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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.¹ 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.² According to the Department of Justice, the use of cameras by law enforcement 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.³ In a study by the International Association of Chiefs of Police, 93% of prosecutors called video evidence an effective tool, and a majority reported reduced time spent in court.⁴ Moreover, 93% of police-misconduct cases where video was available resulted in the officer's exoneration; 50% of complaints were immediately withdrawn when video evidence was used; and 94% of citizens supported the use of video.⁵ Body-worn cameras in particular provide important benefits that vehicle-mounted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.

A study of the Rialto, California Police Department spearheaded by Police Chief Tony Farrar supports those conclusions.⁶ 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.⁷ Farrar has since called the results "quite amazing."⁸ 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."⁹ More recently, in an interview with the Associated Press, Dallas Police Chief David Brown indicated a desire to outfit his force with body cameras, noting the importance of having something more than officer testimony as evidence in disputed situations.¹⁰ He called such cameras "the future of law enforcement."¹¹

Cameras in the Border Security Context

U.S. Customs and Border Protection (CBP), the largest law enforcement agency in the nation,¹² is already exploring the use of body-worn cameras. CBP has a troubling reputation when it comes to use of force: since January 2010, at least 27 people¹³ have died following encounters with CBP officials who used force. That number includes minors, U.S. citizens, individuals alleged to be throwing rocks, and individuals killed while on the Mexican side of the border.¹⁴ Moreover, according to administrative complaints, CBP officials at ports of entry have a pattern of using force abusively and some Border Patrol agents have improperly used force on children.¹⁵

In September 2013, CBP released a short list of actions it plans to undertake to improve its use of force policy, including a commitment to pilot the use of cameras, both vehicle- and officer/agent-mounted.¹⁶ Recently, the House Appropriations Committee included language in its FY 2015 Department of Homeland Security (DHS) appropriations report commending CBP for its plans to conduct a pilot program, noting that cameras "can be useful in discouraging inappropriate conduct by law enforcement officers and have also exonerated officers accused of wrongdoing."¹⁷

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 and agents are responsible for covering a vast terrain, both urban and rural—not just in vehicles but on foot, horse, bicycle, ATV, and boat.¹⁸ According to manufacturers, officer-mounted cameras are designed to work in a variety of situations, including nighttime encounters in low-light conditions.¹⁹ Even when Border Patrol agents conduct roving patrols in their vehicles, they are rarely behind the wheel during encounters with the public, for example pursuing a suspect on foot, thus rendering vehicle-mounted cameras ineffective. Stationary cameras at checkpoints, holding cells or ports of

entry, while necessary and helpful in many situations, are not always properly placed to provide clear or conclusive evidence about a use of force incident, simply because they cannot follow a moving subject.²⁰

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. Cameras would help deter violence against CBP officials and exonerate those who face false accusations of misconduct.

Addressing Privacy Concerns

The use of body-worn cameras by CBP, like other types of electronic surveillance by law enforcement, raises important concerns regarding the privacy of both officers and the public.²¹ These concerns can be addressed, as they have been by police departments, using 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 an ACLU white paper, this framework should include policies regarding control over when recordings are made, access to recordings, subject notification, recording retention and use, and strong technological controls.²²

Cost Analysis

The cost of body-worn cameras across CBP would depend 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 cost-effective. 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 \$119.²³ Taser currently advertises body-worn camera models for law enforcement priced at \$299 and \$499.²⁴

Recommendation

The use of body-worn cameras, deployed within an appropriate policy framework that includes strong privacy protections for officers/agents and the public, should be promptly piloted by CBP and then expanded to cover all CBP enforcement encounters with the public.

¹ See, e.g. Editorial Board, *Putting Cameras on Police Officers is an Idea Whose Time Has Come*, WASH. POST (May 12, 2014), http://www.washingtonpost.com/opinions/putting-cameras-on-police-officers-is-an-idea-whose-time-has-come/2014/05/12/4674b3b6-da20-11e3-8009-71de85b9c527_story.html; Neil Franklin, *Cameras Could Restore Trust in Police*, N.Y. TIMES (Oct. 22, 2013), <http://www.nytimes.com/roomfordebate/2013/10/22/should-police-wear-cameras/body-cameras-could-restore-trust-in-police>; *Police Leaders Explore Growing Use of Body Cameras at PERF Town Hall Meeting in Philadelphia*, POLICE EXECUTIVE RESEARCH FORUM, Vol. 27 (Sept./Oct. 2013), http://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2013/debate_2013_sepoct.pdf; Kurt Vorndam et al., *Enhancing Police Accountability Through an Effective On-Body Camera Program for MPD Officers: Report and Recommendations of the Police Complaints Board*, DC OFFICE OF POLICE COMPLAINTS 5 (May 8, 2014), <http://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Final%20policy%20rec%20body%20camera.pdf>.

