



Kino Border Initiative
Iniciativa Kino para la Frontera



Intake Without Oversight:

Firsthand Experiences with the
Customs and Border Protection
Complaints Process

July 2017



Intake Without Oversight:
Firsthand Experiences with the
Customs and Border Protection
Complaints Process

Background on Complaints Process

An efficient and responsive complaints process is a critical component to ensure professionalism within law enforcement. In *Our Values on the Line*, a 2015 report, the Kino Border Initiative (KBI) and the Jesuit Conference found through survey data that one in three migrants apprehended while crossing the desert reported suffering an abuse by Border Patrol. However, fewer than one out of every 12 who suffered an abuse filed or attempted to file a complaint. The most commonly reported reason for not filing a complaint was that migrants were unaware of that right; the second most common reason was the perception that the complaints would not make a difference.

In response to these findings, in the late fall of 2015, KBI began helping migrants use the Department of Homeland Security complaints process. From late October 2015 to early March 2017, KBI has filed complaints on behalf of 49 individuals in response to a variety of abuses, from excessive use of force to lack of medical attention and denial of the right to seek asylum. This work has given KBI firsthand experience with improvements and ongoing obstacles in the process.

Complaint Categories

Complaints were filed in response to incidents reported by individuals deported to Nogales, Sonora, and only in situations where individuals gave free and full consent. They are not representative of the entirety of alleged abuses, since many individuals were still fearful of retribution. They include:

- Ten complaints on excessive use of force, primarily related to the time of apprehension, two of which specifically addressed injuries from canines;
- Twenty-two complaints regarding the failure of Customs and Border Protections officers or agents to refer individuals expressing fear to the asylum process;
- Ten complaints on separation of individuals from immediate family members;
- Twelve complaints on denial of medical care or inadequate medical care while individuals were in Customs and Border Protection custody;
- Six complaints of violations of the October 2015 Transport, Escort, Detention, Search (TEDS) standards, including illegal searches and use of restraints on a minor;
- Three complaints of failure to return belongings, one of which involved suspected robbery in the field by a Border Patrol agent;
- Two complaints of verbal abuse, both of which were reported by women.

MIGRANT TESTIMONIES

Injury without Recourse

In November 2015, Ernesto, age 21, and his 16-year-old brother were arriving at a roadway when Border Patrol agents arrived and they initially attempted to run. An agent caught up with Ernesto and pushed him into barbed wire. He no longer attempted to move or flee, but according to Ernesto the Border Patrol agent grabbed his shirt collar, dragged, and started to punch him, saying "can't you see this is U.S. territory?" The agent hit Ernesto until he started to bleed and then dragged him again, handcuffed him, and brought him to the truck, while cursing at him in English.

Ernesto was later brought to the hospital, and the agent who drove him to the hospital informed him of his right to file a complaint. When he returned to the Border Patrol Station, he asked to file a complaint but the agents there said it would not have any effect because his injuries were not severe enough. When he and his brother were deported to Nogales, Sonora, the Kino Border Initiative filed a complaint on his behalf.

From November 2015 to the present, the only information that KBI has received is a notification that the complaint was sent to the Joint Intake Center and a June 2016 letter from the Department of Homeland Security's Office of Civil Rights and Civil Liberties informing KBI that the complaint was included in the information layer.

Role of Different Agencies and Gaps in Oversight

Three departments are tasked with oversight and investigation of complaints: Civil Rights and Civil Liberties (CRCL), responsible for identifying patterns of abuse and making policy recommendations; the Office of Professional Responsibility, responsible for integrity and management; and the Office of the Inspector General, which assumes cases that could lead to more severe discipline or criminal charges. The Joint Intake Center is used to aggregate complaints and each of the three departments can see complaints in that system.

In KBI's experience, there are several shortfalls in this system. First, most complaints submitted by KBI are not investigated by any of the three departments tasked with oversight, but rather are addressed at the station level. This includes serious complaints, such as individuals removed despite expressing fear. This is a fundamental flaw in a centralized system intended to provide oversight.

While the Joint Intake Center aggregates complaints, it does not identify patterns of abuse at a particular Border Patrol Station or regarding a particular abuse category in order for these concerns to be addressed. Further, the Office of Professional Responsibility does not train station-level management nor oversee their investigations unless the station requests support. This analysis and feedback on recurring concerns could and should be used to improve training and professionalism because abuses are a question of not just individual agent discipline but also overall law enforcement effectiveness.

