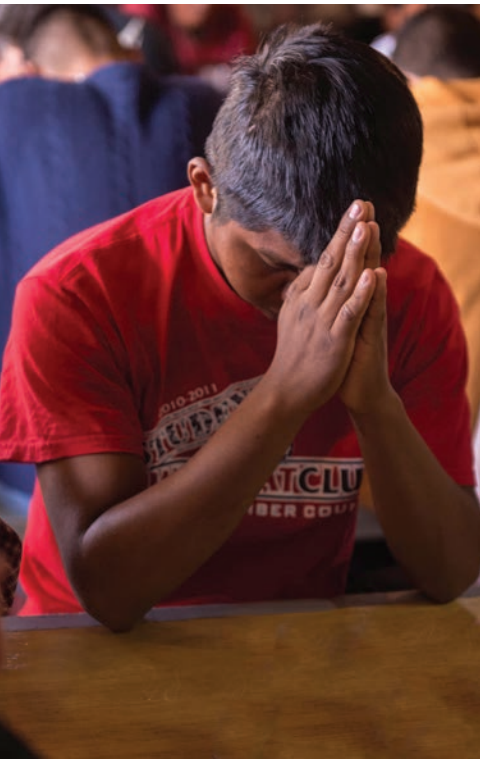

Our Values on the Line:

Migrant Abuse and Family Separation at the Border

JESUITS
Jesuit Conference
of Canada and the United States

Kino Border Initiative
Iniciativa Kino para la Frontera

Our Values on the Line:
Migrant Abuse and Family Separation at the Border

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Study prepared for the Jesuit Conference
of Canada and the United States

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Frequently Used Acronyms

ATEP	Alien Transfer Exit Program
CBP	Customs and Border Protection (under U.S. Department of Homeland Security)
DHS	U.S. Department of Homeland Security
DIF	Desarrollo Integral de la Familia (National System for Integral Family Development)
CAMDEP	Centro de Atención a Migrantes Deportados (Kino Border Initiative's Aid Center for Deported Migrants)
EMIF	Encuesta de Migración Internacional de la Frontera Norte (Northern Border International Migration Survey)
ERO	Enforcement and Removal Operations (at Immigration and Customs Enforcement)
ICE	Immigration and Customs Enforcement
INM	Instituto Nacional de Migración (Mexican National Migration Institute)
KBI	Kino Border Initiative

Author Biography

Michael Danielson is a research fellow at the Center for Latin American and Latino Studies, and teaches Latin American politics and international affairs at George Washington University, the University of California Washington Center, and the New York University program in Washington, DC. He received his Ph.D. in political science from American University in 2013. His dissertation, "Politics At Home Abroad: The Engagement of Mexican Migrants in their Home Towns" was supported by Fulbright, National Science Foundation, and Gill Family Foundation awards. He holds an MA in International Policy Studies from the Monterey Institute of International Studies (now the Middlebury Institute of International Studies) and Spanish and philosophy degrees from Santa Clara University.

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Our Values on the Line:

Migrant Abuse and Family Separation at the Border

Executive Summary

This study assesses the extent to which Customs and Border Protection (CBP), and particularly the Border Patrol, fulfills its obligation to protect the civil and human rights of migrants apprehended, detained, and deported back to Mexico. This assessment is conducted in the context of increasing expenditures on enforcement and criminalization of immigration at the Southwest border. Using an original survey of Mexican migrants deported to the border city of Nogales, Mexico, adjacent to Nogales, Arizona, the study systematically documents some of the negative consequences of this increased enforcement for the migrants themselves. The data were gathered during the second half of 2014 and the first three months of 2015, allowing for an assessment of CBP practices during the first year of Commissioner Gil Kerlikowske's tenure.

The analysis shows that deported migrants suffered a broad range of abuses at the hands of Border Patrol agents, as well as inhumane conditions in detention facilities. Nevertheless, those alleging abuse were unlikely to file a complaint. The data also show that family members apprehended together by the Border Patrol are regularly not deported together. Sometimes migrants are separated from their family members before being apprehended by Border Patrol agents. However, in most cases separation is attributable to predictable consequences of an increased criminalization of unauthorized migration or an administrative failure of U.S. immigration authorities to determine familial relationships and keep track of the whereabouts of family members through the process of detention and deportation.

Whatever the causes, the consequences of family separation include significant financial hardships, security risks, and an increased likelihood of suffering some sort of abuse after deportation. Finally, the analysis shows that migrants are regularly deported at night, potentially increasing risks to their security. Based on these results, the analysis points to several key areas for needed reform. Policy recommendations are summarized below and outlined in detail at the end of the report.

Recommendations for Limiting Abuse by Border Patrol and Holding Agents Accountable

- Independent and internal oversight mechanisms should be strengthened to tackle misconduct and abuse at CBP.
- CBP must ensure an open, accessible, transparent, accountable, and responsive complaint process.
- CBP agent and officer training should be overhauled.
- All CBP agents should be equipped with body–worn cameras.
- CBP short–term detention conditions must be improved, including length of holding in short–term facilities, reasonable temperature control, access to medical care, nutritious and sufficient food, access to a phone, and improved access to civil society organizations to improve accountability.

Recommendations to Reduce Migrant Vulnerability During and After Deportation

- Deportations to Mexican border towns should occur only during daylight hours, with all necessary operational capacity changes implemented to achieve this goal.
- Department of Homeland Security (DHS) must ensure that all persons apprehended with family members are aware of where that family member is within the system.
- CBP should suspend and reevaluate the utility and humanitarian impact of referring people to the Department of Justice (DOJ) for border prosecutions for illegal entry and reentry in light of findings of the DHS Office of the Inspector General (OIG).
- DHS must put in place a standard process to determine familial relationships among apprehended migrants and should take care to preserve family unity upon deportation.
- DHS should take care to preserve the unity of additional categories of family members apprehended together.
- Upon release from CBP custody, and after individuals have an opportunity to receive their bag of belongings and review its contents, all persons should receive an administrative exit interview with translation as necessary.

Our Values on the Line:

Migrant Abuse and Family Separation at the Border

I. Introduction

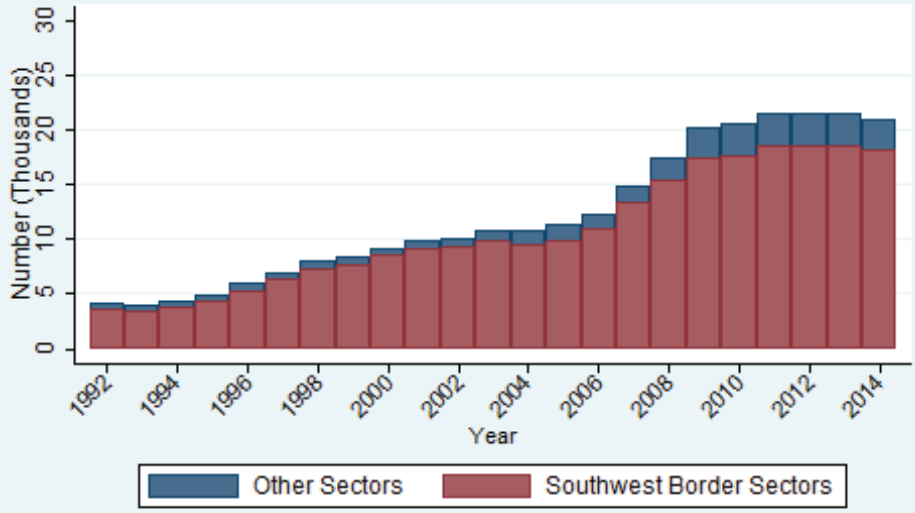
Objectives

This study assesses the extent to which Customs and Border Protection (CBP), and particularly the Border Patrol, fulfills its obligations to protect the civil and human rights of migrants apprehended, detained, and deported back to Mexico. This assessment is conducted in the context of an increasing prioritization of immigration enforcement at the Southwest border as compared to interior enforcement. The period examined roughly corresponds to CBP Commissioner Gil Kerlikowske's first year in the position.

In March 2014, Commissioner Gil Kerlikowske was confirmed as the Obama Administration's first permanent commissioner of Customs and Border Protection, a job many agreed would hold steep challenges even for the experienced and esteemed law enforcement executive. The agency had been riddled with allegations of corruption, abuse, mismanagement, and lack of transparency under his predecessors. Expenditures of the U.S. government on border enforcement have grown tremendously in the past two decades without proportionate investment in necessary quality assurance, accountability, internal investigation, and other good governance safeguards.

The number of Border Patrol agents has quintupled in the last two decades and has doubled since 2004 (see Figure 1).[1] This has arguably made it difficult for CBP to properly vet all of its

Figure 1. Massive Expansion of Southwest Border Patrol
Fiscal Years 1992 - 2014



Source: U.S. Border Patrol Fiscal Year Staffing Statistics (FY 1992 - FY 2014).
US CBP, Summaries and Statistics. Analysis by author.

new hires, which has been a key factor explaining the prevalence of complaints of abuse of migrants by Border Patrol agents.[2] Former Assistant Commissioner of Internal Affairs at CBP James Tomsheck goes a step further. In written correspondence with the author and KBI staff, he asserted that the failure to adequately screen and vet new CBP Law Enforcement Officers "is the overarching issue that impacts all others addressed" in this report.[3] These failures, he contests, have caused immediate and long–term damage to the credibility of the Border Patrol as a federal law enforcement agency. Many Border Patrol agents, including those hired between 2006 and 2008, are well–qualified and execute their duties with professionalism. Unfortunately, on a systemic level, the more than doubling in size of the Border Patrol during the Administration of George W. Bush, including the hiring of 12,000 new agents in just over two years between August of 2006 and December 2008, resulted in a sharp and consistent decline in "the quality and suitability of the Border Patrol applicant pool."

