

CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW

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**BORDER HUMAN RIGHTS WORKING GROUP
STATEMENT OF CONCERN RE: BORDER PATROL'S ROLE IN HOT PURSUIT
AND MIGRANT DEATHS ON AUGUST 7, 2006 NEAR YUMA, ARIZONA
AND REQUEST FOR SUSPENSION OF SUCH DEATH-CAUSING OPERATIONS**

August 23, 2006

Michael Chertoff
Secretary
Department of Homeland Security
Washington, D.C. 20528

W. Ralph Basham, Commissioner
U.S. Customs & Border Protection
1300 Pennsylvania Avenue NW
Washington, DC 20229

David V. Aguilar
Chief of the Border Patrol
Office of Border Patrol
U.S. Customs & Border Protection
1300 Pennsylvania Avenue NW
Washington, DC 20229

Dear Secretary Chertoff, Commissioner Basham, and Chief Aguilar:

We write you this letter out of deep concern for the increasing pattern of violence plaguing the US-Mexico border. In recent years, the number of migrant deaths has continued to grow with increased border militarization and abuses against migrants by government agents and private individuals.

The vehicular accident involving the U.S. Border Patrol that occurred near Yuma, Arizona, on August 7, 2006, is an alarming example of how the U.S. government exacerbates and contributes to this pattern of violence instead of acting to counter it.

Public reports indicate that on Monday August 7, 2006, a vehicular accident killed ten migrants, including a young child, and injured eleven others during a high-speed chase along the border near Yuma, Arizona. A smuggler was reportedly driving a Chevy Suburban vehicle being chased by agents of the U.S. Border Patrol. The chase ended when the Chevy Suburban carrying the migrants flipped over after hitting or after swerving to avoid a spike strip placed on the road by the Border Patrol. The

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majority of injured migrants needed urgent medical care, some in such critical condition that they were airlifted to a Phoenix hospital. Several employees of Emergency Medical Response teams that arrived on the scene have publicly declared the mayhem caused by the accident was the worst they had ever seen.

Because of vastly increased criminal penalties imposed on migrant smugglers, these individuals over recent years have taken more and more dangerous steps to avoid arrest. These heavy jail sentences now imposed on smugglers have in no way reduced their illicit operations, but instead have resulted in the conversion of smugglers into weapons-carrying, hard-core, often violent criminals who routinely rob, sexually abuse, assault, kidnap, and falsely imprison migrants. It is also well known in border communities, and certainly to the U.S. Border Patrol, that this breed of violent smugglers will risk their lives and the lives of their human cargo to avoid arrest and extremely long prison sentences.

Under these well-known circumstances, hot pursuit cases by the Border Patrol are a recipe for death, injury, and the destruction of property. Indeed, except in cases in which delaying the prompt apprehension of a smuggler endangers the lives of law enforcement officers, smuggled migrants, or members of the public, permitting a policy or practice permitting hot pursuits of migrant smugglers is reckless in the extreme in terms of the safety of the migrants being transported by the smuggler as well as the safety of members of the public. A number of law enforcement agencies across the nation have severely limited the use of high-speed pursuits because it is well known that they pose a substantial risk to the officers involved, those being pursued, and to innocent members of the public.

This tragic and avoidable accident should serve as an opportunity for the U.S. Border Patrol to evaluate the violent deaths and costly medical care for the severely injured caused by a combination of the disregard for life exhibited by smugglers and recklessness of Border Patrol hot pursuits, and balance these costs against the marginal benefit of stopping a smuggler's vehicle quickly versus slowly but safely. We are uncertain whether the Border Patrol has created and maintained systems to collect information on pursuit driving. Without this information, the impact and dangers of its policies on hot pursuit cannot be determined. Nor have we found any information indicating that the Border Patrol has reviewed and updated pursuit policies based on analysis of pursuit data.

While policy and practice in this area are reevaluated, we urge the Department of Homeland Security and its Border Patrol to suspend hot pursuits of vehicles carrying migrants except in cases where the lives of officers, the public, or migrants being smuggled are in danger.

