

*The below paper is part of a collection of papers that have been prepared as part of a process, organized jointly by the Center for Migration Studies of New York (CMS) and the Zolberg Institute on Migration and Mobility at the New School, to identify ways to strengthen the US immigration and refugee protection systems through administrative action. Additional papers in this collection can be read on the Zolberg Institute's website.*

## **Border Enforcement Developments Since 1993 and How to Change CBP**

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### **Executive Summary**

Enforcement along the U.S.-Mexico border has intensified significantly since the early 1990s. Social scientists have documented several consequences of border militarization, including increased border-crosser deaths, the killing of more than 110 people by Customs and Border Protection (CBP) agents over the past decade, and expanded ethno-racial profiling in southwestern communities by immigration authorities. Less attention has been paid to the pervasive and routine mistreatment migrants experience on a daily basis in CBP custody.

This paper traces major developments in border enforcement to three notable initiatives: the “prevention-through-deterrence” strategy, the aftermath of the 9/11 terrorist attacks, and the Department of Homeland Security (DHS) Consequence Delivery System, initiated in 2011. Despite the massive buildup in enforcement, CBP has operated with little transparency and accountability to the detriment of migrants. The paper provides an overview of the findings of nongovernmental organizations and social scientists regarding migrant mistreatment while in CBP custody. It then highlights important shifts in migration patterns over the past decade, as well as changes in border enforcement efforts during the Trump administration. It discusses how these transformations affect migrants’ everyday encounters with CBP officials.

The paper concludes by providing specific recommendations for improving CBP conduct. Its core theme is the need to emphasize and inculcate lessons of appropriate police behavior, civil rights, and civil liberties in training and recruiting agents and in setting responsibilities of supervisors and administrators. It offers recommendations regarding important but underrecognized issues, including ending the use of CBP agents/officers as Asylum Officers, as well as better-known issues such as militarization and the border wall.

### **Background**

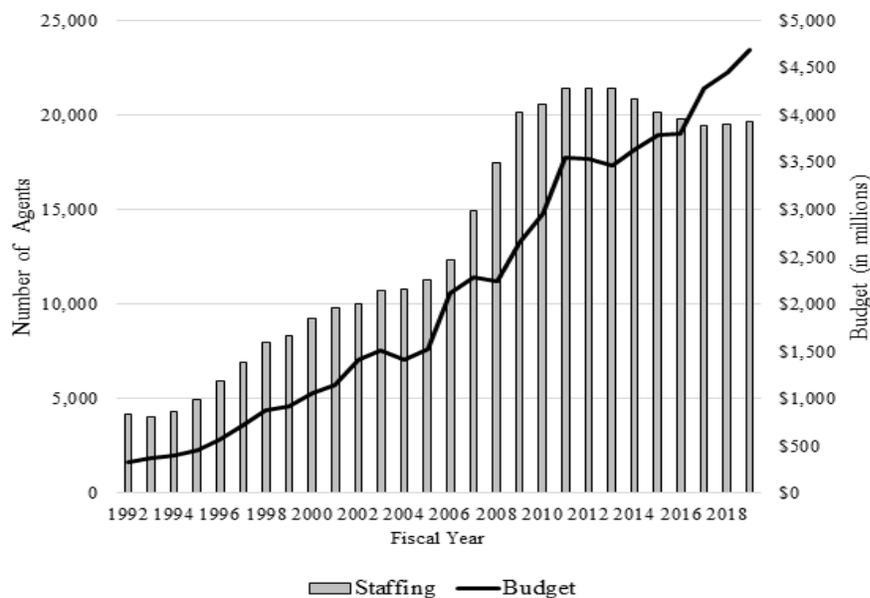
Enforcement of the U.S.-Mexico border has increased substantially over the past three decades. Segments of steel wall, vehicle barriers, and razor wire now span miles along the border. Floodlights, motion sensors, and cameras are omnipresent in border communities, as are

uniformed agents, Customs and Border Protection (CBP) vehicles and helicopters, and Border Patrol checkpoints.

The border has not always been this heavily militarized (Dunn 1996; 2010). As illustrated in figure 1, the U.S. Border Patrol had 4,139 agents in 1992, the overwhelming majority of them stationed in southwestern sectors. Nearly two decades later, this number has swelled more than five-fold, peaking at 21,444 in 2011 before leveling off to 19,648 by 2019 (CBP 2020a).

The Border Patrol’s budget has increased even more dramatically. In 1992, the federal government allocated \$326 million to the agency. By 2019, its budget had ballooned to nearly \$4.7 billion, increasing year-over-year since the beginning of the Trump administration (American Immigration Council 2019). Despite these substantial increases in staffing and expenditures, the Border Patrol and CBP more broadly, have operated behind a veil of secrecy and with limited accountability and oversight (Martínez, Cantor, and Ewing 2014; Heyman 2017; Cantor and Ewing 2017; Nowrasteh 2017; Slack, Martinez, and Whiteford 2018). This is particularly troubling because CBP, the Border Patrol’s parent organization, is one of the largest law enforcement agencies in the world (CBP 2020b). Moreover, roughly 15 million people in the United States live within 100 kilometers of the U.S.-Mexico border, many of whom are of Mexican origin. Approximately 200 million U.S. residents live within the 100-mile “reasonable distance” border zone in which CBP is authorized to operate, as defined in Title 8 § 287.1 of the Code of Federal Regulations (ACLU 2020).

**Figure 1. US Border Patrol Staffing and Budget, FY 1992-2019**



Sources: US Customs and Border Protection (2002a) and American Immigration Council (2019)

A key starting point for current border enforcement strategies was the El Paso Sector’s Operation Hold the Line in late 1993 (Dunn 1996; 2010). Building on this experiment, the Border Patrol announced the adoption of the “prevention-through-deterrence” strategy in 1994 and formally launched the initiative the following year. The prevention-through-deterrence strategy, which stemmed from a recommendation set forth by Sandia National Laboratories, aimed to heavily

enforce and patrol regularly frequented urban crossing points along the U.S.-Mexico border to deter would-be undocumented migrants from attempting to cross (Cornelius 2001; Andreas 2009). Over the next several years, the Border Patrol received increases in funding, personnel, and equipment to enforce crossing points in San Diego-Tijuana (1994 Operation Gatekeeper), Nogales-Nogales (1995 Operation Safeguard), and Brownsville-Matamoros (1997 Operation Rio Grande). Early studies demonstrated that the prevention-through-deterrence strategy did little to deter unauthorized migrants (Dávila, Pagán, and Soydemir 2002), but rather redistributed migration flows into remote and less frequently patrolled areas of southern Arizona and South Texas (Rubio-Goldsmith, McCormick, Martínez, and Duarte 2006; Soto and Martínez 2018).

Border enforcement continued to expand in the wake of the September 11<sup>th</sup>, 2001 terrorist attacks, despite no evidence that potential terrorists were entering into the United States through the U.S.-Mexico border. The prevailing political discourse at the time equated border enforcement with national security, and likened increased securitization with the prevention of subsequent acts of terrorism. Due to this discourse and mounting political pressure, Congress adopted legislation that eliminated the Immigration and Naturalization Service in 2003 and transferred the Border Patrol to the newly created U.S. Customs and Border Protection within the Department of Homeland Security (DHS) (Heyman and Ackleson 2009).

