THE GROWING HUMAN RIGHTS CRISIS

ALONG WASHINGTON'S NORTHERN BORDER

Executive Summary

ONEAMERICA
With Justice for All

UNIVERSITY OF WASHINGTON CENTER FOR HUMAN RIGHTS

April 17, 2012

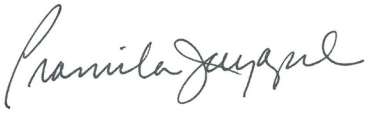
This report is the product of a unique three-way partnership between OneAmerica, the University of Washington Center for Human Rights, and the residents and leaders of many communities living near Washington State's northern border.

In 2008 and 2009, we were invited to participate in a series of meetings convened by Washington's U.S. Senator Maria Cantwell with local law enforcement officials along the northern border who were themselves concerned with the increased presence of federal agents along the border and the undermining of community trust. We had also begun to hear many concerns about the Border Patrol's behavior, particularly towards people of color living and working in towns within 100 miles of the Canadian border. They had experienced themselves or heard stories of people too afraid to go to the courthouse to pay a fine, too mistrustful of the authorities to call 911, or too fearful to leave their home to attend church or go to the grocery store. They sought ways to educate and empower their neighbors to seek sustainable policy solutions, to improve the safety and well-being of all in border cities and towns.

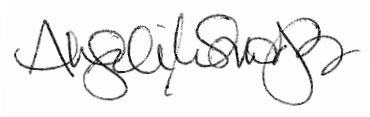
For OneAmerica, responding to these requests was vitally important. OneAmerica's mission is to advance democracy and justice through building power in immigrant communities. We believe that building a healthy, just and vibrant democracy necessitates ensuring that immigrants are engaged in advocating for themselves and their communities. Through our diverse membership base comprised of immigrants who live in communities across the state, we have been able to identify problems that require education, documentation and, ultimately, policy change. Our approach is always based on research and fact-finding, and then elevated to determining positive solutions that will allow for fundamental human, civil and immigrant rights to be upheld.

For the UW Center for Human Rights, too, this partnership provided a valuable opportunity to support frontline human rights defenders working on issues of crucial importance to our state. Our mission is to educate the next generation of UW undergraduate and graduate students in the interdisciplinary field of human rights; to promote human rights as a core area of faculty and graduate research; and to engage productively with local, regional, national, and international organizations and policymakers to advance respect for human rights. In this context, we've been honored to work in partnership with OneAmerica and its community-based rights advocates. Our researchers have helped to document and analyze data gathered through OneAmerica's work and to identify human rights implications and some possible policy solutions.

The publication of this report culminates the first stage of a long process of organizing, educating, and empowering communities along Washington State's northern border to defend their human rights. To be truly successful, however, we must also convey the urgency and necessity for all Washingtonians to make our voices heard in defense of human rights for all people.



Pramila Jayapal
Executive Director
OneAmerica



Angelina Snodgrass Godoy
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Executive Summary

This report documents the findings from 109 on-the-ground interviews, observation, two hearings, observation and research in border communities, all conducted over a period of approximately one year. The report shares the stories of many of the workers we met, and the transformation of their communities in the wake of the post-9/11 buildup of u.s. Border Patrol activity in the area. The majority of stories are marked by fear, mistrust, harassment, and abuse. They are rooted in specific—and avoidable—patterns of practice implemented by the U.S. Border Patrol, working in close coordination with Immigration and Customs and Enforcement and local law enforcement agencies.

In particular, this report calls attention to three interrelated patterns of practice.

First, in its own independent operations, the Border Patrol engages in systematic profiling of religious and ethnic minorities.

Second, collaboration between Border Patrol and other agencies, including local law enforcement, emergency responders, and the courts, results in a confusing and dangerous fusion where vital services are perceived as immigration enforcement.

Third, these first two patterns result in a third: U.S. Border Patrol's behavior and dangerous partnerships with other agencies have created extensive fear and mistrust, leading to community members' unwillingness to call 911, access the courts, and even to leave their house to attend worship services or fulfill basic needs.

The report is divided into three distinct sections and also includes a final section providing commentary from the University of Washington Center for Human Rights:

Introduction, Landscape, and Methodology
Patterns of Abuse
Conclusion and Key Recommendations

Section 1: Introduction, Landscape, and Methodology

Post 9/11: Increased Enforcement Near Northern Border

The patterns of abuse documented in this report reflect broader national trends in recent decades, whereby concerns about immigration and national security have resulted in the channeling of increased resources to the Department of Homeland Security (DHS). Some key statistics indicate the dramatic increase in enforcement along the northern border.

