the 2 nd six (6) round magazine, drop down to a kneeling strong side barricade position and fire six (6) more shots in thirty-five (35) seconds. EXECUTE PROPER CLEARING PROCEDURES.
25 YDS	1	Standing Weak Side Standing Strong Side Barricade	2 Magazines 1 - 8 Rounds 1 - 6 Rounds	12 (12 Rds) Total	60 Sec	Prepare two (2) magazines, one (1) with six (6) rounds and one (1) with eight (8) rounds. Secure the six (6) round magazine in magazine pouch. Load, charge and holster with the eight (8) round magazine. Target faces, fire six (6) shots from the weak side standing barricade position, TACTICAL RELOAD with the six (6) round magazine, move to a strong side standing barricade position and fire six (6) more shots in sixty (60) seconds. EXECUTE PROPER CLEARING PROCEDURES AND HOLSTER A SAFE AND EMPTY WEAPON. A LIVE ROUND SHOULD EJECT.

NOTE:

U.S. CUSTOMS CAT #1 TARGET WILL BE USED.

TOTAL ROUNDS = 60
POSSIBLE SCORE = 300

SCORING:

1. Course requires 4 head shots at 7 yard line.
2. Score body of target and total.
3. Score head shots as 4's and 5's and total. Head shots must be touching or above an imaginary line 10" below the top of the head.
4. Deduct 5 points each from the body total for any body shots beyond 30 hits.

Attachment 3

CUSTOMS AND BORDER PROTECTION (OBP) 72 ROUND SEMI-AUTOMATIC PISTOL COURSE OF FIRE

DISTANCE	STAGE	POSITION	MAGAZINES	SHOTS	TIME	DESCRIPTION/COMMANDS
1.5 YDS	1	Standing, one handed, hip level bent elbow	Weapon loaded with 12 rounds.	1,2,3 (6 Total)	2 Sec	<p>Prepare at least four (4) eleven round magazines. Load, charge and holster. Top the off weapon with one (1) round. Scan and perform checkpoints to the holster. Top off magazine pouch.</p> <p>When the threat appears, draw and fire 1 shot. When threat goes away, scan and perform post firing procedures to the holster. On the next facing, fire 2 shots, returning to the holster after the threat goes away. On the third facing fire 3 shots. Scan and holster</p> <p>Note: Prior to holstering throughout this entire 72 round course of fire, the shooter will perform the following checkpoints prior to holstering his/her weapon. After threat goes away, lower the pistol to high search, pause, take finger off of the trigger and scan. Bring weapon to ready pistol, pause and scan. Check condition of the weapon, holster with a shooting grip, pause and scan. Snap weapon into holster</p>
3 YDS	1	Standing, two handed point shoulder	Weapon loaded with 12 rounds with an additional 11 rd magazine available for an emergency reload	1,2,3 (6 Total)	3 Sec	<p>When target appears, draw and fire 1 shot, re-holster. On the second facing draw and fire 2 shots, re-holster. On the third facing draw and fire 3 shots. When slide locks to the rear after the last shot, perform an emergency reload top off the weapon and perform checkpoints back to the holster.</p>
7 YDS	1	Standing, two handed.	Weapon loaded with 12 rounds with an additional 11 rd magazine available for an emergency reload.	1 +1 2+2 3+3 (12 Total on part 1 of 7 yard line)	3 Sec	<p>Target faces, draw and fire 1 shot, when threat edges away, shooter will go to high search, finger on the trigger and the hammer forward. When target reappears, the shooter will fire 1 additional shot. After the threat goes away, the shooter will perform post firing procedures to the holster. On the next series the shooter will repeat this process firing 2 shots from the holster and 2 additional shots from high search. On the third series the shooter will repeat this process firing 3 shots with 3 additional shots from high search. The shooter will perform an emergency reload, checkpoints to the holster and top off the weapon.</p>

CUSTOMS AND BORDER PROTECTION (OBP) 72 ROUND SEMI-AUTOMATIC PISTOL COURSE OF FIRE

DISTANCE	STAGE	POSITION	MAGAZINES	SHOTS	TIME	DESCRIPTION/COMMANDS
7 YDS	2	Standing two handed, right hand only and left hand only.	Weapon loaded with 12 rounds with an additional 11 rd magazine available for an emergency reload.	2+1	6 seconds	Transition to right handed shooting. When the threat appears, the shooter will draw and fire two shots two handed, transition to right hand only and fire one additional round right hand only for a total of 3 shots in 6 seconds.
				3	5 Seconds	When the threat goes away, the shooter will come to high search right hand only, the finger on the trigger and the hammer forward. When the threat reappears, the shooter will fire an additional 3 shots right hand only in 5 seconds. When the threat goes away, the shooter will reestablish a two handed grip and execute checkpoints to the holster.
				2+1	6 Seconds	Transition to left handed shooting. When the threat appears, the shooter will draw and fire two shots two handed, transition to left hand only and fire one additional round left hand only for a total of 3 shots in 6 seconds.
				3 (12 Total on part 2 of 7 yard line)	5 Seconds	When the threat goes away, the shooter will come to high search left hand only, finger on the trigger with the hammer forward. When the threat reappears, the shooter will fire an additional 3 shots left hand only in 5 seconds. The shooter will perform an emergency reload and execute checkpoints to the holster.
				(A total of 24 round to be fired on the 7 yard line)		At this point the instructor will either have the shooters perform a proper clearing procedure, or allow them to remain loaded and remind them of the condition of their weapon. Score the targets. 36 shots for possible 180 points. Reface with a new target, writing front half score and name on new target in preparation for the second half of the qualification course.