An additional concern is regarding submitted complaints not being accounted for in broader investigations. At the request of NGOs, in the past year CRCL has initiated investigations into family separation and removal of individuals who express fear. At the beginning of the family separation investigation, however, CRCL did not seem to have the relevant KBI complaints in that classification and KBI had to resubmit the documentation. Further investigation of the CRCL keywords abuse classification system is needed to ensure that individual complaints are clearly incorporated into broader investigations of policy and practice.

MIGRANT TESTIMONIES

Pregnant and Ignored

Ignacia was eight months pregnant when she entered the United States near Douglas, Arizona, on December 1, 2015. She had been walking a few hours when she fell in the desert and sprained her ankle. She continued to attempt to walk in spite of the pain and was apprehended by Border Patrol agents that same evening. When apprehended, she informed the agents that she was pregnant. However, upon arrival at the Douglas Border Patrol Station she was not given any medical attention for either her pregnancy or her sprained ankle. She was only given seemingly undercooked burritos and crackers to eat approximately every six hours. This food was insufficient to stave off her hunger because of her pregnancy. She requested additional food but the Border Patrol agents did not provide her with more meals or snacks. She also asked to speak with the Mexican consulate but was not given an opportunity. She was deported on December 3, 2015, and arrived in Nogales still in pain from her injured ankle.

KBI filed a complaint on behalf of Ignacia on December 7. In January 2016, the local station found it to be unsubstantiated. According to the Douglas Border Patrol station manager, he spoke with the agents who had contact with Ignacia and they said that she did not request medical attention, they did not notice that she was pregnant, and that she did not request additional food. As far as KBI is aware, no other entity of DHS investigated the complaint.

Finally, the local Office of the Inspector General (OIG) has been responsive to cases when KBI reaches out directly, but it is unclear whether all information submitted through the Customs and Border Protection (CBP) online complaints system or CRCL is reviewed by OIG absent more proactive NGO follow up.

Communication on Complaint Status

Over the course of 16 months filing complaints, KBI noted improved timeliness in confirming receipt of complaints. However, there is still little information on the conclusions of investigations

and a lack of independent evidence to allow for thorough complaint investigations.

Out of 49 complaints, KBI was notified about the findings of the complaint investigation of only 13 cases. The results of the 13 cases about which KBI received notification were the following:

- In two cases, Civil Rights and Civil Liberties (CRCL) responded with their findings.
- In 11 cases the response came directly from local station management.
- Two complaints were found to be substantiated and disciplinary action was reportedly taken, though for reasons of agent privacy more details were not available.
- Five of those unsubstantiated pertained to individuals who had claimed to state a fear of return and were closed based on the agents' response that they do not remember hearing such a statement. In these cases, there was no known supplementary evidence beyond the agents' testimony, such as audio recordings of the conversation.
- Three complaints were found to be unsubstantiated based on documented evidence, such as station logs and medical reports. However, this documentation can be incomplete and inconsistent with migrants'

concerns. For example, in one case a woman who was eight months pregnant at the time of detention complained of inadequate medical attention. The station logs apparently had no record of her pregnancy.

- For three complaints, it is unclear what evidence was used in the investigation process.

For the remaining 36 cases, KBI has received communication only to confirm that the complaint has been received, will be or has been investigated, and/or has been included in the Civil Rights and Civil Liberties information layer.

While communication on individual complaints is often lacking, KBI does commend CRCL for their quarterly meetings with NGOs to hear concerns and give updates. KBI is also encouraged by the responsiveness of the Arizona Office of Professional Responsibility and Office of the Inspector General to NGO conversation.

Accessibility of Complaint Process

The CBP Info Center is the online portal and complaint management system used by CBP (<https://help.cbp.gov/app/forms/complaint>).

MIGRANT TESTIMONIES

Deported Back to Persecution

Leonardo and Marcos fled Nueva Italia, Michoacán, Mexico, to escape cartel recruitment. Their cousin had just been killed for refusing to comply with the cartel's demands. They entered the U.S. near Douglas, Arizona, and had been walking for four days in the desert when Border Patrol agents approached and detained them on Saturday, April 23, 2016, at 2 a.m. At the time of their apprehension, Leonardo asked one agent about whether they could get asylum since they were fleeing persecution. Reportedly, the agent responded, "No, here we can't give you that. They used to give asylum because Michoacán was bad but not anymore."

