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### **Strengthening CBP with the Use of Body-Worn Cameras**

#### **Cameras: A Law Enforcement Best Practice**

The use of body-worn cameras is increasingly considered a best practice among law enforcement.<sup>1</sup> Police departments across the country are using cameras as a means of reducing the number of incidents in which force is used and as an important tool to protect officers from baseless allegations of abuse.<sup>2</sup> Body-worn cameras in particular provide important benefits that vehicle-mounted or other stationary cameras cannot, by going wherever officers go and capturing incidents that take place away from the patrol vehicle. According to the Department of Justice, the use of cameras by law enforcement also improves the judicial process by providing effective video evidence and increases officer safety by deterring violent behavior and helping to convict those who attack officers.<sup>3</sup>

A study of the Rialto, California, Police Department spearheaded by Police Chief Tony Farrar supports those conclusions. In that department, the use of officer-mounted cameras resulted in an 88% decrease in complaints filed against officers and a 60% decrease in incidents where officers used force, with those officers not wearing cameras being twice as likely to use force.<sup>4</sup> Farrar has since called the results “quite amazing,” and Randy Peterson, a Rialto officer who was vindicated after a false complaint of police brutality, said “I like the cameras because I don’t have to worry about what someone might say that isn’t true.”<sup>5</sup> Judges have also recognized the value of recordings to fostering civil interactions between police and the public<sup>6</sup>: a district court judge in New York recently ordered the use of body-worn cameras by NYPD officers in neighborhoods across the city’s five boroughs, in order to “encourage ‘lawful and respectful’ interactions between police and suspects” and to

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<sup>1</sup> See, e.g. Nancy LaVigne, It’s One Smart Step, Not a Solution, NEW YORK TIMES, Oct. 23, 2013, available at <http://www.nytimes.com/roomfordebate/2013/10/22/should-police-wear-cameras/body-cameras-for-police-could-be-one-smart-step>; Neil Franklin, Cameras Could Restore Trust in Police, NEW YORK TIMES, Oct. 22, 2013, available at <http://www.nytimes.com/roomfordebate/2013/10/22/should-police-wear-cameras/body-cameras-could-restore-trust-in-police>.

<sup>2</sup> Nathan Koppel, Cameras Keep a Close Watch on the Police, WALL STREET JOURNAL, Feb. 12, 2013, <http://online.wsj.com/article/SB10001424127887323511804578298060326177182.html>;

see also City of Spokane, Office of the Police Ombudsman, Body-Worn Video & Law Enforcement: An Overview of the Common Concerns Associated With Its Use, 2012: <http://www.spdombudsman.com/wp-content/uploads/2012/02/Attachment-G-Body-Camera-Report.pdf> (recommending the use of body-worn video cameras by the Spokane Police Department); additionally, a recent survey of media reports reveals that lapel cameras are being used by law enforcement in Albuquerque, NM, Phoenix, AZ, Mesa, AZ, Parker, AZ, Fort Worth, TX, Lubbock, TX, Richland Hills, TX, Cincinnati, OH, Canton, OH, Salt Lake City, UT, Daytona Beach, FL, Pittsburgh, PA, Denver, CO, Fort Collins, CO, New Orleans, LA, Oakland, CA, San Francisco, CA, Rialto, CA, Gilroy, CA, Modesto, CA, , Topeka, KS, New Carrollton, MD, Cheverly, MD, Couer d’Alene, ID, Branford, CT, Southington, CT, Harlan, KY, Claremore, OK, Owasso, OK, Brookfield, WI, Port Washington, WI, , Spokane, WA, Airway Heights, WA, Bainbridge Island, WA, Pigeon Forge, TN, Holton, ME, and Bellevue, NE. Possible future jurisdictions include Los Angeles, CA, Tucson, AZ, Minneapolis, MN, Duluth, MN, and Hazelton, PA.