Another relevant feature of this unprecedented hiring initiative, which likely exacerbated the problems endemic to the effort, was the expansion of commercial background investigation (BI) contracts, which Assistant Commissioner Tomsheck attests compromised the quality of investigations.[4] Based on evaluations conducted by CBP Internal Affairs (CBP–IA), it was shockingly

Shocking Failures of the CBP Process of Screening and Vetting New Hires: Testimony of Former Assistant Commissioner of the CBP Office of Internal Affairs

At my request, and with the support of Commissioner Basham, Customs and Border Protection Internal Affairs (CBP–IA) sought and obtained authority to conduct pre–employment polygraph testing of the law enforcement officer (LEO) applicant pool. The first pre–employment polygraph exams were administered in February of 2008, during the final phase of the [2006 through 2008] Border Patrol hiring initiative. The results of the initial polygraph testing were shocking. Confirmed by detailed admissions of the applicants, it was clearly established that more that 55 percent were very clearly unsuitable for employment as federal LEOs. In addition to this remarkable finding it was further established that many of the applicants had prior involvement in felony crimes, [including] violent crimes. A particularly relevant finding was the large number of applicants who had previously engaged in smuggling activity.

As CBP–IA phased in pre–employment testing, the polygraph was temporarily placed after the pre–employment background investigation. This was a temporary requirement that was the result of the concurrent processing of the applicant by CBP's human resources. This created an opportunity to examine the large amount of data captured during this period. The final analysis in this project confirmed that more than 50 percent of the applicants who had cleared a background investigation (found suitable for employment) failed to clear the pre–employment polygraph. More than 80 percent of these applicants provided detailed admissions that included all of the admissions found in the LEO applicant pool. Most importantly, this group included some applicants currently involved in smuggling activity and at least one confirmed infiltrator directed at CBP by a cartel.

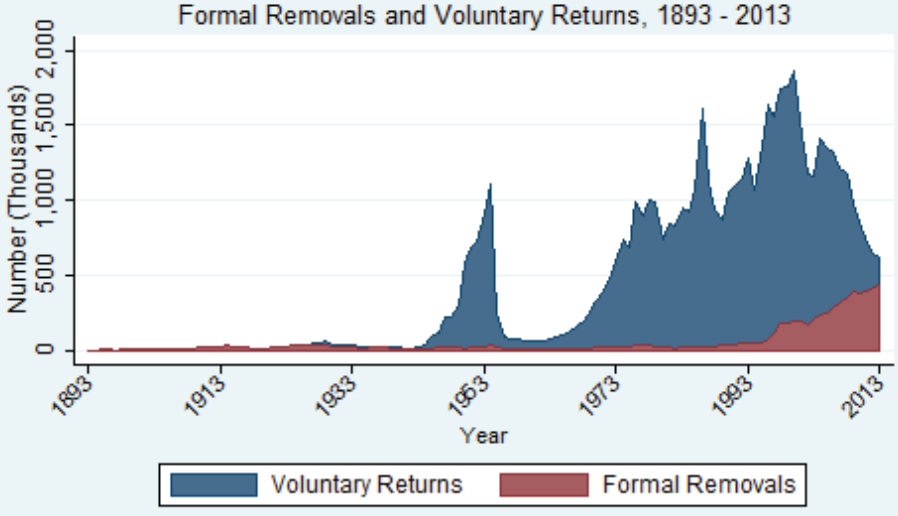
This initial analysis was generated from a study group of 1,000 CBP LEO applicants. This project confirmed that the standard Single Scope Background Investigation (SSBI) mandated by Office of Personnel Management (OPM) for all federal law enforcement positions was highly ineffective when used in the CBP applicant process. The implications of this research project were startling. Between 2006 and 2012, more than 15,000 CBP LEOs had been hired based on a suitability determination based exclusively upon a background investigation. There is every indication that more than half of these current CBP LEOs were unsuitable for employment as a federal LEO. There is every indication that the majority of these CBP LEOs have presented and will continue to present problems.

revealed that more than half of the Border Patrol law enforcement agents (LEOs) hired during this period failed the pre–employment polygraph test, and 80% of these admitted to a range of crimes, including active involvement in smuggling activity and violent crimes (see Box 1). Furthermore, the investigation revealed that at least one hire had been planted by a cartel. Beyond these shocking revelations, the commissioner also highlights the fact that "CBP does not utilize any variation of psychological testing that is widely used throughout the U.S." This is another crucial shortcoming of the agency's process of screening and vetting applicants and likely helps to explain the high levels of agent misconduct and abuse of migrants examined in this report.

Despite the surge in hiring of law enforcement agents, and the concomitant failures to screen and vet applicants, there has not been corresponding growth in staff dedicated to ensuring officer accountability. A recent study of the CBP Integrity Advisory Panel, found specifically that there has not been a commensurate increase in Internal Affairs staff "to timely and effectively investigate allegations of corruption and use of excessive force involving CBP personnel."[5]

As the Border Patrol staff and budget have rapidly expanded in recent years, CBP has shifted its strategy of border enforcement by increasingly targeting for criminal prosecutions immigrants entering the country away from official ports of entry. Even as the overall number of Mexican migrants apprehended at the Southwest border has plummeted from more than a million in 2005 to just over a quarter of a million in 2014,[6] those apprehended are increasingly likely to be formally removed from the country as opposed to voluntarily returned without penalties, which had been the norm for Mexican migrants before 2005 (see Figure 2).[7] One consequence of formal removal is an increased likelihood of referral to the Department of Justice on criminal immigration charges if a migrant is caught on a subsequent attempt at crossing, typically resulting in incarceration. Formal removal for unlawful entry carries additional consequences for migrants as well, when compared to the previously more prevalent practice of so–called "voluntary" return. For example, a formally removed individual is typically no longer eligible for a family–based or work–related visa because of a permanent bar under the Immigration and Naturalization Act (INA), though this permanent bar can be reduced to 10 years with a special waiver. This intensification of

Figure 2. Formal Deportation Orders Now the Norm



Source: U.S. Department of Homeland Security, Yearbook of Immigration Statistics, 2013. Enforcement Actions, Table 39. Aliens Removed or Returned: Fiscal Years 1892 to 2013. Analysis by author.

enforcement has been solidified in a new set of policies known as the "Consequence Delivery System" (CDS), formally launched on January 1, 2011.[8] In addition to the aforementioned limiting of voluntary returns in favor of formal removals, the CDS has increasingly subjected immigrants to criminal charges—particularly prosecution and incarceration of repeat immigration law offenders—and remote repatriations,* which deport migrants to distant ports of entry rather than the one closest to the point of apprehension.[9]

Among the objectives of the CDS, as with the border build up more generally, is to make unauthorized and irregular entry into U.S. territory more difficult and to make unauthorized immigration and repeat attempts at entry after deportation less likely. There is considerable debate over how successful these measures have been at deterring unauthorized immigration, and research has shown a number of negative and unintended consequences.[10] In fact, a recent internal report of the Office of the Inspector General of the Department of Homeland Security found that the Border Patrol has failed to accurately measure the deterrent effect and the cost–effectiveness of one of the key CDS programs—Operation Streamline and associated border prosecution programs—on illegal entry and re–entry of migrants.[11] Particularly relevant to this study are the increased likelihood of formal removal, criminal immigration charges, and long–term detention or incarceration, coupled with the policy of lateral deportation—an attempt to make repeat attempts at entry more difficult by separating migrants from smugglers—all of which may explain rapid growth and a very high prevalence of family separation.

Methods

To assess the extent to which the rights of deported migrants are protected by U.S. immigration authorities in this context of "enforcement with consequences," this study analyzes an original survey of deported migrants carried out from July 2014 through March 2015 in the Mexican border city of Nogales, adjacent to Nogales, Arizona (see Appendix for details). This long survey, was administered to a sample of the migrants served by the Aid Center for Deported Migrants (CAMDEP) in Nogales, Sonora, Mexico. Every migrant who is served at CAMDEP takes a short survey, which collects less detailed information. During 2014, 7,507 migrants took the short survey, and 3,016 took the survey in the first six months of 2015. During the latter period, 38.4% of deported Mexican migrants (109) reported abuse by Border Patrol, comparable but slightly higher than the rate reported by migrants in the long–form survey used in this report. This suggests that the researchers avoided oversampling migrants who had experienced abuse, making the estimates reported below conservative. That is, things are probably even worse for migrants than they seem.

The long–form survey focuses on two key areas of concern: 1) "Border Patrol Abuse and Misconduct" and 2) "Operational Practices and Increased Vulnerability." The first area of concern is with alleged misconduct and abuse committed by U.S. Border Patrol agents against migrants. The study presents a detailed analysis of the different types of misconduct and abuse by agents and the extent to which the agency informs migrants of their right to file a complaint about abuse and misconduct.

To gain a better understanding of the different causes of family separation during deportation—and thus offer workable solutions—the analysis: 1) identifies migrants who were traveling with family members when apprehended by U.S. Border Patrol agents; 2) determines if they were separated during this process; and 3) examines the different reasons why the separation occurred. Family separation causes increased vulnerability upon deportation, as does the practice of night deportations, which the study also analyzes in this section.