In 2011, DHS launched an initiative dubbed the “consequence delivery system” (CDS), which corresponded with additional increases in the Border Patrol’s budget in subsequent years. The aim of CDS was to alleviate what the agency perceived as the shortcomings of the prevention-through-deterrence strategy. The CDS assigns escalating punishments tailored to categories of individual unauthorized border-crossers with the end goal of reducing recidivism or repeat migration attempts (Slack, Martínez, Whiteford, and Peiffer 2015; Slack, Martínez, and Whiteford 2018; Martínez, Slack, and Martínez-Schuldt 2019). Specific programs associated with the CDS include increased criminal prosecutions and imprisonment for unlawful entry and re-entry through Operation Streamline, fast-track proceedings, and lateral repatriations through the Alien Transfer and Exit Program (ATEP). Despite these policy changes, such programs have a relatively weak long-term deterrent effect when placed against the powerful pull of “place,” especially among migrants who have established homes in the United States (Martínez, Slack, and Martínez-Schuldt 2019).

Social scientists have documented the consequences of increased border enforcement over the past three decades. Perhaps most notable have been the thousands of undocumented border-crosser deaths since mid-1990s (Eschbach, Hagan, Rodriguez, Hernandez-León and Bailey 1999; Cornelius 2001; Rubio-Goldsmith et al. 2006; Martinez, Reineke, Rubio-Goldsmith, and Parks 2014; Soto and Martínez 2018), the killing of at least 110 people by CBP agents between 2010 and 2020 (SBCC 2020), and expanded ethno-racial profiling in southwestern communities by immigration authorities (Goldsmith, Romero, Rubio-Goldsmith, Escobedo, and Khoury 2009). Less attention has been paid to the pervasive and routine mistreatment immigrants experience in U.S. custody. The abuse of immigrants by CBP agents is particularly concerning both because the agency encounters hundreds of thousands of people annually and because of a lack of oversight and accountability of CPB (Heyman 2017)—despite being funded by U.S. taxpayers to the tune of \$18.2 billion by fiscal year (FY) 2020 (White House 2020).

## **Mistreatment of Migrants while in US Custody: The Pre-Trump Status Quo**

The routine mistreatment and abuse of migrants in U.S. custody is not new. It predates the Trump administration by several decades (Heyman 1995; Dunn 1996). Nevertheless, the effort to document this mistreatment is a much more recent development. This information comes from three main sources: abuse documentation efforts by nongovernmental organizations (NGOs), empirical studies conducted by social scientists, and formal complaints lodged against CBP.

### *Documentation by Nongovernmental Organizations*

Over the past decade, NGOs along the U.S.-Mexico border have made a concerted effort to document the various forms of abuse and mistreatment experienced by immigrants in U.S. custody. In 2008, the humanitarian organization No More Deaths released a report that documented over 400 distinct accounts of abuse—which often involved multiple victims—in short-term Border Patrol custody along the Arizona-Sonora border. The report did not seek to establish the prevalence of mistreatment, but No More Deaths published an additional report in 2011 that aimed to do just that. Between the fall of 2008 and spring of 2011, No More Deaths conducted 4,130 interviews with 12,895 individuals in Naco, Nogales, and Agua Prieta, Sonora about their experiences with Border Patrol agents. It found that about 10 percent of interviewees experienced physical abuse (e.g., excessive use of force; strikes with hand, feet, and objects), while 13 percent reported verbal abuse (e.g., racial, ethnic, and sexual epithets; profanity; yelling and screaming).

The Kino Border Initiative (KBI) published a similar report in 2013 based on surveys conducted with 4,963 Mexican and Central American migrants to whom KBI provided meals at a day shelter in Nogales, Sonora. All surveys were conducted between March and August 2012. Among the 3,209 respondents who had experienced encounters with Border Patrol agents, nearly 25 percent reported being abused in some way, including 6 percent who reported experiencing physical abuse and 13 percent verbal abuse. Finally, the US Commission on International Religious Freedom has documented how CBP officers avoid or bypass asylum processes mandated by law for persons subject to expedited removal who express a fear of return (USCIRF 2016).

### *Systematic Surveys by Social Scientists*

Research by social scientists largely corroborates the findings from NGO abuse documentation efforts. Drawing on a random sample of 211 adult Salvadoran deportees in 1999 and 2000, Phillips, Rodriguez, and Hagan (2002) found that 16 percent reported being physically abused (i.e., more physical coercion than handcuffs) when apprehended by U.S. authorities. In a separate study conducted several years later, consisting of 300 adult Salvadoran deportees, the authors found that 16 percent experienced excessive (non-justifiable) use of force when apprehended and 11 percent while detained. Twenty-five percent experienced racial slurs when apprehended, and 26 percent while in detention (Phillips, Hagan, and Rodriguez 2006).

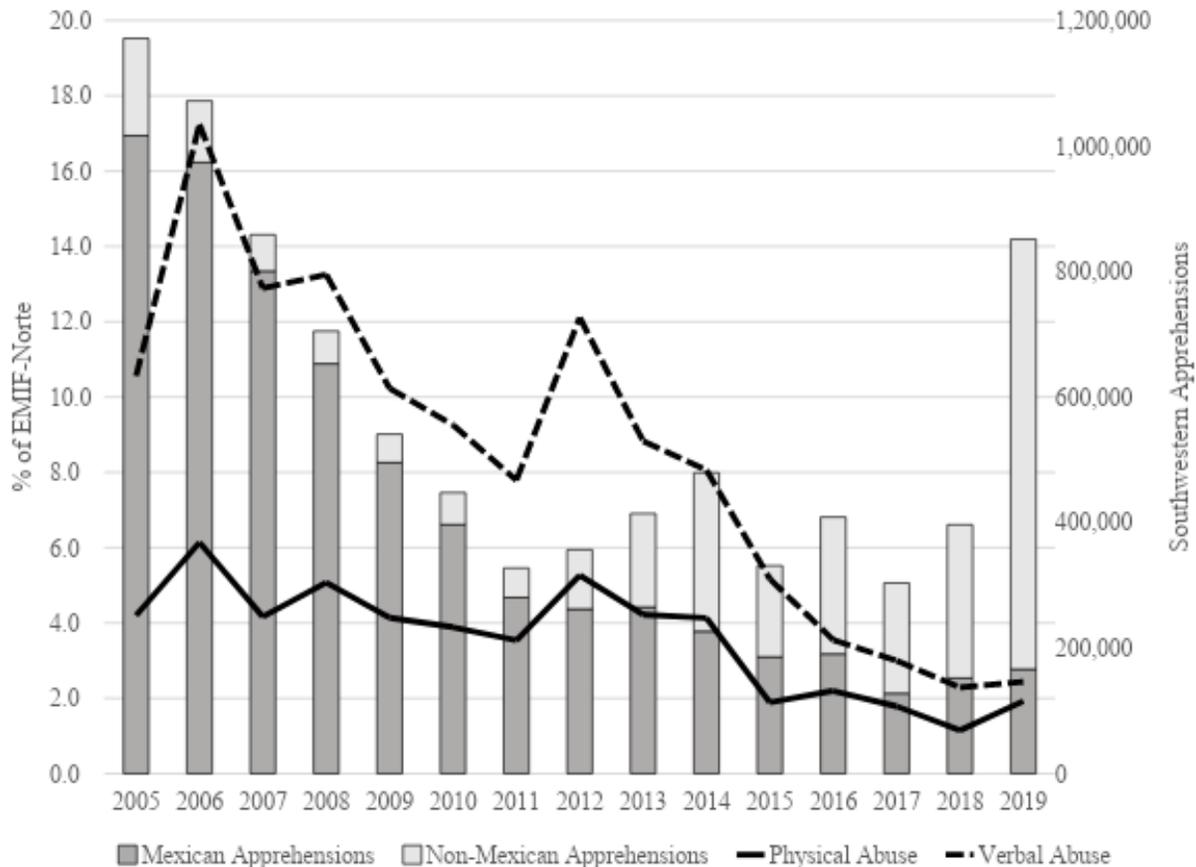
Data collected through the first two iterations of the Migrant Border Crossing Study (MBCS) offer further insight on the mistreatment migrants experience by CBP agents. Between 2007 and