As the policies of law enforcement agencies throughout the country have demonstrated, there are numerous ways in which the drivers of vehicles that pose no immediate danger to the public may be brought to a stop in due course and the occupants arrested with minimum risk of death, injury, or destruction of property. The

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use of low speed tactical intervention techniques is now recommended by almost all law enforcement agencies, including the International Association of Chiefs of Police, Inc.

This of course does not mean that human smugglers should go unapprehended. As long as a vehicle driven by a suspected criminal does not pose a danger to the public or law enforcement officers, and particularly when it is carrying passengers, safe and sound policy is to place the vehicle under surveillance and apprehend its driver when the vehicle comes to a stop. Had that policy been followed in this and previous Border Patrol hot pursuit cases, the violent deaths of many migrants and U.S. citizens killed in these chases would have been avoided, and in all likelihood just as many smugglers would have been apprehended. As the National Institute of Justice of the U.S. Department of Justice reported in May 1997 following a national study of hot pursuit data, "a suspect who does not know he or she is being pursued will drive in a reasonably safe manner, and suspects who know they are being pursued and drive dangerously will slow down after the police terminate their pursuit ... The use of helicopters or fixed-wing airplanes ... can allow law enforcement to monitor a fleeing suspect unobtrusively and alert ground units when he or she stops." While using a spike strip may be an alternative approach recommended in many situations, using it while the suspect's vehicle overloaded with passengers is being chased at high speed obviously invites a dangerous and deadly accident.

Because spokespersons for the Border Patrol have refused to disclose to members of the public or the media the nature of the existing policy and practice regarding hot pursuit cases, many of the undersigned organizations have joined a Freedom of Information Act request seeking this information. A copy of that request is attached. *We urge you to support and encourage prompt and complete responses to these requests.* Once the requested records have been received and reviewed, we intend to submit recommendations to you regarding a rational and humane pursuit policy when smugglers and migrants are involved.

As this accident shows, when Border Patrol agents become engaged in a chase, the vehicles involved become potential dangerous weapons, at least one of which is often under the control of a reckless criminal. Respect for human life and the safety of border communities are ignored whenever Border Patrol agents initiate a high speed chase of a vehicle carrying migrants. Migrants entering the United States without inspection with the assistance of smugglers may be guilty of administrative violations of the law or even misdemeanors, but they do not deserve the death penalty for trying to find a better life or a way to support their families.

We again urge you to suspend high-speed chases of vehicles carrying passengers unless the suspect vehicle poses a danger to officers, the public, or its passengers, respond promptly to our attached FOIA request, and to dedicate the resources necessary to thoroughly evaluate current policy and develop improved policies that save rather than end human lives while not permitting human smugglers to avoid

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apprehension and prosecution. Gaining operation control of the U.S.-Mexico border should not take place in a manner that obviously will cause a high number of deaths of migrants who, for the most part, as you know, are entering without inspection in order to work and feed their families, hardly something someone should die for.

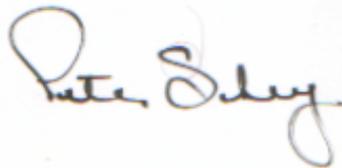
We look forward to your response.

Sincerely,

THE BORDER HUMAN RIGHTS WORKING GROUP

American Civil Liberties Union of Texas
American Civil Liberties Union of New Mexico
American Civil Liberties Union of San Diego
American Civil Liberties Union of Arizona
American Friends Service Committee (San Diego, CA)
American Friends Service Committee (Tucson, AZ)
Binacional Migration Institute (Tucson, AZ)
Border Angels / Gente Unida (San Diego, CA)
Border Action Network (Tucson/Nogales/Douglas)
Border Network for Human Rights (El Paso, TX)
Center for Human Rights and Constitutional Law
Diocesan Migrant and Refugee Services (El Paso, TX)
Coalicion de Derechos Humanos (Tucson, AZ)
Mexican American Legal Defense and Educational Fund
No More Deaths (Tucson, AZ)
South Texas Civil Rights Project (McAllen, TX)
Southern Poverty Law Center (Montgomery, AL)
Texas RioGrande Legal Aid

by

A handwritten signature in blue ink that reads "Peter Schey". The signature is written in a cursive style with a large initial "P".

Peter Schey
Executive Director
Center for Human Rights and Constitutional Law

ccs: Border Patrol Sector Chiefs (US-Mexico border)