Findings

More than one–third of deported migrants interviewed suffered some type of abuse or mistreatment at the hands of Border Patrol agents and

*In addition to the Alien Transfer Exit Program—popularly referred to as "lateral repatriation"—this category of high consequence immigration enforcement has included the Mexican Interior Repatriation Program (MIRP), which deports immigrants to cities in the Mexican interior, closer to their hometowns.

while in DHS custody. This study identifies the prevalence of a broad range of abuses, as well as inhumane conditions in detention facilities. Despite the frequency of alleged abuse, migrants were very unlikely to file complaints. In addition, the analysis shows that family members apprehended together are systematically separated from each other, and that this separation leads to significant financial hardships, security risks, and an increased likelihood of victimization by criminals and corrupt police once individuals are deported to Mexico. Based on these results, the analysis points to several key areas of potential reform, and a set of policy recommendations are included at the end of the report.

Background

This report updates and expands upon the findings of a previous study, "Documented Failures: The Consequences of Immigration Policy on the U.S.–Mexico Border."[12] That study was commissioned by the Kino Border Initiative (KBI), a bi–national organization located in Nogales, Arizona, and Nogales, Sonora, Mexico, which works to promote U.S.–Mexico border and immigration policies that affirm the dignity of the human person and a spirit of bi–national solidarity. KBI staff and volunteers had long observed a range of problems and hardships experienced by the immigrant communities they served, especially those who had recently been deported. These observations were confirmed through the systematic study of KBI–collected data, a comprehensive Mexican Government survey, and in–depth interviews with migrants, Border Patrol staff, and Mexican immigration authorities.

In addition to updating the findings from "Documented Failures," the present study, as noted, goes into much greater depth to better understand the causes, consequences, and multiple dimensions of family separation at the border and Border Patrol misconduct. The detailed analysis of these processes makes evident the multiple causes of the problems and forms the basis of the policy recommendations that reduce or eliminate the unnecessary hardships and human rights violations suffered by migrants at our border.

II. Border Patrol Abuse and Misconduct

This section focuses on Border Patrol abuse and misconduct. The data show that abuses and failures to follow established procedures are widespread, suggesting that the prevalence of abuse is not simply a question of a few bad apples, but rather a systemic problem that must be addressed at the level of leadership and policy. This section documents the different types of abuse committed by U.S. immigration authorities, particularly Border Patrol agents—including theft, physical abuse, verbal abuse, and inhumane detention conditions.

Frequency and Types of Abuse and Misconduct

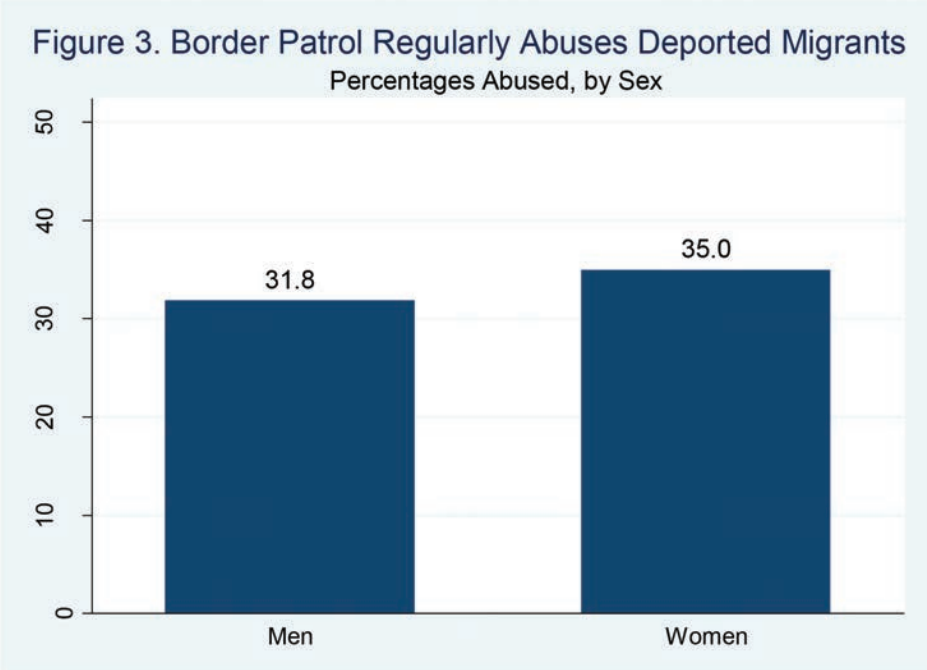
Analysis of data from the Mexican government's Survey of the Northern Border, which surveys deported Mexican migrants at cities along the Northern border of Mexico, shows a consistently high likelihood of abuse of migrants by Border Patrol agents. The rates of alleged abuse of some kind—including physical abuse, verbal abuse, and theft of belongings—grew consistently from 2007 through 2012, when they peaked at more than one in five migrants.

Data collected in the second half of 2014 and the first quarter of 2015 for this report show even higher rates of abuse, with more than one in three men and women experiencing some type of abuse or mistreatment at the hands of U.S. immigration authorities (see Figure 3).* There are many different ways in which migrants are

*There are a number of possible reasons why these numbers are considerably higher than those reported in Figure 7 based on the EMIF survey. Most importantly, the variable measured in that survey was only based on those migrants that had either been physically or verbally abused or had their possessions confiscated and not returned by Border Patrol. The survey used to generate Figure 8, in contrast, simply asked deported migrants if they had been the victim of any abuse or mistreatment by the Border Patrol from the moment of their capture until their deportation. Other important differences between the two data sources are that EMIF surveyed migrants at half a dozen cities across Mexico's Northern border, as opposed to just the city of Nogales, and does not include data for 2014 or 2015.

TESTIMONY 1:
Physical Abuse and Inadequate Follow–Up on Complaint

Roberto, 33, tried to cross into the U.S. through Nogales in October 2014. He and another migrant were hidden in some brush when a Border Patrol agent saw them. When Roberto saw that the agents were heading toward him, he knelt down. An agent told him to put his hands on his head and he did. At that moment, another agent ran up to him and kneed him in his ribs, which pushed him violently from his kneeling position to the ground. The agent then put his boot on Roberto's head so that he could not move. The other migrant that was detained at the same time said "why are you hitting him if he hasn't done anything?" The agents then grabbed Roberto by his collar to pull him up and the agent who had kneed Roberto started to yell at the other migrant. He said that he could kill both of them because they were in his country. While putting handcuffs on Roberto and the other migrant, the agents continued to hit them, threaten them, and spit on them. When the supervising sergeant arrived, the agent who had kneed Roberto said that both migrants had resisted arrest, which was not true. Once the two were in the car, the sergeant asked Roberto what had really happened and Roberto explained. He pointed out to the sergeant where he was bruised in the ribs and said that if he had been running away there would have been no way that the bruises would be in that particular place. The sergeant saw that Roberto could not even get down from the car because of the pain and told him that he could file a complaint. Upon arrival to a Border Patrol holding cell, an agent took him to a medical clinic where the doctor said that he had broken two ribs and in the official medical report said that the break was because of a blow. Roberto was brought to Tucson and someone from Internal Affairs interviewed him about the incident, took photos of the injury, and said they would investigate. He was then charged with illegal reentry and through Operation Streamline was sentenced to a month in jail. In his month in jail, he was not given another medical exam. The officials from Internal Affairs that he tried to follow up with regarding the investigation never responded to him. He is not sure whether or not they carried out an investigation or disciplined the officer.



abused or mistreated by U.S. immigration authorities. To better understand the nature of this problem, the survey also asked deported migrants if they had suffered any of 13 different types of abuse or mistreatment from the time of their capture to their deportation to Mexico. Table 1 shows the number and percentage of deported migrants interviewed that experienced each different type of abuse or mistreatment analyzed, while also looking at these differences by gender. Figure 4 shows comparisons by gender of the six most common types of abuse and misconduct.

Overall, the most common type of abuse was verbal abuse, experienced by 16.1% of migrants. This was by far the abuse most commonly experienced by women, with more than one in five (20.3%) saying they had been verbally abused by Border Patrol agents. Men were considerably less likely to complain of verbal abuse, at 13.8%. The rate at which migrants suffer verbal abuse is particularly important, as this can deter them from making complaints, serve as a form of coercion, and make it more difficult to identify individuals in need of international protection (i.e., victims of human trafficking, refugees, or other persecuted people). The second most common form of mistreatment was the confiscation of and failure to return belongings. It is noteworthy here that men were more likely than women to experience this form of abuse (16.4% compared to 11.9%). Similarly, almost one in 10 men had their money taken and not returned, compared to 4.1% of women. Failure to return belongings makes migrants extremely vulnerable at the moment of deportation. When their identifications are not returned, Mexican deportees are sometimes detained by Mexican police and more vulnerable to extortion. When returned without money or cell phones, they can become stranded in dangerous border cities without the ability to communicate with family members.