2009, Martínez and colleagues conducted 415 surveys with a random sample of recently repatriated adult Mexican migrants in a migrant shelter in Nogales, Sonora (Martinez et al. 2017). Eleven percent of respondents reported being physically abused (e.g., being punched, slapped, kicked, or thrown to the ground) and 34 percent verbally abused (e.g., racist, sexist, homophobic slurs; yelling; or cursing) by U.S. officials when apprehended during their most recent unauthorized border-crossing attempt. In 2009, Slack, Martínez, and Whiteford replicated and expanded upon the first wave of the MBCS. Between 2009 and 2012, the research team, led by Jeremy Slack, completed surveys with a random sample of 1,109 recently deported Mexican migrants in Tijuana and Mexicali, Baja California; Nogales, Sonora; Juarez, Chihuahua, Nuevo Laredo, Tamaulipas, and Mexico DF. Drawing on the same mistreatment questions used in the first MBCS, Slack and colleagues found that 12 percent and 20 percent of respondents experienced physical abuse and verbal abuse, respectively, while in U.S. custody (Martínez, Slack, and Heyman 2013; Slack, Martínez, and Whiteford 2018).

Most academic studies examining migrant mistreatment have focused on adult populations. In an attempt to overcome this limitation, Coulter and colleagues (2020) completed 97 surveys with recently repatriated unaccompanied Mexican minors in Nogales, Sonora, and Matamoros, Tamaulipas. The researchers found that CBP’s treatment of “unaccompanied alien children” (UAC) did not conform with standards set forth in the *Flores* settlement, the Trafficking Victims Protection Reauthorization Act (TVPRA), or CBP’s own procedures and directives. Instead, border officials did not consistently screen unaccompanied minors for fear of returning to their country of origin or fully inform them about the removal process. Indeed, over half of respondents did not know what forms they signed in CBP custody, and 14 percent stated they felt that CBP agents forced or pressured them to sign the forms. These children were also often held in poor conditions. Moreover, the study noted that UAC experience abusive situations in CBP custody beyond the agency’s failure to conform with official policies, protocols, or procedures. Nearly 15 percent of respondents experienced verbal abuse, seven percent physical abuse, and seven percent were threatened with a weapon by CBP agents.

Another academic source of data on migrant mistreatment has been El Colegio de la Frontera Norte’s *Encuesta sobre Migración en la Frontera Norte de México* (EMIF-Norte) survey. Since 2005, EMIF-Norte has gathered data on Mexican deportees’ physical and verbal abuse during their most recent Border Patrol apprehension. Figure 2 provides the unweighted physical and verbal abuse rates documented in each iteration of the EMIF-Norte survey through 2019. Overall, reported physical and verbal abuse rates tend to be lower among EMIF-Norte respondents when compared to the other data sources previously described. Several factors might account for these discrepancies, including selection bias, social desirability bias, and variation in interview contexts. For instance, EMIF-Norte surveys are typically administered in Mexican governmental offices, while most other academic studies have drawn on samples of deportees in migrant shelters, outside of official ports of entry, or in other nongovernmental spaces. Moreover, it is difficult to determine from the EMIF-Norte data when a respondent’s most recent apprehension took place, which could lead to retrospective bias if this event had occurred several months or years prior to being surveyed.

**Figure 2. EMIF-Norte Abuse Rates and Southwestern Apprehension Statistics, FY 2005-2019**



Sources: Encuesta sobre Migración en la Frontera Norte de México (2005-2019; N = 83,929) and U.S. Customs and Border Protection 2020c.

Methodological caveats aside, the EMIF-Norte data, which consists of repeated cross-sectional surveys, offer insight about changing trends in the treatment of Mexican migrants during apprehension. In addition to providing physical and verbal abuse rates captured in the EMIF-Norte survey, figure 2 illustrates aggregate southwestern Border Patrol apprehensions of Mexican and non-Mexican border-crossers between 2005 and 2019. (EMIF-Norte only surveys Mexican deportees and therefore cannot speak to the mistreatment non-Mexicans experience, an increasingly large portion of those apprehended by the Border Patrol. Nevertheless, we included apprehensions of non-Mexicans in figure 2 to provide additional context regarding the changing nature of migration patterns, which is pertinent to our subsequent discussion in the second half of the paper).

Overall, figure 2 demonstrates that the general downward trends in physical and abuse rates appear to be associated with changes in migration patterns. First, the decreases in abuse rates have coincided with an overall decrease in border crossings, which immigration scholars often measure by using southwestern apprehensions. This suggests that volume matters. The tension between Border Patrol agents and border-crossers may be higher when more people are crossing the border and being apprehended. In a similar vein, abuse rates, especially verbal abuse rates, decreased as the proportion of Mexican apprehensions decreased. This suggests that context matters. It is possible that the general comportment of Border Patrol agents toward Mexican border-crossers has changed as they have apprehended a higher proportion of non-Mexicans,

especially Central American asylum seekers, a higher proportion of whom are women and children. Again, this data does not speak to whether Border Patrol's treatment of non-Mexicans is better when compared to their treatment of Mexicans. Rather, we simply offer this shifting context as a possible explanation for decreasing abuse rates over time reported by EMIF-Notre respondents.

Perhaps more important, figure 2 also unmistakably illustrates that rates of physical and verbal abuse reported by Mexican deportees began to decrease well before Trump assumed office. The enormous post-1993 Border Patrol hiring surge ended by September 2010 (CBP 2020a), so over time there were fewer inexperienced officers. In addition, Gil Kerlikowske served as commissioner of CBP from March 2014 to January 2017 and implemented some important reforms in conduct standards, including those initiated by DHS Secretary Jeh Johnson. Finally, despite decreases in abuse rates, EMIF-Norte data also demonstrate that the physical and verbal mistreatment of apprehended Mexican border-crossers persists, suggesting there is a need for additional reforms.

### *Formal Complaints against Customs and Border Protection*

Abuse documentation efforts by NGOs suggest that the mistreatment of migrants in U.S. custody is not a rare occurrence. This assertion is supported by several peer-reviewed academic studies that yield consistent results despite drawing on different samples. Nevertheless, abuse documentation and self-report studies shed little light on the extent to which the perpetrators of these abuses are held accountable for their actions. Other researchers have helped overcome this limitation by examining the nature and disciplinary outcomes of formal complaints lodged against CBP officials by people held in their custody.

Through a Freedom of Information Act (FOIA) request from CBP's Office of Internal Affairs (OIA), now renamed the Office of Professional Responsibility (OPR), the American Immigration Council (AIC) secured data on 809 formal complaints of alleged abuse filed against Border Patrol agents between January 2009 and January 2012 (Martínez, Cantor, and Ewing 2014). AIC found that 40 percent of all cases cited "physical abuse" as the reason for the complaint, followed by "excessive use of force" (38 percent), "unspecified abuse" (13 percent), and "Other" (3 percent). These data also demonstrated persistent inaction by CBP's OIA. Fifty-eight percent of formal complaints resulted in "no action taken" against the officer who perpetrated the abuse, while 40 percent were still pending investigation when AIC received their data request (Martínez, Cantor, and Ewing 2014). Only 13 formal complaints resulted in some form of disciplinary action. In other words, among cases in which a decision was made, over 97 percent resulted in "no action taken," with an average of 122 days taken to arrive at the decision. Although AIC was not able to assess independently the merit of each complaint, the notable absence of disciplinary action is concerning, especially considering that 78 percent of complaints alleged physical abuse or excessive use of force.