CUSTOMS AND BORDER PROTECTION (OBP) 72 ROUND SEMI-AUTOMATIC PISTOL COURSE OF FIRE

DISTANCE	STAGE	POSITION	MAGAZINES	SHOTS	TIME	DESCRIPTION/COMMANDS
15 YDS	1	Standing	Start with loaded weapon with 12 rounds. Have 2 11 round magazines in magazine pouch for reloads.	1	3 Seconds	Draw and fire 1 round, checkpoints to the holster.
				2	4 Seconds	Draw and fire 2 rounds checkpoints to the holster.
				3	5 Seconds	Draw and fire 3 rounds, checkpoints to the holster.
				4	6 Seconds	Draw and fire 4 rounds, checkpoints to the holster.
	2	Standing to Kneeling	Weapon loaded with 12 rounds with an additional 11 rd magazine available for an emergency reload.	2+2	12 Seconds	If the shooter did not fire the correct number of rounds, he/she must adjust the number of rounds in their weapon. The weapon must have 1 round in the magazine and 1 round in the chamber. Shooter will draw and fire 2 shots, perform and emergency reload while dropping to the kneeling position and fire two rounds in the kneeling position. When the threat goes away the shooter goes to the kneeling high search position with their finger on the trigger and the hammer forward.
	3	Kneeling	1 magazine loaded with an 11 rd magazine for a magazine exchange.	1	3 Seconds	When threat appears, shooter will fire one round. When the threat goes away, shooter will return to kneeling high search.
				2	4 Seconds	When threat appears, shooter will fire two rounds. When the threat goes away, shooter will return to kneeling high search.
				3	5 Seconds	When threat appears, shooter will fire three rounds. When the threat goes away, shooter will perform a magazine exchange, holster, snap in and come to their feet.
				(A total of 20 rounds are to be fired from the 15 yard line)		

CUSTOMS AND BORDER PROTECTION (OBP) 72 ROUND SEMI-AUTOMATIC PISTOL COURSE OF FIRE

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DISTANCE	STAGE	POSITION	MAGAZINES	SHOTS	TIME	DESCRIPTION/COMMANDS
25 YDS	1	Right side barricade, standing and kneeling. Shooter will start one step to the right and one step to the rear of the barricade.	Start with a loaded weapon and have an 11 round magazine available for a magazine exchange.	8	30 Seconds	When the threat appears, the shooter will step into cover, draw and fire 4 rounds in the standing right side barricade position. The shooter will move back into cover with his/her finger off of the trigger, kneel on their right knee and fire 4 rounds in the kneeling right side barricade position. When the threat goes away, the shooter will perform a magazine exchange, holster, snap in and come to their feet.
	2	Left side barricade, standing and kneeling. Shooter will start one step to the left and one step to the rear of the barricade.		8 (A total of 16 rounds will be fired from the 25 yard line)	30 Seconds	When the threat appears, the shooter will step into cover, draw and fire 4 rounds in the standing left side barricade position. The shooter will move back into cover with his/her finger off of the trigger, kneel on their left knee and fire 4 rounds in the kneeling left side barricade position. When the threat goes away, the shooter will perform a proper clearing procedure, holster, snap in before coming to their feet.
						Score second half which consists of 36 shots for a possible 160 points. Add front half totals and the back half totals.

NOTE:

TQ-15 TARGET WILL BE USED.

TOTAL ROUNDS= 72
 POSSIBLE SCORE = 360
 MINIMUM PASSING SCORE= 252 or a 70%

Attachment 4

Interim CBP Use of Force and Firearms Guidelines**Attachment 4****U. S. Customs and Border Protection****Employee Acknowledgement**

As a CBP Employee who is authorized to carry a firearm, you are required to comply with and be thoroughly familiar with all aspects of this interim guidance. You have been provided a complete copy of the interim CBP Use of Force and Firearms Guidelines and have been given the opportunity to discuss the contents of this document with your supervisor or other management official.

By signing this statement, you acknowledge your possession of a copy of the interim CBP Use of Force and Firearms Guidelines and your personal obligation to comply with all sections therein.

Officer's Name (Printed)

Officer's Signature

Date

Duty Station

Supervisor's Name (Printed)

Supervisor's Signature

Attachment 5

Customs and Border Protection

Interim Firearms and Use of Force Policy Guidance

Page Issue

- 1 Warning Shots
- 2 Shooting of Animals
- 3 Frequency of Qualification
- 4 Number of Rounds Fired for Qualification
- 5 Training with Qualification
- 6 Firing Distances for Handgun Qualification Course
- 7 Drinking Alcohol with Weapon
- 8 Lowest Level of Authority to Revoke Weapon Carrying Authority
- 9 Firearms on Commercial Aircraft
- 10 Personally Owned Weapons
- 11 24 Hour Carriage
- 12 Firearms Instructors
- 13 Non-Deadly Force
- 14 Use of Deadly Force
- 15 Pregnant Employees
- 16 At the Academy - Firearms Qualifications
- 17 Post Academy Firearms Qualifications
- 18 Type of Weapon
- 19 Removal of Weapon
- 20 Temporary Removal of Weapon
- 21 Firing Weapon at Vehicles or Vessels
- 22 Sporting Events - Hunting
- 23 Use of Force Continuum

Warning Shots	
Legacy Customs Inspector	Not authorized.
Legacy INS/Border Patrol	Not authorized.
Proposed CBP Officer	Not authorized.
Proposed Border Patrol	Not authorized.
Effect	None.

Shooting of Animals

Legacy Customs Inspector	Authorized only against dogs or other vicious animals when necessary in self-defense or in defense of others.
Legacy INS/Border Patrol	Authorized when confronted by an animal which presents an immediate threat to the officer or another person or when an animal is encountered that appears to be so seriously injured that it should be destroyed to prevent additional suffering.
Proposed CBP Officer	Authorized only against dogs or other vicious animals when necessary in self-defense or in defense of others.
Proposed Border Patrol	No change.
Effect	Legacy Immigration Inspectors will be required to conform to the Legacy Customs Policy.

