



National Border Patrol Council

Press Release

FOR IMMEDIATE RELEASE

San Diego, CA – March 3, 2014 – “Reaching into his bag and taking out a stone, he slung it and struck the Philistine on the forehead. The stone sank into his forehead, and he fell facedown on the ground.” Samuel 17:49

The stoning of Goliath by David was not the first killing using rocks, nor will it be the last. Rocks can maim and kill just as easily as a knife or a firearm. Every day on the border between the U.S. and Mexico, Border Patrol agents are assaulted with rocks, bricks, and other projectiles. These weapons are readily available and have the potential to do great harm.

All use of force incidents are measured by an “objective reasonableness” standard established by the Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989). In the *Graham* case, the Court instructed lower courts to always ask three questions to measure the lawfulness of a particular use of force. First, what was the severity of the crime that the officer believed the suspect to have committed or be committing? Second, did the suspect present an immediate threat to the safety of officers or the public? Third, was the suspect actively resisting arrest or attempting to escape? The Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene without the benefit of hindsight, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. 490 U.S. 386, 396-397.

While some will focus on the rocks used to attack Border Patrol agents, the National Border Patrol Council (NBPC) believes that the fact that agents are being assaulted is paramount. The Department of Homeland Security's Use of Force policy authorizes the use of deadly force when an agent believes they are in danger of death or great bodily injury. Under *Graham v. Connor* and DHS's Use of Force policy, rock attacks more than justify the use of force against those who choose to attack Border Patrol agents. Agents, when under attack, cannot wait to see the extent of possible injuries before responding. Such hesitation could lead to the agent being killed, whether outright by rocks or after being injured and disarmed.

Restricting agents in their use of force, whether it is against rock or vehicular assaults, will only result in more criminals attacking Border Patrol agents. Criminals will know if agents are prohibited from using deadly force against rock or vehicle assaults, they will quickly employ those means against agents. This is evidenced by the Border Patrol's previous pursuit policy that was overly restrictive. The vast majority of smugglers would fail to yield and evade agents, since they were well aware of the policy's restrictions and that there were little to no consequences for fleeing.

The Border Patrol, due to its strategy of putting pressure on smugglers and illegal aliens at the border fence, has contributed to the situation where criminals are emboldened to launch rock assaults from Mexico or just inside the U.S. Tactically this leaves agents little recourse as they are often caught unprotected in the open or between fences when assaults occur. Assaults would decrease if agents were allowed to make arrests away from the border fence, in areas of their choosing that are more tactically sound and with other agents for back-up.

No Border Patrol agent goes to the field wanting to be involved in a deadly force situation. Agents are trained to protect themselves and be aware of their surroundings. No agent would intentionally put himself in front of a speeding vehicle or within range of rock throwing criminals so that they could use deadly force. Assertions to the contrary belittle the training, integrity, and professionalism of Border Patrol agents. These assaults happen for one reason only: criminals make a conscious decision to attack Border Patrol agents. Stop the assaults on agents and the use of deadly force would be unnecessary.

The NBPC calls upon CBP to open its books and provide the real story regarding the actual number of use of force incidents involving Border Patrol agents and whether force was justified. NBPC believes CBP should provide transparency around the criminal histories of those who allege use of force by Border Patrol agents, statistics regarding the number of assaults on Border Patrol agents, and the blatant lack of prosecutions against those who assault them.

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The National Border Patrol Council is a professional labor union representing more than 17,000 Border Patrol Agents and support staff. The NBPC was founded in 1965, and is recognized as one of the most effective labor organizations in the Federal sector.

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