


5-1-2017

Freeze, You're on Camera: Can Body Cameras Improve American Policing on the Streets and at the Borders?

Connie Felix Chen

Follow this and additional works at: <http://repository.law.miami.edu/umialr>

 Part of the [Law and Society Commons](#), and the [Law Enforcement and Corrections Commons](#)

Recommended Citation

Connie Felix Chen, *Freeze, You're on Camera: Can Body Cameras Improve American Policing on the Streets and at the Borders?*, 48 U. Miami Inter-Am. L. Rev. 141 ()
Available at: <http://repository.law.miami.edu/umialr/vol48/iss3/7>

This Notes and Comments is brought to you for free and open access by University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact library@law.miami.edu.

Freeze, You're on Camera: Can Body Cameras Improve American Policing on the Streets and at the Borders?

Connie Felix Chen*

In the United States, recent killings of civilians by law enforcement have propelled body cameras to the forefront of solutions to the “epidemic” of police misconduct. Preliminary studies suggest that body cameras create a win-win situation for both the police and the public by producing a civilizing effect on all parties involved. The problem, however, is that not every law enforcement agency has a body camera program. And among those that do, the surprising lack of legal action raises the question: How effective are body cameras in ensuring that justice is served?

This Note discusses the use of body cameras in American policing on the streets and at the borders. It provides a background into the problem of police misconduct and highlights arguments in favor of and cautioning against body camera technology. Finally, in light of the Trump administration’s pro-law enforcement stance, this Note investigates high-profile police killings and assesses existing border policies to consider whether body cameras can truly deliver on their promise.

* J.D. 2017, University of Miami School of Law; B.A. 2013 in Psychology, Emory University. I am deeply grateful to Judge Milton Hirsch and Professor Tamara Lave for their expert guidance throughout the writing process. I would also like to thank my family—especially my mother, Laura—for their confidence and support. This Note is dedicated to my late grandmother, YingZi.

INTRODUCTION	142
I. A HISTORY OF VIOLENCE: A BACKGROUND OF POLICE- CIVILIAN INTERACTIONS	146
<i>A. Police Violence on American Streets</i>	146
<i>B. Police Violence at the Borders</i>	151
II. BODY CAMERAS: A CLOSER LOOK AT THE TECHNOLOGY AND THE POTENTIAL	155
<i>A. Body Camera Technology</i>	155
<i>B. Findings from the SAVER Assessment and BWC Feasibility Study</i>	156
<i>C. Recognizing the Potential</i>	160
III. PRIVACY CONCERNS AND THE LIMITATIONS OF BODY CAMERA TECHNOLOGY	164
<i>A. (Un)Reasonable Expectations of Privacy</i>	164
<i>B. Body Camera Limitations</i>	166
IV. PANACEA OR SMOKE AND MIRRORS: AT THE END OF THE DAY, CAN BODY CAMERAS TRULY DELIVER ON THEIR PROMISE?	170
<i>A. The Future of Body Cameras on the Streets</i>	170
<i>B. The Future of Body Cameras at the Borders</i>	179
CONCLUSION	186

INTRODUCTION

On the morning of April 12, 2015, Freddie Gray was standing on the corner of North Avenue and Mount Street, talking with a friend.¹ Forty-five minutes later, Gray's lifeless body was pulled from the back of a Baltimore Police transport van.² What exactly happened behind those metal doors? Much of the incident remains a mystery.

¹ Kevin Rector, *The 45-Minute Mystery of Freddie Gray's Death*, THE BALTIMORE SUN (Apr. 25, 2015), <http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-gray-ticker-20150425-story.html#page=1>.

² *Id.*

According to a police timeline, at 8:39 a.m., twenty-five year old Freddie Gray “made eye contact” with three officers patrolling the Gilmore Homes housing project, an area known for violent crime and drug sales.³ Police claim that Gray “fled unprovoked upon noticing [their] presence” and was captured after a foot chase through several side streets.⁴ Upon discovering a small switchblade inside Gray’s pant pocket, the officers placed him under arrest.⁵ This is where witness accounts begin to differ.

Police state that Gray was apprehended “without force or incident.”⁶ One officer admitted he was prepared to use his Taser but never deployed it.⁷ Two mobile phone videos, however, paint a different picture. The video segments show Freddie Gray on the ground—screaming—with three officers kneeling over him as he was handcuffed.⁸ A witness reported that one officer had his knee on Gray’s neck while another officer bent Gray’s legs backwards so that he was “folded up like . . . a piece of origami.”⁹ Conflicting testimonies aside, what *is* clear is that when Freddie Gray entered the police transport van, he was still alive.¹⁰

³ Amy Davidson, *Freddie Gray’s Death Becomes a Murder Case*, THE NEW YORKER (May 1, 2015), <http://www.newyorker.com/news/amy-davidson/freddie-grays-death-becomes-a-murder-case>; Elliott C. McLaughlin, Ben Brumfield & Dana Ford, *Freddie Gray Death: Questions Many, Answers Few, Emotions High in Baltimore*, CNN (Apr. 20, 2015), <http://www.cnn.com/2015/04/20/us/baltimore-freddie-gray-death/index.html>.

⁴ Rector, *The 45-Minute Mystery of Freddie Gray’s Death*, *supra* note 2. Police insisted Gray’s flight in a high-crime area gave probable cause for the chase. No other reason was provided. *See also* Application for Statement of Charges, *State v. Grey*, No. 6B02294074 (Apr. 12, 2015), *available at* <http://s3.documentcloud.org/documents/1996025/freddie-gray-charging-documents.pdf>.

⁵ Application for Statement of Charges, *supra* note 4.

⁶ *Id.*

⁷ McLaughlin, Brumfield & Ford, *Freddie Gray Death: Questions Many, Answers Few, Emotions High in Baltimore*, *supra* note 3.

⁸ *Id.*

⁹ Rector, *The 45-Minute Mystery of Freddie Gray’s Death*, *supra* note 1. Statement of Kevin Moore.

¹⁰ Fantz & Botelho, *What We Know, Don’t Know about Freddie Gray’s Death*, CNN (Apr. 29, 2015), <http://www.cnn.com/2015/04/22/us/baltimore-freddie-gray-what-we-know/>. Surveillance cameras recorded Gray conscious and upset, exclaiming “I can’t breathe” and asking for an inhaler. A bystander’s video shows Gray was pulled towards the van, but he stood briefly on his own before being placed inside.

Between 8:45 and 9:23 a.m., the van made four confirmed stops with Freddie Gray in custody.¹¹ During the first stop, captured on cell phone, Gray was placed in leg irons after reportedly “acting irate in the back.”¹² The van made two additional stops, captured on surveillance cameras, to check on Gray’s condition.¹³ The van stopped a fourth time to pick up another prisoner, Donta Allen, who heard “banging against the walls” on Gray’s side of the metal partition.¹⁴ Allen, however, could not see Gray, and the officers were holding steadfast to the “blue code of silence.”

What investigators do know is that at 9:24 a.m., when the van finally arrived at the Western District police station, Freddie Gray was unconscious and not breathing.¹⁵ After failed attempts to resuscitate him, paramedics rushed Gray to the University of Maryland Shock Trauma Center.¹⁶ On April 19, Gray was pronounced dead.¹⁷ The cause of death: Catastrophic damage to his spinal cord—which was “80% severed in the neck area”—a crushed larynx, and a later-discovered head injury.¹⁸

¹¹ Erik Ortiz, *Freddie Gray: From Baltimore Arrest to Protests, a Timeline of the Case*, MSNBC (May 1, 2015), <http://www.msnbc.com/msnbc/freddie-gray-baltimore-arrest-protests-timeline-the-case>.

¹² Rector, *The 45-Minute Mystery of Freddie Gray’s Death*, *supra* note 1. Some witnesses claim Gray was beaten with batons and unresponsive when police “threw” him back inside the van. An autopsy report, however, showed no evidence of beatings.

¹³ *Id.* The second stop was near the G&A Food Market. The third stop was at near an intersection, during which Gray indicated he could not breathe and twice requested medical assistance. His requests were ignored.

¹⁴ Peter Hermann, *Prisoner in Van Heard “Banging against Walls,”* THE WASHINGTON POST, (Apr. 29, 2015), https://www.washingtonpost.com/local/crime/prisoner-in-van-said-freddie-gray-was-banging-against-the-walls-during-ride/2015/04/29/56d7da10-ee66-11e4-8666-a1d756d0218e_story.html?utm_term=.2c71cc2cd70e. Police contend that Gray “continued to be combative” during transport.

¹⁵ Ortiz, *Freddie Gray: From Baltimore Arrest to Protests, a Timeline of the Case*, *supra* note 11.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*; Natalie Sherman, Chris Kaltenbach, & Colin Campbell, *Freddie Gray Dies a Week after Being Injured During Arrest*, THE BALTIMORE SUN, (Apr. 19, 2015), <http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-freddie-gray-20150419-story.html>.

But *how* did those fatal injuries occur? Police admit that Freddie Gray was never secured with a seat belt during transport—a clear violation of department policy.¹⁹ A medical examiner hypothesized that the lack of a restraint allowed Gray’s head to collide with an exposed bolt inside the van.²⁰ The public was unconvinced. The lack of definite answers, combined with disturbing media footage and the mental-image of Gray’s body bouncing around the van, rapidly fueled a series of national protests against police brutality.²¹

Faced with increasing public indignation, on May 1, 2015, prosecutors charged six officers with a multitude of crimes ranging from misconduct in office to involuntary manslaughter to second-degree murder.²² The officers, however, refused to testify against one another, and other witnesses lacked knowledge as to the actual cause of Gray’s death. Without video evidence to shed light on what happened inside the van, three officers who went to trial were acquitted of all charges.²³ Prosecutors were forced to drop remaining charges against the others, ending the case with zero convictions.²⁴

Freddie Gray adds to a growing list of fatal police-civilian encounters never brought to justice. Days after Gray’s death, South Carolina Senator Tim Scott proclaimed that body cameras would have made a substantial difference in the investigation and criminal proceedings.²⁵ According to Senator Scott:

¹⁹ Rector, *The 45-Minute Mystery of Freddie Gray’s Death*, *supra* note 1. Officers had five separate opportunities to secure Gray. On the third transport stop, officers had to “pick Gray off the floor” after he fell from his seat.

²⁰ Davidson, *Freddie Gray’s Death Becomes a Murder Case*, *supra* note 3.

²¹ *Id.*

²² Sarah Almkhtar, Larry Buchanan, K.K. Rebecca Lai, Haeyoun Park, Tim Wallace & Karen Yourish, *Freddie Gray Case Ends with No Convictions of Any Police Officers*, THE NEW YORK TIMES (July 27, 2016), http://www.nytimes.com/interactive/2015/04/30/us/what-happened-freddie-gray-arrested-by-baltimore-police-department-map-timeline.html?_r=0. The six officers are Sergeant Alicia White, Lieutenant Brian Rice, Officer Edward Nero, Officer Caesar Goodson, Officer Garrett Miller, and Officer William Porter.

²³ *Id.*

²⁴ *Id.*

²⁵ Jeremy Diamond, *Scott: ‘We Would Know Exactly what Happened’ to Freddie Gray with Police Cameras*, CNN (Apr. 29, 2015), <http://www.cnn.com/2015/04/29/politics/tim-scott-body-cameras-baltimore/>.

[B]ody cameras will help keep more people alive and will help to restore confidence communities have in law enforcement officers. When you're on film, your behavior changes. I think it makes your officers safer and it makes your communities safer.²⁶

This Note will discuss the use of body cameras in American policing, both on the streets and at the borders. It will begin by providing background into the problem of police misconduct—real and imagined, genuine and fabricated. The next section will discuss body cameras as a proposed solution to this problem. It will provide an introduction to the technology, examine two major body camera studies, and highlight arguments in favor of developing a comprehensive body camera program. The Note will then tackle potential problems with police cameras, including privacy and Fourth Amendment concerns, as well as image distortion and locus of control issues. It will close by investigating a few recent, high-profile cases in the United States and assessing existing Border Patrol policies to consider whether body cameras can truly deliver on their promise.