<sup>3</sup> Dep’t of Justice, Office of Justice Programs’ National Institute of Justice, A Primer on Body-Worn Cameras for Law Enforcement, Sept. 2012, <https://www.justnet.org/pdf/00-Body-Worn-Cameras-508.pdf> [hereinafter “DOJ Primer”]

<sup>4</sup> Ian Lovett, In California, a Champion for Police Cameras, NEW YORK TIMES, Aug. 21, 2013, <http://www.nytimes.com/2013/08/22/us/in-california-a-champion-for-police-cameras.html>; Tony Farrar, Self-awareness to being watched and socially-desirable behavior: A field experiment on the effect of body-worn cameras on police use-of-force, Police Foundation, Mar. 2013, <http://www.policefoundation.org/sites/pftest1.drupalgardens.com/files/201303/The%20Effect%20of%20Body-Worn%20Cameras%20on%20Police%20Use-of-Force.pdf>.

<sup>5</sup> Nancy Dillon, Police body-worn cameras stop-and-frisk judge suggested have helped Rialto Police Department, NEW YORK DAILY NEWS, Aug. 13, 2013, <http://www.nydailynews.com/news/national/cameras-proposed-stop-frisk-judge-ca-police-article-1.1426025#ixzz2eh8TIOY3>

<sup>6</sup> A federal judge recently ordered the Maricopa County Sheriff’s Office to require videotaping of every traffic stop, in order to remedy the department’s discriminatory treatment of Latinos. Order, Ortega Melendres, et al. v. Arpaio, et al. No. CV-07-02513-PHX-GMS, (D. Ariz. Oct. 2, 2013) (Supplemental Permanent Injunction/ Judgment Order), available at [https://www.aclu.org/sites/default/files/assets/2013.10.02.606\\_supplemental\\_permanent\\_injunction\\_judgment\\_order.pdf](https://www.aclu.org/sites/default/files/assets/2013.10.02.606_supplemental_permanent_injunction_judgment_order.pdf)

“increase trust between officers and the public by providing a new form of evidence that can be used in settling complaints.”<sup>7</sup>

### Addressing Privacy Concerns

The use of body-worn cameras by U.S. Customs and Border Protection (CBP), like other types of electronic surveillance by law enforcement, raises important concerns regarding the privacy of both officers and the public.<sup>8</sup> These concerns can be addressed, as they have been in police departments, with a comprehensive policy framework that strikes a balance between effective oversight and protecting the civil liberties of CBP officials and the public. As detailed in a recent ACLU white paper, such a framework should include policies regarding control over when recordings are made, access to recordings, subject notification, and recording retention, recording use, and strong technological controls.<sup>9</sup>

### Cameras and the Border Security Context

Body-worn cameras can provide the same benefits for CBP as they have for police departments, if deployed with a strong policy framework in place to protect privacy and limit control over recordings. CBP, which is the largest law enforcement agency in the nation,<sup>10</sup> has a troubled reputation when it comes to use of force. Since January 2010, at least 19 people<sup>11</sup> have died as the result of alleged excessive use of force by CBP officials. That number includes seven minors under 21, seven U.S. citizens, eight individuals alleged to be throwing rocks, and six individuals killed while on the Mexican side of the border.<sup>12</sup> Moreover, according to administrative complaints, CBP officials at ports of entry have a pattern of using force abusively.<sup>13</sup>

Because body-worn cameras can accompany officers into situations that take place away from vehicles, they are particularly well suited to CBP’s needs. CBP officers are responsible for covering a vast terrain, both urban and rural—not just in vehicles but on foot, horse, bicycle, ATV, and boat.<sup>14</sup> According to manufacturers, officer-

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<sup>7</sup> Andrew Grossman, Judge Orders NYPD to Add Cameras to Officers’ Gear, WALL STREET JOURNAL, Aug. 12, 2013, available at <http://online.wsj.com/article/SB10001424127887324085304579009131128679174.html?mod=e2tw>

<sup>8</sup> Timothy B. Lee, Here’s why cops should be required to wear a lapel camera while on duty, THE WASHINGTON POST, Oct. 10, 2013, available at <http://www.washingtonpost.com/blogs/the-switch/wp/2013/10/10/heres-why-cops-should-be-required-to-wear-a-lapel-camera-while-on-duty/>.