(Report by the D.C. Office of Police Complaints recommending a pilot program for the use of body cameras in order to decrease instances of police misconduct, enhance investigations, ensure speedy resolutions to lawsuits, and improve officer training.)¹

² Nathan Koppel, *Cameras Keep a Close Watch on the Police*, WALL ST. J. (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). A recent survey of media reports reveals that lapel cameras are being used by law enforcement in: Fairbanks, AK; Arab, AL; Athens, AL; Eloy, AZ; Lake Havasu City, AZ; Mesa, AZ; Phoenix, AZ; Scottsdale, AZ; Surprise, AZ; Tucson, AZ; Campbell, CA; Fairfield, CA; Modesto, CA; Novato, CA; Oakland, CA; Rialto, CA; San Antonio, CA; San Diego, CA; San Francisco, CA; Delta, CO; Denver, CO; Fort Collins, CO; Branford, CT; Hartford, CT; Milford, CT; Southington, CT; Walcott, CT; Washington, DC; Boynton Beach, FL; Cocoa Beach, FL; Daytona Beach, FL; Hallandale Beach, FL; Orlando, FL; Oviedo, FL; Sanford, FL; Windermere, FL; Buffalo, IA; Coeur d'Alene, ID; Post Falls, ID; Nampa, ID; Evansville, IN; Greenwood, IN; Topeka, KS; Wichita, KS; Harlan, KY; Owensboro, KY; New Orleans, LA; Cheverly, MD; Laurel, MD; New Carrollton, MD; Houlton, ME; Burnsville, MN; Gilbert, MN; Charlotte, NC; Wentzville, MO; Greensboro, NC; Omaha, NE; Haverhill, NH; Wildwood Crest, NJ; Albuquerque, NM; Canton, OH; Cincinnati, OH; Lancaster, OH; Sunbury, OH; Choctaw, OK; Claremore, OK; Owasso, OK; Tahlequah, OK; Pittsburgh, PA; Anderson, SC; Mt. Juliet, TN; Mt. Pleasant, TN; Fort Worth, TX; Lubbock, TX; Richland Hills, TX; San Antonio, TX; Park City, UT; Chesapeake, VA; Newport News, VA; Winoski, VT; Airway Heights, WA; Bainbridge Island, WA; Liberty Lake, WA; Hudson, WI; Port Washington, WI; Whitewater, WI; and Kenova, WV. Future jurisdictions include: Los Angeles, CA (testing pilot program since Jan. 2014); Washington DC (police chief moving forward with pilot program); Detroit, MI (pilot program began April 14, 2014); Minneapolis, MN (field tests to begin summer 2014); Las

Vegas, NV (pilot program in use); Duluth, MN; Charlotte, NC (approved by city council); Portland, OR (testing six in pilot program after a federal judge recommended Portland police officers use body-worn cameras); Atlantic City, NJ (pilot program starting in 2014); Hazleton, PA; Palm Bay, FL (city council approved purchase of 51 body cameras); Charleston, SC (police chief applied for \$30,000 from DOJ to launch program); Mt. Juliet, TN (planning to the devices through the summer); Richmond, VA (tested and waiting for final decision from city on whether to purchase); and Seattle, WA (pilot program launching in July 2014).

³ 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"]; see also Eugene P. Ramirez, *A Report on Body Worn Cameras*, MANNING & KASS, ELLROD, RAMIREZ, TRESTER LLP (Apr. 2, 2014), http://www.parsac.org/parsac-www/pdf/Bulletins/14-005_Report_BODY_WORN_CAMERAS.pdf ("The use of BWCs would be an excellent tool to help modify the behavior of both the police and members of the community. In the event of a use of force incident, supervisors would be able to view what happened and determine whether any alleged misconduct occurred").

⁴ Craig E. Ferrell, Jr., *The Future Is Here: How Police Officers' Videos Protect Officers and Departments*, THE POLICE CHIEF 80 (Oct. 2013), <http://www.calea.org/content/draft-law-enforcement-standard-body-worn-cameras-and-recording-devices>.

⁵ Steve Lovell, *Body-Worn (Video) Evidence*, EVIDENCE TECHNOLOGY MAGAZINE, Vol. 12, No. 2 (Mar.-Apr. 2014), http://www.evidencemagazine.com/index.php?option=com_content&task=view&id=1585

⁶ Ian Lovett, *In California, a Champion for Police Cameras*, N.Y. 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/pfrest1.drupalgardens.com/files/201303/The%20Effect%20of%20Body-Worn%20Cameras%20on%20Police%20Use-of-Force.pdf>.