I. A HISTORY OF VIOLENCE: A BACKGROUND OF POLICE-CIVILIAN INTERACTIONS

A. *Police Violence on American Streets*

Growing public interest in American policing is fueled by the recognition that our country struggles with a serious problem of police violence. In April of 2009, the National Police Misconduct Reporting Project (“NPMRP”) was established to address the lack of statistical data on the “epidemic” of police misconduct.²⁷ NPMRP, a non-governmental, non-partisan project, maintains a database of “credible allegations” and provides daily updates on new reported

²⁶ *Id.*

²⁷ *National Police Misconduct Reporting Project*, CATO INSTITUTE, <https://www.policemisconduct.net/about/>. The last time the Department of Justice compiled a comprehensive report on police misconduct was over ten years ago—based on 2001 statistics voluntarily submitted by just 5% of departments nationwide.

violations.²⁸ Most states, however, have laws preventing direct third-party access to police disciplinary information, and agencies often filter their reports to exclude minor policy infractions and internal affairs matters.²⁹ As a result, NPMRP collects data from media reports of alleged misconduct.³⁰ This method likely underestimates the actual number of incidents nationwide.

In its most recent 2010 Police Misconduct Statistical Report, NPMRP found that 23.8% of media-reported cases that year contained allegations of excessive force.³¹ This included excessive use of force, *i.e.*, “the application of lawful use of force in too many separate incidents” and use of excessive force, *i.e.*, “the application of force beyond what is reasonably believed to be necessary to gain compliance from a subject in any given incident.”³² Among these complaints, 56.9% involved the use of physical force (fist strikes, throws, chokeholds, batons strikes, and other physical attacks), and 14.7% involved use of a firearm.³³ Approximately 8% (127 cases) of the incidents resulted in a fatality.³⁴

Since the creation of NPMRP, several other independent research and data-compilation initiatives, including “Cop Crisis” and “Mapping Police Violence,” have sprung up around the country. Cop Crisis, a non-profit project managed by police reform activists, seeks to “raise awareness about police brutality” by sourcing data

²⁸ *Id.*

²⁹ David Packman, *2010 National Police Misconduct Statistics and Reporting Project (NPMSRP) Police Misconduct Statistical Report*, CATO INSTITUTE (2010), <http://www.policemisconduct.net/statistics/2010-annual-report/#Summary>. Records are confidential in 23 states, subject to limited availability in 15 states, and public in 12 states.

³⁰ *Id.*

³¹ *Id.* Out of the 6,613 law enforcement officers reported, 1,575 were involved in excessive force reports. Following at a distant second were complaints of sexual misconduct (9.3%) and third, allegations involving fraud/theft (7.2%). See *Figure 2. Police Misconduct by Type* for a full breakdown of violation percentages.

³² “Use of Force,” BUREAU OF JUSTICE STATISTICS, https://www.bjs.gov/index.cfm?ty=tp&tid=84#data_collections.

³³ *Id.*

³⁴ *Id.* 91 were caused by a firearm, 19 by physical force, 11 by Taser, and 6 by other causes (police dogs, vehicles, or some combination).

from multiple projects and combining them in one place.³⁵ The project documented at least 1,307 arrest-related deaths in 2015, 1,152 deaths in 2016, and 328 deaths (as of April 10) in 2017.³⁶ These statistics roughly amount to one death every seven hours.³⁷ Mapping Police Violence, managed by a team of four civilians, collects data on police killings to “quantify the impact of police violence in communities.”³⁸ Statistics from 2015 show that rates of police killings differed significantly across departments.³⁹ Although some people claim police violence is a response to community violence, the data reflected no such relationship.⁴⁰ Police in high-crime cities were no more or less likely to use deadly force than police in lower-crime areas.⁴¹ This finding suggests two possibilities: (1) Certain departments employ more “trigger-happy” officers and (2) certain departments more readily authorize the use of deadly force.

Whatever the reason, one fact is undisputed. Minority communities are disproportionately affected by police violence. This is hardly surprising, considering trends of racial disparity across the entire criminal justice system.⁴² In response to discriminatory policing practices, citizens have proposed a list of satirical new offenses, e.g., “driving while black” and “running while black,”⁴³ to add a

³⁵ *Contact Information*, COP CRISIS, <https://copcrisis.com>.

³⁶ *Stats*, COP CRISIS, <https://copcrisis.com>. This figure includes all deaths attributable to use of force by police during arrest, detainment, custody, transport, and confinement. The Bureau of Justice Statistics, in its “Arrest-Related Deaths Program Redesign Study, 2015-16: Preliminary Findings” publication, found a 12% increase in the number of deaths in 2015 when media reports were combined with police survey reports.

³⁷ *Id.*

³⁸ *Planning Team*, MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.org/planning-team/>.

³⁹ *2015 Police Violence Report*, MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.org/2015/>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers*, THE SENTENCING PROJECT (2008) at 1, available at <http://www.sentencingproject.org/wp-content/uploads/2016/01/Reducing-Racial-Disparity-in-the-Criminal-Justice-System-A-Manual-for-Practitioners-and-Policymakers.pdf>.

⁴³ *Id.*; *Freddie Gray’s Death in Police Custody – What We Know*, BBC (May 23, 2016), <http://www.bbc.com/news/world-us-canada-32400497>. “[There] is no

touch of wry humor to the grave issue. The underlying causes of racial disparity in policing—whether higher crime rates, legislative decisions, overt racial bias, or a combination—is discussion for another day. But, it’s worth noting that psychological research confirms people, including police officers, “hold strong implicit associations between blacks . . . and weapons, crime, and aggression.”⁴⁴ This association has dire implications out in the field. A study looking at statistics from 2010 to 2014 found that black and Hispanic males were 2.8 times and 1.7 times, respectively, more likely to be killed by “legal intervention” than white men.⁴⁵ White victims accounted for a greater number of deaths only because they comprise a larger percentage of the population.⁴⁶ Furthermore, among the 346 black victims killed in 2015, 69% were neither armed nor suspected of a violent crime.⁴⁷

Identifying police misconduct is easy; prosecuting it is another story. The 2010 NPMRP study revealed that the incidence of excessive force complaints increased over the year, but the number of subsequent disciplinary actions remained unchanged.⁴⁸ Among the 11,000 officers accused of misconduct, less than 30% were prosecuted and less than 10% were convicted of any charge.⁴⁹ Of those who were convicted, only 36% were sentenced to any time behind bars.⁵⁰ In comparison, members of the general public experienced a 68% conviction rate and a 70% incarceration rate.⁵¹

Perhaps the single greatest barrier to successful prosecution of police misconduct is the “blue code of silence,” an unwritten rule

law against running.” Statement of former Baltimore Police Commissioner Anthony Batts.

⁴⁴ Jacqueline Howard, *Black Men Nearly 3 Times as Likely to Die from Police Use of Force, Study Says*, CNN (Dec. 20, 2016), <http://www.cnn.com/2016/12/20/health/black-men-killed-by-police/>.

⁴⁵ James W. Buehler, *Racial/Ethnic Disparities in the Use of Lethal Force by US Police, 2010-2014*, 107 AM. J. OF PUB. HEALTH 295, 296 (Feb. 2017).

⁴⁶ *Id.* As of the 2010 Census, 63.7% of the American population identified as “non-Hispanic white,” 12.2% identified as “non-Hispanic black,” and 16.3% identified as “Hispanic or Latino.”

⁴⁷ *Id.*

⁴⁸ Packman, *2010 NPMSRP Report*, *supra* note 29.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

that prohibits police from “snitching” on one another.⁵² This includes voluntarily disclosing misconduct by fellow officers or even testifying truthfully if the facts may implicate another officer.⁵³ The practice of police falsification under the “blue code” has become so prevalent in some departments that it spawned a new term—“testifying.”⁵⁴ In officers’ own words: 43% claimed “always following the rules is not compatible with getting the job done; 52% agreed “it is not unusual for a police officer to turn a blind eye to improper conduct of other officers;” 61% “do not always report serious abuse by fellow officers;” and 84% “witnessed fellow officers using more force than necessary.”⁵⁵ In recent years, the “blue code of silence” seems to only intensify in response to heightened public scrutiny of police misconduct. As the case of Freddie Gray illustrates, shattering the “blue wall” often proves too great a challenge for investigators and prosecutors. Even though the six officers charged in Gray’s death were tried separately and compelled to testify against one another, the “Baltimore six”⁵⁶ maintained a united front against the justice system. And ultimately, they won.

Police misconduct is costly—not only physically and emotionally, but also financially. In 2010 alone, the United States government spent over \$346 million on misconduct-related judgments and settlements, excluding sealed settlements and litigation expenses.⁵⁷ The Department of Justice estimated that investigating and prosecuting alleged police misconduct cost taxpayers \$1.8 million each

⁵² Gabriel J. Chin & Scott C. Wells, *The “Blue Wall of Silence” as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury*, 59 U. PITT. L. REV. 233, 237 (1998). Also referred to as the “blue wall of silence” or “blue shield.”

⁵³ *Id.*

⁵⁴ *Id.* at 234.

⁵⁵ David Weisburd & Rosann Greenspan, *Police Attitudes Towards Abuse of Authority: Findings from a National Study*, U.S. DEPT. OF JUSTICE (May 2000), available at <https://www.ncjrs.gov/pdffiles1/nij/181312.pdf>.

⁵⁶ Baynard Woods, *Both Black and Blue: Racial Dynamics are Thorny for Officers on Trial in Baltimore*, THE GUARDIAN (Dec. 4, 2015), <https://www.theguardian.com/us-news/2015/dec/04/black-and-blue-racial-dynamics-police-officers-freddie-gray-trial-baltimore>.

⁵⁷ Packman, *2010 NPMSRP Report*, *supra* note 29. The estimated amount spent on misconduct-related lawsuits is \$346,512,800.

year.⁵⁸ In Freddie Gray's case, the efforts ended with zero convictions. With Baltimore in chaos from riots, arson, and looting, the city agreed to pay Gray's family an additional \$6.4 million "civil justice" settlement.⁵⁹ Frustrated with the excessive expenditure and lack of desired results, protestors and politicians demanded that police officers start wearing body cameras to better document their activities.⁶⁰

B. *Police Violence at the Borders*

Moving outward from American cities, border communities also experience their share of police violence. With over sixty-thousand employees, the U.S. Customs and Border Protection Agency ("CBP") ranks among the world's largest law enforcement agencies.⁶¹ CBP, as the world's first "full-service border entity," is tasked with preventing terrorists and weapons from entering the United States, facilitating international travel and trade, and maintaining comprehensive border management and control.⁶² Every day, CBP agents arrest over one thousand individuals for suspected violations of United States laws and seize nearly six tons of drugs and contraband.⁶³

Along United States borders, agents from the Office of Border Patrol ("Border Patrol") are in charge of leading CBP's security missions. Created in 1924 to curtail illegal immigration, Border Patrol's primary mission is to detect and prevent individuals from gaining illegal entry into the United States, especially along the southern

⁵⁸ *Stats, supra* note 36.

⁵⁹ John Bacon, *Baltimore to Pay Family of Freddie Gray \$6.4M*, USA TODAY (Sept. 8, 2015), <http://www.usatoday.com/story/news/nation/2015/09/08/reports-baltimore-pay-family-freddie-gray-64m/71873786/>. Rioters caused an estimated \$9 million in damages to over 285 business in Baltimore. Mayor Stephanie Rawlings-Blake explained the settlement was "proposed solely because it [was] in the best interest of the city."

⁶⁰ The Harvard Law Review Association, *Chapter Four Considering Police Body Cameras*, 128 HARV. L. REV. 1794, 1796 (2015) [hereinafter *Considering Body Cameras*].

⁶¹ *About CBP*, CBP, <http://www.cbp.gov/about>.

⁶² *Id.* CBP's proposed mission is to "safeguard the American homeland at and beyond our borders" and to "serve the American people with vigilance, integrity, and professionalism."

⁶³ *Id.*

border between the United States and Mexico.⁶⁴ Border Patrol claims its training program is “one of the most rigorous and demanding” in the country.⁶⁵ New agents must complete a sixty-six day program that includes courses in federal law, agency operations, physical techniques, firearms training, and scenario-based training.⁶⁶ Agents must also pass a Spanish language examination and complete Federal Law Enforcement Center courses in ethics and constitutional law.⁶⁷

In spite of this rigorous training, abuse of power by Border Patrol agents remains a serious concern. While each police-related fatality within the United States has sparked waves of protest, border incidents rarely garner the same widespread media attention and public outrage. It’s not that Americans don’t care what happens at the border; most of the time, they just don’t know. Thus, in March of 2011, the Southern Border Communities Coalition (“SBCC”) was established to increase visibility into the relatively clandestine activities of CBP and Border Patrol.⁶⁸ Since January of 2010, SBCC counted fifty media-reported deaths at the hands of Border Patrol agents.⁶⁹ At least twenty other people have been seriously injured.⁷⁰ Thirty-nine of the deaths resulted from the use of lethal force (predominantly shootings) and fourteen of the people killed were United States citizens.⁷¹ In nine of these cases, Border Patrol agents claimed that the individual had been throwing rocks, conduct that they argued justified their use of lethal force.⁷²

Among these reported incidents is the fatal cross-border shooting of sixteen-year-old José Antonio Elena Rodríguez by Border Patrol Agent Lonnie Swartz.⁷³ On October 10, 2012, Rodríguez was

⁶⁴ *Border Patrol Overview*, CBP, <http://www.cbp.gov/border-security/along-us-borders/overview>.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *About Us*, SBCC, <http://southernborder.org/about-us/>.