Frequency of Qualification	
Legacy Customs Inspector	Three times a year.
Legacy INS/Border Patrol	Four times a year.
Proposed CBP Officer	Three times a year.
Proposed Border Patrol	No change.
Effect	Legacy Immigration Inspectors will qualify three times per year vs. 4 times per year.

Number of Rounds Fired for Qualification	
Legacy Customs Inspector	30
Legacy INS/Border Patrol	72
Proposed CBP Officer	30
Proposed Border Patrol	No change
Effect	Legacy Immigration Inspectors will fire 30 rounds for qualification vs. 72 rounds.

Training with Qualification	
Legacy Customs Inspector	8 hours of training with trimester qualifications.
Legacy INS/Border Patrol	Firearms training quarterly to include qualifications and other firearms tactical courses.
Proposed CBP Officer	8 hours of training with trimester qualifications.
Proposed Border Patrol	No change
Effect	Legacy Immigration Inspectors will receive 8 hours of training on a trimester vs. quarterly basis.

Firing Distances for Handgun Qualification Course

Legacy Customs Inspector	3, 7 and 15 yards.
Legacy INS/Border Patrol	1.5, 3, 7, 15 and 25 yards.
Proposed CBP Officer	3, 7 and 15 yards.
Proposed Border Patrol	No change.
Effect	Legacy INS personnel will fire at the 3, 7 and 15 yardlines. They will no longer fire at the 1.5 and 25 yardlines.

Drinking Alcohol with Weapon	
Legacy Customs Inspector	Not allowed unless working undercover and then must be able to maintain control.
Legacy INS/Border Patrol	Not allowed when under the influence of intoxicating alcoholic beverages. (In practice were permitted to drink with firearms in plain clothes but could not be intoxicated)
Proposed CBP Officer	Not allowed unless working undercover and then must be able to maintain control.
Proposed Border Patrol	Not allowed unless working undercover and then must be able to maintain control.
Effect	Legacy Immigration Inspectors and Border Patrol will be required to conform to the Legacy Customs Policy

Lowest Level of Authority to Revoke Weapon Carrying Authority	
Legacy Customs Inspector	The Responsible Official revokes authority to carry, but the firearms instructor or first line supervisor has authority to take possession of employee weapon at his/her discretion.
Legacy INS/Border Patrol	The Authorizing Official revokes authority to carry, but the firearms instructor or first line supervisor has authority to take possession of employee weapon at his/her discretion.
Proposed CBP Officer	The Responsible Official revokes authority to carry, but the firearms instructor or first line supervisor has authority to take possession of employee weapon at his/her discretion.
Proposed Border Patrol	No change.
Effect	None

Firearms on Commercial Aircraft	
Legacy Customs Inspector	Must have approval letter.
Legacy INS/Border Patrol	No special approval required.
Proposed CBP Officer	Must have approval letter.
Proposed Border Patrol	No change.
Effect	Legacy Immigration Inspectors will require approval letters to bring firearms on commercial aircraft.

Personally Owned Weapons on Duty	
Legacy Customs Inspector	Not allowed.
Legacy INS/Border Patrol	Permitted with approval. Firearm must meet agency standards and requesting officer must meet qualification requirements.
Proposed CBP Officer	Not allowed.
Proposed Border Patrol	No new approvals for personally owned weapons shall be issued. Personally owned weapons shall be removed from circulation at service life expiration or in accordance with future CBP policy.
Effect	Legacy Immigration Inspectors shall no longer be permitted to carry personally owned weapons and shall be issued a government owned weapon when feasible. For Legacy Border Patrol, no new approvals shall be issued and personally owned weapons shall be removed from circulation at service life expiration or in accordance with future CBP policy.

24 Hour Carriage	
Legacy Customs Inspector	All inspectional personnel for service issued firearms only. Certification required.
Legacy INS/Border Patrol	Permitted, no certification required.
Proposed CBP Officer	All inspectional personnel for service issued firearms only. Certification required.
Proposed Border Patrol	No change.
Effect	Legacy Immigration Inspectors will require certification for 24 hour carriage authority.

Firearms Instructors	
Legacy Customs Inspector	Selected from volunteers, collateral duty.
Legacy INS/Border Patrol	Selected from volunteers, collateral duty.
Proposed CBP Officer	Selected from volunteers, collateral duty.
Proposed Border Patrol	No change.
Effect	No effect.

Use of Non-Deadly Force

Legacy Customs Inspector	Policy permits use of OC Spray and Baton. CBP Officer Candidates trained only on the Baton. Intention to standardize on the Baton and remove OC Spray.
Legacy INS/Border Patrol	Headquarters directed that employees be trained on both OC Spray and Baton and required to carry at least one.
Proposed CBP Officer	The Office of Field Operations issued a memorandum dated March 25, 2003, stating that the Collapsible Straight Baton will serve as the official intermediate weapon for OFO. Training in the use of and issuance of the CSB to OFO Officers has not been completed as previously envisioned. Therefore, each OFO Officer is required to carry: OC Spray, if that Officer has successfully completed OC Spray training; the CSB if that Officer has successfully completed CSB training; or both, if that Officer has successfully completed training for both of these intermediate force weapons.
Proposed Border Patrol	No change
Effect	Each OFO Officer is required to carry: OC Spray, if that Officer has successfully completed OC Spray training; the CSB if that Officer has successfully completed CSB training; or both, if that Officer has successfully completed training for both of these intermediate force weapons.

