



Homeland Security

March 11, 2011

The Honorable Charles Grassley
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

Thank you for the opportunity to testify yesterday in front of the Senate Judiciary Committee on the Department of Homeland Security's (DHS) work to keep our Nation safe from terrorism and other threats, as well as our historic border security and immigration enforcement efforts.

I wanted to follow up with you regarding the tragic murder of Border Patrol Agent Brian Terry while attempting to apprehend armed subjects in Peck Canyon south of Tucson, Arizona, on December 14, 2010. While the Federal Bureau of Investigation's (FBI) investigation of Agent Terry's murder continues, I wanted to share with you important details regarding U.S. Customs and Border Protection's (CBP) use of force policy, as well as the weapons that our CBP Agents and Officers carry when in the line of duty.

Like law enforcement agencies across the United States, CBP Officers and Agents, including the U.S. Border Patrol, are equipped with a variety of lethal and less-lethal weapons. At no point, however, are our law enforcement personnel ever performing their duties equipped with only a less-lethal device. Standard equipment for all CBP Officers and Agents include HK P2000 handguns. Members of Border Patrol Tactical Units (BORTAC), like Agent Terry and his team, carry these sidearms along with additional weaponry, often including M4 rifles. On the night of his murder, all members of Agent Terry's team were armed with lethal weapons. As was noted in FBI Special Agent Scott Hunter's December 29, 2010 affidavit, Agent Terry's BORTAC team used their weapons to return fire on the suspects.

More broadly, CBP's use of force policy, similar to use of force policies for all law enforcement agencies, authorizes Officers and Agents to use deadly force when they have a reasonable belief that a subject poses an immediate danger of death or serious physical injury to the Officer or Agent or to another person. The decision on whether to use deadly force rests with the Officers and Agents in the field. CBP law enforcement personnel have never been ordered—now or in the past—to use less-lethal devices before using deadly force. Our Officers and Agents are empowered to determine the appropriate level of force in defense of themselves, their fellow Officers and Agents, or innocent third parties. We would like to provide you with an

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in-person briefing on the specifics of the use of force policy. I will have my staff be in touch with yours to arrange this briefing.

CBP will continue to be relentless in its commitment to securing our Nation's borders, while remembering all of the men and women who have made the ultimate sacrifice. We will not tolerate these acts against our Agents or any other law enforcement organization and will continue to do everything possible to bring those responsible to justice.

Should you wish to discuss this further, please do not hesitate to contact me at (202) 282-8203.

Yours very truly,



Janet Napolitano