⁶⁹ *Border Patrol Abuse Since 2010*, SBCC, <http://soboco.org/border-patrol-brutality-since-2010/>. This number reflects the death toll as of July 2016.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* Under CBP policy guidelines, agents are justified in using deadly force to repel rock attacks because rocks are capable of inflicting serious injuries.

⁷³ *Id.*

walking towards the OXXO convenience store where his brother worked.⁷⁴ The store was located off Calle International, a street running along the border fence between Nogales, Sonora in Mexico and Nogales, Arizona in the United States.⁷⁵ That same night, Border Patrol agents and Nogales police were responding to a 911 call reporting that narcotics smugglers were hoisting marijuana bundles over the fence.⁷⁶ Nogales K-9 officer John Zuniga observed two men climbing over the fence back into Mexico.⁷⁷ Zuniga then heard rocks hitting the ground around him and saw more rocks flying through the air, launched by a group of youths standing on Mexican soil.⁷⁸ As Zuniga led his canine partner back to his vehicle, he heard several gunshots.⁷⁹ Ballistics reports concluded that at least one agent, standing in the United States, had fired fourteen .40 caliber bullets through the border fence into Mexico.⁸⁰ José Rodriguez was struck eight times, once in the head and seven times in the back.⁸¹ He was left to die on a sidewalk off Calle International.⁸²

Witness accounts of the incident contained three major inconsistencies. First, there was no indication that José Rodriguez was even involved in the rock-throwing assault.⁸³ Second, Border Patrol

⁷⁴ Bob Ortega & Rob O'Dell, *Deadly Border Agent Incidents Cloaked in Silence*, THE ARIZONA REPUBLIC (Dec. 16, 2013), <http://archive.azcentral.com/news/politics/articles/20131212arizona-border-patrol-deadly-force-investigation.html>.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Daily Mail Reporter, *Mexican Teen Killed by U.S. Border Agents was Shot Seven Times in the Back after Throwing Rocks Across Border*, DAILY MAIL (Oct. 15, 2012), <http://www.dailymail.co.uk/news/article-2217996/Mexican-teen-killed-U-S-border-agents-shot-SEVEN-times-throwing-rocks-border.html>.

⁷⁹ Ortega & O'Dell, *Deadly Border Agent Incidents Cloaked in Silence*, *supra* note 75.

⁸⁰ *Id.*

⁸¹ Brian Skoloff, *Border Patrol Shot Mexican Teen Jose Antonio Elena Rodriguez 8 Times: Autopsy*, HUFFINGTON POST: LATINO VOICES (Feb. 8, 2013), http://www.huffingtonpost.com/2013/02/08/border-patrol-shot-mexican-teen-jose-antonio-elena-rodriguez-autopsy_n_2646191.html.

⁸² Ted Robbins, *Frustration Mounts Over Unresolved Border Patrol Shootings*, NPR (Apr. 11, 2013), <http://www.npr.org/2013/04/11/176932999/frustration-mounts-over-unresolved-border-patrol-shootings>.

⁸³ *Id.* The family's lawyer stated that Rodriguez did not have any type of weapon in his hand—only a cell phone in his pocket.

agents claimed the youths ignored oral commands to cease throwing rocks, but Nogales police and three Mexican civilians denied hearing any orders before the gunshots.⁸⁴ Third, at the site where Rodriguez was killed, the Mexican side of the fence is twenty-five feet lower than on the American side.⁸⁵ This made it nearly impossible for a rock thrown from Mexico to strike an agent standing in Arizona.⁸⁶ Moreover, for an agent in Arizona to hit a target in Mexico, he would have to stand against the fence and aim between three-and-a-half inch gaps between fence posts.⁸⁷ Was this a case of self-defense . . . or target practice?

José Rodriguez is one of several cases in which Border Patrol agents responded to alleged rock throwing with deadly force.⁸⁸ But like officers within the United States, Border Patrol agents rarely (if ever) face legal consequences for their actions.⁸⁹ Border Patrol, CBP, the Department of Homeland Security, and the Department of Justice largely turn a blind eye to what the SBCC calls a “continuing pattern of human rights violations.”⁹⁰ Even when agents are prosecuted, investigators typically conclude that they acted in self-defense.⁹¹ Both SBCC and the Inter-American Commission on Human Rights urged the Obama administration to “take immediate steps” to increase accountability at the border by introducing body cameras to Border Patrol’s curriculum.⁹²

⁸⁴ Ortega & O’Dell, *Deadly Border Agent Incidents Cloaked in Silence*, *supra* note 75.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Daily Mail Reporter, *Mexican Teen Killed by U.S. Border Agents*, *supra* note 78.

⁸⁹ *Id.*

⁹⁰ *Border Patrol Shooting Deeply Concerns Inter-American Commission on Human Rights*, SOUTHERN BORDER COMMUNITIES COALITION (Feb. 25, 2014), <http://soboco.org/border-patrol-shooting-deeply-concerns-inter-american-commission-on-human-rights/>.

⁹¹ Richard Marosi & Richard Fausset, *Border Patrol Shooting of Mexican Teen Draws Condemnation*, LOS ANGELES TIMES (Oct. 13, 2012), <http://articles.latimes.com/2012/oct/13/nation/la-na-border-shooting-20121013>.

⁹² *Id.*

II. BODY CAMERAS: A CLOSER LOOK AT THE TECHNOLOGY AND THE POTENTIAL

A. *Body Camera Technology*

Recent tragedies, including the unsolved deaths of Freddie Gray and José Rodríguez, have propelled body cameras to the forefront of a list of possible solutions to the problem of police misconduct. The use of video camera technology to capture real time encounters between police and civilians is not an entirely new concept.⁹³ Over the past decade, police departments across the country have installed millions of CCTV security cameras in public spaces and over 17,500 dashboard cameras in police vehicles.⁹⁴ Establishing an innovative program where officers physically wear cameras to document their interactions, however, remains an underexplored strategy.⁹⁵ Despite the relative novelty of body camera technology, within two years of its introduction, the number of police departments using or considering body cameras soared from a “handful” to approximately 1/3 of agencies nationwide.⁹⁶ On December 1, 2014, the Obama Administration proposed to invest \$263 million in federal funding to support body camera research, distribution, and training—transforming a once-niche technology into a major public safety market.⁹⁷

The typical police body camera consists of a video camera, a microphone, a battery, and an onboard data storage system.⁹⁸ The hardware is lightweight compared to other police equipment,

⁹³ *Considering Body Cameras*, *supra* note 60, at 1795.

⁹⁴ Tod Newcombe, *For the Record: Understanding the Technology Behind Body Worn Cameras*, GOV. TECH. (Sept. 8, 2015), <http://www.govtech.com/dc/articles/For-the-Record-Understanding-the-Technology-Behind-Body-Worn-Cameras.html>.

⁹⁵ *Id.* Body cameras are also known as “on-officer recording systems,” “body cams,” or “cop cams.”

⁹⁶ *Id.*

⁹⁷ *Body-Worn Video Cameras for Law Enforcement Assessment Report*, U.S. DEPT. OF HOMELAND SECURITY (2015) at 1 [hereinafter SAVER Assessment Report], available at http://www.firstresponder.gov/SAVER/Documents/Body-Worn-Cams-AR_0415-508.pdf. The proposed program would help pay for over 50,000 body cameras.

⁹⁸ *Id.* See Table 4-3 for key specifications of commercially available body camera models.

thereby enabling officers to wear body cameras in a variety of positions.⁹⁹ Most devices attach to the officer's uniform or mount to headgear.¹⁰⁰ From there, the cameras capture both video and audio recordings of interactions from the officer's perspective.¹⁰¹ The majority of systems also come with a cloud-based data storage service with built-in security features to protect against tampering or destruction of video evidence.¹⁰² Prices vary significantly between manufacturers and models, but MSRP values generally range between \$500 and \$900, excluding additional proprietary software costs.¹⁰³

B. Findings from the SAVER Assessment and BWC Feasibility Study

In January of 2015, the Department of Homeland Security's ("DHS") System Assessment and Validation for Emergency Responders ("SAVER") Program conducted an operational assessment of seven commercially available body camera models.¹⁰⁴ SAVER's findings provided a guide for police departments considering implementing a body camera program.¹⁰⁵ Products were selected by a focus group of emergency responders based on existing market research and performance criteria.¹⁰⁶ The assessment sought to answer two questions: (1) What products are commercially available, and

⁹⁹ Newcombe, *For the Record: Understanding the Technology Behind Body Worn Cameras*, *supra* note 94.

¹⁰⁰ *Id.* The Rialto Police Department uses four-ounce cameras that attach to an officer's sunglasses or cap.

¹⁰¹ Michael D. White, *Police Officer Body-Worn Cameras: Assessing the Evidence*, DEPT. OF JUSTICE: OJP DIAGNOSTIC CENTER, at 12, available at <https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>.

¹⁰² *Id.*

¹⁰³ SAVER Assessment Report, *supra* note 97, at 12. See *Table 4-3* for specific MSRP pricing.

¹⁰⁴ *Id.* at 1-2. Products assessed were: (1) Black Mamba Protection LLC "BMPpro+"; (2) Digital Ally Inc. "FirstVu HD"; (3) Pinnacle Response Ltd. "PR5"; (4) Safety Vision LLC "Prima Facie Body Camera"; (5) TASER International Inc. "AXON Flex"; (6) VIEVU LLC "LE3"; (7) Wolfcom Enterprises "Wolfcom 3rd Eye Police Body Camera."

¹⁰⁵ *Id.* at 1.

¹⁰⁶ *Id.* at 1-2.

(2) how does a product perform under various field conditions?¹⁰⁷ Five agents familiar with body cameras evaluated the products based on the following categories: Affordability (life-cycle cost of the equipment), capability (power, capacity, and other performance features), deployability (ease of installation of implementation), maintainability (cost of maintenance and restoration), and usability (overall experience, efficiency, and satisfaction).¹⁰⁸ Products were rated on a scale of 1 to 5.¹⁰⁹

Under the modified SAVER evaluation with three categorical groups, the tested products scored between 3.3 and 3.9.¹¹⁰ Based on those results, DHS concluded that although body cameras *can* provide valuable assistance to police, departments must continue to “re-search each product’s overall capabilities and limitations in relation to their [specific] needs.”¹¹¹ DHS provided the following baseline recommendations: A body camera should have an image resolution of at least 640 x 480 pixels, a frame rate of at least twenty-five frames per second, and the ability to record events under low lighting conditions.¹¹² The battery should enable the device to record continuously for a minimum of three hours and the onboard storage, set at the lowest setting, should be capable of preserving at least three hours of footage.¹¹³ The system should also include a minimum one-year warranty.¹¹⁴

The SAVER evaluation also identified technological deficiencies among existing body camera models. Cost-efficient cameras

¹⁰⁷ *Id.* at i.

¹⁰⁸ *Id.* at 1, 3-4. *See Table 1-1* for evaluator information. Products were ultimately assessed against sixteen criteria (out of a proposed twenty-five). Factors relating to maintainability (power, data storage, security, software requirements, operating temperature, and recharge method) and affordability were excluded for being jurisdiction- or department- specific. Battery access and video streaming were excluded because the majority of products lacked such features.

¹⁰⁹ *Id.* at 3-4. *See Table 2-1* for specific breakdown of values and weight.

¹¹⁰ *Id.* at 9. Safety Vision 3.9; TASER 3.9; Pinnacle 3.7; Black Mamba 3.7; VIEVU 3.7, Digital Ally 3.7; Wolfcom 3.3.

¹¹¹ *Id.* at 30. *See Table 5.1* for full product advantages and disadvantages.

¹¹² Newcombe, *For the Record: Understanding the Technology Behind Body Worn Cameras*, *supra* note 94.