Findings from the 2014 AIC report received the attention of Jeh Johnson who, at the time, served as the Secretary of the DHS. In September of 2014, Johnson announced several changes aimed to increase transparency and streamline the investigation of complaints filed against CBP officials. For instance, the newly instituted policies allowed qualified CBP OIA employees to "serve as criminal rather than general investigators," which gave the agency the authority "to investigate or

act upon claims of abuse within the organization” (Cantor and Ewing 2017, 4). CBP also implemented a standardized review process for use-of-force incidents to expedite the investigation process and “adopted a new ‘Integrity and Personnel Accountability Strategy’ for all employees to foster a culture of integrity and eradicate corruption within the agency” (ibid.).

In 2017, AIC published a follow-up report using a similar methodology to examine an additional 2,178 cases of alleged misconduct by Border Patrol agents filed between January 2012 and October 2015. Although AIC was unable to assess the effect of the policy changes set forth by Secretary Johnson in late 2014, nor the impacts of changes stemming from recommendations made in a 2015 Pivotal Practices Consulting report commissioned by CBP, the findings of the 2017 report were strikingly similar to those of the AIC report published three years earlier. The complaints ranged from physical, sexual, and verbal abuse, to general misconduct and conflicts of interest, with over 59 percent of allegations citing “physical abuse.” As Cantor and Ewing note, “even though assessing which cases did or did not merit disciplinary action was not feasible with the information CBP provided, the overall findings of this report are still remarkable” (ibid., 1). Among all complaints filed, 55 percent resulted in “no action,” while 42 percent were “pending investigation” when AIC received the data. Only 52 complaints resulted in formal action, including counseling (25 cases), suspension (11 cases), reprimand (11 cases), alternative remedy (2 cases), other (2 cases), and resignation (1). In other words, “no action” was taken against the accused officer in nearly 96 percent of cases in which an outcome was determined. Systematic data since 2015 have not been published.

Other indicators suggest pervasive problems within CBP’s Border Patrol. For instance, a 2017 report by the Cato Institute, drawing on data from the Office of Personnel Management, found that “Border Patrol agents are more likely to be terminated for discipline or performance reasons than officers in other large federal law enforcement agencies (those with 5,000 or more officers)” (Nowrasteh 2017, 1). Nevertheless, as Nowrasteh notes, “A high relative termination rate could be a sign of effective internal affairs but not in the case of Border Patrol, which is inadequately overseen” (2017. 10).

The triangulation of NGO abuse documentation efforts, peer-reviewed studies and data sources, and complaints lodged against CBP suggests that the routine mistreatment of migrants while in U.S. custody: (1) preceded the Trump administration; (2) is widespread and often consists of serious allegations of physical and sexual abuse; and (3) seldom results in sanctions against abusers.

To the best of our knowledge, there have not yet been any systematic empirical, peer-reviewed studies that have examined the treatment of migrants in CBP custody during Trump’s tenure, although extensive journalistic reporting is available. One data source—the EMIF-Notre—suggests that physical and verbal abuse rates during apprehension among Mexican deportees may be declining. However, these declines predate the Trump administration and are likely a function of shifting institutional contexts due to changes in staffing and migration patterns as well as late Obama period reforms. Additional systematic research is required to assess whether the trends identified in the EMIF-Norte data are generalizable. Nevertheless, these data demonstrate that mistreatment of migrants while in custody persists. Moreover, as the American Immigration Council and Cato Institute have each pointed out, an absence of organizational oversight as well as a lack of accountability of CBP agents engaging in the abuse of migrants continue to be concerns.

## Changes in Border Enforcement and Migration Patterns During the Trump Administration

Within the first few weeks of his administration, Donald J. Trump signed Executive Order (EO) 13767, titled “Border Security and Immigration Enforcement Improvements.” The executive order carried notable implications for enforcement along the U.S.-Mexico border. It expanded the use of expedited removals in the border region, authorized an increase in Border Patrol staffing by 5,000 agents, mandated the detention of immigrants apprehended for unlawful entry, and prioritized criminal prosecutions for immigration offenses committed at the border (US Department of Homeland Security, 2017b). EO 13767 also effectively served as the precursor to the controversial Migrant Protection Protocols (MPP) or “Remain in Mexico” policy. Specifically, it allows DHS to return apprehended immigrants “to the foreign contiguous territory from which they arrived, pending the outcome of removal proceedings” if the person does not “pose a risk of a subsequent illegal entry” (US Department of Homeland Security, 2017).

EO 13767 also called on DHS to “identify and allocate all sources of available funding for the planning, design, construction, and maintenance of a wall” (US Department of Homeland Security 2017). Among the changes in border enforcement during the Trump administration, the construction of a new border wall and large-scale family separations at the border have garnered the most public attention. Native American nations, NGOs, elected officials in border communities, activists, legal scholars, academics, and environmental justice groups have been outspoken in their opposition to the expansion and construction of the wall. Other policy changes, including MPP and “metering,” which limits the number of asylum seekers CBP agents will interview in a given day at ports of entry, have also had devastating impacts on immigrants, particularly asylum seekers and other vulnerable populations.

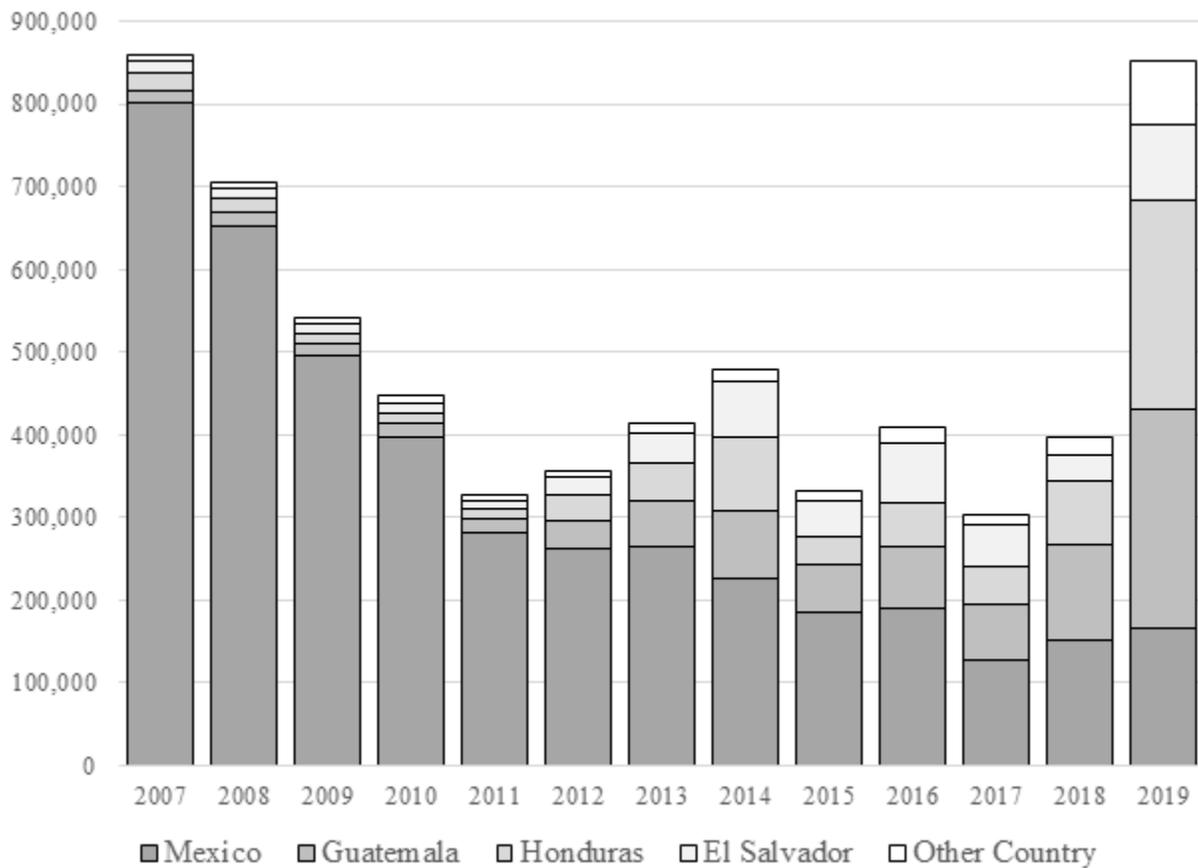
Despite Trump’s obsession with the border wall, increases in the volume of border crossings, changes in the demographic profile of border-crossers, and shifts in people’s modes of crossing appear to have had the most influence on border enforcement during the first three-and-a-half years of his presidency. As illustrated in Figure 3, though border crossings along the U.S.-Mexico border—measured as southwestern Border Patrol apprehensions—dipped significantly the first year Trump was in office. They then increased from 303,916 in 2017 to 396,579 in 2018, before more than doubling to 851,508 in 2019 (CBP 2020d). The notable increase in apprehensions, combined with the 126,001 people deemed “inadmissible”<sup>1</sup> at southwestern ports of entry, made 2019 the busiest year for attempted border-crossings in over a decade (CBP 2020e). In the wake of this increased volume, the Trump administration made it more difficult to process and detain families, administer credible fear interviews, and respect the legal requirements of asylum. This includes a lack of access to legal counsel, especially in the Prompt Asylum Claim Review (PACR) and Humanitarian Asylum Review Process (HARP) programs, as well as attempts to change the status of individuals entering the country to limit access to bond. Under MPP, Immigration and Customs Enforcement (ICE) has argued that individuals enrolled in this program are not eligible for bond even if they originally entered the country between ports of entry (Entry Without Inspection (EWI)), and is classifying everyone as an