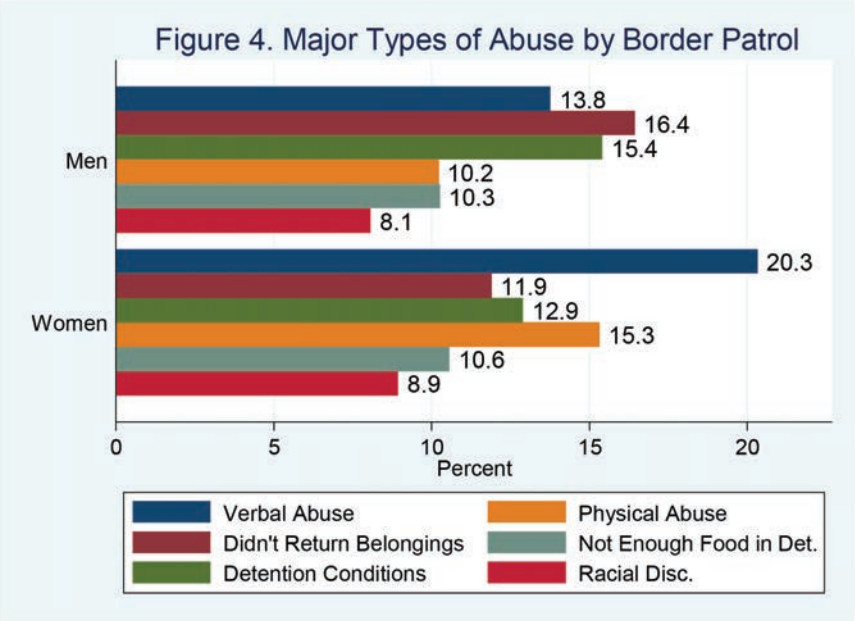
Detention conditions also frequently violated the human rights and dignity of migrants. Indeed, in June 2015, several organizations* filed a class action lawsuit alleging that the Tucson Sector Border Patrol violates the U.S. Constitution and its

*These include the American Immigration Council, the American Civil Liberties Union Foundation of Arizona, the National Immigration Law Center, the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, and Morrison & Foerster LLP.

Table 1. Deported Migrants Mistreated by CBP in Many Different Ways
Number and Percentages by Gender

	Men		Women		Total	
	#	%	#	%	#	%
Verbal Abuse	31	13.8	25	20.3	56	16.1
Didn't Return Belongings	37	16.4	15	11.9	52	14.8
Poor Detention Conditions	35	15.4	16	12.9	51	14.5
Physical Abuse	23	10.2	19	15.3	42	12
Lack of Food in Detention	23	10.2	13	10.6	36	10.3
Racial Discrimination	18	8.1	11	8.9	29	8.4
Didn't Return Money	22	9.8	5	4.1	27	7.8
Poor Conditions During Transport	14	6.2	4	3.3	18	5.2
Denial of Medical Services	8	3.6	3	2.4	11	3.2
Rape	2	0.9	1	0.8	3	0.9
Dog Bite in BP Custody	2	0.9	1	0.8	3	0.9
Sexual Assault/Harassment	1	0.4	1	0.8	2	0.6
Extortion	1	0.4	1	0.8	2	0.6

Note: Number percentages do not add up to 100% because many migrants experienced more than one type of abuse or mistreatment.



own policy by holding migrants in cold, overcrowded, filthy conditions and denied adequate food, medical care, and sanitation and personal hygiene items. One in seven deported migrants complained about inhumane conditions in detention centers, and 10.3% specifically complained about a lack of food. The second most common type of abuse suffered by women was physical aggression (15.3%), 50 percent higher than the physical abuse rate for men (10.2%). These numbers indicate that even beyond the more high–profile incidents of excessive use of force, physical aggression toward migrants is not uncommon. In the desert, abuse such as that suffered by Roberto (Testimony 1) often goes unreported and undisciplined. Better training and more robust oversight could reduce the number of these incidents. Finally, 8.4% of deported migrants said they had been victims of racial or ethnic discrimination by CBP staff from the time of their apprehension to their deportation. This number is troubling because the Justice Department's new guidance to prohibit racial discrimination in policing practices specifically exempts some law enforcement activity "in the vicinity of the border" from that prohibition.[13] The definition for what constitutes the vicinity of the border is not clarified in the guidance. In any case, the high percentage of migrants expressing that they have been victims of discrimination should provide yet another impetus to specifically apply the Justice Department restrictions to all border security activities.

Less common forms of abuse listed in Table 1 include poor conditions in transportation to and from detention or to the border for deportation and the denial of necessary medical services (18 and 11 migrants in our sample, respectively). Criminal behavior by Border Patrol agents reported by migrants interviewed includes extortion (2 migrants interviewed); sexual assault and harassment (2 migrants); and rape (3 migrants). While the numbers of migrants surveyed who suffered these abuses are not high, this criminal behavior is sufficiently grave to merit attention and concern, particularly given the vulnerability of migrant women and children to predatory behavior.

Migrants Don't Tend to File Complaints About Abuses

Although abuse and mistreatment of migrants by Border Patrol agents is a common occurrence, as shown above, it is extremely rare for migrants to file a complaint. As shown in Figure 5, fewer than one out of every 12 (7.7%) deported migrants who reported some type of abuse filed a complaint with U.S. immigration authorities. Migrants

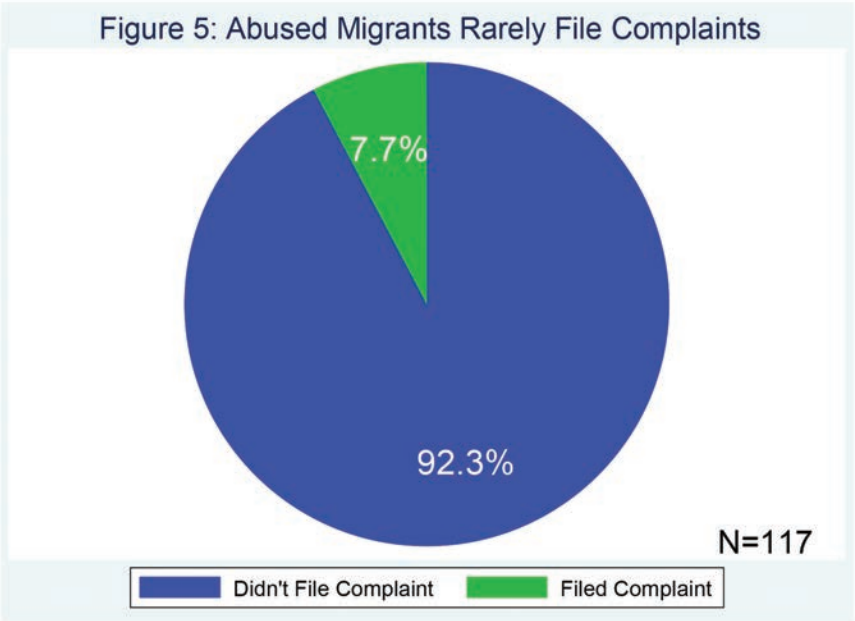
filed complaints about a broad range of abuses including: sexual assault, harassment, extortion, physical abuse, verbal abuse, confiscation and failure to return belongings and money, denial of medical care, poor conditions during transport, racial discrimination, and inhumane conditions and insufficient food in detention centers.* In fact, the only two categories of abuse that were not denounced by at least one migrant were rape and dog bites (though these violations were reported to researchers). Of the nine individuals who did file complaints, three said they were satisfied by the response from Border Patrol, and six were not. Though these numbers are too small to make generalizations, this finding at least suggests that processes could be improved to ensure more satisfactory responses to complaints that are filed. In fact, a belief that filing a complaint will not make a difference and may lead to retaliatory action may help explain why formal complaints are so rarely lodged. The story of Alma and Lizbeth (Testimony 2) and Roberto (Testimony 1) are examples of the ways in which those pursuing formal complaints are often left confused and unsatisfied by the follow–up on the part of the agency. The infrequency of complaints filed by

TESTIMONY 2:
Sexual Abuse and Challenges in Filing a Complaint

Alma, 42, was traveling with her daughter Lizbeth, 24, in March 2015. They could not make it any further in the desert so they sat down to wait for Border Patrol agents. When the agents arrived, they threw the women's food on the ground and said, "you have rat food." They then started to pat down Alma and Lizbeth. Alma was bothered by the way that one male officer was patting down Lizbeth because he seemed to be doing so in an overly sexualized way. At one point when he was touching her in this sexualized manner, she said, "that's my underwear!" When Alma tried to object, the other agents got angry at her. Upon arrival at the holding cell, they decided to file a complaint about the agent's actions. They signed various papers but the officials at the short term detention facility said they could not receive the complaint. The next day, a lawyer arrived to speak with both Alma and Lizbeth about their treatment but neither are sure if that was a formal complaint. A few hours later they were both deported and upon arrival in Mexico filed a complaint with the Mexican consulate. They are not sure what has come of their efforts to denounce the abuse.

*It should be noted that since migrants were able to report all types of abuse that they experienced, several of those who filed complaints had experienced more than one type of abuse. The structure of the survey does not make it possible to identify if the complaint filed focused on one or multiple abuses experienced.

