

A Culture of Cruelty

ABUSE AND IMPUNITY IN SHORT-TERM
U.S. BORDER PATROL CUSTODY

EXECUTIVE SUMMARY

NO MORE DEATHS
NO MÁS MUERTES
2011

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“We were held with another woman who was coughing so badly that she threw up violently, over and over. The others in the cell called for help. An officer came over and said, ‘Que se muera!’ - ‘Let her die!’”

January 29, 2011 with three women in Nogales, Sonora

“They treated me like a dog...They asked if [I] wanted water, but when [I] responded ‘yes,’ they wouldn’t give [me] any.”

February 16, 2010, with a 16 year-old boy from Guatemala

INTRODUCTION

In 2006, in the midst of humanitarian work with people recently deported from the United States to Nogales, Sonora, No More Deaths began to document abuses endured by individuals in the custody of U.S. immigration authorities, and in particular the U.S. Border Patrol. In September 2008 No More Deaths published *Crossing the Line* in collaboration with partners in Naco and Agua Prieta, Sonora. The report included hundreds of individual accounts of Border Patrol abuse, as well as recommendations for clear, enforceable custody standards with community oversight to ensure compliance. Almost three years later, *A Culture of Cruelty* is a follow-up to that report—now with 12 times as many interviews detailing more than 30,000 incidents of abuse and mistreatment, newly obtained information on the Border Patrol’s existing custody standards, and more specific recommendations to stop the abuse of individuals in Border Patrol custody.

The abuses individuals report have remained alarmingly consistent for years, from interviewer to interviewer and across interview sites: individuals suffering severe dehydration are

deprived of water; people with life-threatening medical conditions are denied treatment; children and adults are beaten during apprehensions and in custody; family members are separated, their belongings confiscated and not returned; many are crammed into cells and subjected to extreme temperatures, deprived of sleep, and threatened with death by Border Patrol agents. By this point, the overwhelming weight of the corroborated evidence should eliminate any doubt that Border Patrol abuse is widespread. Still the Border Patrol’s consistent response has been flat denial, and calls for reform have been ignored.

We have entitled our report “*A Culture of Cruelty*” because we believe our findings demonstrate that the abuse, neglect, and dehumanization of migrants is part of the institutional culture of the Border Patrol, reinforced by an absence of meaningful accountability mechanisms. This systemic abuse must be confronted aggressively at the institutional level, not denied or dismissed as a series of aberrational incidents attributable to a few rogue agents. Until then we can expect this culture of cruelty to continue to deprive individuals in Border Patrol custody of their most fundamental human rights.

BORDER PATROL SHORT-TERM CUSTODY CONDITIONS

Our documentation from Fall 2008 to Spring 2011 includes **4,130 interviews** with **12,895 individuals** who were in Border Patrol custody, including 9,562 men, 2,147 women, 533 teenagers (ages 13-18), and 268 children (ages 0-12). The majority of interviews were conducted in Naco (3,201), followed by Nogales (834), and Agua Prieta (62). Based on these interviews we have identified 12 areas of concern, and in the full report provide prevalence statistics and case examples for each denial of or insufficient water; denial of or insufficient food; failure to provide medical treatment or access to medical professionals; inhumane processing center conditions; verbal abuse; physical abuse; psychological abuse; dangerous transportation practices; separation of family members; dangerous repatriation practices; failure to return personal belongings; and due process concerns. Our findings include the following:

- Border Patrol agents denied food to **2,981 people** and gave insufficient food to **11,384 people**. Only 20 percent of people in custody for more than two days received a meal.

- Agents denied water to **863 people** and gave insufficient access to water to **1,402 additional people**. Children were more likely than adults

to be denied water or given insufficient water. Many of those denied water by Border Patrol were already suffering from moderate to severe dehydration at the time they were apprehended.

- Physical abuse was reported by **10 percent** of interviewees, including teens and children. The longer people were held in custody, the more likely they were to experience physical abuse.

- Of the 433 incidents in which emergency medical treatment or medications were needed, Border Patrol provided access to care in only 59 cases—**86 percent** were deported without necessary medical treatment.

- The most commonly reported forms of inhumane processing center conditions were overcrowding (5,763 reports), followed by unsanitary conditions (3,107), extreme cold (2,922), and extreme heat (2,349).

- We recorded **2,926 incidents** of failure to return personal belongings: 398 cases of failure to return shoes or shoelaces, 211 cases of failure to return money, 201 cases of failure to return identification, 191 cases of failure to return important documents, and 125 cases where *no personal belongings were returned at all*. People deported without money or key personal belongings are at heightened risk of exploitation and physical harm.