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<sup>1</sup> Apprehensions refer to the arrests of people who crossed between ports of entry, regardless of whether or not they wanted to evade detection or to locate authorities to claim fear and seek asylum. “Inadmissibles” are generally individuals attempting to apply for asylum at ports of entry. However, a number of other individuals who attempt to cross through ports but lack the appropriate documents are also counted.

“Arriving Alien” (AA), meaning that ICE is in charge of granting parole. This has resulted in extended periods in detention with often horrific conditions (Costello 2019). Additionally, there have been record high numbers of unaccompanied minors stuck in privately operated shelters because of new requirements for sponsors that made people afraid to come forward or unable to place children in their final destination (usually with immediate family members in the United States) (Long 2018).

**Figure 3. Southwestern Border Patrol Apprehensions, FY 2007-2019**



Source: US Customs and Border Protection 2020

Unlike earlier periods of unauthorized migration along the U.S.-Mexico border, which consisted largely of single Mexican male migrants (see FY 2007 in Figure 2), Central American families have made up the bulk of the population crossing the border and being apprehended by authorities in recent years. Border Patrol apprehension data illustrate the changing demographic profile of border-crossers since the beginning of the Trump administration. In 2017, 53 percent of southwestern apprehensions were of people from the so-called “Northern Triangle” countries of Guatemala, Honduras, and El Salvador. By 2019, this proportion increased to 71 percent (CBP 2020f) (see Figure 3). Trump’s constant critique of what he described as “open borders,” as well as his threats to eliminate asylum have likely contributed to this increase in asylum-based migration. While this demographic change began in earnest in 2014 as crime and violence simultaneously began forcing people to leave Guatemala, Honduras, and El Salvador, an expanded awareness of the asylum process has led to changes in the way people have attempted

to cross the border in recent years. Rather than attempting to cross the border and avoid detection, people have begun to seek out CBP agents so they can declare fear of returning to their countries of origin and initiate the asylum process. However, the major increase in 2019 does not track with any significant changes on the ground in Central America. It is still too early to fully understand what drove this recent migration, but it is likely a combination of opportunity through “migrant caravans” that decreased the cost and danger of travelling through Mexico, as well as a higher profile given to the border and asylum by the Trump administration. Many individuals we have spoken to in the field expressed concern that this opportunity might not be available in the future and therefore they had to make the journey now.

Increased apprehensions, the changing profile of those apprehended, and changes in people’s modes of crossing have played significant roles in altering U.S.-Mexico border enforcement during the Trump presidency. These changes have also effectively turned debates over unauthorized immigration into a fight about asylum. With an insistence on calling asylum seekers “illegals,” the Trump administration has staked a position against people’s legal right to apply for asylum. In fact, this discourse seems to have made its way into CBP’s everyday encounters with migrants seeking asylum. Recent research conducted at a migrant shelter in Arizona found that asylum seekers who have been granted “notices to appear” reported that CBP agents routinely treated them like criminals or made them feel as if they had engaged in illegal activity by seeking asylum, despite being well within their right to do so (Dormer 2019).

The discourse equating asylum seekers with criminals has led to numerous attacks on asylum, including: (1) an attempt to prevent people who cross between ports of entry from applying for asylum that was struck down by the courts; (2) a ban on applications from asylum-seekers who have failed to first apply for asylum in a third country (still in litigation but in effect); (3) “metering”; (4) the Migrant Protection Protocols; (5) PACR/HARP – rapid asylum trials with no legal representation; and (6) family separation policies. All these programs largely follow the same logic of previous enforcement modalities: make the process more difficult, dangerous, and expensive while increasing suffering so that people give up their claims or do not attempt to migrate in the first place.

The construction of a new border wall and family separation are the policies that have generated the most visibility and outrage during Trump’s tenure. However, the broader assault on legal immigration, both through asylum, as well as limiting refugees, visa applicants, and the refusal to renew passports or the denaturalization of US citizens, particularly through scrutiny of birth certificates from midwives along the border, are each cause for concern (Sieff 2018). These processes, which are occurring with less fanfare and outrage, are in fact more effective in realizing the broader goals of preventing demographic change and limiting foreigners from entering and integrating into the United States. The issues with border enforcement are part of a wider turn against all forms of immigration, legal and unauthorized, from all international sources.

### *Border Enforcement and the COVID-19 Pandemic*

The Trump administration has used the COVID-19 pandemic as a rationale for drastically altering immigration policy, with profound consequences on the border and the operations of CBP (Slack and Heyman 2020). In fact, COVID-19 has provided the cover to enact all of the

Trump administration's most drastic and draconian policies, effectively ending asylum and severely limiting many forms of legal migration. According to reports, persons arrested at the border are summarily removed from the United States to Mexico with an average of ninety minutes in processing time. Others are returned to their home countries, although there are still questions about who is being sent where and why, including asylum-seekers and other people with claims of protection. With these policies in place, asylum at the U.S.-Mexico border has in practice come to an end. While exceptions exist for migrants who can make a case to the arresting officer of fear covered by the Convention Against Torture (which will soon require that they meet a heightened standard) and persons whom officers believe are trafficked, these narrow exceptions are at the discretion of CBP officers. Past studies have shown that CBP officers have ignored evidence of fear and trafficking (USCIRF 2016). Additionally, Border Patrol agents have taken a larger role in conducting credible fear interviews and have rejected claims at a significantly higher rate than Asylum Officers.