Agents brought the twins initially to the Douglas Border Patrol Station and then to the Tucson Border Patrol Station. Leonardo asked the agent who interviewed him at the Tucson Station about the possibility of asylum, because of the persecution they were fleeing, and the agent responded "asylum has ended." After their interviews, the agent asked them to sign about 10 different pieces of paper. The agent did not explain the contents of the paperwork and just said "sign, sign" very quickly. Leonardo and Marcos were then deported to Nogales around 4 p.m. on Sunday, April 24.

KBI filed a complaint on their behalf on April 26, 2016. In July 2016, the Douglas Border Patrol Station found the complaint to be unsubstantiated. Officer Roman, the station supervisor, said in a call with KBI's advocacy director, Joanna Williams, that station management asked all of the agents involved to submit memos about the incident and none of them reported recalling the brothers asking for asylum. As far as the KBI is aware, no other entity of DHS investigated the complaint.

It continues to improve in user-friendliness and is a useful tool, especially for NGOs who assist individuals in filing complaints. KBI also commends CBP for adding the Spanish-language complaints interface to the website, which has allowed KBI to train partner organizations in Mexico and Central America on how to access the complaints process. However, individuals without access to the Internet and without the support of NGOs face more limited complaint options. A centralized, multilingual hotline is still a critical missing piece, and individuals still lack access to phones and information on how to file a complaint while in CBP holding cells.

CRCL has also on occasion informed KBI that investigations cannot proceed because complaints were submitted without Alien Registration Numbers. Most individuals removed by Border Patrol arrive to the KBI aid center without removal paperwork and do not know or have documentation of their A Number. Further steps must be taken to ensure individuals who are deported are issued their removal documents and that the complaint investigation can advance in absence of an A Number.

Recommendations

- **Increase funding to the CBP Office of Professional Responsibility (OPR) to double their staff of investigative agents.** With that increased funding, OPR should directly investigate all complaints against CBP agents or officers. Short of that, OPR must be responsible for training and oversight of station management complaint investigations.
- **Audio record interactions between CBP officers and agents and individuals in their custody** and equip all CBP officers and agents in the field with body-worn cameras to enhance the available evidence for complaints investigations. Data should be preserved with appropriate privacy protections. CBP should employ a clear and transparent process for determining what footage is archived. Such a process should ensure that video of potential abuses is saved and is made accessible to individuals who wish to file a complaint about their treatment by agents.

- **Establish a complaint hotline** modeled after the ICE ERO Community and Detainee Helpline, which should be available at all CBP detention facilities and posted on Border Patrol vehicles and at ports of entry, in multilingual format and free of charge.
- **Increase transparency of complaint and investigation process.** The release of Office of Professional Responsibility aggregated data on investigations and discipline in FY2015 was an important step forward, and OPR should quickly release FY2016 data with further explanations of complaint categories, intake points, and the investigation processes.
- **Integrate DHS databases** to ensure that different oversight entities can easily identify individuals filing complaints and the agents or officers on duty at the time of the incident.
- **Implement exit interviews.** Upon release from CBP custody, and after individuals have an opportunity to receive and review their belongings, all persons should receive an administrative exit interview with translation as necessary, which includes the following questions:
 - Have all of your belongings, including money and identification, been returned to you?
 - Were you apprehended with family members? If so, have you received information about where your family member is and how/when you may be reunited?
 - Have you received information about how to file a complaint?
 - Do you wish to file a complaint now about your treatment or conditions while in CBP custody?

CBP should keep a record of each individual's answers to these questions and take appropriate action to locate belongings or give information on family members if the individual indicates that these requirements have not been met.

For further information, please contact:

Joanna Williams,

Director of Education and Advocacy,
Kino Border Initiative:
jwilliams@kinoborderinitiative.org

Kristen Lionetti,

Policy Director,
Jesuit Conference of Canada and the United States:
klionetti@jesuits.org

www.kinoborderinitiative.org

www.jesuits.org