- Border Patrol deported **869 family members** separately, including **17 children** and **41 teens**. Family separation frequently involved “lateral repatriation,” or deportation through ports of entry that are distant from the location of apprehension. It is a costly practice that increases the risk of physical harm to those who are repatriated to unfamiliar or dangerous locations.

- **1,051 women, 190 teens, and 94 children** were repatriated after dark in violation of the Memorandum of Understanding between the Mexican Consulate and U.S. Customs and Border

Protection and, in the case of children, the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008.

- Increasing reports of psychological abuse included threatening detainees with death; depriving them of sleep; keeping vehicles and cells at extremely hot or cold temperatures; playing traumatizing songs about people dying in the desert (*migracordos*) loudly and continuously;

and forced holding of strenuous or painful positions for no apparent reason other than to humiliate.

It is clear that instances of mistreatment and abuse in Border Patrol custody are not aberrational. Rather, they reflect common practice for an agency that is part of the largest federal law enforcement body in the country. Many of them plainly meet the definition of torture under international law.

BORDER PATROL’S APPREHENSION METHODS & BORDER DEATHS

In 2009-2010 alone, at least 253 people died attempting to cross the border through southern Arizona. No More Deaths volunteers who patrol the region on a daily basis providing food, water, and medical aid, have identified three Border Patrol practices that further increase the risk of death in the desert and constitute their own forms of abuse:

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March 15, 2010 with Jorge, 27, from Guatemala

Six Border Patrol agents, including some on horses and motorcycles, surrounded his group of 10. He was thrown onto the ground face first and an agent hit him on the side with the butt of a gun while agents yelled insults. Jorge was held for three days in the Tucson processing center. When he repeatedly asked to see a doctor, he was denied. Agents threw out any food the detainees had and provided none even when it was requested; over the course of three days, they received only packets of crackers. Jorge now suffers chronic stomach pain as a result of going so long without eating. Border Patrol also took everyone's clothes except a t-shirt and pants and then turned on the air conditioning. Jorge says his belongings, including his birth certificate and \$100 U.S. currency, were confiscated and not returned. Jorge has a cousin and father who live in Santa Monica, Calif., where he lived for 10 years before being deported. He was apprehended by Border Patrol as he attempted to return to them.

Intentionally funneling migrants to deadly regions and the dispersal of groups as an apprehension tactic

The Border Patrol implements a border strategy that intentionally pushes migrants into the deadliest corridors of the desert in a failed and inhumane policy of "deterrence." When Border Patrol finds migrants in the desert, the practice of "dusting"—using helicopters, vehicles, dogs, and horses to rush at and separate groups, apprehending some individuals while leaving others behind—makes those who have been scattered more likely to become disoriented and lost in the desert.

Impeding search and rescue efforts

Volunteers attempting to form search and rescue missions for people lost in the desert—including "dusting" victims—report agents withholding critical information about where an individual might be and responding to reports of missing persons inadequately, if at all. Volunteers also report Border Patrol agents interfering with medical professionals attempting to provide emergency aid.

Vandalizing life-saving resources such as food, water, and blankets

Life-saving humanitarian supplies left on migrant trails are frequently removed or destroyed. A high percentage of water bottles are slashed and food is often dumped out on the trail. Volunteers have witnessed Border Patrol agents pouring water out of bottles, and have come upon destroyed humanitarian resources immediately after seeing Border Patrol agents leave an area.

CHANGING DEMOGRAPHICS

No More Deaths interviews are conducted in a rapidly changing political and economic context. Border Patrol abuse can be seen as a predictable consequence of a national political climate that vilifies immigrants through a dizzying array of state and federal measures. While border-crossing attempts have purportedly dropped, there has been a sharp increase in deportations of those who have lived in the U.S. for many years. To better understand this shift in demographics, we began a

separate "Deportation Impact" survey to identify the top concerns of this population. From over 100 interviews, the average length of time living in the U.S. before deportation was 14.4 years. Interviewees had, on average, 2.5 children in the United States, and 46.6 percent reported that all of their children living in the U.S. were U.S. citizens.



Notably, 69.3 percent of those interviewed answered that they would continue to try to cross the border to reunite with family in the U.S. Individuals who named rejoining family as their number one reason to cross again were also more likely to report that their family was dependent on their income, that their youngest child in the U.S. was less than 5 years old, and that they were married or in a relationship. For many in this situation, with no other way to see their children, spouse or home again, no amount of personal risk or inhumane treatment will ever be an effective "deterrent." These individuals may be subjected to Border Patrol abuse on multiple occasions as they seek to return home.

