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◆ **Questioned Over Border Agent's Murder, Napolitano Defends DHS Policy And Tackles "Misinformation"**

by [Mike Levine](#) | March 09, 2011

Brian Terry (undated photo)

Hoping to address what she called "misinformation," Homeland Security Secretary [Janet Napolitano](#) on Wednesday said border patrol agents are "absolutely" not under order to use non-lethal force when threatened.

"Our lethal force policy is the same as virtually every law enforcement department I know of in the country," she told the Senate Judiciary Committee during a hearing Wednesday. "That is, if you are under threat of serious injury or death, you may use lethal force."

This comes just days after Napolitano's department came under fire for an alleged "beanbag" policy, which some say played a role in the Dec. 14 killing of Border Patrol Agent Brian Terry.

On Wednesday, Napolitano did not dispute that 40-year-old Terry himself fired beanbags, and that is how a recently-disclosed FBI document filed in federal court described the incident. It's unclear, however, if Terry -- whose team was part of a special tactical unit within the Border Patrol -- was armed only with beanbags while others had more powerful weapons.

"When the suspected aliens did not drop their weapons, two Border Patrol agents deployed 'less than lethal' beanbags at the suspected aliens," according to the FBI document. "At this time, at least one of the suspected aliens fired at the Border Patrol agents. Two Border Patrol agents returned fire, one with his long gun and one with his pistol. Border Patrol agent Brian Terry was shot with one bullet and died shortly after."

Four days after the incident, former Republican congressman [Tom Tancredo](#) of Colorado posted a commentary online saying, "Border Patrol Agent Terry and the BORTAC team were under standing orders to always use ('non-lethal') bean-bag rounds first before using live ammunition." He did not mention any source for that information.

On Thursday, Terry's brother, Kent Terry, was quoted by the Arizona Daily Star as saying the other agents there that night told him they were instructed to use the non-lethal bean-bags first. But in a subsequent interview with Fox News, Kent Terry said he could not verify such orders were given because the other agents "have not" talked to him about such instructions, and he has "heard nothing" from them since the incident took place.

Republicans on the Senate Judiciary Committee repeatedly asked Napolitano about the policy and the case.

She said that while law enforcement agencies "usually" employ "a mix of lethal and non-lethal devices" carried by their officers, "the plain fact of the matter is that the lethal force policy of our Border Patrol is that [agents] are entitled to use lethal force if they are under" a threat of serious injury or death.

Still, she said, "the particulars of the Agent Terry operation are still under investigation." Napolitano also said the U.S. Attorney's Office in Arizona is "prosecuting" the case and it is "moving forward," an indication the case may be heading for a grand jury or is already there.

One suspect in the case is in custody, but so far he has only been charged with alleged violations of immigration law.

Sen. Chuck Grassley, R-Iowa, the ranking Republican on the committee, asked explicitly, "Is it true that Agent Terry's team was under standing order to use non-lethal force even against armed bandits refusing to drop their weapons?"

Napolitano said, "My information is: absolutely not. Our lethal force policy is what I've described to you."

A Customs and Border Protection spokesman echoed that days earlier, telling FoxNews.com, "There was no order given to any CBP law enforcement personel -- now or in the past -- that indicates the use of less lethal devices before using deadly force."

In her opening remarks, Napolitano said she speaks for the entire Obama administration "when I say we are not only saddened by the loss of our agents, but we are outraged by these acts of violence against officers of the United States."

"Justice will be brought to those involved," she said, speaking of not only the Terry case but also the recent murder of Immigration and Customs Enforcement agent Jaime Zapata in Mexico. "We owe nothing less to the memory of Agent Zapata, Agent Terry and to those who are still on the job, along the border and in Mexico."

Nevertheless, Napolitano agreed with Sen. Jon Kyl, R-Ariz, that there is still more work to be done along the Southwest border.

-- FoxNews.com's Diane Macedo contributed to this report

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