Funding for Customs and Border Protection (CBP) soared post-9-11. In fiscal year 2003, CBP was allocated $5.9 billion. In FY2007, CBP's budget ballooned to $7.7 billion and expanded another 52 percent to $11.7 billion in FY2012 (Batalova and Lee 2012).

Since 9/11, the number of agents deployed along the northern border has increased dramatically—from 340 in FY2001 to 2,069 in FY2010 (Congressional Research Service 2010). In Blaine sector, the focus of our report the number of agents increased from 48 in 2001 to 327 in 2010. There is now one CBP agent for every two miles of northern border compared to one agent for every 13 miles in 1999. Staffing has increased 589%, while apprehensions have decreased 75.6%—this is often a statistic cited for how increased enforcement has been effective. However, using decreasing apprehensions as a measure of border security ("prevention through deterrence") is problematic, as migration flows can be impacted by many factors including economic slowdowns. While much of the increased enforcement has been justified as necessary because of its connection to national security, a systematic review of all terrorism-related prosecutions occurring in Washington State since 9/11 show that **of 43 prosecutions for terrorism in Washington State since 2001, zero have been referred to the courts by the Border Patrol.**

While Border Patrol, as the "men in green," may be more visible along the northern border, Immigration and Customs Enforcement's (ICE) role in detention and deportation, fueled by their soaring budget, cannot be overstated. In FY 2003, the total ICE budget was $3.3 billion. By 2007, the budget had increased 44 percent to $4.7 billion. By 2012, it had climbed another 25 percent to $5.9 billion. ICE staffing has also grown steadily. In 2005, there were 15,000 employees. By 2009, staffing had increased nearly 27 percent with 19,000 employees.

A series of recent memos on prosecutorial discretion by ICE Director John Morton gives guidance to ICE agents, officers, and attorneys to use prosecutorial discretion at any point during the enforcement process, including when deciding who to question and stop, in order to utilize ICE resources to focus on threats to national security and public safety. However, this guidance has yet to be fully implemented with visible results on the ground. Current ICE and CBP practices only lead to a wider dragnet for deportation of people who are not threats to public safety.

Immigrants are being deported in record numbers under the Obama Administration (about 400,000 a year). The Administration is focused on "criminal aliens," but data shows that of all "criminal aliens" for whom ICE obtained a removal order last year, only 25% were for aggravated felonies. The remaining 75% of this category of people were deported under some other crime-related deportation ground which can include many low-level misdemeanors (e.g. shoplifting or minor traffic offenses).

Individuals in deportation proceedings with criminal charges in Washington State's immigration courts is lower than the national rate with only 13.3% of individuals in 2010 and compared to 16.5% nationwide. The majority of individuals in proceedings have only immigration charges.

Methodology

This report's dataset contains 109 interviews that uncovered 135 incidents reported by Latinos and Muslims/Arabs across Skagit, Whatcom, and Snohomish counties.

Two OneAmerica base group leaders and OneAmerica's Lead Organizer were trained in human rights documentation at American University's Law School in Washington, DC. They then trained other members of the base groups and developed a shared methodology that all could use to document reported abuses.

OneAmerica reached the community by doing our research where immigrants live and work. Trained leaders knocked on doors at trailer parks and apartment complexes and visited migrant camps, worksites, and grocery stores. They contacted trusted institutions such as local churches, domestic violence service providers, a community health clinic, and a Spanish-language radio station, and asked for them to refer community members to the OneAmerica human rights hotline.

Section 2: Patterns of Abuse

Pattern of Abuse 1: Border Patrol's Use of Racial Profiling

Our research documented numerous accounts of the Border Patrol engaging in apparent racial and religious profiling in the northern border region. In interviews, community members described a large number of incidents in which CBP stopped individuals for no discernible reason other than their appearance, accent, or perceived inability to speak English.

82 of the incidents reported to us involved being asked for papers by CBP either while driving or at a public location. Community members reported that without reason to suspect unlawful activity, the Border Patrol regularly approaches people who appear to be Latino for such questioning in numerous public locations including gas stations, ferry terminals, the Greyhound station, the Bellingham airport, or outside of Wal-Mart.

25 accounts from community members involved questioning by Border Patrol agents who had followed Latino drivers on the roads. Specifically, community members reported that CBP often waited outside fields and then followed workers when they left. In some case, individuals were followed to their homes.