Use of Deadly Force

Legacy Customs Inspector	Only when necessary, when there is probable cause to believe that the subject poses an imminent danger of death or serious bodily injury to the officer or another person. Verbal warning to submit to authority shall be given prior to use of deadly force if feasible, and if to do so would not increase the danger to the officer or others. Deadly force may be used to prevent the escape of a fleeing subject if there is probable cause that the subject has committed a felony causing serious injury or death and the escape would pose an imminent danger of death to officer or another person.
Legacy INS/Border Patrol	Only with the intent of stopping a person or animal from continuing the threatening behavior which justifies the use of deadly force. When the officer reasonable believes that the person at whom the firearm is to be discharged poses the means, the intent, and the opportunity of causing death or grievous bodily harm upon the officer or another person.
Proposed CBP Officer	Only when necessary, when there is probable cause to believe that the subject poses an imminent danger of death or serious bodily injury to the officer or another person. Verbal warning to submit to authority shall be given prior to use of deadly force if feasible, and if to do so would not increase the danger to the officer or others. Deadly force may be used to prevent the escape of a fleeing subject if there is probable cause that the subject has committed a felony causing serious injury or death and the escape would pose an imminent danger of death to officer or another person.
Proposed Border Patrol	No change
Effect	Legacy Immigration Inspectors will be required to conform to the Legacy Customs Policy.

Pregnant Employees	
Legacy Customs Inspector	Pregnant employees may choose to continue to qualify with a doctor's written authorization. They may choose not to continue to qualify, in which case the permission to carry a firearm and perform duties requiring the carrying of a firearm is rescinded temporarily, until the employee's physician provides written authorization.
Legacy INS/Border Patrol	Silent regarding pregnant employees. Pregnant employees may be exempted from requalifying for up to 270 days.
Proposed CBP Officer	Pregnant employees may choose to continue to qualify with a doctor's written authorization. They may choose not to continue to qualify, in which case the permission to carry a firearm and perform duties requiring the carrying of a firearm is rescinded temporarily, until the employee's physician provides written authorization.
Proposed Border Patrol	No change.
Effect	A transition to Legacy Customs policy for Legacy Immigration Inspectors.

At the Academy - Firearms Qualifications

Legacy Customs Inspector	80% (120 out of 150) Legacy Customs Course of Fire 70% (210 out of 300) FLETC Course of Fire 100% judgement pistol shooting Remedial training and two chances to qualify when remedial is complete.
Legacy INS/Border Patrol	70% (252 out of 360) on Handgun qualification course 100% judgement pistol shooting. Remedial training and one chance to qualify when remedial is complete.
Proposed CBP Officer	80% (240 out of 300) for the 60 round handgun course. Remedial training and two chances to qualify when remedial is complete.
Proposed Border Patrol	No change.
Effect	None. CBP Officer candidates currently fire the 60 round COF at the CBP Academy.

In the Field - Firearms Qualifications

Legacy Customs Inspector	30 round handgun course, 150 points possible, 80% or better to qualify. If fail after remedial training and 3 attempts to qualify weapon and credentials taken away (no waivers). If employee does not participate in trimester qualifications for whatever reason (medical, injury etc) weapon and credentials taken away.
Legacy INS/Border Patrol	72 round handgun course, 360 points possible, 70% or better to qualify. If fail to qualify during 40 hours of remedial training then weapon taken away. Employee is allowed to miss 2 consecutive quarters of qualifications for approved reasons and keep firearm. If employee does not participate in quarterly qualifications for medical or pregnancy reasons, they are allowed to keep their firearm up to 270 days without qualifying.
Proposed CBP Officer	30 round handgun course, 150 points possible, 80% or better to qualify. If fail after remedial training and 3 attempts to qualify weapon and credentials taken away (no waivers). If employee does not participate in trimester qualifications for whatever reason (medical, injury etc) weapon and credentials taken away.
Proposed Border Patrol	No change.
Effect	Legacy Immigration Inspectors will fire only 30 rounds for handgun qualification vs. 72 rounds, but require 80% or better (vs. 70%) to qualify. Legacy Immigration Inspectors will not be allowed to miss 2 consecutive quarters of qualifications for approved reasons and keep firearm. Legacy Immigration Inspectors will not be allowed to fail to qualify for medical or pregnancy reasons for up to 270 days and keep firearm.

Type of Weapon	
Legacy Customs Inspector	Glock-9mm-Model 17 (Shotgun if required)
Legacy INS/Border Patrol	H&K USP-40 caliber and Beretta-96D-40 caliber (INS Shotgun if required) (Border Patrol must qualify with handgun, shotgun and rifle)
Proposed CBP Officer	Pending.
Proposed Border Patrol	No change.
Effect	Until a standard handgun for OFO is designated, Legacy Immigration Inspectors shall carry their currently assigned handgun. Legacy Customs Inspectors shall carry the Glock 17, 9-mm pistol.

Removal of Weapon

Legacy Customs Inspector	<p>EXAMPLES:</p> <p>Any conduct which would be in violation of an applicable Federal law</p> <p>Evidence of the misuse of a firearm;</p> <p>Evidence of the commission of a felony</p> <p>Failure to meet firearms qualifications or other mandatory training requirement</p> <p>Medical conditions that would impede the safe and effective use of a firearm</p> <p>Evidence of substance abuse</p> <p>Evidence of inappropriate violent behavior</p>
Legacy INS/Border Patrol	<p>Authority to carry a firearm during duty and/or non-duty hours may be withdrawn or restricted by the Authorizing Official when the withdrawal or restriction is in the best interests of the Service and/or the officer. Failure to meet firearms qualifications or other mandatory training requirement</p>
Proposed CBP Officer	<p>EXAMPLES:</p> <p>Any conduct which would be in violation of a applicable Federal law</p> <p>Evidence of the misuse of a firearm;</p> <p>Evidence of the commission of a felony</p> <p>Failure to meet firearms qualifications or other mandatory training requirement</p> <p>Medical conditions that would impede the safe and effective use of a firearm</p> <p>Evidence of substance abuse</p> <p>Evidence of inappropriate violent behavior</p>
Proposed Border Patrol	No change.
Effect	A transition to Legacy Customs' policy for Legacy Immigration Inspectors.