<sup>9</sup> ACLU, “Police Body-Mounted Cameras: With Right Policies in Place, a Win for All,” October 9, 2013, available at <https://www.aclu.org/technology-and-liberty/police-body-mounted-cameras-right-policies-place-win-all>.

<sup>10</sup> Immigration enforcement spending now exceeds the budgets of the FBI, the DEA, the Secret Service, the U.S. Marshals Service, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) combined. <http://www.migrationpolicy.org/pubs/pillars-reportinbrief.pdf>

<sup>11</sup> Jorge A. Solis, 28, shot and killed, Douglas, AZ (Jan. 4, 2010); Victor Santillán de la Cruz, 36, shot and killed, Laredo, TX (March 31, 2010); Anastasio Hernandez Rojas, 32, tortured to death, San Diego, CA (May 28, 2010); Sergio Adrian H. Huereca, 15, shot and killed, El Paso, TX (June 7, 2010); Juan Mendez, 18, shot and killed, Eagle Pass, TX; Ramses Barron Torres, 17, shot and killed, Nogales, Mexico (Jan. 5, 2011); Roberto Pérez Pérez, beaten while in detention and died due to lack of proper medical care, San Diego, CA (Jan. 13, 2011); Alex Martinez, 30, shot and killed, Whatcom County, WA (Feb. 27, 2011); Carlos Lamadrid, 19, shot and killed, Douglas, AZ (March 21, 2011); Jose Alfredo Yañez Reyes, 40, shot and killed, Tijuana, Mexico (June 21, 2011); Gerardo Rico Lozana, 20, shot and killed near Corpus Christi, TX (Nov. 3, 2011); Byron Sosa Orellana, 28, shot and killed near Sells, AZ (Dec. 6, 2011); Alexander Martin, 24, died in car explosion that may have been caused by Border Patrol tasers (March 15, 2012); Charles Robinson, 75, shot and killed, Jackman, ME (June 23, 2012); Juan Pablo Perez Santillán, 30, shot and killed on the banks of the Rio Grande, near Matamoros, Mexico (July 7, 2012); Guillermo Arévalo Pedroza, 36, shot and killed, Nuevo Laredo, Mexico (Sept. 3, 2012); Valerie Tachiquin-Alvarado, 32, shot and killed, Chula Vista, CA (Sept. 28, 2012); José Antonio Elena Rodríguez, shot and killed, Nogales, Sonora (Oct. 11, 2012); Margarito Lopez Morelos, 19, shot and killed in the Baboquivari Mountains, AZ (Dec. 3, 2012); and Matthew Simmons, 25, shot and killed just south of Hebronville, TX (March 21, 2013).

<sup>12</sup> ACLU of New Mexico Regional Center for Border Rights; Analysis of information gathered from various newspaper articles on deaths noted in footnote above (vii) (Dec. 2012).

<sup>13</sup> Complaint and request for investigation of abuse of power, excessive force, coercion, and unlawful confiscation of property by Customs and Border Protection at ports of entry along the U.S.-Mexico border, American Civil Liberties Union, May 9, 2012, [https://www.aclu.org/files/assets/aclu\\_2012\\_cbp\\_abuse\\_complaint\\_2.pdf](https://www.aclu.org/files/assets/aclu_2012_cbp_abuse_complaint_2.pdf)

<sup>14</sup> On October 12, 2012 in Nogales, Sonora, across the border from Arizona, 16-year-old Jose Antonio Elena Rodríguez, was shot to death by U.S. Border Patrol agents in a boat who claimed that Rodriguez was part of a group throwing rocks from the Mexican side of the border fence. Witnesses caught some of the incident on video, but body-worn cameras on the agents would have provided much clearer evidence of the situation. Melissa del Bosque, Are U.S. Agents Who Shoot Mexicans Across the Border Above the Law, TEXAS OBSERVER, Oct. 22, 2012, available at <http://www.texasobserver.org/lawsuit-could-grant-constitutional-protections-to-mexicans-shot-on-mexican-side-of-the-border-fence/>.