¹¹³ *Id.*

¹¹⁴ *Id.*

had more image-quality issues, notably under low lighting conditions, compared to “high-end” models.¹¹⁵ This forces police departments with limited resources to consider the price-quality trade off. In addition, all products experienced some stability issues with imaging and placement.¹¹⁶ This was especially apparent when officers engaged in pursuit of a suspect or any type of physical confrontation.¹¹⁷ Some evaluators, however, reported that head-mounted cameras suffered from fewer stability issues than cameras placed elsewhere on the body, due to the head acting as a “natural gyroscope to reduce motion.”¹¹⁸ Head-mounted cameras offered the additional advantage of being able to record whatever the officer was looking at, whereas cameras affixed to the chest or shoulder could only record what was directly in front of the officer’s body.¹¹⁹ Finally, crucial maintainability factors (data storage, security, software) were completely excluded from the assessment. These costs should not be ignored.

U.S. Customs and Border Protection has also looked into the possibility of outfitting its agents with body cameras.¹²⁰ On July 30, 2014, CBP established the Body-Worn Camera Working Group (“BWC”) to conduct a feasibility study.¹²¹ BWC members included representatives from thirteen CBP offices, DHS, the Office for Civil Rights and Civil Liberties, and the DHS Privacy Office.¹²² The objective of the Operational Utility Evaluation was to provide CBP

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Newcombe, *For the Record: Understanding the Technology Behind Body Worn Cameras*, *supra* note 94.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Victoria Bekiempis, *U.S. Customs and Border Protection Weighs Using Body Cameras*, NEWSWEEK (July 25, 2015), <http://www.newsweek.com/customs-and-border-patrol-body-worn-cameras-356528>.

¹²¹ *Body-Worn Camera Feasibility Study Report*, CBP (2015) at iii [hereinafter CBP Feasibility Report], available at <http://www.cbp.gov/sites/default/files/documents/body-worn-camera-20151112.pdf>.

¹²² *Id.*

with an understanding of the abilities and limitations of body cameras.¹²³ The ultimate goal was to outfit CBP and Border Patrol agents with body cameras by the end of 2015.¹²⁴

The BWC adopted a three-step approach: Phase I – Controlled Environment Evaluation, Phase II – Field Evaluation, and Phase III – Data Analysis and Report Creation.¹²⁵ In Phase I, CBP trainees tested body cameras in non-operational, scenario-based environment in CBP’s training facilities to develop training materials focused on promoting agent safety.¹²⁶ In Phase II, participants studied the effectiveness of body cameras in operational environments to answer two questions: (1) Does the body camera footage contribute to CBP’s mission, and (2) how effective are body cameras in the field?¹²⁷ Twelve Border Patrol agents wore body cameras for thirty days during routine assignments at the Santa Teresa, Ysleta, and Baine stations.¹²⁸ In Phase III, agents analyzed the data collected (1,895 video files providing over 170 hours of footage) from Phase I and Phase II.¹²⁹

Border Patrol agents’ evaluations of the body camera experiment were overwhelmingly negative. During Phase II, body cameras tended to reduce agents’ situational awareness during encounters, as agents were more concerned with whether their cameras were functioning properly and oriented correctly.¹³⁰ This created an unsafe situation for all parties involved.¹³¹ Agents also felt their safety was compromised when they positioned themselves to get the best camera angle rather than adopt the proper defensive stance when facing a hostile suspect.¹³² Furthermore, several agents reported that body

¹²³ *Id.*

¹²⁴ Bekiempis, *U.S. Customs and Border Protections Weighs Using Body Cameras*, *supra* note 120.

¹²⁵ CBP Feasibility Report, *supra* note 121, at 1.

¹²⁶ *Id.* at 3. Phase I lasted from October through December 2014. Scenario-based testing replicates real-world events and encounters.

¹²⁷ *Id.*

¹²⁸ *Id.* at 5.

¹²⁹ *Id.*

¹³⁰ CBP Feasibility Report, *supra* note 121, at 6.

¹³¹ *Id.*

¹³² *Id.*

cameras caused civilians to be “more guarded in their conversations,” thereby hindering the agents’ ability to gather important information.¹³³

Body camera technology also raised several concerns. Poor camera stabilization in windy conditions, limited night feature options, and absence of auto-rotation on certain camera models critically affected the quality of video footage.¹³⁴ Agents complained that video upload time was “excessive” and that the lack of security features meant evidence can be modified or deleted.¹³⁵ Some agents also expressed concern that video footage would be used as evidence against them in disciplinary proceedings.¹³⁶

In light of the critical feedback, the BWC concluded that while body cameras were becoming more prevalent in American policing, the existing technology was “not designed to meet the rigors required by CBP agents.”¹³⁷ After an internal review, CBP determined that Border Patrol agents should not be required to wear body cameras.¹³⁸ Due to the unique challenges at the border, before a body camera program can be implemented, additional operational requirements must be met, specific policies developed, and technological issues resolved.¹³⁹ In spite of these challenges, CBP Commissioner Gil Kerlikowske announced that CBP will continue testing body cameras to develop a program that best suits the needs of its agents.¹⁴⁰

C. *Recognizing the Potential*

Notwithstanding these unresolved technological and performance issues, most experts agree that body cameras have the ability

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ CBP Feasibility Report, *supra* note 121, at 6.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Elliot Spagat, *US Border Agency Staff Rejects Body Cameras for Agents, Citing Cost, Terrain*, U.S. NEWS (Nov. 6, 2015), <http://www.usnews.com/news/us/articles/2015/11/06/apnewsbreak-us-border-agency-staff-rejects-body-cameras>.

¹³⁹ *See generally* CBP Feasibility Report, *supra* note 121.

¹⁴⁰ Aaron Nielsen, *CBP to Continue Body Cam Testing*, SAN ANTONIO EXPRESS NEWS (Nov. 12, 2015), <http://www.expressnews.com/news/local/article/CBP-to-continue-body-cam-testing-6627864.php>.

to significantly transform the field of policing.¹⁴¹ Community Oriented Policing Services (“COPS”) Director Ronald Davis explained that body cameras can strengthen officer performance and accountability, enhance department transparency, improve evidence collection, and aid in the investigation of officer-involved incidents.¹⁴²

Body cameras have been shown to lower rates of police misconduct. In 2012, COPS partnered with the Police Executive Research Forum (“PERF”) to study the effects of body camera programs in various police departments across the United States.¹⁴³ Results from the Rialto Police Department in California showed a 60% reduction in “officer use of force” incidents and an 88% reduction in “citizen complaints” between the year prior to and the years following camera deployment.¹⁴⁴ The Mesa Police Department in Arizona found 75% fewer use of force complaints and 40% fewer total complaints against officers wearing body cameras compared to those without.¹⁴⁵ Ron Miller, Chief of Police of Topeka, Kansas, concluded that “everyone is on their best behavior when the cameras are running. The officers, the public—everyone.”¹⁴⁶

Body cameras are often thought of as primarily benefiting the victims of police misconduct by exposing officers who use excessive force. If a picture is worth a thousand words, then a video must be worth millions. Even if an officer adheres to the “blue code of silence” or participates in “testilying,” body camera footage can provide prosecutors and juries with an objective account of what *actually* happened. As the cases of Samuel DuBose and Keith Lamont Scott (discussed later in this Note) illustrate, the footage may wholly refute an officer’s claims that the suspect was combative and that the officer’s use of deadly force was justified.

¹⁴¹ Jay Stanley, *Police Body-Mounted Cameras: With Right Policies in Place, a Win for All*, ACLU (Mar. 2015) at 2, available at https://www.aclu.org/sites/default/files/assets/police_body-mounted_cameras-v2.pdf.

¹⁴² *Letter from the COPS Office Director, IMPLEMENTING A BODY-WORN CAMERA PROGRAM: RECOMMENDATIONS AND LESSONS LEARNED (2014)* [hereinafter COPS BODY CAMERA PROGRAM] at vii, available at <https://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>.

¹⁴³ *Perceived Benefits of Body-Worn Cameras*, COPS BODY CAMERA PROGRAM, *supra* note 142, at 5.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 6.

¹⁴⁶ *Id.* at 5.

But ironically, the devices provide significant advantages to police as well. Not only do body cameras deter officers from employing excessive force, but they also help improve officer safety, mitigate ambiguities in witness accounts, and resolve allegations of racial profiling.¹⁴⁷ Police departments have found the cameras useful in defending against administrative, civil, and criminal complaints against officers.¹⁴⁸ Body camera footage also drastically reduced the number of frivolous complaints.¹⁴⁹ Chief of Police Michael Frazier of Surprise, Arizona reported:

Recently we received an allegation that an officer engaged in racial profiling during a traffic stop. The officer was wearing his body-worn camera, and the footage showed that the allegation was completely unfounded. After reviewing the tape, the complainants admitted that they have never been treated unfairly by any officers[.]¹⁵⁰

Chief Ron Miller reported a similar experience: “We’ve actually had citizens come into the department to file a complaint, but after we show them the video, they literally turn and walk back out.”¹⁵¹ In the majority of cases, the video evidence supported the officer’s version of the events.¹⁵²

Furthermore, in cases that proceed to litigation, body camera footage provides the court with the original, on-scene statements of officers, suspects, and witnesses.¹⁵³ The footage can also be used to refresh a witness’s memory of the event and verify or impeach his

¹⁴⁷ *Considering Body Cameras*, *supra* note 60, at 1796.

¹⁴⁸ *Body-Worn Cameras: Concept and Issues Paper*, IACP NATIONAL LAW ENFORCEMENT POLICY CENTER (Apr. 2014) at 1 [hereinafter *IACP Body-Worn Cameras*], available at <http://www.aele.org/iacp-bwc-mp.pdf>.

¹⁴⁹ *Considering Body Cameras*, *supra* note 60, at 1801.

¹⁵⁰ *Perceived Benefits of Body Cameras*, COPS BODY CAMERA PROGRAM, *supra* note 142, at 6.

¹⁵¹ *Id.*

¹⁵² *Id.* at 7. In a case arising out of Daytona Beach, Florida, an individual threatened to file a complaint against several officers, alleging that they had threatened him and used racial epithets. One officer was wearing a body camera, and once the department reviewed the footage, it was clear that the individual had lied. The “allegations were absolutely not what was represented in the video.”

¹⁵³ *IACP Body-Worn Cameras*, *supra* note 148, at 1.

testimony at trial.¹⁵⁴ Among prosecutors, 96% reported that body camera evidence improved their ability to successfully prosecute a case.¹⁵⁵

Body camera footage also assists departments in developing better officer training programs, which benefits both civilians and police.¹⁵⁶ The records are useful in identifying and correcting the behavior of officers who have a history of misconduct and for demonstrating what a proper police-civilian encounter looks like.¹⁵⁷ A PERF survey found that 94% of police departments use body camera footage to train new officers and aid in administrative reviews of officers who abuse their authority.¹⁵⁸ As the ACLU stated, in a world where conflicts between police and civilians are commonly recorded by third parties, “if [society wants] accountability for both . . . officers and for the people they interact with . . . [the solution] is to also have video from the officer’s perspective.”¹⁵⁹

The “widespread galvanization over body cameras, however, exemplifies the human tendency, in times of tragedy, to latch on to the most readily available solution to a complex problem.”¹⁶⁰ Although results from preliminary studies—most notably the February 2012 to February 2013 Rialto Police Department study—tend to illustrate a negative correlation between body camera usage and the number of “use of force” complaints against officers, experts warn that it is still too early to draw definite conclusions.¹⁶¹ In light of the reactionary influx of federal and state funding for body camera research and implementation, one must not forget that the proliferation

¹⁵⁴ *Considering Body Cameras*, *supra* note 60, at 1803.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 1802.

¹⁵⁷ *Id.*

¹⁵⁸ *Perceived Benefits of Body-Worn Cameras*, COPS BODY CAMERA PROGRAM, *supra* note 142, at 7.

¹⁵⁹ *Introduction*, COPS BODY CAMERA PROGRAM, *supra* note 142, at 1. Statement of Scott Greenwood.

¹⁶⁰ *Considering Body Cameras*, *supra* note 60, at 1796.