Such barriers have reduced arriving migrants' hope of receiving asylum or otherwise gaining admission to the United States, but they have not completely ended movement northward by other means. Desperate asylum-seekers still arrive at the border, as do non-asylum seeking migrants. A smaller proportion of non-Mexicans and family groups are arrested, but more Mexicans and more men enter. Unable to enter via an open process, current field research suggests that migrants seem to have shifted to the more expensive option of smugglers and to more sophisticated or dangerous modes of entry. It is too recent to measure effects on changes in the undocumented population inside the United States, using demographic methods, and arrests represent interdicted attempts, but border arrests do continue at a substantial level (452,665 apprehensions/inadmissibles Oct. 1, 2019-June 30, 2020 [CBP 2020g]). The border closure is likely to follow the same path of border militarization in the 1990s and will likely increase migrant deaths. However, further escalations of state sanctioned violence along the border are a constant threat and people must be aware of the potential for this possibility.

The asylum hearings of persons subject to the MPP have been indefinitely suspended during the pandemic. However, MPP-status asylum-seekers were still forced to line up at 4 AM to check in and receive a new court date. Those that did not present themselves at the port of entry on their original court date to receive a rescheduled hearing date were ordered removed in absentia. This practice ended in July as the docket was moved online, but many asylum seekers are not aware of the changes and still present themselves for their hearings. New asylum-seekers are simply removed to Mexico or to their home countries, and enrolled in MPP without any definitive hearing date.

During 2018 and 2019 a substantial number of people were subjected to "metering"; that is, made to wait at ports of entry to be able to apply for asylum. This process led to lists of thousands of names run by a variety of governmental and non-governmental organizations along the U.S.-Mexico border. During the pandemic, these lists have disappeared; however, people who present themselves at ports of entry to apply for asylum are being turned away. This exercise in futility has been called the "Corona Returns" locally. Little is known about this group of people, including how many have stayed in Mexico, returned home or crossed in the US between ports of entry. Nonetheless, it is clear that a highly vulnerable population of migrants remains stuck in Mexican northern border cities.

Legal border crossings also continue, though numbers are down. Under an agreement reached between the United States and Mexico, U.S. citizens and lawful permanent residents are permitted to return to the U.S. but may encounter a health check going through the land border to Mexico. The agreement also allows the admission of other categories of “essential” travelers, which include Mexican business people, farmworkers, health workers, and even some shoppers. While categories of border crossers have been defined officially, in our field experience, more often than not, the vital decision on whether a would-be crosser is “essential” is left to the discretion of CBP officers at ports of entry. Port traffic is down significantly, but questioning at U.S. ports lasts longer and waits have remained prolonged.

## **Conclusion**

Enforcement of the U.S.-Mexico border has intensified dramatically over the past three decades, as signaled by increased Border Patrol staffing and budget allocations. Nevertheless, the Border Patrol and CBP, more generally, operate with little external oversight or accountability. Despite significant changes in migration patterns, these abuses have continued under the Trump administration, which may be in part attributed to the abhorrent xenophobic discourse perpetuated by the President and his closest advisors, an anti-immigrant organizational culture within CBP itself, and specific border enforcement policies stemming from Executive Order 137676. Perhaps the most significant shift in border enforcement during the Trump administration has been the effort to push immigration enforcement south of the U.S.-Mexico border through agreements with the Mexican government to arrest and remove “transmigrants” passing through Mexico, the Migrant Protection Protocols, and “metering.” Given these changes, it is imperative that social scientists expand their focus to include examining asylum-seekers’ experiences while in a state of limbo near the border, while also continuing to gather reliable and valid data on migrants’ treatment in U.S. custody. In what follows, we provide specific recommendations that might help alleviate some of the key concerns raised in this paper, with specific attention to diminishing the mistreatment of migrants in US custody.

## **Recommendations**

The goal is to improve CBP’s culture, to instill professional standards of conduct, and to develop an internal organizational culture that accepts both accountability and transparency. Our recommendations refer to Border Patrol agents and CBP officers. The recommendations principally respond to the review above of CBP conduct and accountability, but we include some additional topics since this list functions as a unified source for suggested actions affecting the border that can be done administratively.

### Hiring

- CBP should review and improve its hiring process to ensure that it is identifying potential problem officers/agents. The current hiring process requires a polygraph test, background checks, and evaluations of applicants. These procedures should be strengthened, and CBP should adhere to the overall standards for federal law enforcement agencies, including best practices in vetting, and investigations and checks of employees. It should not hire

officers/agents that have been decertified by other law enforcement agencies. To this end, CBP should participate in the National Decertification Index.

- CBP should develop and implement plans to increase the hiring of women, other under-represented groups, and college-educated officers/agents. It should review posted qualifications to encourage and increase applications from individuals with experience in child welfare and family trauma.

#### Improving Officer/Agent Experience and Outcomes

- CBP should develop a robust conduct data analysis system to cover officers/agents and units, and which focuses on patterns of abuse and other issues. This system should include complaints, officer/agent discipline, and trend analyses regarding potentially and actual deadly force incidents.
- CBP should design and implement a strong data-based early intervention system, which includes patterns of public/migrant complaints, self- and other officer/agent-evaluation, and behaviors such as absence and tardiness.
- CBP should train supervisors and officers/agents in stress- and frustration-recognition and handling.
- The CBP Commissioner's office should institute an initiative to improve the climate for women and other underrepresented groups in the organization, including a review of harassment protocols.

#### Make Conduct Principles Extend Across the Entire Organization and Its Activities

- CBP should take a transversal approach to conduct improvement described in this document. Principles and guidelines that are originally taught in the academy are reinforced in post-academy and are central to periodic evaluation, retention, and promotion. Implementation of and performance by subordinates on these principles should be central to supervisor/manager evaluation, retention, and promotion at all levels. The record of standards implementation, performance improvement, and progressive discipline should be a core expectation for supervisors and criteria for their evaluation. CBP should develop written policies and practices for progressive discipline on these standards, up to termination, and train managers on effective discipline. CBP should finalize and implement current draft penalty guidelines. CBP should develop indicators of implementation of these standards across all levels, and act on those indicators in evaluating and governing CBP management.
- CBP should affirm that it is the duty for officers/agents to intervene to stop and to report any misconduct, including verbal and physical abuse. CBP should reward, not retaliate against, officers who report misconduct.
- CBP should finalize and publish its policy for investigation of suspected disciplinary and conduct cases, including clarifying jurisdiction of the Inspector General and Office of Professional Responsibility (OPR), flow of information, communication with complainants, expected standard punishments, and finalization and implementation of decisions. CBP should resume publishing comprehensive reports from OPR, semi-annually, and issue a full public accounting of which the Integrity Advisory Panel

recommendations from 2015-16 have been implemented and when remaining ones will be. It should set a standard above which misconduct must be referred to the Joint Intake Center, copying OPR, and should discipline supervisors for keeping such misconduct cases to themselves. CBP should end informal resolution and cease allowing field office and sector leadership to overrule disciplinary actions taken at headquarters.

- CBP should establish an independent civilian review board with sufficient investigatory resources. All cases above a threshold (to be defined explicitly) must be reviewed by the board; the review board also should have the power to review all cases or conduct at its discretion, including past cases, and to observe Discipline Review Board and Use of Force Review Board (national and local) proceedings. A random selection of misconduct cases should be reviewed annually by this independent board to evaluate the appropriate handling and resolution of cases. CBP should task the new board with initial policy reviews of (1) BORTAC's role and limits on its deployment and (2) legal positions taken by CBP on cases brought by individuals or families harmed by officers and agents. The reports of the board should be public, and issued simultaneously to the Commissioner and Inspector General of DHS.
- CBP should initiate a review of the collective bargaining agreements with unions representing law-enforcement personnel. This review should be led by an outside labor law expert with experience in law-enforcement CBAs and include other outside nongovernmental stakeholders. The review should assess and recommend changes to CBP's disciplinary process, including an assessment of whether the current protocol of OPR reporting on policy violations and Human Resources deciding disciplinary recommendations is effective, with reference to the 2016 Pivotal Practices report done for CBP.