Temporary Removal of Weapon

Legacy Customs Inspector	<p>EXAMPLES:</p> <p>Officers who will be on authorized sick leave or leave without pay status of an entire qualification period and unable to qualify.</p> <p>Suspension due to a disciplinary action regardless of the number of days.</p>
Legacy INS/Border Patrol	<p>Authority to carry a firearm during duty and/or non-duty hours may be withdrawn or restricted by the Authorizing Official when the withdrawal or restriction is in the best interests of the Service and/or the officer.</p>
Proposed CBP Officer	<p>EXAMPLES:</p> <p>Officers who will be on authorized sick leave or leave without pay status of an entire qualification period and unable to qualify.</p> <p>Suspension due to a disciplinary action regardless of the number of days.</p>
Proposed Border Patrol	No change.
Effect	A transition to Legacy Customs' policy for Legacy Immigration Inspectors.

Firing Weapon at Vehicles or Vessels

Legacy Customs Inspector	Cannot be fired solely to disable vehicles or vessels. May be fired at the driver or other occupant of a moving motor vehicle or vessel only when reasonable belief the subject poses an imminent danger of death or serious injury to the officer or another person and the public safety benefits of using such force outweigh the risks to the safety of the officer or other persons.
Legacy INS/Border Patrol	Cannot be fired at a moving vehicle for purposes of stopping vehicle. Firearms may be discharged at the driver or other persons inside a vehicle who the officer reasonably believes presents imminent danger of death or grievous bodily harm to the officer or another person. The hazard of an uncontrolled moving vehicle, as well as the possibility of injury to other persons must be taken into consideration before firing.
Proposed CBP Officer	Cannot be fired solely to disable vehicles or vessels. May be fired at the driver or other occupant of a moving motor vehicle or vessel only when reasonable belief the subject poses an imminent danger of death or serious injury to the officer or another person and the public safety benefits of using such force outweigh the risks to the safety of the officer or other persons.
Proposed Border Patrol	No change
Effect	Legacy Immigration Inspectors will be required to conform to the Legacy Customs Policy.

Sporting Events - Hunting

Legacy Customs Inspector	Not addressed in policy
Legacy INS/Border Patrol	Service firearms may be used at a firearms sporting event or organized competition; hunting for game and/or target practice on privately-owned land with permission of the owner; on public lands where discharging firearms is not a violation of law and reasonable safety procedures can be followed; or at a commercial, public, or government-owned range.
Proposed CBP Officer	Service firearms may be used at a firearms sporting event, organized competition, or at a commercial, public, or government owned range.
Proposed Border Patrol	Service firearms may be used at a firearms sporting event, organized competition, or at a commercial, public, or government owned range.
Effect	Legacy Immigration Inspectors and Legacy Border Patrol will not be permitted to use their Service weapons to hunt and/or target practice on privately owned or public land, even with the permission of the owner.

Use of Force Continuum	
Legacy Customs Inspector	Officer Presence Verbal Commands Soft Techniques (Come along holds, Escort position) Hard Techniques (Strikes to body, take downs) Deadly Force
Legacy INS/Border Patrol	Although not referred to as "Use of force Continuum", the INS Policy includes clear language as to proper use of force (including non-lethal force) in Appendix 6.
Proposed CBP Officer	Officer Presence Verbal Commands Soft Techniques (Come along holds, Escort position) Hard Techniques (Strikes to body, take downs) Deadly Force
Proposed Border Patrol	No change
Effect	Legacy Immigration Inspectors will be required to conform to the Legacy Customs Policy.

Attachment 6

Secretary

U.S. Department of Homeland Security
Washington, DC 20528Homeland
Security

July 1, 2004

MEMORANDUM FOR: Deputy Secretary
Under Secretaries
Director, U.S. Secret Service
Commandant, U.S. Coast Guard
Assistant Secretary, ICE
Commissioner, CBI
Acting Administrator, TSA

FROM: Tom Ridge *Tom Ridge*

SUBJECT: Use of Deadly Force Policy

Attached is the Department of Homeland Security (DHS) Use of Deadly Force Policy which I issued today. The policy, applicable to all DHS law enforcement officers and agents, is intended to provide the standard for all DHS components. Officials and supervisors should take appropriate steps to ensure that pre-existing use of force policies comply with this new standard and incorporate its core principles.

The following Use of Deadly Force Policy was developed by a Task Force comprised of DHS headquarters and component representatives to unify to the extent feasible and practicable existing DHS agency policies. The resulting umbrella policy reflects the components' different law enforcement missions and activities, and permits the agencies to adopt more detailed operational guidance with DHS approval.

DEPARTMENT OF HOMELAND SECURITY POLICY ON THE
USE OF DEADLY FORCE

June 25, 2004

By virtue of the authority vested in the Secretary of the Department of Homeland Security, including the authority vested by 6 U.S.C. §112(a), I hereby establish a Department of Homeland Security policy on the use of deadly force for law enforcement. The policy set forth herein is intended to set uniform standards and provide broad guidelines for the use of force by law enforcement officers and agents of the Department of Homeland Security performing law enforcement missions. The provisions of this Order apply to all law enforcement officers and agents of the Department of Homeland Security.

1. GENERAL PRINCIPLES

Law enforcement officers and agents of the Department of Homeland Security may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.

A. Fleeing subjects. Deadly force may not be used solely to prevent the escape of a fleeing suspect.

B. Firearms may not be fired solely to disable moving vehicles, vessels, aircraft, and other conveyances, except as follows:

1. United States Secret Service agents and officers, in exercising the United States Secret Service's protective responsibilities, may discharge firearms to disable moving vehicles, vessels, and other conveyances. United States Secret Service agents and officers may discharge firearms to disable aircraft in flight, only if the use of deadly force against the occupants of the aircraft would be authorized under this policy.