Figure 5: Abused Migrants Rarely File Complaints



migrants who suffer abuse are also likely due to a complaints process that former CBP Assistant Commissioner of Internal Affairs James Tomsheck described as "a complicated and bureaucratic mechanism that is both highly inefficient and ineffective."[14]

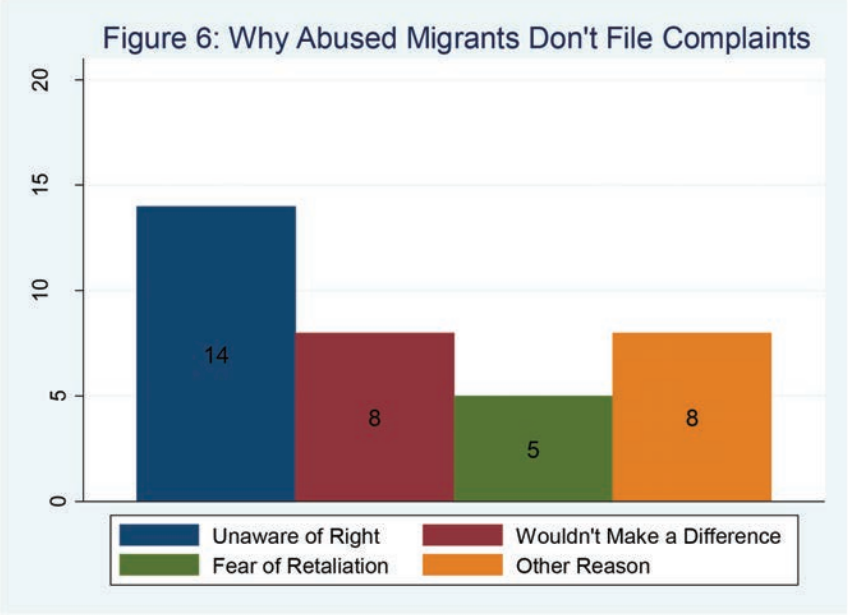
As noted, more than nine out of 10 deported migrants who experienced abuse at the hands of Border Patrol agents *did not* file a formal complaint. When asked why they didn't, a majority did not provide any answer. Figure 5 shows the numbers of deported migrants responding to the survey that did answer these questions. The most common reason provided was that migrants were unaware that they had a right to complain (14 respondents, 13% of those who did not file a complaint). Eight migrants—7.2% of those who did not complain—said they didn't think it would make a difference, and the same number said there was another reason. Finally, five migrants said they didn't complain despite having experienced mistreatment because they were afraid of retaliation.

As a recent analysis of some 800 complaints of Border Patrol abuse showed, even when complaints are filed, CBP leadership documented that they took action to address complaints in only 3% of cases that had been closed.[15] Coupled with the general finding here that complaints are exceedingly rare, it is evident that there is virtually no accountability for abuse or misconduct by Border Patrol agents.

III. Operational Practices That Increase Migrant Vulnerability

This section discusses the operational practices of DHS that increase vulnerability for migrants at the moment of their deportation. The two practices highlighted in this study are family separation and night deportations. The bulk of this section focuses on the problem of family separation that occurs during the process of deportation and identifies several different causes of this separation. After the analysis of family separation, this section discusses the prevalence of night deportations and the hazards that the practice causes.

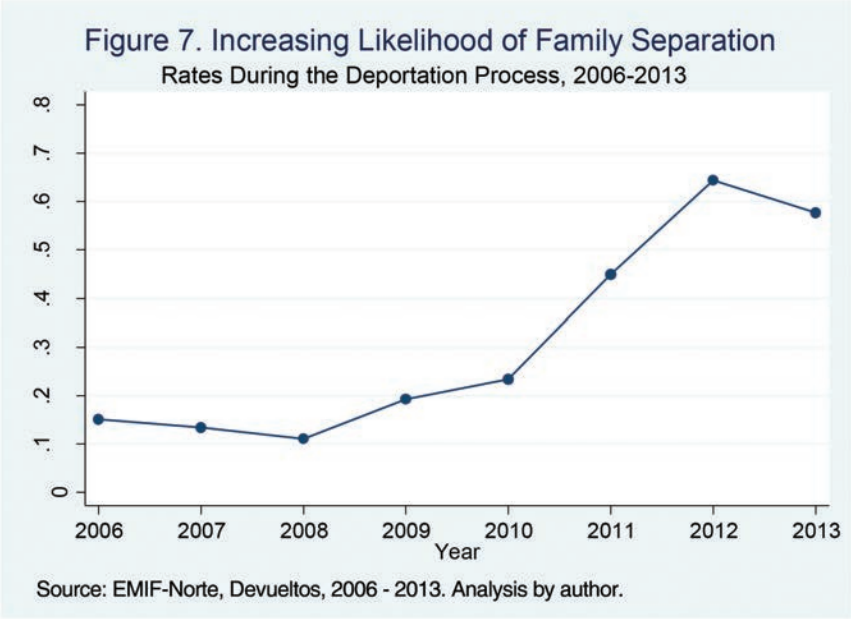
It is the policy of the U.S. Department of Homeland Security to preserve "[t]he unity of families . . . during repatriation, taking into consideration administrative parameters."[16] Previous research has shown, however, that this form of family separation is rampant,[17] and subsequent analysis has shown that family separation has been on the increase (see Figure 7).[18] It is a concern of DHS—as well as the immigrants themselves, human rights advocates, and citizens—to better understand why this is happening

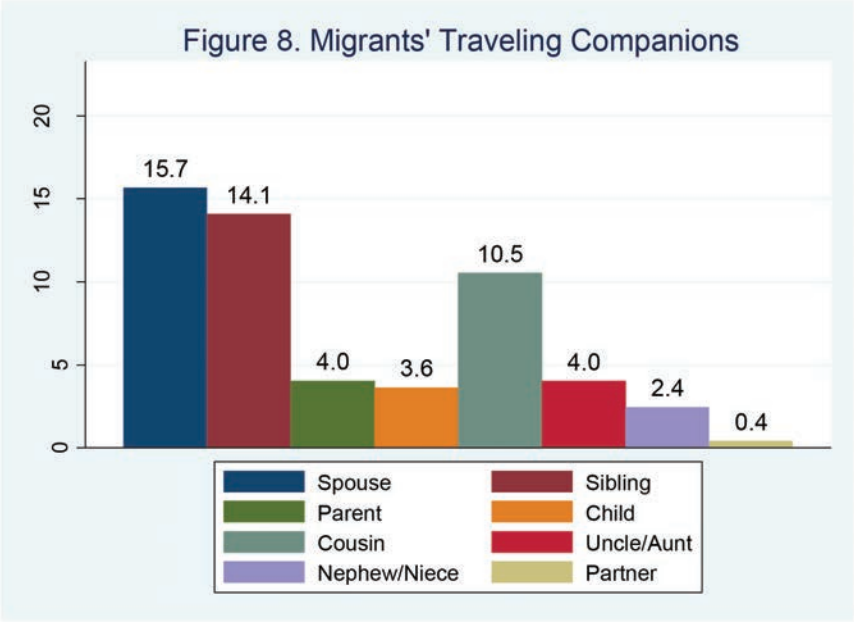


and to determine what changes to policy and procedure are possible.

The causes of this form of family separation can be roughly divided into three main categories. First, sometimes, immigrants are separated from their traveling partners before they are apprehended by Border Patrol agents or while attempting to escape capture. Although CBP should have clear processes through which detained and deported migrants can be reunited with family members from whom they were separated, this form of separation is beyond the direct control of CBP.

The second category of separation is explained by the willful or negligent separation of families by CBP in violation of current policy. For example, in a scenario that interviews and analysis suggest is quite prevalent, family members are apprehended together, but are deported to different ports of entry. Family separation of this sort could be mitigated by simple procedural changes to more explicitly direct agents to determine family relationships, actively prevent the separation of family members when it is avoidable, and assist migrants in ascertaining the whereabouts of their family members within the chain of CBP custody. A third category of causes of family separation during the process of detention and deportation is attributable to impacts of border enforcement policy more generally. As such, this type of separation could be limited in the future through administrative changes and the exercise of prosecutorial discretion or through legislative reform. For example, one cause of family separation is the long–term detention or incarceration of one or more family members in a group. Many such cases are attributable to increasingly strict border enforcement policies under the larger umbrella of the "Consequence Delivery System," including the collateral criminal prosecution and incarceration consequences of civil migration related offenses. Under this set of policies, immigrants are more likely to be formally removed, and thus subject to long–term incarceration if they attempt re–entry within five years, making family separation upon subsequent attempts at illegal entry more likely.[19] In some of these, separation may be occurring because one or both deportable family members are criminally charged. In such cases, CBP officials could exercise prosecutorial discretion on the grounds that families should not be separated, and deport migrants with their family members rather than referring them to federal border prosecution programs that sentence migrants to prison terms. Overall, it is clear that one consequence of the increased criminalization of unauthorized immigration and the increased likelihood of formal removal as opposed to voluntary return (see Figure 2) is a higher prevalence of family separation.

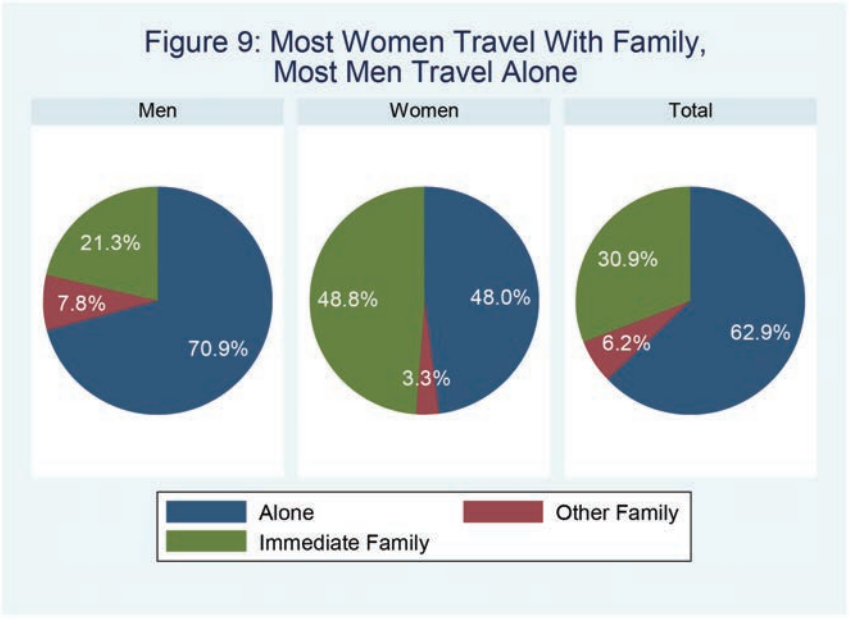




Do Migrants Travel with Family or Alone?