#### Abuse and Mistreatment Reduction

- CBP should improve training (academy and post-academy/refresher), and in conjunction, establish and reinforce standards of conduct through regular and case-based evaluations to reduce loss after training. Such standards should include: social and cultural background of migration and migrants (including indigenous people, women, children, asylum-seekers, and other non-traditional migrants); fundamentals of human rights and constitutional rights (overall principles as well as specific laws and procedures); real-world problem-solving (beyond memorizing laws) involving human and constitutional rights<sup>2</sup>; lawful use of force, de-escalation tactics, and alternatives to the use of force; implicit bias and racial profiling; and appropriate interaction (language, physical actions, expressed attitudes) with migrants and the public. CBP should include non-agency experts in training on these and other topics. Bring CBP fully within DOJ's 2014 Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity, and issue a DHS counterpart.

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<sup>2</sup> To include, but not exclusively: scope of CBP officials' authority to conduct immigration enforcement activities, including interviews, interrogations, stops, searches, arrests, and detentions, and identifying and detecting fraudulent documents.

- Agents and officers should be accountable for failures to implement the law, policy, and standards on which they are trained. The supervisory hierarchy should be accountable from first line supervisors to top of CBP and DHS for officer/agent conduct in their areas. Accountability includes handling of complaints and other evidence of misbehavior, thorough investigation of and action on specific cases, and overall conduct of units under supervisors/managers. Accountability includes documentation of incidents, investigation of incidents, and the command review of/solutions for patterns and trends. CBP should require this to be central in supervisory/managerial evaluation and promotion.
- Officers/agents should receive, record, and process all statements suggesting fear without judging or discouraging them. Likewise, they should refrain from making any comments on potential asylum. CBP should train officers/agents on, issue standards for, and evaluate them on appropriate interactions with any people who indicate any fear of persecution or evidence of trafficking. Officers/agents should effectively record statements of fear and effectuate prompt turnover to asylum officers or ICE, as appropriate. The CBP role in I-213s should be as devoid of obstacles and automatic as possible. Quality control should be instituted based on random recordings used only to ensure appropriate officer conduct, not introduced as evidence in immigration proceedings.
- CBP and ICE should eliminate expedited removal. They should not prosecute or initiate removal proceedings for asylum applicants until a decision on asylum is completed, and only prosecute them in extraordinary circumstances presenting serious non-immigration offenses. This should be done in conjunction with cessation of the exclusion of asylum seekers under the CDC regulation authorizing suspension of entry of persons to prevent communicable disease (see Asylum Policies).
- CBP should train on, issue standards for, and evaluate on appropriate dealings with all persons. This should include instruction on screening, identifying, and responding to vulnerable populations, such as children, victims of human trafficking, indigenous people, and the acutely ill. CBP should train on, issue standards for, and evaluate on sensitivity towards lesbian, gay, bisexual, transgender, and queer individuals. CBP should train on, issue standards for, and evaluate on standards to reduce racism, conscious or unconscious, in interactions. CBP should train on, issue standards for, and evaluate on non-biased questioning and interactions. Officer/agent interactions with all persons, and especially vulnerable people, should encourage and not discourage them from expressing fear or evidence of persecution and trafficking; and initiating, recording, and submitting I-213s should be effective and devoid of barriers.
- Verbal and physical abuse are unacceptable. CBP should establish and enforce standards of appropriate speech that proscribe verbal abuse, and that distinguish command speech from abusive speech. CBP should establish and enforce standards in which specific physical actions are necessary and not injurious, and those beyond are proscribed as abusive. These standards should be central to officer/agent evaluation, with serious consequences for their violation; and effective enactment of such standards likewise should be central to the evaluation of supervisors and managers.

- Eliminate sexual and other harassment and assault, internal and external to the organization. Assess current policies and procedures to investigate cases and complaints to ensure that they are rapid, effective, and consequential.

### Use of force

- The CBP force policy must include detailed protocols related to officer/agent documentation of incidents, the investigation of incidents, and the command review of patterns and trends. CBP should track and provide statistics on all cases where weapons are drawn, whether used or not.
- CBP should make public existing standards for vehicular pursuit and shooting at vehicles, and issue strengthened standards that weigh risks (to officer/agent, community, migrants and guides) against law enforcement objectives. CBP should promptly complete investigation and review of vehicular pursuit cases and implement recommendations.
- Other improvements in use of force and related issues can be done administratively by CBP: these include prohibition of chokeholds; new standards for thrown projectiles that weigh actual risk against use of force options; and standards that minimize cross-border use of force by requiring self-protection and de-escalation by retreat into the United States. CBP should establish a standard of exhausting all alternatives before shooting or striking with a vehicle, and only when fully justified under *Tennessee v. Garner*. CBP should train to and implement the PERF de-escalation training and practice recommendations to support that standard. Agents/officers have a duty to de-escalate from potential use of force as much as possible.
- CBP should make public within 24 hours the facts of any use-of-force incident that results in serious injury or death (of an officer or a member of the public) and comply fully with the Death in Custody Reporting Act of 2013.
- CBP must make clear to all agents/officers and supervisors that there will be a serious investigation of all force and misconduct cases, with appropriate consequences even if no actual injury/death occurred. All National Use of Force Review Board (UFRB) and local UFRB reviews should be conducted promptly and reports posted publicly. The 'no harm - no foul' practice can lead to tacit approval of bad practices. Officers/agents must be certain that they will be forced to give true and complete accounts of why they used force, and CBP must fully discipline them. CBP must implement use of body-worn cameras for all officers/agents, and penalize cameras not being turned on.
- The DHS Inspector General (OIG) should review all case investigations above a published threshold of seriousness that are closed without action taken for completeness and appropriate application of standards. In cases where OIG identifies problems in the investigations, OIG should reopen them. OIG should publish reviews of all cases for completeness and appropriate application of standards. The public reports should identify problems and deficiencies and include recommendations for improvement in investigation and reporting, as well as information about particular cases. The external civilian review board described above should annually review a sample of cases for adequacy of the disciplinary process and issue a public report on the same. Recommendations from the IG and public review board shall be implemented as

promptly as possible. Supervisors should be held responsible for all limitations in case investigation/review and action. CBP should end port directors'/sector chiefs' ability to override disciplinary recommendations from Headquarters.

- Case records should be public information, including officer/agent names, camera footage consistent with policy, locations, events, and outcomes, and investigatory resolution. CBP counsel should cease arguing otherwise.

#### Holding cells, documents and possessions, and transportation

- CBP should ensure that all persons in custody—children, families, and adults—have access to good food, drinking water, appropriate space (space to sit and to sleep), appropriate vehicle and room temperature (within a range used by GSA, not correctional guidelines), sanitation and hygiene, medical care (including mental health care), and access to communication and direct consultation with legal representation and family members. Personnel must conduct themselves in a courteous manner and absolutely no verbal, physical, and sexual abuse by CBP personnel will be permitted. TEDS and Flores decision standards should be required in all cases, and supervisors should be responsible for adherence, indicated in regular evaluations.
- CBP should follow the 12-hour limit on CBP (Ports and Border Patrol) detention stated in the 2008 Border Patrol Detention Standards. People should not be held outside buildings except for fully sheltered and serviced tents. CBP should strengthen medical care in holding and transportation, including first response (with review by nongovernmental medical groups such as Physicians for Human Rights and the American Academy of Pediatrics), and should not take medications away from arrested or detained people unless approved by a doctor.
- CBP should regularly provide the public with specific data on processing and holding capacity of ports and BP stations, including both space and personnel. Non-governmental monitoring organizations should be identified and invited for regular standards inspections in all major Border Patrol sectors/OFO districts.
- CBP should improve the handling of documents and possessions, including full accountability for all such items, tracking, and return of all nonperishable items that are not contraband. It should establish a uniform set of policies and procedures for the handling and movement of possessions that is specific to immigration detainees, rather than to the institution that currently holds them in custody; clear channels should be implemented to recuperate lost possessions; and CBP should maintain a chain of custody that can easily be followed to help people retrieve their belongings. Document seizure by officers/agents should always require a written justification and a process for recovery when appropriate. CBP should provide regular training of agents/officers on documents, including new ones, and how to handle documents in the field.