¹⁶¹ *Police Body Cameras*, CATO INSTITUTE, <http://www.policemisconduct.net/explainers/police-body-cameras/>.

of these devices will inevitably change the nature of policing—for better or for worse.¹⁶²

III. PRIVACY CONCERNS AND THE LIMITATIONS OF BODY CAMERA TECHNOLOGY

A. *(Un)Reasonable Expectations of Privacy*

Amidst the fervor surrounding body cameras, it is easy to overlook the pervasive and indiscriminate nature of these devices. The body camera initiative has been described as a “win-win” for both police and civilians—but only so long as civilian privacy interests remain protected.¹⁶³

Body cameras raise the age-old question of how the Fourth Amendment applies to new forms of government technology. The Fourth Amendment of the United States Constitution provides:

The right of the people to be secure in the persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause . . . and *particularly describing the place to be searched, and the persons or things to be seized.*¹⁶⁴

Body camera critics argue that the routine recording of police-civilian interactions violates the Fourth Amendment and evokes notions of a “Surveillance State.”¹⁶⁵ This argument has been raised be-

¹⁶² *Considering Body Cameras*, *supra* note 60, at 1796. See also Introduction, COPS BODY CAMERA PROGRAM, *supra* note 142, at 1. Statement of Charles Ramsey, Police Commissioner, Philadelphia Police Department: “Because technology is advancing faster than policy . . . What do these technologies mean for constitutional policing? If we embrace this new technology, we have to make sure that we are using it to help us do our jobs better.

¹⁶³ Stanley, *Police Body-Mounted Cameras*, *supra* note 141, at 2.

¹⁶⁴ U.S. CONST. AMEND. IV. (emphasis added).

¹⁶⁵ Marc Jonathan Blitz, *Police Body-Worn Cameras: Evidentiary Benefits and Privacy Threats*, AMERICAN CONSTITUTION SOCIETY (May 2015) at 13 [hereinafter *ACS Evidentiary Benefits and Privacy Threats*], available at https://www.acslaw.org/sites/default/files/Blitz_-_On-Body_Cameras_-_Issue_Brief.pdf; *Considering Body Cameras*, *supra* note 60, at 1810.

fore in opposition to other types of police equipment—and dismissed. Closed-circuit television (“CCTV”) cameras installed on public streets and “dashcam” video cameras in police vehicles were initially received with similar criticism but have since become an accepted feature of modern society.¹⁶⁶ CCTV cameras, however, have a limited field of vision, and dashboard cameras provide little assistance to police officers outside transmission range. Body cameras, in comparison, enable comprehensive documentation of police-civilian interactions in a greater range of settings and thus, pose a greater risk to privacy than previous forms of police technology.¹⁶⁷ Officers wearing body cameras can now capture footage of encounters inside a person’s private residence.¹⁶⁸ And although privacy expectations are admittedly lower in public spaces or “open fields”¹⁶⁹—should citizens nevertheless expect their every encounter with police to be captured on film?

From a legal perspective, that answer is generally yes. In spite of rapid advancements in police surveillance technology, the Supreme Court adheres to the opinion that law enforcement agents are not required to “shield their eyes” from publically visible conduct¹⁷⁰ and that “mere visual observation does not constitute a search.”¹⁷¹ In addition, courts have held that there is no Fourth Amendment violation when agents use video equipment to record activities visible to the naked eye.¹⁷² As the law currently stands, as long as the officer is in a place where he has a right to be, he may observe, photograph, and record his surroundings.

¹⁶⁶ ACS *Evidentiary Benefits and Privacy Threats*, *supra* note 165, at 3.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 1.

¹⁶⁹ See *Oliver v. United States*, 466 U.S. 170, 176 (1984) (“The special protection accorded by the Fourth Amendment . . . is not extended to the open fields”); *United States v. Dunn*, 480 U.S. 294, 304 (1987) (“The term open fields may include any unoccupied or underdeveloped area outside of the curtilage. An open field need be neither ‘open’ nor a ‘field’ . . .”).

¹⁷⁰ See *California v. Ciraolo*, 475 U.S. 207, 213 (1986).

¹⁷¹ See *United States v. Jones*, 132 S. Ct. 945, 953 (2012).

¹⁷² See *Dow Chem. Co. v. United States*, 476 U.S. 227 (1986) (finding constitutional the government’s use of aerial photography to photograph an industrial complex); *United States v. Jackson*, 213 F.3d 1269, 1280 (10th Cir. 2000) (finding the government’s use of silent video cameras on telephone poles outside the defendant’s residence did not violate the Fourth Amendment; judgment vacated on other grounds).

There are, however, two possible scenarios that suggest Fourth Amendment jurisprudence should be revised in response to the introduction of police body cameras. In the first scenario, a police officer obtains a valid search warrant for a private residence—but the warrant does not authorize him to search *everything* in the home.¹⁷³ A body camera captures evidence indiscriminately and therefore, may unlawfully extend the officer's visuals to areas outside the scope of the warrant.¹⁷⁴ In the second scenario, the “plain view” exception to the Fourth Amendment warrant requirement applies only if (1) the place, person, or thing is visible from an area within the scope of the warrant and (2) the incriminating nature of the place, person, or things is “immediately apparent.”¹⁷⁵ A body camera enables the officer to conduct a post-search review (including rewinding and zooming-in) of the footage and discover evidence that he would have otherwise missed.¹⁷⁶ The officer may also determine that a previously innocent-looking item is, in fact, incriminating.¹⁷⁷ In light of these issues, while proponents advertise that body cameras promote and protect civilian interests, critics claim that in reality, body cameras represent another step towards the dreaded “Surveillance State.”¹⁷⁸ As of this Note, there has yet to be a case addressing either scenario. But given the rapid proliferation of body cameras in American policing—combined with inconsistent usage and storage policies—sooner or later courts will be forced to adjudicate these issues.

B. Body Camera Limitations

In addition to privacy concerns, body camera critics caution that the reactionary adoption of body cameras as a response to isolated incidents of excessive force may only exacerbate police-civilian relations.¹⁷⁹ Even the American Civil Liberties Union (“ACLU”)

¹⁷³ ACS *Evidentiary Benefits and Privacy Threats*, supra note 165, at 13. The Fourth Amendment explicitly requires that a search warrant “describe with particularity the place to be searched, and the person or things to be seized.”

¹⁷⁴ *Id.*

¹⁷⁵ See *Arizona v. Hicks*, 480 U.S. 321 (1987).

¹⁷⁶ ACS *Evidentiary Benefits and Privacy Threats*, supra note 165, at 14.

¹⁷⁷ *Id.*

¹⁷⁸ *Considering Body Cameras*, supra note 60, at 1811.

¹⁷⁹ *Id.* at 1805.

warned that body cameras can either increase police accountability or increase the potential of additional abuse.¹⁸⁰ Participants in the PERF conference also voiced their concern that body cameras may damage, rather than foster, police relationships with their community.¹⁸¹ Professor Seth Stoughton, a renowned body camera researcher, compares body cameras to hammers.¹⁸² For some jobs—driving a nail or pulling out a nail—a hammer is the perfect tool; for other jobs—screwing a nail through wood—using a hammer only makes things worse.¹⁸³ Like hammers, body cameras have their limitations. And the idea that body cameras are a one-size-fits-all solution to the problem of police violence is not only wrong, but dangerous.

The greatest technological obstacles surrounding body cameras revolve around image distortion and locus of control.¹⁸⁴ Police have complete control over the cameras and the power to select which encounters to record.¹⁸⁵ Such discretion allows unscrupulous officers to abuse the technology for their own benefit; for example, recording from a certain perspective to protect themselves against subsequent allegations of excessive force.¹⁸⁶ Because body cameras are commonly worn on the chest, the camera is typically tilted at an upward angle. From that perspective, anything (or anyone) in front of the officer appears much larger than the officer.¹⁸⁷ As Professor Stoughton explains:

When you look up at someone, they look taller, they look broader, and that's more threatening. So if all

¹⁸⁰ *Considerations for Implementation*, COPS BODY CAMERA PROGRAM, *supra* note 142, at 11.

¹⁸¹ *Id.* at 19.

¹⁸² Bill Nemitz, *Police Body Cameras Are Useful Tools, But They Can Distort the Truth*, PORTLAND PRESS HERALD (Feb. 26, 2017), <http://www.pressherald.com/2017/02/26/police-body-cameras-are-useful-tools-but-they-can-distort-the-truth/>. Stoughton is a former Special Response Team officer for the Tallahassee Police Department and current Professor at the University of South Carolina School of Law.

¹⁸³ *Id.*

¹⁸⁴ *Considering Body Cameras*, *supra* note 60, at 1805.

¹⁸⁵ *Id.* at 1806.

¹⁸⁶ *Id.*

¹⁸⁷ Nemitz, *Police Body Cameras Are Useful Tools, But They Can Distort the Truth*, *supra* note 182.

we had was the (body camera) video, people would say, ‘Wow, this guy’s much, much taller than the officer.’¹⁸⁸

Image distortion becomes even problematic with physical movement. When the camera is “bouncing around” on the officer’s clothing, “all or almost all of the [evidentiary] value” of that camera is lost.¹⁸⁹ Worse still, under the wrong circumstances, body camera footage is not only useless, but also misleading.¹⁹⁰ To demonstrate this point, Professor Stoughton produced a series of body camera videos capturing the same encounter up close and from a distance.

In the first video—“Bees Traffic Stop”¹⁹¹—an officer approaches a stopped vehicle from behind. Without warning, the driver’s door swings up and a man jumps out of the car. The officer falls to the ground and reaches towards his hip, presumably for his weapon. The officer’s body camera footage suggests that the man, seeing the officer approach his vehicle, knocked the officer down and fled. Additional footage captured from the officer’s dashcam, however, shows that neither the man nor the door touched the officer. He simply fell down. Moreover, the audio record reveals that the man was not attempting to evade arrest, but rather, trying to avoid getting stung by a bee in his car.

In the second body camera video (this time without audio)—“Dancing”¹⁹²—an officer and a man appear to be engaged in a violent confrontation inside a parking garage. The footage is shaky and difficult to follow, but snippets show the man crashing against the officer with his hands raised. Video footage from a distance, however, reveal that the officer and the man are smiling and dancing to Tango music.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ See “Bees Traffic Stop,” available at <https://onedrive.live.com/?authkey=%21AFHZ7a4fSIUwqGE&cid=86101BC7744BE167&id=86101BC7744BE167%2146000&parId=86101BC7744BE167%2145996&o=OneUp>.

¹⁹² See “Dancing,” available at <https://onedrive.live.com/?authkey=%21AFHZ7a4fSIUwqGE&cid=86101BC7744BE167&id=86101BC7744BE167%2145998&parId=86101BC7744BE167%2145996&o=OneUp>.

Image distortion does not always benefit the officer. In the third body camera video—“Gun Takedown”¹⁹³—an officer approaches a man standing against a pole. There is nothing inherently suspicious about the man or his behavior. The officer asks “are you okay,” to which the man responds, “I don’t want any trouble, just leave me alone.”¹⁹⁴ The officer reaches towards the man, and suddenly, for no apparent reason, wrestles the man to the ground. Based on the officer’s body camera footage, this appears to be another example of police excessive use of force against an innocent civilian. But footage from a camera positioned farther away shows that the man is not so innocent. Moments before the takedown, the man drew a gun and held it against the officer’s stomach. This critical action took place outside the narrow range of the officer’s body camera. This series of videos lead Stoughton to conclude that the closer a body camera is to the target, the less useful it becomes.¹⁹⁵

In addition to distortion, body cameras skeptics are concerned about the lack of public access to the captured footage.¹⁹⁶ Many States have disclosure exemptions that protect police records from public and media disclosure.¹⁹⁷ Participants in the PERF conference expressed concern that the combination of excessive recording and nondisclosure may damage, rather than foster, police relationships with the community.¹⁹⁸ Lastly, storing massive amounts of body camera footage and data is very expensive. Over a five-year period, the New Orleans Police Department spent \$1.2 million dollars on maintaining its body camera program, the majority of which went towards data storage.¹⁹⁹ Among law enforcement agencies in the PERF study, 39% cited cost as the primary reason for why they did

¹⁹³ See “Gun Takedown,” available at <https://onedrive.live.com/?authkey=%21AFHZ7a4fSIUwqGE&cid=86101BC7744BE167&id=86101BC7744BE167%2148111&parId=86101BC7744BE167%2145996&o=OneUp>.

¹⁹⁴ *Id.*

¹⁹⁵ Nemitz, *Police Body Cameras Are Useful Tools, But They Can Distort the Truth*, *supra* note 182.

¹⁹⁶ *Considering Body Cameras*, *supra* note 60, at 1806.

¹⁹⁷ *Id.*

¹⁹⁸ *Considerations for Implementation*, COPS BODY CAMERA PROGRAM, *supra* note 142, at 19.

¹⁹⁹ *Id.*

not have a body camera program.²⁰⁰ Although the momentum surrounding body cameras shows little sign of slowing down, it is imperative that police, civilians, prosecutors, and juries recognize the evidentiary and policy limitations of existing body camera technology.