The analysis finds that more than one in three (37.4%) migrated with at least one family member, and the remaining 62.6% did not. As shown in Figure 8, it was most common for migrants to travel with a spouse (15.7%), a sibling (14.1%), or a cousin (10.5%). Some 15% of those surveyed were traveling with some other family member.

As highlighted above, a 2004 memorandum of understanding between the U.S. and Mexico stipulates that it is DHS policy to protect the unity of families. However, families are defined to be *immediate* families (spouse, parent, child, and sibling), rather than extended families (e.g., aunt/uncle, cousin, niece/nephew, etc.). To reduce the vulnerability of migrants upon deportation, including harm by criminal gangs and extortion by corrupt officials, DHS should prioritize keeping



immigrants together with these extended family members, as well as any other traveling companions. For example, Alonso, a migrant interviewed in the Kino Border Initiative Aid Center for Deported Migrants (CAMDEP, in Spanish), was separated from his nephews and cousin. Maintaining their unity would have prevented stress and perceived insecurity for his family (see Testimony 3). Nevertheless, for the purposes of this analysis, the focus is placed on separation from *immediate* families, as this provides for a more direct evaluation of CBP compliance with standing policy. As Figure 9 shows, most women were traveling with family members (52.1%, almost all of which were immediate family members). Seven out of 10 (70.9%) men traveled without family members. Three in 10 (30.9%) of the deported migrants surveyed were traveling with at least one member of their immediate families when crossing into the U.S.; 6.2% were traveling with *only* a non–immediate family member; and the remaining 62.6% were traveling with no family members.

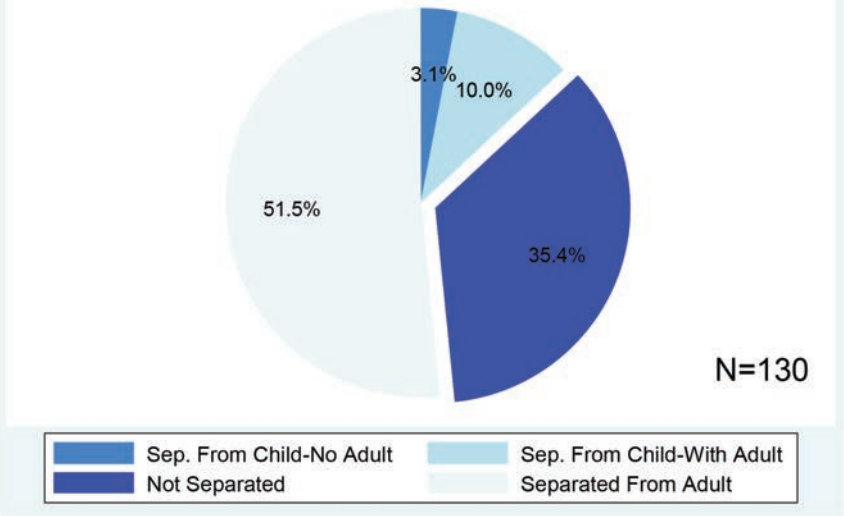
Prevalence of Family Separation

Two out of three (64.6%) migrants who crossed into the United States with immediate family members and were deported to Nogales were separated from at least one of those family members by the Border Patrol during the process of detention and deportation (see Figure 10).* Of those who were separated from immediate family members, 17 (13.1%) were separated from a child, and four of those 17 children were unaccompanied by another adult.† Two of these four were minors themselves who had been separated

*This estimate is consistent with estimates of family separation rates based on other data sources, including the Mexican government's Survey of Migrants at the Northern Border (EMIF–Norte, author calculations) and a short form survey of deported migrants conducted on a massive sample at the Aid Center for Deported Migrants (CAMDEP, in Spanish) in Nogales, Mexico, the same site where the survey used in the present analysis was conducted. This congruence is important, and suggests that the sample of migrants surveyed here are representative of the larger population of migrants deported to Nogales, as well as those deported to other cities along Mexico's northern border.

†The margin of error (95% confidence) for the estimate of the percent separated from a minor is 5.8%, meaning that between 7% and 19% of those separated from a family member were separated from a minor. The percent of those minors that were not still with an adult was below the margin of error, meaning that considerably more or fewer deported migrants are separated from children who remain unaccompanied by an adult.

Figure 10: Migrants Regularly Separated From Family When Deported, Often From Children



from underage siblings. The other two were separated from their uncle and spouse. Overall, 11 migrants surveyed (3%) were minors themselves. Nine of these youth were traveling with immediate family members and two were separated by the Border Patrol during the deportation process.

To provide more specific policy recommendations it is necessary to identify the prevalence of different types of family separation. As mentioned above, sometimes family members are not deported together because they are not apprehended and detained together, and mitigating this type of family separation is beyond the mandate and ability of CBP. The survey identified migrants who were separated from their family members before being detained, as well as cases where the family member managed to escape apprehension (see Figure 11). Of those separated, nine were separated before being apprehended by the Border Patrol and in three cases, the separation occurred because the family member escaped. Overall, about one in seven separations (14.3%) are attributable to this type of cause (blue bars in Figure 11).

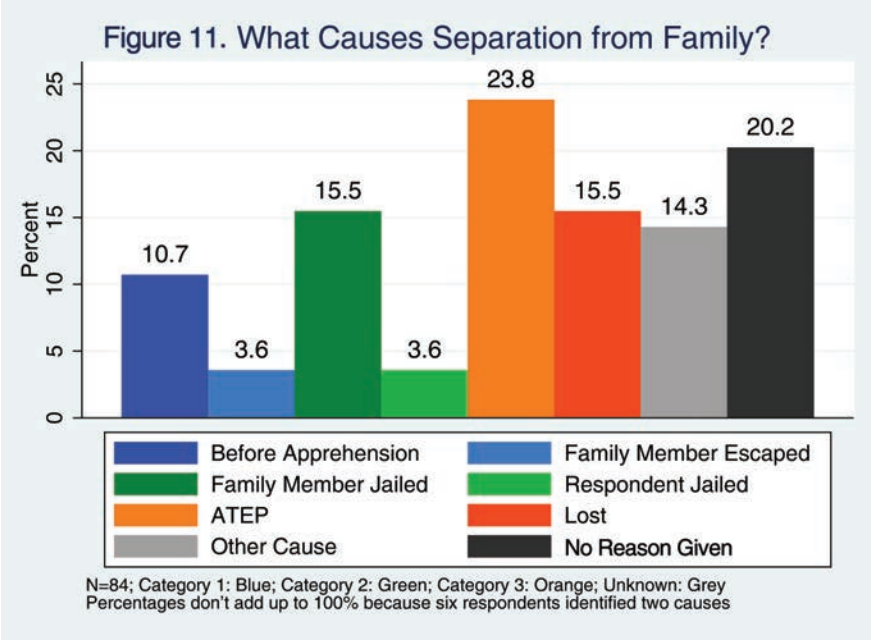
The second general category of family separation occurs when one family member is subject to long–term detention, including criminal detention, and the other is not.* Of the 130 people traveling with an immediate family member, at least 13 were separated because their family member was still jailed, and three of those interviewed were separated because they had been in detention themselves, accounting for their separation from family. Almost one in five separations (19.1%) is attributable to this set of causes (green bars in Figure 11).

Third, family separation occurs as a result of the CBP Alien Transfer Exit Program (ATEP), which is more commonly known as lateral repatriation. Although the aim of ATEP is to break up smuggling rings and make repeat attempts at irregular migration less common, one consequence of this program is an increased likelihood of family separation. Of the 84 deported migrants separated from immediate family members, 20 said the cause of the separation was that they were deported to different places and 13 did not know where their family member was (orange slices in Figure 11). That means that well over one in three family separations could be remedied with more explicit CBP policies to ensure the identification of

TESTIMONY 3:
Separation from Family Members Who Are Minors

Alonso, a 30–year–old Mexican national, was crossing the desert in July 2015 with his two nephews, ages 16 and 17, and his cousin, age 15. The four were fleeing insecurity back home. It was their first time attempting to enter the U.S. Only about 30 minutes into their journey, they were found by a Border Patrol helicopter and detained. All four of them were put into the same truck and taken to the Tucson Border Patrol Station. Upon arrival at the station, Alonso was placed in a different cell than his nephews and cousin. At no moment did the Border Patrol agents ask Alonso or his nephews or his cousin if they were related. Alonso's nephews were not asked if they feared return to Mexico and when Alonso mentioned concerns about violence, the Border Patrol agent responded that many people made similar claims. After spending a night in the Border Patrol holding cell, Alonso was deported through Mexicali the next day without ever seeing an asylum officer. He thought that his teenage relatives had also been deported through the same city. But upon arrival in Mexicali he asked the Mexican consulate if the children had already been deported and the consulate told him that they had no information about them. Later that day, Alonso called his sister and discovered that his nephews and cousin had been deported through Nogales. He had to wait another day in Mexicali so that his family could send him the 540 pesos for the bus to Nogales. By the time Alonso arrived at the DIF shelter in Mexico where his nephews and cousin were, they had waited in the shelter for three days. They had no idea where their uncle was and thought that possibly he had been given a longer jail sentence. While Alonso was able to be reunited with his nephews, the DIF shelter would not permit him to take his cousin out of the shelter because cousins are not allowed to assume custody of underage migrants.