2. U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection and U.S. Coast Guard law enforcement officers and agents, when conducting maritime law enforcement, may fire firearms to disable moving vessels or other conveyances.

C. If feasible and if to do so would not increase the danger to the officer or others, a warning to submit to the authority of the officer shall be given prior to the use of deadly force.

D. Warning shots are not permitted, except as follows:

1. Warning shots may be used by United States Secret Service agents and officers in exercising the United States Secret Service's protective responsibilities.

2. Warning shots may be used by U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection and U.S. Coast Guard law enforcement officers and agents when conducting maritime law enforcement only as a signal to a vessel to stop.

3. Warning shots may be used by U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection and U.S. Coast Guard law enforcement officers and agents when conducting aviation law enforcement operations only as a signal to an aircraft to change course and follow direction to leave airspace.

E. Officers will be trained in alternative methods and tactics for handling resisting subjects which must be used when the use of deadly force is not authorized by this policy.

II. GUIDELINES

A. Homeland Security Directorates and Agencies shall, to the extent necessary, supplement this policy with policy statements or guidance consistent with this policy. Such policy statements shall be subject to review and approval by appropriate departmental offices, including the Office of General Counsel, to ensure consistency with law and departmental standards and policies.

B. The respective Homeland Security Directorate Under Secretaries, the Commandant of the United States Coast Guard, and the Director of the United States Secret Service shall approve guidelines for weaponless control techniques, intermediate weapons, and firearms or lethal weapons with non-lethal munitions, in accordance with this policy and that directorate's or agency's unique law enforcement mission, training, and equipment.

III. MILITARY ACTIVITIES

This policy shall not apply to the United States Coast Guard when engaged in warfighting, the military defense of the United States, or other military activities where Standing Rules of Engagement apply or to other operations at sea addressed by other policies or direction.

IV. SAVINGS

To the extent agency and component policies and procedures in place prior to the creation of the Department of Homeland Security are consistent with this policy, they remain in full force and effect unless otherwise revoked or modified.

V. APPLICATION OF THE POLICY

This Policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

A handwritten signature in black ink, appearing to read "Tom Ridge", followed by a horizontal line.

Tom Ridge

OBP:CKoenig:HRuffel:mad:10/26/04:04-03696

bcc: OBP 50/15-P
OBP 50/5.7-P
Master Log

EXHIBIT H

Secretary

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

July 1, 2004

MEMORANDUM FOR: Deputy Secretary
Under Secretaries
Director, U.S. Secret Service
Commandant, U.S. Coast Guard
Assistant Secretary, ICE
Commissioner, CBP
Acting Administrator, TSA

FROM: Tom Ridge 

SUBJECT: Use of Deadly Force Policy

Attached is the Department of Homeland Security (DHS) Use of Deadly Force Policy which I issued today. The policy, applicable to all DHS law enforcement officers and agents, is intended to provide the standard for all DHS components. Officials and supervisors should take appropriate steps to ensure that pre-existing use of force policies comply with this new standard and incorporate its core principles.

The following Use of Deadly Force Policy was developed by a Task Force comprised of DHS headquarters and component representatives to unify to the extent feasible and practicable existing DHS agency policies. The resulting umbrella policy reflects the components' different law enforcement missions and activities, and permits the agencies to adopt more detailed operational guidance with DHS approval.

www.dhs.gov

DEPARTMENT OF HOMELAND SECURITY POLICY ON THE
USE OF DEADLY FORCE

June 25, 2004

By virtue of the authority vested in the Secretary of the Department of Homeland Security, including the authority vested by 6 U.S.C. §112(a), I hereby establish a Department of Homeland Security policy on the use of deadly force for law enforcement. The policy set forth herein is intended to set uniform standards and provide broad guidelines for the use of force by law enforcement officers and agents of the Department of Homeland Security performing law enforcement missions. The provisions of this Order apply to all law enforcement officers and agents of the Department of Homeland Security.

I. GENERAL PRINCIPLES

Law enforcement officers and agents of the Department of Homeland Security may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.

A. Fleeing subjects. Deadly force may not be used solely to prevent the escape of a fleeing suspect.

B. Firearms may not be fired solely to disable moving vehicles, vessels, aircraft, and other conveyances, except as follows:

1. United States Secret Service agents and officers, in exercising the United States Secret Service's protective responsibilities, may discharge firearms to disable moving vehicles, vessels, and other conveyances. United States Secret Service agents and officers may discharge firearms to disable aircraft in flight, only if the use of deadly force against the occupants of the aircraft would be authorized under this policy.

2. U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection and U.S. Coast Guard law enforcement officers and agents, when conducting maritime law enforcement, may fire firearms to disable moving vessels or other conveyances.

C. If feasible and if to do so would not increase the danger to the officer or others, a warning to submit to the authority of the officer shall be given prior to the use of deadly force.

D. Warning shots are not permitted, except as follows:

1. Warning shots may be used by United States Secret Service agents and officers in exercising the United States Secret Service's protective responsibilities.

2. Warning shots may be used by U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection and U.S. Coast Guard law enforcement officers and agents when conducting maritime law enforcement only as a signal to a vessel to stop.

3. Warning shots may be used by U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection and U.S. Coast Guard law enforcement officers and agents when conducting aviation law enforcement operations only as a signal to an aircraft to change course and follow direction to leave airspace.

E. Officers will be trained in alternative methods and tactics for handling resisting subjects which must be used when the use of deadly force is not authorized by this policy.