IV. PANACEA OR SMOKE AND MIRRORS: AT THE END OF THE DAY, CAN BODY CAMERAS TRULY DELIVER ON THEIR PROMISE?

A. *The Future of Body Cameras on the Streets*

In recent years, American police officers on the streets have found themselves front and center of national news headlines. Cries of police brutality—both legitimate and unfounded—play like a broken record stuck on repeat. In many cases, the violence is captured from multiple angles on CCTV cameras, police vehicle dashcams, and civilian cellphones. In few cases is any legal action taken.

The public demands an end to the violence. And for many, body cameras provide the relief Americans have long been waiting for. Preliminary research and department reports are largely favorable, and an increasing number of jurisdictions are adding body cameras to their arsenal. In the months leading up to the 2016 presidential election, several candidates expressed their openness to expanding body camera programs.²⁰¹ Donald Trump proclaimed that body cameras “can solve a lot of problems for police.”²⁰² Rand Paul openly supported body camera legislation, explaining that body cameras “hel[p] officers collect and preserve evidence to solve crimes, while also decreasing the number of complaints against police.”²⁰³ Democratic candidates Hilary Clinton and Bernie Sanders

²⁰⁰ *Id.* at 31.

²⁰¹ Ben Jacobs, *Donald Trump Tells the Guardian Police Body Cameras 'Need Federal Funding,'* THE GUARDIAN (Oct. 13, 2015), <https://www.theguardian.com/us-news/2015/oct/13/donald-trump-police-body-cameras-federal-funding>.

²⁰² *Id.*

²⁰³ Dan Roberts, *Congressional Bill would Test the Effect of Body Cameras on Police Brutality,* THE GUARDIAN (Mar. 27, 2015), <https://www.theguardian.com/us-news/2015/mar/27/rand-paul-body-camera-bill-test>.

went a step further, proposing that body cameras should be mandatory across all police departments.²⁰⁴ Martin O'Malley called body cameras the "best standard" in American policing.²⁰⁵

But in light of all this, few have stopped to question whether body cameras are really a panacea to the problem of police violence. From a law enforcement perspective, there seems to be some agreement that body cameras are useful for regulating police conduct and resolving civilian complaints. But the Community Oriented Policing Services ("COPS") and Police Executive Research Forum ("PERF") partnership study on body camera programs across the United States was conducted in 2012, under the Obama administration. Although Obama was condemned for openly supporting the Black Lives Movement and blamed for police deaths in the "war on cops," data from the Officer Down Memorial Page show that the average number of police fatalities during his presidency was the lowest in decades.²⁰⁶ The number of assaults showed a similar decline.²⁰⁷ If the 2012 body camera findings are true—that everyone is on their best behavior—then the proliferation of body cameras during the Obama administration likely played a role in improving officer safety.

President Trump's vehement support for law enforcement, however, can turn the tables in either direction. In July of 2016, he made a promise: "The crime and violence that [] afflicts our nation will soon come to an end. Beginning on January 20, 2017, safety will be restored."²⁰⁸ In one of the "largest [studies] ever conducted with a nationally representative sample of police," the Pew Research Center found that the 86% of officers surveyed indicated that recent high-profile killings of black civilians by police have made their

²⁰⁴ Jacobs, *Donald Trump Tells the Guardian Police Body Cameras 'Need Federal Funding,' supra* note 201.

²⁰⁵ *Id.*

²⁰⁶ Christopher Ingraham, *Police are Safer Under Obama than They Have Been in Decades*, THE WASHINGTON POST (July 9, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/07/09/police-are-safer-under-obama-than-they-have-been-in-decades/?utm_term=.ee909aceba79.

²⁰⁷ *Id.*

²⁰⁸ Dara Lind, *Under Trump, Rank-and-File Law Enforcement—On the Border, On the Streets—Will Have More Power Than Ever*, VOX (Jan. 20, 2017), <http://www.vox.com/policy-and-politics/2017/1/20/14241026/police-trump-border-patrol>.

jobs risker.²⁰⁹ Furthermore, 93% reported they were more concerned about their safety; 75% said the incidents and subsequent protests have exacerbated tensions between police and the black community; and 72% claimed they were less willing to stop and question suspects.²¹⁰

Attorney General Jeff Sessions echoed Trump's support for "law and order," claiming that public criticism of police has dampened morale and contributed to spikes in crime rates in cities such as Chicago and Baltimore.²¹¹ Some advocates even asserted that police are hindered by public "agitators" waiting to pounce on the "next viral video."²¹² President Trump proposed a solution: Give police more autonomy over how to perform their duties. This proposal, along with Sessions' confirmation, have raised more than a few eyebrows. According to the Human Rights Watch: "Confirming Senator Sessions as Attorney General would likely put the Justice Department out of the business of civil rights enforcement."²¹³

Although Trump has not elaborated on his opinion towards body cameras, for police and some body camera advocates, the President's last words are optimistic:

[Police] are accused of things and oftentimes you see the body cameras and, all of [a] sudden, they didn't do anything wrong. And I almost think that it is a positive thing for the police, but it would really depend on the department itself.²¹⁴

Trump's presentation of body-cameras as a pro-police measure may entice some departments to implement body camera programs

²⁰⁹ Rich Morin, Kim Parker, Renee Stepler & Andrew Mercer, *Behind the Badge*, PEW RESEARCH CENTER (Jan. 11, 2017), <http://www.pewsocialtrends.org/2017/01/11/behind-the-badge/>.

²¹⁰ *Id.*

²¹¹ Lind, *Under Trump, Rank-and-File Law Enforcement—On the Border, On the Streets*, *supra* note 208.

²¹² *Id.*

²¹³ *US: Don't Confirm Sessions as Attorney General*, HUMAN RIGHTS WATCH (Jan. 10, 2017), <https://www.hrw.org/news/2017/01/10/us-dont-confirm-sessions-attorney-general>.

²¹⁴ Jacobs, *Donald Trump Tells the Guardian Police Body Cameras 'Need Federal Funding'*, *supra* note 201.

as a way to monitor their officers' behavior and defend against potential misconduct accusations. This would be a wise decision, considering the sheer number of civilian groups and politicians that have vowed to keep a scrutinizing eye on the President's domestic policies. The spotlight on American police will be brighter than ever. Every move they make will be analyzed thrice over. As Axon (formally Taser International) CEO Rick Smith lamented, "tension between the police and the public is at historic levels."²¹⁵

As a response to the rising discord, on April 5, 2017, Axon announced it will be offering a free "Axon Body 2" camera and corresponding software license to every police officer in the country for one year.²¹⁶ Axon encouraged its competitors to follow suit.²¹⁷ In a country so divided by "victim politics," body cameras may provide the shred of objectivity necessary to keep police-civilian relationships from deteriorating beyond repair.

But with great power comes great responsibility. If police are allowed greater discretion in enforcing the laws, it inevitably lowers their incentive to abide by traditional protocol. The problem with a bottom-up approach to law enforcement is that it permits different jurisdictions to establish their own regulations. Police departments that have found body cameras useful will continue using them—whether in support of the public's or their own best interests. Conversely, departments with a history of violence—arguably those that *should* have body cameras—are unlikely to implement a similar program and risk exposing their officers' misconduct. The discretionary distribution of body cameras may paint a deceptively positive picture of police-civilian relationships. In addition, absent federal funding to help cover costs, departments may be hesitant to spend already-strained resources on the expensive devices.

²¹⁵ Ryan Randazzo & Megan Cassidy, *Taser Offers Free Body Cameras to Law-Enforcement Officers Nationwide*, USA TODAY (Apr. 5, 2017), <https://www.usatoday.com/story/tech/nation-now/2017/04/05/taser-offers-free-body-cameras-law-enforcement/100095506/>.

²¹⁶ *Id.* The offer includes use of the Axon camera and license to use the company's website to store and organize video evidence. The cameras' MSRP price is \$400 and software licensing costs \$15-\$90 a month. The offer is open to every police department not currently involved in a public bidding process for body cameras.

²¹⁷ *Id.*

From a civilian perspective, the issue of whether body cameras can truly deliver on their promise is even more questionable. The popularity of police body cameras is directly attributable to a sequence of highly controversial police killings of black Americans between 2014 and 2016. Although some cases rested exclusively on witness testimonies, others were captured on video. In the case of Freddie Gray, cellphone and surveillance videos revealed that Gray was alive when he entered the Baltimore Police transport van.²¹⁸ Forty-five minutes later, Gray's lifeless body was pulled from the back of the van.²¹⁹ It's obvious that Gray *somehow* died during transport, but without video inside the van to confirm or disprove the officers' testimony that Gray was combative, three officers were acquitted at trial and three others had their charges dropped.²²⁰

Gray's death, and the lack of any legal consequences, is but one episode in a macabre series of police-civilian killings. One year prior, on July 17, 2014 in New York City, Eric Garner was confronted by police for selling untaxed cigarettes.²²¹ A brief struggle ensued, and one officer placed Garner in a department-prohibited chokehold.²²² Throughout the ordeal, Garner repeated eleven times, "I can't breathe. I can't breathe. I can't breathe . . ." ²²³ The entire incident was captured in disturbing detail on a bystander's cellphone.²²⁴ None of the officers involved in Eric Garner's death were fired; none were indicted.²²⁵ Angry cries of "I can't breathe" filled American streets.

Less than a month later, on August 9, 2014, in Ferguson, Missouri, police confronted Michael Brown after he was caught stealing

²¹⁸ Fantz & Botelho, *What We Know, Don't Know about Freddie Gray's Death*, *supra* note 10.

²¹⁹ Rector, *The 45-Minute Mystery of Freddie Gray's Death*, *supra* note 1.

²²⁰ Almukhtar, et. al., *Freddie Gray Case Ends with No Convictions of Any Police Officers*, *supra* note 22.

²²¹ Ford Fessenden, *New Perspective on Eric Garner's Death*, THE NEW YORK TIMES (June 13, 2015), <https://www.nytimes.com/interactive/2014/12/03/us/2014-12-03-garner-video.html>.

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ Haeyoun Park & Jasmine C. Lee, *Looking for Accountability in Police-Involved Deaths of Blacks*, THE NEW YORK TIMES (Nov. 16, 2016), https://www.nytimes.com/interactive/2016/07/12/us/looking-for-accountability-in-police-involved-deaths-of-blacks.html?_r=0.

cigarettes from a convenience store.²²⁶ After a violent altercation inside the police vehicle, Brown took off running.²²⁷ According to the officer, when Brown charged him, he fired ten rounds in self-defense.²²⁸ In this case there were no cameras, and witness testimonies differed. Some confirmed the officer's story; others claimed that Brown had his hands up when he was shot.²²⁹ The officer was not charged.²³⁰ "Hands up, don't shoot" became a national slogan.

After the grand jury's decision, Brown's family urged the public to "work together to fix the system" and "ensure that every police officer working the streets . . . wears a body camera."²³¹ Before police were able to honor the request, on November 22, 2014 in Cleveland, Ohio, twelve-year-old Tamar Rice was shot and killed when police mistook his pellet gun for a real firearm.²³² The shooting was caught on camera.²³³ Once again, the officer was not fired or charged.²³⁴ The cases of Garner, Brown, Rice, Gray (along with numerous other lesser-reported incidents), and the protests that followed each case, prompted several jurisdictions to equip their officers with body cameras.

The first high-profile police shooting recorded on a body camera took place on July 19, 2015 in Cincinnati, Ohio.²³⁵ Samuel DuBose

²²⁶ *Department of Justice Report Regarding the Criminal Investigation into the Shooting Death of Michael Brown by Ferguson, Missouri Police Officer Darren Wilson*, DEPT. OF JUSTICE (Mar. 4, 2015) at 6, available at https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj_report_on_shooting_of_michael_brown_1.pdf.

²²⁷ *Id.* at 6-7.

²²⁸ *Id.* A total of twelve rounds were fired—two inside the police vehicle, ten on the street.

²²⁹ *Id.* at 8.

²³⁰ Monica Volante, *Michael Brown's Family Releases Statement on Grand Jury Decision*, FOX 8 (Nov. 24, 2014), <http://fox8.com/2014/11/24/michael-br-owns-family-releases-statement-on-grand-jury-decision/>.