*Note the questions used to identify this type of separation asked if the migrant interviewed or her/his family member had been jailed ("*encarcelado*"), making it impossible to identify whether the person was imprisoned for criminal immigration violations, or if s/he was being held in jail pending a hearing in civil immigration court.



family relationships of migrants when in custody and to ensure that they are not deported to different places or at different times.*

Finally, a remaining 12 migrants identified an unspecified other reason for the separation, and 17 did not identify a cause (gray bars in Figure 11). The cause or causes of separation from family members for this latter group could be any of the identified causes, or a different cause. That is, it is reasonable to assume that each of the categories delineated above is likely an underestimate, though there is no way to determine what the cause of separation was for these missing cases. Indeed, it may be that the migrants themselves are unaware of the cause.

The "Consequence Delivery System" has created a long and tangled chain of custody of apprehended immigrants, and the complexity of that process, together with the lack of access to a means of communication, causes people to get lost or separated during detention, transfer, incarceration, and deportation. Border Patrol agents may incorrectly enter names, deny access to phone calls, or deny access to the individual's consulate.[20] All of this can make it more difficult for migrants to locate family members who are in custody or have been recently deported, making it more difficult for CBP agents to reunite family members where possible. Beyond Border Patrol, both Immigration and Customs Enforcement (ICE) and U.S. Marshals may fail to provide phone calls or impose such formidable restrictions on calls so as to make it practically impossible for migrants to contact family member traveling companions. While individuals are in custody, they often do not have information on where they are, what judicial or detention process they face, and how family members can contact them. Any of these factors can result in their family members being unsure of where they are detained and how long they will be detained. This is exacerbated when both family members are in the system or when one or both have already been deported. For example, neither Alonso (Testimony 3) nor Lucia (Testimony 4) had clear information about their family member traveling companions' whereabouts until after they and their family members had been deported.

*It is also worth noting that of the migrants separated from family members, immigration authorities asked migrants if they were traveling with family members in at most 28% of cases and told migrants where their family members were and why they had been separated less than half of the time.

Some Consequences of Family Separation

Much anecdotal testimony has indicated that being separated from one's traveling companions, especially when they are members of one's immediate family, makes migrants more vulnerable and can cause financial hardship, among other negative impacts. To document this, we asked migrants if being separated from their family members had caused financial or security hardships. As depicted in Figure 12, more than one in every three migrants (38.1%) said that being separated had resulted in financial difficulties due to the fact that their family member was the one carrying their money. Increased insecurity was even more common, with seven in 10 (69%) migrants reporting that being separated from a family member during the deportation process made them feel less secure. There were no significant differences by gender. One example of this sense of insecurity is Lucia, a woman migrant whose separation from her brother and nephew put both her and them at very significant risk of harm, as illustrated by the kidnapping that her relatives suffered after their deportation (see Testimony 4).

To complement our measurement of this increased feeling of insecurity, migrants were also asked if they had experienced any form of abuse *after* being deported back to Mexico (including theft, assault, or other violence at the hands of criminals, Mexican authorities, or others). Overall, only 6.4% of deported migrants reported being victimized after being deported to Mexico.* However, as Figure 13 shows, migrants who were separated from the family members they were traveling with were more than twice as likely to have already experienced abuse in the short period of time after their deportation than those who had not been separated from a family member or who had not traveled with a family member in the first place (12.3% compared to 4.9%).† This difference is mostly driven by separated men's greater likelihood of victimization (16.1% compared to 3.6%).

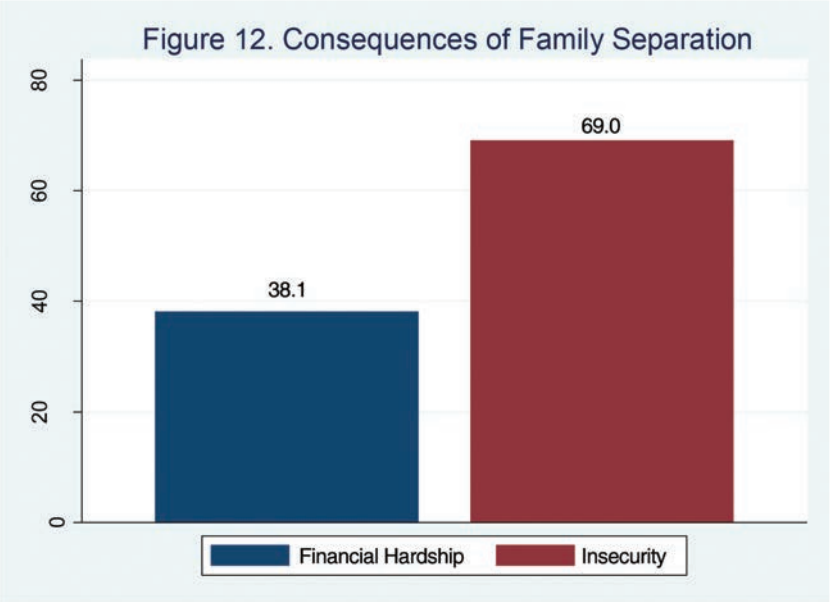
TESTIMONY 4:
Separation of a Woman from Her Family Causes Extreme Vulnerability

Lucia is 32 years old and emigrated from Oaxaca. She was traveling with her brother and her nephew and they crossed into the U.S. near the small town of Roma, Texas in July 2015. The three of them had been walking for 5 days when Border Patrol detained all of them. At the moment of detention, no agent asked about whether they were family members. They were taken to the McAllen Border Patrol Station and Lucia told the agent who interviewed her that she came with her brother. She asked to be deported with him. The Border Patrol agent responded that it didn't matter if they were siblings, there was no guarantee they would be deported together. Lucia's brother and nephew were deported to Matamoros a day after they were detained, while Lucia remained another day in detention and was then deported through Reynosa. She did not know that they had deported her brother and nephew because they were in different cells in the Border Patrol Station. When she arrived with Mexican migration officials in Reynosa, she asked about her brother but they said they did not have any information about him or where he had been deported. Lucia felt very vulnerable by herself in Reynosa because she knew that the city was dangerous. She quickly went to the migrant shelter in town and called her family. When she talked to her family, she realized that her cousin and her brother had been kidnapped immediately after being deported through Matamoros. They escaped after two days. Lucia did not leave the migrant shelter for the remainder of her time in Reynosa because the she was afraid that she, too, would be kidnapped.

This evidence—coupled with the more than two–thirds of separated migrants who felt less secure—shows how one of the unintended consequences of U.S. migration authorities' failure to adequately ensure the unity of families in the process of detention and deportation is increased insecurity and risk of falling victim to violence.

*It is worth pointing out that this is a very conservative estimate, as most of those surveyed had just been deported. Most had been back in Mexico for a day or less when interviewed, and some 90% had been deported within the previous 4 days. Had it been possible to track these migrants and ask them the same question a week or more later, it is likely that the numbers would be larger.

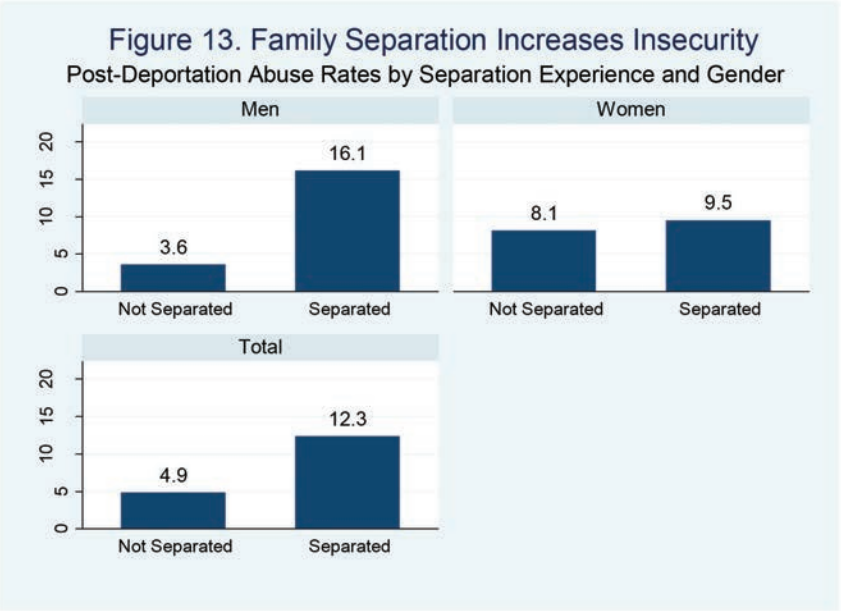
†This difference is statistically significant; p = 0.02 level.



Summary of Family Separation

This section has shown that the separation of deported migrants from their family members is rampant and places migrants at increased risk of violence, abuse, and financial hardship in Mexico. As such, U.S. immigration authorities must do more to ensure the unity of families and keep them informed of the whereabouts of their family members when keeping them together is not practicable.