II. GUIDELINES

A. Homeland Security Directorates and Agencies shall, to the extent necessary, supplement this policy with policy statements or guidance consistent with this policy. Such policy statements shall be subject to review and approval by appropriate departmental offices, including the Office of General Counsel, to ensure consistency with law and departmental standards and policies.

B. The respective Homeland Security Directorate Under Secretaries, the Commandant of the United States Coast Guard, and the Director of the United States Secret Service shall approve guidelines for weaponless control techniques, intermediate weapons, and firearms or lethal weapons with non-lethal munitions, in accordance with this policy and that directorate's or agency's unique law enforcement mission, training, and equipment.

III. MILITARY ACTIVITIES

This policy shall not apply to the United States Coast Guard when engaged in warfighting, the military defense of the United States, or other military activities where Standing Rules of Engagement apply or to other operations at sea addressed by other policies or direction.

IV. SAVINGS

To the extent agency and component policies and procedures in place prior to the creation of the Department of Homeland Security are consistent with this policy, they remain in full force and effect unless otherwise revoked or modified.

V. APPLICATION OF THE POLICY

This Policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

A handwritten signature in black ink, appearing to read "Tom Ridge", followed by a long horizontal stroke.

Tom Ridge

EXHIBIT I

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DEPARTMENT OF HOMELAND SECURITY U.S. Customs and Border Protection

CBP DIRECTIVE NO. 4510-029

DATE: July 13, 2009

ORIGINATING OFFICE: OTD:UFPD

SUPERSEDES:

REVIEW DATE: July 2012

POLICY ON THE USE OF ELECTRONIC CONTROL DEVICES

1. **PURPOSE.** The purpose of this directive is to establish uniform standards for the proper training, deployment and use of Electronic Control Devices (ECDs) by U.S. Customs and Border Protection (CBP) law enforcement personnel.
2. **AUTHORITIES.** 19 U.S.C. § 1589 (a); 8 U.S.C. § 1357; and applicable Department of Homeland Security (DHS) and CBP regulations and policies.
3. **SUPERSEDES/CANCELLED POLICY/SUMMARY OF CHANGES.** This policy supersedes any prior CBP policy to the extent that the prior policy is inconsistent with the content of this policy directive.
4. **BACKGROUND.** The Use of Force Policy Division (UFPD), the steward of use of force and threat management policy within CBP, has identified a need for a comprehensive CBP ECD policy. This policy establishes guidelines and parameters for the deployment of an ECD in those situations where it would be reasonable to use intermediate force.
5. **DEFINITIONS.**
 - 5.1 **Passive Resistance.** A subject that offers no physical or mechanical resistance to a law enforcement officer's control efforts, but is not cooperative.
 - 5.2 **Active Resistance.** A subject that is exhibiting physical or mechanical defiance to a law enforcement officer's control efforts. Although the subject is not deliberately attempting to cause injury to the officer/agent or to others, injury could nevertheless occur as a result.
 - 5.3 **Assaultive Resistance.** Active resistance that has the potential of causing physical injury to the officer/agent or to others. The subject attempts (or appears to have the intent to attempt) to make physical contact in an attempt to control or assault the officer/agent.
 - 5.4 **Serious Physical Injury.** A physical injury likely to cause death or serious permanent disfigurement or loss of function of a bodily member or organ.
 - 5.5 **Electronic Control Device (ECD).** A device that uses short-duration electronic pulses to overload a targeted muscle system, causing neuro-muscular incapacitation, with minimal risk of serious physical injury or death.

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5.6 ECD Deployment. The use or activation of an ECD.

5.7 ECD Cartridge. The device that houses the probes for an ECD.

5.8 Probe Deployment. The launching of probes from an ECD device/cartridge towards an intended target.

5.9 Neuro-Muscular Incapacitation (NMI). The involuntary stimulation of both motor and sensory nerves that impedes a person's ability to act. NMI is not reliant on pain for compliance.

6. POLICY.

6.1 POLICY – TRAINING GUIDELINES

6.1.1 Only CBP certified ECD instructors shall instruct CBP personnel and certify them as end users/operators or instructors.

6.1.2 Only ECD systems and cartridges authorized by the UFPD shall be used in training or operations.

6.1.3 Participation in the training and certification for the ECD shall be voluntary.

6.1.4 Only CBP personnel who have previously been certified in either the collapsible straight baton or OC spray are eligible to be trained and certified to use ECD devices.

6.1.5 ECD systems, cartridges and related equipment shall not be altered in any way.

6.1.6 Successful completion of a UFPD approved ECD training course (consisting of at least eight hours of instruction) is required for initial end user/operator certification. Thereafter, ECD certified personnel must receive an annual four-hour UFPD approved refresher course in order to maintain certification.

6.1.7 Exposure to an ECD is not required for end user/operator certification. End users may opt to participate in exposure training, so long as the training is conducted under the close supervision of CBP certified ECD instructors and in a controlled manner with appropriate safety gear. Exposures should be documented in the training log after-action report and may be videotaped and kept for training reference.

6.1.8 Appropriate safety equipment (including eye protection) shall be worn during all ECD training.

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6.2 POLICY – OPERATIONAL GUIDELINES

6.2.1 An ECD shall be deployed only in accordance with DHS policy, CBP use of force policy, the CBP Use of Force Continuum, and in a manner consistent with its designed use as specified by the manufacturer.

6.2.2 An ECD shall not be used to taunt, harass, or abuse a subject, or in a manner inconsistent with training or policy protocols.

6.2.3 An ECD is not a substitute for the use of deadly force. This however, does not preclude the use of an ECD (or any other weapon) for this purpose if the use of deadly force would otherwise be reasonable.

6.2.4 An ECD shall only be utilized by CBP trained and certified law enforcement personnel as an intermediate force device on subjects who, at a minimum, demonstrate active resistance.

6.2.5 ECDs shall be carried on the non-gun side in a UFPD authorized holster issued by or CBP or purchased through an official uniform purchase program.