In total, 63 incidents reported involved apparent racial profiling by CBP. There is a clear perception among community respondents that the Border Patrol selectively target certain ethnic groups with these practices. Community members who experienced these incidents consistently reported that the only explanation for their targeting was that they looked Latino or like "workers."

Our research also documented concerns about religious profiling among members of the Muslim community, both during border crossings and while driving in the border area.

Pattern of Abuse 2: Dangerous Fusion—Collaboration Between Border Patrol and Local Law Enforcement and Other Agencies

Many of the incidents reported did not arise from the Border Patrol's independent enforcement activities, but from the complex interface between Border Patrol and other federal and local agencies. Three types of cases emerged from our research, involving the Border Patrol's collaboration with local law enforcement, with 911 emergency services, and with local courts.

Border Patrol agents routinely provide backup and language interpretation when requested to do so by local police. About 38% of all incidents reported to OneAmerica involved CBP acting as interpreters. Once on the scene, Border Patrol agents routinely asked for the immigration status of the present individuals. Sometimes, Border Patrol only checked immigration status in these situations, failing to interpret at all.

As a result of these practices, requiring language access services during a routine traffic stop can result in detention and deportation. In over twenty cases community members reported individuals who were pulled over by local law enforcement for a broken taillight, loud muffler, or a failed turn signal had been detained when CBP arrived to interpret.

Border Patrol's "interpretation practices" raise concerns about racial and ethnic profiling. Because language interpretation is the most frequent justification for the Border Patrol's involvement in everyday policing, not all communities experience this level of immigration scrutiny—only those who are believed to speak Spanish. In many cases, even those who speak English are subjected to this scrutiny when they appear Latino or have a "Latino-sounding" last name.

Fusion of local law enforcement with CBP has dire consequences for community safety. As one community member, Ira, explained to us, "People are afraid to call the police for help because they know they are connected to immigration. It's hard to tell apart who is who because we feel they [local law enforcement and federal immigration] are the same."

For the cities of Blaine, Lynden, and Sumas, the Border Patrol provides dispatch services for 911 calls, and on occasion arrives at the scene of the incident alongside – or even before – first responders. As with driving incidents, although the Border Patrol's ostensible purpose in emergency situations is to provide interpretation and backup, they do not set aside their objective of immigration enforcement even in emergency situations.

CBP collaborating with law enforcement either as emergency response personnel or as interpreters has had lethal consequences. The February 2011 death of Alex Martinez and the June 2011 death of Benjamín Roldán Salinas are troubling examples of the dangerous effects of these practices. Had interpretation been provided by a neutral party in these instances, perhaps the outcomes would have been different.

Numerous individuals reported Border Patrol's presence in or near courthouses, particularly in Lynden. The selectivity of this tactic – the reported presence of agents on days when Spanish-language interpretation is provided, and their reported targeting of Latinos – suggests that this particular community's access to justice is weaker than that of other communities, raising concerns about equal protection under the 14th amendment.

Pattern of Abuse 3: CBP Creates Climate of Fear and Unsafe Communities

Feelings of fear and anxiety were reported in nearly 70 percent of the incidents we documented. Fear did not simply extend to immigration enforcement, but the community memebers were clearly fearful of the police, emergency services, and other agencies whose operations are vital to the health and safety of all people in our communities. Specific practices of the Border Patrol and its partner agencies, especially local law enforcement, have contributed to this climate.

These practices have erected barriers to the trust and relationships necessary for effective crime-fighting in any community. Communities find themselves unable to access vital services like emergency assistance and police protection.

The outlined collaboration has also undermined the efforts of those seeking to protect victims of domestic violence or worksite abuses. As one employee from a domestic violence agency along Washington's northern border told us, "There is intense fear among victims to call out of fear that their spouse, children, or others will be put in danger of deportation."

If the court system represents one end of the community safety spectrum and calling 911 or the police represents the other end, migrant workers find themselves unable to trust the system at either entry point. Resource-sharing and collaboration becomes a grave concern when it imperils communities' ability to enjoy basic civil liberties and defend their rights, even in situations that threaten their very lives.

Along the northern border, there are mixed status families but also mixed status churches, schools, and neighborhoods. Behavior by CBP is pervasive and causes anxiety for Latino children and residents. U.S. citizen children are deeply impacted by the climate of fear, the lack of access to services and protection, and, in some cases, by a parent's deportation.