²³¹ *Id.*

²³² Ashley Fantz, Steve Almasy & Catherine E. Shoichet, *Tamir Rice Shooting: No Charges for Officers*, CNN (Dec. 28, 2015), <http://www.cnn.com/2015/12/28/us/tamir-rice-shooting/>

²³³ *Id.*

²³⁴ *Id.*

²³⁵ Greg Noble & Jason Law, *WATCH: Body Cam Video Released in Sam DuBose Shooting*, WCPO (July 30, 2015), <http://www.wcpo.com/news/local-news/hamilton-county/cincinnati/watch-body-cam-video-released-in-sam-dubose-shooting>.

was stopped for a missing front license plate.²³⁶ According to the officer, DuBose tried to drive off and dragged him with the car—the officer, fearing for his life, fired one shot.²³⁷ The officer’s body camera, however, refuted his claim. The video showed the officer reaching through the driver’s window and shooting DuBose point-blank in the head.²³⁸ DuBose’s car never moved; the officer was never dragged. The officer was charged with murder, but after twenty-five hours of deliberating, the jury could not reach a decision on either murder or voluntary manslaughter.²³⁹

A year later, on July 5, 2016, in Baton Rouge, Louisiana, Alton Sterling was detained for reportedly threatening someone with a gun.²⁴⁰ Bystander cellphone videos and a CCTV camera show Sterling being tackled by two officers, pinned to the ground, and shot several times at close range.²⁴¹ Both officers were wearing body cameras, but both cameras “fell off” during the altercation and failed to capture the shooting.²⁴² As of this Note, neither officer has been charged.

Two months later, on September 20, 2016, in Charlotte, North Carolina, Keith Lamont Scott was shot and killed by police when he allegedly made a threatening gesture with a gun.²⁴³ The incident was

²³⁶ Crimesider Staff, *Ray Tensing Trial: Judge Declares Mistrial in Fatal Police Shooting of Sam DeBose*, CBS NEWS (Nov. 12, 2016), <http://www.cbsnews.com/news/sam-dubose-shooting-ray-tenzing-trial/>.

²³⁷ Noble & Law, *WATCH: Body Cam Video Released in Sam DuBose Shooting*, *supra* note 235.

²³⁸ *Id.*

²³⁹ Crimesider Staff, *Ray Tensing Trial: Judge Declares Mistrial*, *supra* note 236.

²⁴⁰ Alex Johnson & Gabe Gutierrez, *Baton Rouge Store Owner Says His Video Shows Cops ‘Murdered’ Alton Sterling*, NBC NEWS (July 7, 2016), <http://www.nbcnews.com/news/us-news/baton-rouge-store-owner-says-his-video-shows-cops-murdered-n604841>. Police did remove a gun from Sterling’s pocket after they shot him, but a witness claims that Sterling never reached for the weapon.

²⁴¹ *Id.*

²⁴² Kimbriell Kelly, Wesley Lowery, Steven Rich, Julie Tate & Jennifer Jenkins, *Fatal Shootings by Police Remain Relatively Unchanged after Two Years*, THE WASHINGTON POST (Dec. 30, 2016), https://www.washingtonpost.com/investigations/fatal-shootings-by-police-remain-relatively-unchanged-after-two-years/2016/12/30/fc807596-c3ca-11e6-9578-0054287507db_story.html?utm_term=.b403035d4522.

²⁴³ Nick Valencia, Jason Hanna & Steve Almasy, *Charlotte Shooting: Police Release Video and Photo Evidence*, CNN (Sept. 24, 2016), <http://www.cnn.com>.

recorded by Scott's widow, a police vehicle dashcam, and police body cameras—none of the videos showed Scott pointing a gun at police.²⁴⁴ The officer was not charged with any crime.²⁴⁵

The outcome of these cases raises the question: Does getting caught on video make any difference? Cellphone videos did not save Eric Garner's life or Tamar Rice's life. After the first killings, people reasoned that perhaps the officers did not realize they were on camera.²⁴⁶ If police knew their actions were filmed—and presumably subject to later review—perhaps they would have approached the situation differently from the start. But a year later, the presence of body cameras did not protect Samuel DuBose, Alton Sterling, or Keith Scott. In Sterling's case, the camera was not even utilized properly. Any evidence that could have been obtained was lost. More importantly, officers in all six killings found ways to justify their actions—the suspect was uncooperative; the officers were in fear for their lives. Even though the body camera videos suggested otherwise, at the end of the day, prosecutors and juries chose to believe the officers.

Law enforcement is a dangerous profession. Politicians recognize it, the public recognizes it, and the Supreme Court recognizes it. When ordinary citizens encroach upon each other's rights, their actions are evaluated under a substantive due process standard.²⁴⁷ When a police officer is accused of using excessive force—deadly or not—during a seizure, his actions are analyzed under the Fourth Amendment's "objective reasonableness" standard.²⁴⁸ The inquiry turns on whether the officer's actions are reasonable in light of the facts and circumstances confronting him, regardless of his underlying intent or motivation.²⁴⁹ "Reasonableness" is judged from the

com/2016/09/24/us/charlotte-keith-lamont-scott-shooting-video/index.html. A pistol and ankle holster were recovered from the scene.

²⁴⁴ *Id.*

²⁴⁵ Park & Lee, *Looking for Accountability in Police-Involved Deaths of Blacks*, *supra* note 224.

²⁴⁶ Domenico Montanaro, Lisa Desjardins & Simone Pathe, *Does the Garner Case Weaken the Argument for Body Cameras?* PBS (Dec. 4, 2014), <http://www.pbs.org/newshour/updates/garner-case-weaken-argument-body-cameras/>.

²⁴⁷ *See Graham v. Connor*, 490 U.S. 386, 387 (1989).

²⁴⁸ *Id.*

²⁴⁹ *Id.*; *see, e.g., Terrell v. Smith*, 669 F.3d 1244 (11th Cir. 2012) (finding that the officer's use of deadly force was reasonable where the suspect attempted to

perspective of a “reasonable” officer and takes into account the fact that police must often make “split-second” decisions about how much force is necessary in a given situation.²⁵⁰ Under this test, “malicious and sadistic” intent are merely terms describing “unreasonable” conduct under the circumstances.²⁵¹ Because the vast majority of police officers *do* use “reasonable” force in executing their duties, this standard protects “unreasonable” police officers from being brought to justice.

If the public wants additional evidentiary footage of police misconduct, then yes, body cameras will provide that. If the public hopes police will better monitor and control their own behavior, then body cameras may also help. But it seems that the public, through protests and lobbying, is demanding justice for victims of police brutality—and here, body cameras fall short. DuBose was deemed a homicide. Sterling was called an “execution-style murder.”²⁵² But Scott, the only case where prosecutors had clear body camera footage of the critical moment, was consistently ruled a “justified shooting” based on the totality of the circumstances.²⁵³ Under the current state of the law, the addition of body cameras hardly makes a difference in the outcome.

use his car as a weapon); *Poole v. City of Shreveport*, 691 F.3d 624 (5th Cir. 2012) (finding that the officer did not use excessive force in tasing the suspect after the suspect refused to comply with the officer’s commands); *United States v. Sinclair*, 983 F.2d 598, 602 (4th Cir. 1993) (“[A]pproaching a suspect with a drawn weapon is an extraordinary measure . . . [but such an action] can be justified as a reasonable means of neutralizing potential dangers to police and innocent bystanders.”); *but see Turman v. Jordan*, 405 F.3d 212 (4th Cir. 2005) (finding that the officer’s actions were not objectively reasonable where, absent a reasonable suspicion that criminal activity was afoot, he pointed a gun in the suspect’s face, jerked him from the hotel room, spun him around, and handcuffed him).

²⁵⁰ *Id.*

²⁵¹ *Id.* (rejecting the lower court’s application of the *Johnson v. Glick*, 481 F.2d 1028, 1033 (2nd Cir. 1973) test, which considered factors such as the “need for the application of force, [the] amount of force used, the extent of injury inflicted, and whether force was applied in a good-faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm”).

²⁵² Christopher Brennan, Graham Rayman & Dan Good, *Alton Sterling’s Police Killing in Louisiana Sparks Outrage*, NY DAILY NEWS (July 6, 2016), <http://www.nydailynews.com/news/national/alton-sterling-police-killing-louisiana-people-furious-article-1.2700595>.

²⁵³ Valencia, Hanna & Almasy, *Charlotte Shooting: Police Release Video and Photo Evidence*, *supra* note 243.

B. The Future of Body Cameras at the Borders

With President Trump in office, the future of body cameras at the United States border also appears uncertain. Throughout his campaign and first weeks in command, Trump has stood by his nonsense, no-mercy stance on illegal immigration—a stance that some have criticized as un-American and unconstitutional. In “keeping his promise to the American people,” Trump has already signed two executive orders with the goal of increasing border security and “prevent[ing] further illegal immigration into the United States.”²⁵⁴ The orders call for the immediate construction of a physical wall along the United States-Mexico border²⁵⁵ and pledge to hire 10,000 additional Immigration and Customs Enforcement (“ICE”) agents²⁵⁶ and 5,000 additional Border Patrol agents.²⁵⁷

Both Executive Orders have been received with mixed reviews. Former special agent Neville Cramer applauded the push towards increasing the size of the illegal immigration taskforce, but expressed concern over internal memos indicating that Border Patrol may loosen its hiring requirements to fill the positions.²⁵⁸ The current Department of Homeland Security (“DHS”) hiring process for ICE and Border Patrol is rigorous and slow, averaging 212 days and 282 days, respectively.²⁵⁹ Days after the Executive Orders were issued, however, DHS Inspector General John Roth testified before a

²⁵⁴ Exec. Order: Border Security and Immigration Enforcement Improvements, -- C.F.R. -- (Jan. 25, 2017), at Sec. 1, <https://www.whitehouse.gov/the-press-office/2017/01/25/executive-order-border-security-and-immigration-enforcement-improvements>.

²⁵⁵ *Id.* at Sec. 2(a).

²⁵⁶ Exec. Order: Enhancing Public Safety in the Interior of the United States, -- C.F.R. -- (Jan. 25, 2017), at Sec. 7, <https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>.

²⁵⁷ Exec. Order: Border Security and Immigration Enforcement Improvements, *supra* note 254, at Sec. 8.

²⁵⁸ “If the people knew . . . the number of illegal immigrants in the country, they would say [ICE and Border Patrol] should have a force the size of NYPD, 45 to 50,000 agents.” *Trump’s Executive Order Calls for Hiring 15k Border Patrol, ICE Agents*, FOX 10 (Mar. 1, 2017), <http://www.fox10phoenix.com/news/arizona-news/238869577-story>.

²⁵⁹ Greg Moran, *Trump’s Plan to Rapidly Expand Border Patrol Comes with Big Risks*, LA TIMES (Mar. 13, 2017), <http://www.latimes.com/local/lanow/la-me-border-patrol-20170313-story.html>.

congressional committee that his office will work with ICE and Border Patrol to “avoid previously identified poor management practices and their negative impacts”—a reference to agent corruption and misconduct.²⁶⁰ In response, U.S. Customs and Border Protection (“CBP”) released a statement that the Agency will maintain its high recruitment standards and will not lower its training standards.²⁶¹ Notably absent from all this talk concerning border safety is the issue of body cameras.

Since CBP’s Operational Utility Evaluation in 2014, which concluded that existing body camera technology is ill-suited to meet the demands of Border Patrol agents, there has been no indication that CBP plans to reinitiate testing. Even if technological requirements are met, several obstacles still stand in the way of widespread deployment. The list includes covering the cost of equipment, training, and storage; alleviating agents’ concerns that body cameras undermine intelligence gathering and may be used in disciplinary proceedings; and obtaining union approval from the National Border Patrol Council.²⁶² But in light of the new proposed hiring spree—and possibility (however slim) of lower hiring standards—perhaps CBP should reconsider body cameras now more so than ever. Police departments using body cameras have reported that the cameras produce a “civilizing” effect on both sides and reduce the number of excessive use of force complaints. Assuming this is true, CBP would benefit from adopting a precautionary approach—implement a body camera program and hope to stop complaints before they arise.

Used correctly, with appropriate policies in place, body cameras can be a beneficial tool for CBP and Border Patrol. The diverse working environments at the southern border simply mean that CBP may need to utilize multiple products and deployment strategies.²⁶³ Body camera technology is still in its infancy, and the National Institute of Justice is currently funding two studies on body camera

²⁶⁰ *Id.*

²⁶¹ Tal Kopan, *Trump Admin Looks at Ways to Hire More Border Agents*, CNN (Feb. 27, 2017), <http://www.cnn.com/2017/02/27/politics/cbp-hiring-requirements-border-security-trump/>.

²⁶² Spagat, *US Border Agency Staff Rejects Body Cameras for Agents*, *Citing Cost, Terrain*, *supra* note 138.