June 14, 2010 with Gerardo, 47, from Nayarit, Mexico

His feet were severely blistered and were being treated by a volunteer EMT during the interview. He was detained for two days at a Border Patrol detention center near Why, Ariz., after walking through the desert for three days. At the detention center, agents went through his belongings and those of others and threw away identification, cell phones and lists of phone numbers. He was able to recover his cell phone from the trash and had it in his possession during the interview. Gerardo requested medical treatment for his feet, but was only told, "Later." He never received any care. Migracorridos were played over the loudspeakers 24 hours a day at high volume. Every two hours, guards would come in shouting at the detainees and requiring them to line up for inspection. These measures prevented the detainees from sleeping and Gerardo regarded them as forms of psychological torture. He reported substandard conditions that included inadequate food, overcrowding and excessive cold.

EXISTING STANDARDS FOR CUSTODY AND REPATRIATION

Since 2008, advocates have obtained three documents that define guidelines for conditions in Border Patrol custody and repatriation standards. We identified the standards that these memoranda address, many of which are routinely violated, as well as those areas of concern that are not included in any Border Patrol guidelines.



The *Hold Rooms & Short-Term Custody Memorandum* (June 2, 2008) was obtained through a Freedom of Information Act (FOIA) request by the American Civil Liberties Union—Regional Center for Border Rights. Although the document was heavily redacted, we were able to identify guidelines addressing the following, many of which are routinely violated in practice:

- Access to food
- Access to water
- Access to medical care
- Processing center conditions

- Property recovery
- Due process protections
- Special considerations for juveniles

The *Proper Treatment of Detainees Memorandum* (May 2, 2004), also obtained as a result of the ACLU FOIA request, explicitly prohibits verbal abuse on the basis of "name, nationality, race, religion, economic condition...dress or any other circumstance." The regularity with which this provision is violated makes its closing admonition almost ironic: "It is your duty to give them the same treatment you would like if your situations were reversed."

In neither of these memoranda does there appear to be any prohibition of, or guidance regarding, physical abuse, psychological harm, separation of family members, or safe transportation and repatriation practices. The standards that do exist are consistently ignored, and the apparent absence of basic human rights principles from training materials speaks volumes about the Border Patrol's posture towards the rights of individuals in its custody.

No More Deaths has also obtained a *Memorandum of Understanding Regarding Local Arrangement for Repatriation of Mexican Nationals* between the Department of Homeland Security and the Mexican Consulate (April 2, 2009), which addresses criteria and procedures for "repatriating Mexican nationals in a safe, dignified, and orderly way with respect to their human rights" and applies to both Border Patrol and Immigration and Customs Enforcement operations in the region. Our documentation suggests that Border Patrol does not comply with the following stipulations of the Memorandum of Understanding:

- All detainees should be informed of their right to speak to the Consulate, and guaranteed access to do so.
- The family unity should be preserved during repatriation.
- "Special needs" populations (including the elderly, women traveling alone, and unaccompanied minors) should be deported during daylight hours.

April 13, 2011 with anonymous woman, 22, from Chiapas, Mexico

She stated that she, her husband, and five others were walking through the desert, north of Sasabe, Ariz. There were three married couples in the group. All were apprehended by Border Patrol, detained in Tucson, and all spouses were separated from each other. In the morning Border Patrol agents told her that she was about to be deported to Mexico. She replied that she wanted to go with her husband. The agents questioned the fact that she was married and asked to see her marriage license. She replied that she did not have it with her. The agents began laughing, ridiculing, and insulting her and said that they did not believe that she was married. Finally, they said, "Are you going to leave or not?" She was then deported to Nogales with two other members of her group. None of them had any information on the whereabouts of their spouses.

- Border Patrol and ICE should alert Mexican agencies receiving deportees of individuals with medical, mental health, or other special needs.

- In cases of Mexican nationals requiring ongoing medical treatment after deportation, mobility devices should be provided by the medical center where they were treated. When this is not possible, DHS should alert the Mexican consulate in advance so that the consulate can provide such devices.

Another apparent violation of the memorandum is the increasingly common practice of "lateral repatriation," in which Border Patrol transfers detainees far from their original point of entry prior to deportation. Men, women, and children with little or no money are then repatriated to unfamiliar cities—some of which are named in U.S. State Department travel alerts—and face greater risk of being targeted for abuse, extortion, and kidnapping.