⁷ Nancy Dillon, *Police Body-Worn Cameras Stop-and-Frisk Judge Suggested Have Helped Rialto Police Department*, N.Y. DAILY NEWS (Aug. 13, 2013), <http://www.nydailynews.com/news/national/cameras-proposed-stop-frisk-judge-ca-police-article-1.1426025#ixzz2eh8TIOY3>; see also

⁸ [Dillon, supra note 7.](#)

⁹ *Id.*

¹⁰ Nomaan Merchant, "Dallas Cop Indicted for Shooting Mentally Ill Man." ASSOCIATED PRESS (May 4, 2014), <http://bigstory.ap.org/article/dallas-cop-indicted-shooting-mentally-ill-man>

¹¹ Tristan Hallman, "Lawsuits against Dallas police costing city millions." DALLAS MORNING NEWS (May 11, 2014), <http://www.dallasnews.com/news/crime/headlines/20140510-lawsuits-against-dallas-police-costing-city-millions.ece>

¹² 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. Doris Meissner et al., *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, MIGRATION POLICY INSTITUTE (Jan. 2013), <http://www.migrationpolicy.org/pubs/pillars-reportinbrief.pdf>.

¹³ 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); Neil Begin, 54, shot and killed near Van Buren, ME (Apr. 23, 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 Perez Perez, died from improper medical care while in detention after reporting the he had been seriously beaten by agents (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); Amado Rodriguez, 46, shot and killed, Fabens, TX (Apr. 18, 2011); Jose Alfredo Yañez Reyes, 40, shot and killed, Tijuana, Mexico (June 21, 2011); Omar Olivares, 28, shot and killed, Eagle pass, TX (Sept. 15, 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 Rodriguez, shot and killed, Nogales, Sonora (Oct. 11, 2012); Margarito Lopez Morelos, 19, shot and killed in the Baboquivari Mountains, AZ (Dec. 3, 2012); Matthew Simmons, 27, shot and killed just south of Hebbbronville, TX (March 21, 2013); Ernesto Gutierrez Cortez, 38, shot and killed in Otay Mesa, CA (Oct. 19, 2013); Keith J. Martin, 35, shot and killed near Hondo, TX (Jan. 2, 2014); Gabriel Sanchez Velazquez, late 20s, shot and killed near Apache and Portal, AZ (Jan. 16, 2014); Name not released, shot and killed in Otay Mountains, southeast of San Diego (Feb. 18, 2014).

¹⁴ ACLU of New Mexico Regional Center for Border Rights; Analysis of information gathered from various newspaper articles on deaths noted in footnote 17 above.

¹⁵ ACLU et al., *Unaccompanied Immigrant Children Report Serious Abuse by U.S. Officials During Detention* (June 11, 2014), <https://www.aclu.org/immigrants-rights/unaccompanied-immigrant-children-report-serious-abuse-us-officials-during>; ACLU, *Complaint and Request for Investigation of Abuse of Power, Excessive Force, Coercion, and Unlawful Confiscation of Property by Customs and Border Protection at Ports of Entry Along the U.S.-Mexico Border* (May 9, 2012), https://www.aclu.org/files/assets/aclu_2012_cbp_abuse_complaint_2.pdf.

¹⁶ U.S. Customs and Border Protection, *U.S. Customs and Border Protection Use of Force Reviews, Recommendations and Next Steps* (Sept. 25, 2013), <http://www.cbp.gov/sites/default/files/documents/Use%20of%20Force%20Two%20Pager-FINAL.PDF>.

¹⁷ H. Comm. On Appropriations, 113th Cong., Report on the Dep't of Homeland Security Appropriations Bill, 2015 (Full Committee Print), <http://appropriations.house.gov/uploadedfiles/hrpt-113-hr-fy2015-hsecurity.pdf>.

¹⁸ 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), <http://www.texasobserver.org/lawsuit-could-grant-constitutional-protections-to-mexicans-shot-on-mexican-side-of-the-border-fence/>.

¹⁹ 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.vievu.com/vievu-action/> (last visited Oct. 11, 2013).

²⁰ 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/>.

²¹ Timothy B. Lee, *Here’s Why Cops Should Be Required to Wear a Lapel Camera While on Duty*, WASH. POST, (Oct. 10, 2013), <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/>.

²² Jay Stanley, *Police Body-Mounted Cameras: With Right Policies in Place, a Win for All*, ACLU (Oct. 9, 2013), <https://www.aclu.org/technology-and-liberty/police-body-mounted-cameras-right-policies-place-win-all>.

²³ *Id.* at 15.

²⁴ TASER, <http://info.taser.com/leaders-advantage.html> (last visited Oct. 11, 2013).