



# Defending Human Dignity at the U.S.-Mexico Border:

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

*Summary of Shadow Report Submitted by the Southern Border Communities Coalition (SBCC)*

U.S. Customs and Border Protection (CBP) is the largest law enforcement agency in the United States with over 60,000 employees. Most agents of the U.S. Border Patrol, a component of CBP, are deployed in communities near the U.S.-Mexico border. They do not limit their activity to the actual border; they operate throughout our communities. CBP regularly violates human rights under the International Covenant on Civil & Political Rights (ICCPR), and the Southern Border Communities Coalition (SBCC) has submitted a [Shadow Report](#) to demonstrate these failures to comply with the ICCPR.



**RACIAL & IDENTITY DISCRIMINATION (ART. 26):** Despite the ICCPR prohibition against discrimination, the United States allows law enforcement to engage in racial and identity profiling in the border region. The U.S. Department of Justice (DOJ) [guidance limiting profiling](#) by federal law enforcement “does not apply to interdiction activities at the border or its functional equivalent”. [CBP policy permits](#) agents to “use race or ethnicity when a compelling governmental interest is present,” and describes national security as “per se a compelling interest.” Ramona Casas, who lives in the Rio Grande Valley of Texas, says she carries her U.S. passport with her everywhere she goes *inside* the country. *“I know if I do not do this, I could be interrogated and Border Patrol won’t believe I am a U.S. citizen due to my skin color and accent.”*

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

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



**ARBITRARY & WARRANTLESS SEARCHES (ART. 9):** The United States grants CBP broad warrantless search powers under [8 U.S.C. 1357\(a\)\(3\)](#). Border Patrol invokes these powers to stop people on the street and run [more than 100 checkpoints](#) *inside* the country. Agents search and [detain people](#), telling them they have no rights. In a survey of Texas, New Mexico, Arizona, and California, [nearly one-third of voters statewide said they had been stopped](#) at an interior checkpoint. For Jovanny Hernández, who lives in New Mexico, his city of Las Cruces is surrounded by six Border Patrol checkpoints, all within the United States. *“I have to cross a checkpoint every time I want to see my family in another town, even though I’m traveling inside the country.” “[Border Patrol] makes me feel like a criminal for traveling in my own home.”*

**QUESTION:** How will the U.S. change its laws and policies to prohibit arbitrary enforcement with respect to warrantless searches including interior checkpoints currently permitted in border communities under 8 U.S.C. 1357(a)(3)?

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



**EXCESSIVE FORCE & INHUMANE POLICING (ART. 6, 7):** CBP excessive force is on the rise. Within the last three years, use of force by border agents has increased from nearly 600 to 900 incidents a year, and is [on pace to hit a new high](#). Since 2010, more than 270 people have [died in encounters with border agents](#) and many more have been harmed. This violence is a direct result of a deficient standard for use of force in the United States. Instead of limiting force to the international standard of ‘necessary and proportional’ the United States permits force that is ‘objectively reasonable.’ This low standard led a CBP agent to sexually assault Janine Bouey multiple times when she was crossing the San Ysidro border in California. ***“What happened to me should have never happened and it shouldn’t happen to anybody traveling to the United States.”***

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

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



**IMPUNITY AND LACK OF AN EFFECTIVE REMEDY (ART. 2, 50):** Victims of border agents struggle to access justice in the United States. Successful disciplinary, civil, or criminal actions against U.S. border agents are exceedingly rare: CBP’s system for handling complaints of abuse and misconduct is patently ineffective; their National Use of Force Review Board has exonerated every killing; the Supreme Court has ruled there is no right to sue federal agents in civil court for constitutional violations until and unless Congress legislates to allow it, and it has not; and the U.S. Department of Justice has closed all but one criminal investigation of a border killing without pursuing charges. In the 100-year history of border agents, no U.S. border agent (zero) has ever been convicted for taking a life while on duty, despite killing thousands.

Marisol García Alcántara, who survived being shot in the head by Border Patrol in 2021 in Nogales, Arizona, believes the agency considers its agents legally untouchable, stating ***“Whatever their agents do, nothing happens.”*** After Border Patrol agents shot Marisol, they interfered with the local police investigation of the incident. Marisol was taken to a hospital, then a detention center and ultimately deported with a bullet still lodged in her brain. No agent was prosecuted or held accountable.

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

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



[Full report available at startwithdignity.org/reports](https://startwithdignity.org/reports)

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