INEFFECTIVE OVERSIGHT WITHIN THE DEPARTMENT OF HOMELAND SECURITY

An institutional culture resistant to accountability and lacking transparency renders the limited internal accountability mechanisms currently in place virtually meaningless. It is unclear how or whether the Border Patrol seeks to ensure that its custody standards are applied in practice or whether agents receive any human rights training. Migrants are expected to file complaints with Border Patrol while still in custody, a policy that creates a clear conflict of interest and discourages victims from coming forward out of fear of retaliation. Above all, Border Patrol's steadfast denial of abuse in the face of overwhelming evidence to the contrary is indicative of an institution vehemently resistant to any measure of accountability.

Other existing oversight mechanisms are no more effective in addressing Border Patrol misconduct. The Office of Civil Rights & Civil Liberties (CRCL) receives and investigates complaints against Department of Homeland Security agents, including

the Border Patrol. For the past two years, No More Deaths and our partners in Naco and Agua Prieta, Sonora have made good faith efforts to engage the existing system, filing over 75 complaints with CRCL. To our knowledge, no discernable outcome has resulted from a single case we have filed. Of particular concern is the fact that DHS is the parent agency of both CRCL and Customs and Border Protection (CBP). Cases reviewed by CRCL are often referred back to the same DHS component agency named in the complaint, further undermining the credibility of CRCL as an oversight body. CRCL is under no obligation to share the results of an investigation, even with the person who experienced abuse and filed the complaint.

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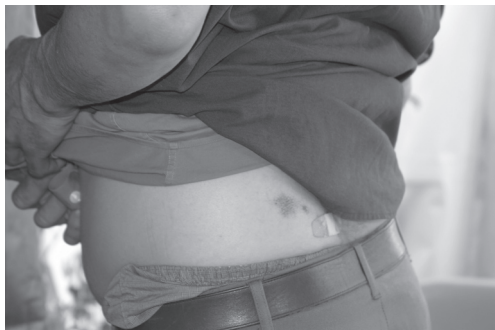
The utter lack of transparency within the current oversight structure exacerbates a Border Patrol culture of impunity that perpetuates and encourages abusive treatment of migrants in custody. We believe this can only be remedied by a truly independent oversight mechanism with a strong mandate and enforcement powers to end systemic abuse in Border Patrol custody.

RECOMMENDATIONS & CONCLUSIONS

The findings of this report are twofold: First, human rights abuses of individuals in short-term U.S. Border Patrol custody are systematic and widespread. The accounts documented over the past two and a half years do not reflect anomalous incidents



but rather an institutional culture of abuse within Border Patrol. Second, the custody standards that do exist are inadequate and are not subject to the oversight necessary to ensure their implementation. Without drastic changes to Border Patrol custody standards and independent accountability mechanisms, the senseless abuse of immigrants along the border and in Border Patrol custody is certain to continue.



The Border Patrol must respect the basic human rights of people in custody; first, by applying the existing custody standards, and then by expanding the standards to fully address the concerns raised in this report. This includes guaranteeing full access to water, food, medical care, sanitary and humane processing center conditions, due process protections, and safe transportation and repatriation practices. Under no circumstances should agents verbally, physically, or psychologically abuse detainees. Property of those in custody must be respected and returned. In its apprehension methods, all Border Patrol strategies intended to scatter groups should end immediately and agents should actively assist with search and rescue missions. Border Patrol should cease the practice of, and publicly announce opposition to, the vandalism and removal of resources such as food, water, or blankets that have been left for those in crisis.

We also recommend the establishment of an independent oversight mechanism in which community and human rights

groups play a central role. While DHS must improve its ability to hold its own employees accountable, there is a need for an independent body charged with the following responsibilities: investigating complaints filed directly or by a third party; monitoring the implementation of standards in short-term facilities; imposing disciplinary sanctions on Border Patrol agents who commit egregious and repeat abuses; providing restitution to victims; and tracking, analyzing, and publicly reporting on aggregate information drawn from complaints, their resolutions, and facility ratings.

The utter lack of transparency within the current oversight structure exacerbates a Border Patrol culture of impunity that perpetuates and encourages abusive treatment of migrants in custody.

Indifference to the persistent institutional violence of the Border Patrol reflects a lack of ethical leadership and responsibility on the part of the federal government and is indefensible in light of the United States' longstanding commitment to human rights, justice, accountability, and the rule of law. While policy reforms addressing Border Patrol custody mistreatment are needed, so too are: a rejection of failed economic and enforcement strategies that compel, then criminalize, migration; the enactment of meaningful immigration reform; and the establishment of standards of conduct and independent oversight for the Department of Homeland Security.

The full report in English and Spanish, as well as all government documents referenced within it, is available at <http://www.cultureofcruelty.org>.

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