mounted cameras are designed to work in a variety of situations, including nighttime encounters in low-light conditions.<sup>15</sup> Even when Border Patrol agents do conduct roving patrols in their vehicles, they are rarely behind the wheel during encounters with the public, usually stepping out of the vehicle to pursue a suspect on foot or enter a home, thus rendering vehicle-mounted cameras ineffective. Stationary cameras in checkpoints, holding cells or ports of entry, while necessary and helpful in many situations, are not always situated properly to provide clear or conclusive evidence about a use of force incident, simply because they cannot follow a moving subject.<sup>16</sup>

An agency-wide policy that mandates appropriate use of body-worn cameras in enforcement interactions with the public would provide much-needed oversight in response to criticisms about CBP's track record. In addition, such a policy would help to deter violence against CBP officials, and to exonerate officials who face false accusations of misconduct.

### Cost Analysis

The cost of body-worn cameras across CBP depends on the technology used. Cost per unit varies greatly depending on factors such as video quality, recording time limits, audio quality, camera placement, and more, but even the more expensive body-worn units are far more cost effective than in-car camera systems.<sup>17</sup> In a 2012 DOJ comparison of camera systems, the VieVu and Taser Axon, two comparable models, cost approximately \$900 to \$1,000 per unit, though other options ranged from as low as \$119.<sup>18</sup> Taser currently advertises body-worn camera models for law enforcement priced at \$299 and \$499.<sup>19</sup> Both the Taser and VieVu companies also offer video storage services for additional fees.<sup>20</sup>

### Recommendation

The use of body-worn cameras, deployed within an appropriate policy framework that includes strong privacy protections for officers and the public, should be mandated and funded for all CBP enforcement encounters with the public.

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<sup>15</sup> According to the Taser website, cameras have a "Retina Low Light" feature with light sensitivity designed to match the human eye. Taser, <http://www.taser.com/products/on-officer-video/axon-flex-on-officer-video> (last visited Oct. 11, 2013); VieVu also provides videos demonstrating the performance of body-worn cameras at night and in various conditions. VieVu, <http://www.viewu.com/viewu-action/> (last visited Oct. 11, 2013).

<sup>16</sup> A Border Patrol agent was acquitted in April 2013 after allegedly strangling a migrant in his custody to death. While the encounter was recorded by a stationary camera, it was recorded from such an angle as to be inconclusive. A body-worn camera likely would have provided much clearer evidence of what actually occurred. Greg Moran, Video Released from Border Patrol Strangling Trial, San Diego Union-Tribune, May 9, 2013, <http://www.utsandiego.com/news/2013/May/09/video-border-patrol-strangle-trial-fonseca/>

<sup>17</sup> While an in-car system can cost as much as \$8,000 and does not capture any interactions that take place away from the patrol car, body-worn cameras tend to cost far less. City of Spokane, Office of the Police Ombudsman, Body-Worn Video & Law Enforcement: An Overview of the Common Concerns Associated With Its Use, 2012: <http://www.spdombudsman.com/wp-content/uploads/2012/02/Attachment-G-Body-Camera-Report.pdf>; see also DOJ Primer at 5.

<sup>18</sup> *Id.* at 15.

<sup>19</sup> Taser, <http://info.taser.com/leaders-advantage.html> (last visited Oct. 11, 2013).

<sup>20</sup> TASER Axon Flex: The next generation of body camera, Policeone.com, Mar. 22, 2012, <http://www.policeone.com/police-products/body-cameras/articles/5272310-TASER-Axon-Flex-The-next-generation-of-body-camera/:VERIPATROL> Cloud, <http://www.viewu.com/viewu-products/veripatrol-cloud/> (last visited Sept. 11, 2013).