U.S. Citizen Latino youth struggle with how to process racial profiling incidents such as being asked for immigration papers. These youth identify strongly with America and they struggle with how to deal with feelings of alienation and discrimination in their home country. They cannot reconcile what has happened to them or could happen to them with what they believe America to be.

Section 3:

Conclusion and Policy Recommendations

The practices documented in this report suggest that communities of color in Washington State find themselves fearful of the very agencies that are entrusted with their protection, as a result of some systematic patterns of practice by CBP. The following are key policy recommendations contained in this report.

Recommendations for Department of Homeland Security Customs and Border Protection

- Implement a CBP-wide sensitive locations policy similar to ICE that restricts enforcement at sensitive locations, including schools, hospitals, places of worship, public religious ceremonies, public demonstrations, and courthouses.
- Implement a written policy that clearly outlines that CBP will not engage in enforcement during assistance with emergency checkpoints, health epidemics, or natural disasters.
- CBP must bring its enforcement practices in line with Department of Homeland Security stated priorities to focus on individuals who are threats to public safety.
- While the 100-mile rule is enacted by statute, reforms are necessary for operations in regions along the border. CBP agents should not arbitrarily stop, question or arrest individuals without reasonable suspicion or probable cause that the individual has entered the United States illegally.
- CBP should adopt a policy barring the use of agency personnel and resources to perform civilian law enforcement functions and state and local police officials should not be engaged in Border Patrol operations. CBP should not respond to routine law enforcement calls such as traffic incidents or serve as emergency response. CBP should not serve as interpreters or, at a minimum, must develop a written code of conduct with clear expectations.
- CBP must increase its transparency. CBP should provide transparent and accessible information on stops—even those that do not result in a deportable offense—as well as developing metrics other than apprehensions to measure the effectiveness of its policies.
- All CBP officers should receive periodic use of force and de-escalation techniques training. Training should include specific instruction on U and T visas, asylum and refugee status, as well as Violence Against Women Act visas.
- DHS Office of the Inspector General should undertake a broad investigation of CBP's practices.

Recommendations for the Department of Justice

- Reform the Department of Justice 2003 "Guidance Regarding the Use of Race by Law enforcement by Federal Law Enforcement Authorities" DOJ Guidance to improve protections for those affected by profiling practices at the border including prohibition of racial profiling based on national origin, language and religion, among other reforms.
- Investigate CBP's interior enforcement practices in and outside courthouses and the use of CBP as interpreters or as emergency response and whether these practices limits meaningful access of Limited English Proficient individuals to 911, emergency services, and the courts under TITLE VI of the CIVIL RIGHTS ACT OF 1964.

Recommendations for U.S. Congress

- Do not increase appropriations at the northern border until an investigation has been completed examining the use of resources along the northern border.
- Move forward immediately with the reauthorization of the Violence Against Women Act, including the strongest protections possible for immigrant women by renewing and strengthening the U visa program.
- Move forward swiftly with Comprehensive Immigration Reform that provides an earned path to legalization for the millions of undocumented immigrants in the U.S., which will offer relief to mixed status families, power to workers to end worksite exploitation, relief to scrupulous businesses who contribute to the economy; and clearer lines of communication between immi-

grants and law enforcement to improve community safety.

- Co-sponsor and pass the End Racial Profiling Act of 2011 (S.1670 & H.R. 3618), which would prohibit the use of profiling based on race, religion, ethnicity or national origin by any federal, state, local or Indian tribal law enforcement agency.

Recommendations for Washington State

- State and local police should refrain from asking immigration status.
- State and local police should refrain from enforcing federal immigration laws, including by engaging in interior enforcement operations with Border Patrol agents and requesting translation assistance from Border Patrol. State and local law enforcement should also work to end practices and programs that undermine the bright line between federal immigration enforcement and local law enforcement, such as the Secure Communities program or the honoring of ICE detainer holds by local governments.
- Local Law Enforcement Agencies should draft language access plans to ensure they meet TITLE VI regulations. The use of CBP as interpreters should not be used as part of an agency's language access plan. A code of ethics for law enforcement interpreters should be developed by WASPC.
- State legislature and local governments should support local police departments by prioritizing the resources local law enforcement offices need to provide language access.
- The Governor and Attorney General should monitor CBP's interior operations to ensure that the rights of Washington's residents are protected.

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Find this report online at: WeAreOneAmerica.org/northern-border

OneAmerica, formerly Hate Free Zone, is a 501(c)(3) non-profit organization that advances the fundamental principles of democracy and justice by building power within immigrant communities.