#### Border Communities and Ports

- CBP should require agents to have fully articulated fact-justification for search and seizure on local roads and streets, paths, parks, and other community spaces, and should hold supervisors accountable for the performance of agents. Border Patrol agents should only enter yards or dwellings with judicial warrants or direct witnessing of law violation,

and should not deceive or use physical force to enter such spaces or place cameras. CBP should record, track, and report on the race and ethnicity of people stopped and questioned inside the 100-mile zone in inhabited areas, on streets and roads, in private vehicles, and in public carriers and private vehicles. At checkpoints, Border Patrol should record and track the race and ethnicity of people detained for longer than a brief immigration inquiry and all those pulled into secondary. CBP should develop standards, policies and procedures to address inequities seen in this data.

- Distant surveillance must be as limited by the standards of reasonable suspicion (or higher) as in-person searches. CBP should develop and apply this policy specifically for border communities within the 100-mile zone. For each sector, evaluate what a “reasonable distance” for operations is and reduce the zone accordingly. End measurements of “reasonable distance” that do not begin at an external boundary, such as using the Great Lakes as “functional equivalents” of the border.
- CBP should hold regular non-uniformed community liaison meetings, post liaison emails and phone numbers, and make complaint process efficient and accessible. CBP should improve relations with border communities, including reduced surveillance and use of lights, entry into homes and sensitive locations, better interactions with the public, and caution with vehicular pursuits.
- CBP should end boarding of common carriers other than those crossing international borders, and end presence at transportation hubs. CBP should limit apprehensions of people in the 100-mile zone to those people who actually have entered the border in the last 14 days. CBP should eliminate use of expedited removal and use prosecutions only in extraordinary cases involving serious non-immigration violations; all legal actions should require full non-expedited processes.
- CBP and ICE should affirm the sensitive location memos and strictly require them of officers/agents. CBP and ICE should add courthouses and other locations for legal processing to the sensitive location memos. Officers/agents should be knowledgeable about policies for operating in locations where there are limitations on cooperation by local law enforcement.
- CBP should review canine operations with external experts to recommend changes to improve efficacy and respect individual rights.
- CBP should review drone operations with external experts to establish privacy protections and limit loans to other agencies to exceptional circumstances.
- CBP should initiate a major program to improve performance of land ports of entry, including standards of interaction with the public. CBP should evaluate officers on interaction with the public and supervisors on the performance of their officers, , including routine randomized review of recordings from inspection booths. CBP should provide well-displayed, multilingual signage at ports on complaint procedures. Professionalism Service Managers emails and phone numbers should be posted online and on signage. CBP should provide real-time transparency regarding crossing times.
- CBP should provide accountability and transparency for search and seizure at ports; all seizure of documents and personal technologies and investigative detention require

written reasons based on detailed, articulable facts. CBP should permit and improve counsel access at Ports. Camera recording of interactions and holding cells should be retained for at least a year.

- CBP should address the social and economic costs of under-resourced ports relative to enforcement outside ports. CBP should stop using ports as personnel reserves for the Border Patrol; instead, CBP should study the economic and social benefits of re-assigning of Border Patrol as CBP inspectors at ports to improve legitimate trade and travel, and interdict contraband.
- CBP should restore dedicated pedestrian lanes for U.S. citizens and Legal Permanent Residents where they previously existed. CBP should restore the dedicated pedestrian lane for students where they previously existed. CBP should restore the "All Lanes Open Initiative," which kept all bridge lanes staffed during morning rush hours. CBP should cease "port-hardening measures" including concrete barriers topped with razor wire that create a choke point at the top of the bridges, take down limit line booths, and cease stopping traffic at ports to practice "tactical exercises."

### Complaints

- The complaint process should be open, accessible and streamlined, with a toll-free phone number and online portal, available in all widely used languages. CBP should provide an opportunity for people to place complaints prior to removal or release. Complainants, including third parties, should be given the option to submit anonymously or with identification. Retaliation for complaints should be strictly punished. An external review board should adjudicate complaints. CBP should develop a mechanism for communicating complaint outcomes to complainants and should keep records of its follow-through on all complaints. It should develop safeguards to prevent retribution by officer/agents against complainants, including monitoring individual complainants' routine treatment at ports of entry for signs of retaliation.
- CBP should analyze complaints to identify patterns that can be addressed and improved; this should be done for officers/agents, units, locations, and activities. CBP should keep records of how complaints have been addressed, both specific cases and in terms of general patterns at all levels of management. Use of the record in policy implementation, improvement, and progressive discipline is a core expectation for supervisors and criteria for their evaluation. CBP should produce an annual public report on complaints and improvement.
- Officers/agents should never hide their identities, badges, or organizations, and will be seriously penalized for doing so.
- CBP should provide rapid, effective, and complete response to FOIA requests, reviewing and improving existing guidelines, consulting stakeholders, and increasing resources as appropriate.

### Minors

- CBP should take immediate steps to improve the treatment of Unaccompanied Children (UAC) using the standards in the *Flores* settlement. CBP and other entities responsible

for the care of UAC should be monitored to ensure their compliance with US law and policy. CBP should undertake a hiring initiative to recruit personnel with background or expertise in social work, child welfare and/or child development to work with UAC.

- Mexican UACs should be afforded the same procedures and protection under the TVPRA as UACs from noncontiguous states.
- DHS should address the problem of the removal of children from parents and non-parental guardians. In particular, the burden of proof should be on the government to demonstrate that a child is a victim of trafficking or otherwise in imminent risk of bodily harm. This should require review by a court, or at least an independent child welfare expert. Children should be left in the custody of non-parental kin guardians (such as siblings, grandparents, aunts/uncles) unless such a burden of proof can be met. Family units should not undergo separation—all parents, minor children, and other adult relatives should be kept whole in CBP custody and released together.
- CBP should create a coherent and functional tracking system for all UAC, including the exceptional case of children removed from adults.

#### Other

- CBP should not refer migrants for prosecution under 8 USC sec. 1325(a) and 8 USC sec. 1326(a). CBP and federal prosecutors should investigate and pursue persons suspected of involvement in smuggling, trafficking, and other offenses under the relevant provisions in the federal code. Revise the Consequence Delivery System accordingly and create a mechanism for external input on a new version.
- Border Patrol agents and CBP officers should not serve as asylum officers.
- Under the authority of DHS, active duty military and National Guard should be disengaged from border enforcement, including training exercises, surveillance, construction, and logistics.
- DHS should stop border wall construction by halting all land acquisition proceedings and all contracting (open or pending), and establish a commission to review and redress the harms of existing barriers including removal where feasible.
- DHS should commission external studies on the risks and outcomes of interior checkpoints at the northern and southern borders, which capture data on racial inequities in searches.
- Consistent with existing budgets, CBP should administratively reallocate internal resources to increase the number of OPR investigators.
- CBP should end its prevention-through-deterrence strategy. Border Patrol agents – who are required to aid migrants when asked -- should be forbidden, with serious consequences, from damaging and destroying life-saving resources such as water caches. Border Patrol search and rescue resources should be bolstered, including beacons and cooperation with nongovernmental organizations.

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