²⁶³ CBP Feasibility Report, *supra* note 121, at 7.

technology and deployment.²⁶⁴ Current products on the market may not solve all of CBP's problems, but it is nevertheless a step in the right direction.

With regard to costs, in October of 2015, then-candidate Donald Trump indicated that federal funding may be directed to law enforcement agencies that wished to purchase body cameras, but had limited financial resources.²⁶⁵ Although Trump made no specific reference to CBP or Border Patrol in that interview, he has consistently held law enforcement agents—on the streets and at the border—in the highest regards. In July of 2016, President Trump appeared on the Border Patrol union podcast, “The Green Line.”²⁶⁶ During the show, Trump claimed that Border Patrol agents “have tremendous knowledge” and that he will be “relying very much on the professionalism of Border Patrol to tell us what to do.”²⁶⁷

The President's willingness to defer to the judgment of agents working the front lines deals a heavy blow to CBP's already speculative body camera plans. First, CBP's 2014 body camera study identified several technological and safety concerns—none of which have been resolved. Considering Border Patrol agents' disdain towards wearing body cameras, CBP is unlikely to spend resources on additional evaluations almost certain to lead to the same conclusions. Second, Trump's bottom-up approach hands decision making power over to Border Patrol and ensures that agents' interests will be aptly represented. In light of the President's unwavering support for law enforcement, Border Patrol agents are unlikely to request body cameras and risk undermining the veracity of their accounts.

If CBP does decide to keep its promise and move forward with additional body camera evaluations, however, there is some good news. In many regards, implementing a body camera program at the borders is more straightforward than implementing the same program on the streets. Unlike police officers on the streets, border

²⁶⁴ *Research on Body-Worn Cameras and Law Enforcement*, NATIONAL INSTITUTE OF JUSTICE, <https://www.nij.gov/topics/law-enforcement/technology/pages/body-worn-cameras.aspx>.

²⁶⁵ Jacobs, *Donald Trump Tells the Guardian Police Body Cameras 'Need Federal Funding'*, *supra* note 201.

²⁶⁶ Lind, *Under Trump, Rank-and-File Law Enforcement—On the Border, On the Streets*, *supra* note 208.

²⁶⁷ *Id.*

agents rarely encounter informal, non-law enforcement related interactions, such as a citizen asking for directions.²⁶⁸ Privacy expectations at the border are also much lower, if not completely absent, as Border Patrol agents operate predominately in public spaces. This means that border investigations will seldom be subject to the same Fourth Amendment constraints as residential searches. Therefore, as a general rule, agents should be required to wear and activate their body cameras during all on-duty hours. If cost remains an issue, body cameras should be deployed based on necessity, *i.e.*, to areas where internal investigations reveal there is a need for greater surveillance technology and agent accountability.²⁶⁹ Relevant factors include the volume of illegal traffic, the frequency of assaults against agents, the frequency of use of force complaints against agents, and the shortage of other surveillance measures.²⁷⁰ Then again, no government conflict is resolved so easily.

What's missing from the equation is the issue of internal accountability. And this is an issue that body cameras cannot fix. In response to mounting public frustration over Border Patrol's excessive use of force—which includes “deliberately stepp[ing] in the path of cars” to justify shooting at the drivers and using deadly force against people throwing rocks—CBP commissioned a panel of law enforcement experts from the Police Executive Research Forum (“PERF”) to conduct an independent review of its activities.²⁷¹ The twenty-one page report contained harsh criticisms of Border Patrol's “lack of diligence” in investigating agents and failure to conduct “consisten[t] and thorough[h] reviews” of reported incidents.²⁷² In addition, PERF recommended that agents should attempt to “get out of the way . . . as opposed to intentionally assuming a [vulnerable]

²⁶⁸ See *Body-Worn Camera Recommendations*, COPS BODY CAMERA PROGRAM, *supra* note 142, at 40. A body camera policy for police departments should define what activities fall under “law enforcement related encounters” to alleviate privacy concerns associated with nondiscriminatory recording of all police-civilian interactions.

²⁶⁹ CBP Feasibility Report, *supra* note 121, at 9.

²⁷⁰ *Id.*

²⁷¹ Brian Bennett, *Border Patrol's Use of Deadly Force Criticized in Report*, LA TIMES (Feb. 27, 2014), <http://www.latimes.com/nation/la-na-border-killings-20140227-story.html#page=2>.

²⁷² *Id.*

position.”²⁷³ PERF also recommended that CBP adopt similar policies to police departments within the United States, which prohibit officers from shooting at moving vehicles unless there is an additional (non-vehicular) threat of deadly force.²⁷⁴

CBP did not completely disregard the PERF report, but nevertheless issued a twenty-three page response challenging the committee’s recommendations.²⁷⁵ As to shooting at vehicles, the agency argued that if drivers knew Border Patrol agents were not allowed to shoot, the drivers would try to run agents over.²⁷⁶ As to shooting at rock-throwers, an outright ban on the use of deadly force creates a more dangerous environment, because many agents operate “in rural or desolate areas, often alone, where concealment, cover and egress is not an option.”²⁷⁷ In order to ensure the safety of Border Patrol agents and the successful completion of CBP missions, a certain amount of discretion must be allowed.

With discretion, however, comes inconsistency. When faced with an oncoming vehicle or person throwing rocks, some agents may immediately reach for their gun while others may first try to move out of harm’s way. The majority of Border Patrol agents, even when caught in a potentially deadly situation, *do* exercise restraint when it comes to reaching for their firearm.²⁷⁸ On the other hand, most of the agents who pulled the trigger did so under circumstances similar to encounters that other agents resolved without lethal force.²⁷⁹ In either case, a body camera will capture the event. But without proper policies in place governing how the camera should be used, when the footage should be released, and what legal consequences should follow, simply outfitting Border Patrol agents with body cameras is unlikely to have a substantial effect on accountability.

²⁷³ *Id.*

²⁷⁴ *Id.* Congressional oversight committees requested a copy of the report, but received only a summarized version that omitted the most controversial findings.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ Ortega & O’Dell, *Deadly Border Agent Incidents Cloaked in Silence*, *supra* note 75.

²⁷⁹ *Id.*

Any practical body camera program must include specific measures to ensure proper data storage and prevent evidence tampering. Here, CBP can look to various police departments for guidance and tailor their policies to fit specific border needs. At the most basic level, agents should be held responsible for downloading video footage after each shift.²⁸⁰ In situations involving the use of deadly force, a supervisor may be required to take custody of the camera and preserve the evidence.²⁸¹ Policies should also specify the length of time that data be retained; common times include sixty or ninety days for non-evidentiary data.²⁸² The American Civil Liberties Union (“ACLU”) model policy recommends that videos containing evidence of deadly force or subject complaints be preserved for at least three years pending an investigation.²⁸³ Yet based on the José Rodríguez case, which has been pending since 2012, body camera footage should be preserved longer—perhaps until a case is closed. Policies should also state where the data is stored. Popular storage databases include internally managed servers and online cloud databases managed by third-parties.²⁸⁴ With regard to releasing body camera footage, PERF and the ACLU both favor a broad public disclosure policy to promote transparency.²⁸⁵

One thing is certain: Under the Trump administration, the United States-Mexico border will be receiving a lot more national attention. CBP already has extensive Border Surveillance Systems set up along the southern border, including aerial video (helicopters, drones, and camera towers), mobile and fixed ground video, ground sensors, radar and radio frequency sensors, thermal imaging devices, and aircraft detection devices.²⁸⁶ Nevertheless, CBP plans to

²⁸⁰ *Body-Worn Camera Recommendations*, COPS BODY CAMERA PROGRAM, *supra* note 142, at 42.

²⁸¹ *Id.*

²⁸² *Id.* at 44. Retention times are subject to State laws.

²⁸³ *A Model Act for Regulating the Use of Wearable Body Cameras by Law Enforcement*, ACLU, available at <http://www.aele.org/ACLUBWCAct.pdf>.

²⁸⁴ *Body-Worn Camera Recommendations*, COPS BODY CAMERA PROGRAM, *supra* note 142, at 44.

²⁸⁵ *Id.* at 56.

²⁸⁶ *Overview*, Privacy Impact Assessment for the Border Surveillance Systems, U.S. DEPT. OF HOMELAND SECURITY (Aug. 29, 2014) at 1, available at

dramatically increase its surveillance capabilities by doubling the number of digital watchtowers in the most remote regions from 222 towers to 446 towers.²⁸⁷ These new systems will be able to detect facial features and attach specific geographic coordinates to “items of interest.”²⁸⁸ Given the federal government’s plans to heighten security along the borders, adding body cameras to the expansion agenda remains well within the realm of possibility.

But if the José Rodríguez case has taught us anything, it’s that the problem is not lack of video evidence, but rather, intentional nondisclosure or destruction of video evidence. All of the border surveillance systems mentioned above were in place when sixteen-year-old José Antonio Elena Rodríguez was shot and killed by Border Patrol Agent Lonnie Swartz. In fact, the entire incident was captured on a border-fence security video less than fifty yards away.²⁸⁹ That video has yet to be released to the public. The Swartz trial is currently set for June 19, 2017.²⁹⁰ Whatever the outcome, the Swartz trial will set a powerful precedent for future Border Patrol litigation.

The public wants body cameras at the border. Instituting a program without strong policies to support it, however, is like putting a band-aid on a festering wound. Although it appears “fixed” from the outside, the underlying ailment remains uncured. Unless CBP requires agents to record all encounters and provides public access to all recordings, the social value of a body camera program will likely

https://www.dhs.gov/sites/default/files/publications/privacy_pia_CBP_BSS_August2014.pdf. See pgs. 2-3 for a comprehensive list of surveillance systems and their functions.

²⁸⁷ Spenser Woodman, *U.S. Seeks to Double Video Surveillance Towers along Mexican Border*, THE INTERCEPT (Jan. 27, 2017), <https://theintercept.com/2017/01/27/u-s-seeks-to-double-video-surveillance-towers-along-mexican-border/>. The first towers will be built along the Big Bend region, which has seen “the lowest rates of migrant apprehension” along the Mexican border.

²⁸⁸ *Id.*

²⁸⁹ Ortega & O’Dell, *Deadly Border Agent Incidents Cloaked in Silence*, *supra* note 74.

²⁹⁰ Rob O’Dell, *Border Patrol Agent’s Trial for 2012 Killing of Nogales Teen Delayed Again*, AZ CENTRAL (Feb. 1, 2017), <http://www.azcentral.com/story/news/politics/border-issues/2017/02/01/border-patrol-agent-trial-2012-killing-nogales-teen-delayed-again/97366576/>. The trial has been postponed five times already.

be minimal.²⁹¹ At the United States-Mexico border, body cameras *can* save lives—but only if Border Patrol agents are willing to wear them and CBP is willing to revise or amend its current policies. Under the current state of affairs, however, the cognizable benefits of body cameras hardly justify their financial costs.

CONCLUSION

Body cameras have been lauded as a panacea for the epidemic of police misconduct, on the streets and at the borders. Although overly optimistic, this opinion is not entirely wrong. Preliminary studies suggest that with proper usage, storage, and disclosure policies in place, body cameras can have a tremendous positive effect on police-civilian relations. In spite of the Trump administration's commitment to honoring the demands of law enforcement, body camera technology continues to progress and gain popularity. Perhaps in the near future, body cameras will join surveillance and dashboard cameras as a widely utilized and accepted tool in American policing.

Nevertheless, what recent cases—the same cases that gave rise to the body camera discussion—show is that people tend to over-credit the testimony of police officers in the face of uncertainty. In giving them the benefit of the doubt, we find a fragment of reason in the madness. We want to believe that police are here to serve and protect. We want to believe that we live in a society of law and order. And we want to believe that people are inherently good.

But the reality is there will always be officers who abuse their authority, at the cost of civilian lives. There will always be individuals who fabricate accusations to satisfy a personal vendetta against law enforcement. So as the saying goes, “guns don't kill people; people kill people,” body cameras don't dictate the outcome of cases—people do. Even with surveillance cameras, dashboard cameras, cellphone cameras, and body cameras capturing police violence from multiple angles, juries are reluctant to find police at fault.

²⁹¹ Bryce Clayton Newell, *Body-Worn Cameras Alone Won't Bring Transparency to the Border Patrol*, SLATE (Feb. 3, 2016), http://www.slate.com/articles/technology/future_tense/2016/02/border_patrol_s_body_worn_cameras_will_require_good_transparency_policies.html.

Maybe it's not an issue of technology . . . but an issue of humanity.