6.2.6 ECD operators shall not intentionally target the head, neck, groin or female breast.

6.2.7 CBP personnel should not deploy ECDs near flammable materials.

6.2.8 CBP personnel shall deliver only the number of ECD cycles reasonably necessary to control and secure a resistant subject. If the use of the ECD is unsuccessful in controlling a subject, the officer/agent should transition to another use of force option.

6.2.9 When possible, CBP personnel should verbalize "TASER, TASER, TASER" prior to deployment to warn fellow officers/agents of the imminent use of an ECD. This will alert fellow officers/agents to prepare to control a subject under the power of an ECD.

6.2.10 When possible, CBP personnel should avoid using an ECD on children, the elderly, pregnant subjects, subjects who are on elevated surfaces, subjects operating a conveyance, subjects in water sufficient to drown or subjects who are running (unless exigent circumstances exist).

6.2.11 CBP personnel shall ensure that any person(s) exposed to an ECD and in CBP custody will be promptly seen by an Emergency Medical Technician. Additionally, CBP personnel shall seek medical attention, as appropriate, for anyone who appears, or claims to be, injured.

6.2.12 CBP personnel trained and certified in the use of an ECD may remove probes embedded in a person's skin, provided the projectiles are not embedded in the head, neck, genitals, or female breast tissue. Probe removals in those instances shall be performed by a certified medical professional.

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6.2.13 If practical, CBP personnel shall photograph or videotape any marks or injuries resulting from the use of an ECD. If the marks or alleged injuries to be documented are on a private portion of the subject's body, CBP personnel shall make reasonable efforts to ensure privacy before the documentation is recorded. To the extent possible the recording must be made by an officer/agent of the same gender as the subject.

6.2.14 ECD projectiles are considered a biohazard and shall be disposed of according to established biohazard disposal protocol.

6.2.15 Only UFPD authorized ECD systems and cartridges shall be carried and utilized by CBP personnel. Requests to utilize special-purpose systems or cartridges not previously authorized must be submitted through the chain of command to the Director of the UFPD.

6.2.16 Any incident that results in the discharge of an ECD must be reported in accordance with Section 8 of this Policy.

6.2.17 Only personnel who have been trained and CBP certified as ECD Armorers are authorized to perform maintenance on, or make repairs to, ECD systems. This does not preclude ECD end users from performing routine cleaning that does not require disassembly of the device beyond removal of the cartridges.

6.2.18 An ECD shall not be used for the purposes of voluntary exposure unless it is part of an authorized training course in accordance with Section 6.1.7 of this policy.

7. RESPONSIBILITIES.

7.1 Assistant Commissioners (or their designees) shall ensure appropriate distribution and dissemination of this policy.

7.2 The UFPD shall be responsible for the development and approval of ECD training materials, certification standards and operational procedures.

7.3 The UFPD shall be responsible for the periodic review of field usage of ECDs in order to evaluate policy compliance as well as to assess the overall safety and effectiveness of ECD devices/systems.

7.4 Responsible CBP supervisory personnel shall ensure that ECDs (when not in use) are stored with cartridges removed, in a limited access location and in a manner consistent with the manufacturer's suggestions for storage.

7.5 Local Stations, Branches and Ports of Entry shall be responsible for the issue, storage, proper care and maintenance of ECD devices and related equipment.

7.6 Each ECD device shall have all stored deployment and utilization data downloaded quarterly. Additionally, after each field deployment, data related to that deployment shall be downloaded and saved.

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7.7 Responsible officials shall ensure that all downloaded ECD data is securely stored and maintained for a minimum of three years.

7.8 Failure to comply with this policy may result in disciplinary action and/or loss of ECD certification.

8. PROCEDURES.

8.1 ECD REPORTING GUIDELINES

8.1.1 Verbal Reports – Personnel shall verbally report any use of an ECD to their immediate supervisor within one hour of the event, unless the reporting employee is physically incapacitated or otherwise unable. Such oral report shall be made in person, via radio, or telephone and include the following information (if known):

- a. The date, the time, and the location of the incident;
- b. The device(s) used;
- c. The nature and extent of any injuries claimed or observed; and
- d. The name, date of birth, and physical location(s) of the subject(s).

8.1.2 If CBP bargaining unit employees are required to provide any additional information, pursuant to, but not limited to, written or oral statements and/or reports, all applicable provisions of the appropriate collective bargaining agreement must be observed.

8.1.3 Written Reports. CBP supervisors shall send reports through their respective chains of command. Copies of the written reports shall be sent to the appropriate Assistant Commissioner and to the Director of UFPD within 10 business days, or as soon as practical. Reports to the UFPD shall be made by utilizing CBP Form 318 – Reportable Use of Force Incident Data (also available as an e-form on CBPNet).

8.1.4 Supervisors should follow the guidelines established in CBP Directive 3340–025C (or any successor policy) when determining whether a Significant Incident Report (SIR) should be completed. A deployment of an ECD device, in and of itself, does not warrant the filing of a SIR. The supervisor on duty shall submit a preliminary written report by the end of the work shift to the Commissioner's Situation Room in accordance with CBP Directive 3340–025C.

8.1.5 Any use of an ECD that results in serious physical injury or death shall follow CBP policy and procedures for reporting the use of deadly force.

8.1.6 If medical treatment offered pursuant to Section 6.2.11, above, is refused, that refusal shall be documented by the CBP personnel involved.

8.1.7 Mere display of an ECD device does not constitute a reportable use of the system.

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9. **NO PRIVATE RIGHT STATEMENT.** This document is for internal CBP use only and does not create or confer any rights, privileges, or benefits for any person or entity. United States v Caceres, 440 U.S. 741 (1979).

Acting Commissioner
U.S. Customs and Border Protection