This section has also shown that there are a range of causes of family separation and has identified multiple reasons why migrants often do not know where their family members are after deportation. There are reasonable justifications for some cases of family separation, and under current



immigration law it may not be feasible to entirely eliminate the separation of families by U.S. immigration authorities. But there is no justification for failing to inform migrants of the whereabouts of their family members within the detention system, or the port through which they were deported. There are also grounds under the DHS memo on prosecutorial discretion of November 20, 2014, for CBP officials to forgo sending migrants with previous deportations to criminal proceedings, including Operation Streamline, when they are traveling with family members.[21]

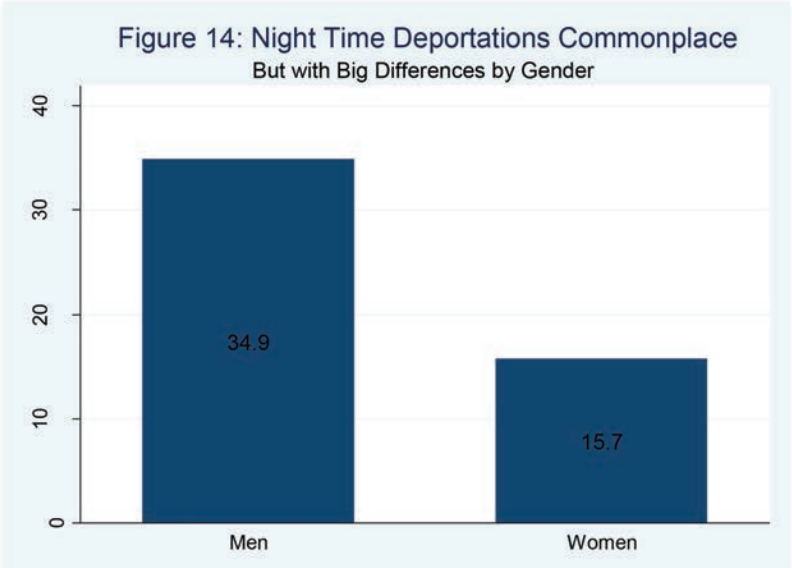
Nighttime Deportations

The timing of deportations also has important implications for the security and protection of migrants. Mexican border cities like Nogales tend to have high levels of violence and migrants are particularly vulnerable to abuse by criminals and corrupt police and other public officials in Mexico. This vulnerability is greater after the civic and religious organizations that provide shelter to migrants have closed their doors for the night. As such, migrants deported after dark are at greater risk, and this is a practice that should be largely limited or eliminated altogether, whenever possible. Indeed, official DHS policy now seeks to limit nighttime deportations, and it has been a topic of ongoing discussions with its Mexican counterpart, the National Migration Institute (INM, by its Spanish acronym). This recognition of the need to limit nighttime deportations is a notable change since the publication of "Documented Failures" in early 2013 and the Administration should be commended to the extent that agencies have begun to address this operational failure.

Nevertheless, the data show that migrants are still regularly deported after dark (see Figure 14). Over the period studied, 28% of migrants were deported at night. Men were more than twice as likely as women to be deported after dark; however, one of every seven women (15.8%) was also placed in this vulnerable position. Recent accounts from border service providers and shelter staff indicate that repatriation agreements that emphasize that the agency should prioritize daylight deportations seem to be making an impact on this problem in the last few months, but further monitoring is necessary, particularly as the agency continues to insist it requires the "flexibility" to execute deportations into Mexico well into nighttime hours.

IV. Policy Recommendations

This report has presented a systematic, data–driven analysis of some of the hardships and challenges regularly faced by migrants and their families. The analysis focused on two key categories of problems faced by migrants who are deported



back to Mexico, with particular emphasis on their interactions with and the behaviors of U.S. immigration authorities. This final section of the report makes policy recommendations based on the findings. If implemented, these reforms would begin to address the most pressing problems faced by migrants and their families and help CBP to do its job more humanely, more efficiently, and with greater accountability.

Limiting Abuse by Border Patrol and Holding Agents Accountable

Steps must be taken to ensure that migrants know their rights and are provided with reasonable mechanisms through which to exercise them. It is particularly important that steps be taken to allow migrants to file complaints without fear of retribution or further abuse. DHS and especially CBP must address the clear pattern of abuse and lack of professionalism among U.S. migration authorities who apprehend and detain migrants along the U.S.–Mexico border. The high rates of abuse not only violate the civil and human rights of migrants, but they are detrimental to CBP's objectives of successfully identifying and prosecuting smugglers and recognizing migrants with credible fears of repatriation who may be eligible for humanitarian relief.

Recommendation: Independent and internal oversight mechanisms should be strengthened to tackle misconduct and abuse at CBP. The Administration and Congress must take steps to strengthen internal and independent oversight of CBP. Building internal oversight capacity should include the implementation of recommendations of the Homeland Security Advisory Council's "Interim Report of the CBP Integrity Advisory Panel" to increase the number of internal investigators focused on reducing corruption and holding agents accountable for inappropriate use of force, professional and criminal misconduct, and abuse of migrants and citizens of border communities. Investigations of all use–of–force incidents should be undertaken regardless of whether a formal complaint is filed. Quarterly reports on the number and type of complaints, the number and type of misconduct investigations, and analysis of trends should be submitted to relevant Congressional committees on an ongoing basis, posted on the DHS Open Data website, and also referred to an independent community stakeholder comprised DHS Border Oversight Task Force (a body proposed in various legislative initiatives).[22] These reports should form the basis for evaluating progress on addressing endemic accountability issues and for developing new officer/agent trainings for CBP.

Recommendation: CBP must ensure an open, accessible, transparent, accountable, and responsive complaint process. In coordination with other DHS components, CBP should institute a uniform and streamlined complaint process, whereby complainants can lodge concerns to a single aggregator of cases that immediately files registered complaints with CBP Internal Affairs, DHS Civil Rights/Civil Liberties, and the DHS Office of the Inspector General. CBP complaints should be accepted through multiple formats (electronic, written, and via phone) and be accessible and available for submission in multiple languages. CBP should establish a 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. Complainants should receive follow–up and updates on the status of the investigation into their complaint in a timely fashion, including complainants who were subsequently removed from the United States with a complaint pending. Individuals actively involved in an investigation of a complaint should not be deported, in accordance with the June 2011 memo on "Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiffs" and the aforementioned November 2014 memo.[23]

Recommendation: CBP agent and officer training should be overhauled. CBP agent and officer training should emphasize conflict de–escalation techniques, language and cultural competency, and trauma–informed approaches to community policing. Officers and agents should additionally receive annual scenario–based training on safeguards related to the protection of and respect for the due process rights of trafficking victims, children, and asylum seekers. Trainings should be revamped to eliminate military–style tactics and should place particular emphasis on law enforcement rules of engagement and use of force. All CBP agents and officers must be trained on the complaint process, whistleblower protections, ethical and professional conduct, and the obligation to first and foremost preserve human

life and human dignity in the context of enforcing the law in border zones.

Recommendation: All CBP agents should be equipped with body–worn cameras. Cameras should be able to record both audio and video and must be turned on for every interaction with the public, particularly every apprehension. 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.

Recommendation: CBP short–term detention conditions must be improved in the following ways:

- Holding cells must respect maximum capacity limitations, be kept at a reasonable temperature, and have information on individuals' rights clearly posted in English and Spanish.
- Individuals placed in holding cells should be given a medical examination and access to medical care, nutritious and sufficient food, and a phone to contact family members, the consulate, and/or attorneys.
- Border Patrol should adopt policies similar to the ICE directive on visitation[24] so as to ensure that NGOs have access to these facilities and regular opportunities to interview persons detained in those facilities to verify that conditions are adequate.
- No individuals should be detained in a holding cell for longer than 12 hours, whether at single or multiple facilities. Any facilities holding individuals who will have been detained for longer than 12 hours by the time of their release should include access to showers and beds.

Operational Safeguards to Reduce Migrant Vulnerability During and After Deportation

Moving beyond what was possible with past studies, the present analysis has identified several causes of family separation. Sometimes migrants are separated from the family members with whom they are traveling before they are apprehended by the Border Patrol. Other times, one family member is subject to long–term detention or imprisonment, while the other is removed immediately. Migrants may also be separated from their family members due to the Alien Transfer Exit Program (ATEP)—known popularly as "lateral repatriation"—in which CBP deports migrants to distant ports of entry, rather than the one closest to the point of apprehension. An additional subgroup includes numerous deported migrants who have no information on where their family member is and what has caused their separation. Improved policies and practices are necessary to reduce the vulnerability of migrants during and after deportation, including the increased risks of financial and personal security of being separated from traveling partners.

Recommendation: Deportations to Mexican border towns should occur only during daylight hours, with all necessary operational capacity changes implemented to achieve this goal. CBP and ICE should fully implement the "presumption of daytime returns" clause of repatriation agreements with Mexico. Allocate more resources to back up staffing and facilities so that holding facilities do not become overwhelmed to a degree that necessitates returning people during nighttime hours.

Recommendation: DHS must ensure that all persons apprehended with family members are aware of where that family member is within the system. To facilitate information about where family members are located, the following steps should be taken by CBP, ICE, and the U.S. Marshals:

- Guarantee access to phone calls, including international calls, when an individual is initially detained and every time that individual is transferred to a different location. Call duration should be at least two minutes.
- Ensure that agents enter detained individuals' names accurately in the system, expand the detainee locator system to include individuals in Border Patrol custody, and ensure that locator information always reflects an individual's current location.
- Inform individuals in custody of their exact location and of the status of their case and the legal process going forward, with

necessary translation and commensurate with necessary safeguards regarding communications with pro se and represented individuals.

- If an individual is detained with a family member, inform that individual of their family member's whereabouts every time their relative is transferred.

Recommendation: CBP should suspend and reevaluate the utility and humanitarian impact of referring people to the Department of Justice (DOJ) for border prosecutions for illegal entry and reentry in light of findings of the DHS Office of the Inspector General (OIG). Short of suspending the program, CBP must begin to positively exercise discretion in making decisions about which individuals should be referred to the program. The CBP must develop a formal tool to weigh individuals' equities and avoid referring individuals with protection needs, including asylum seekers and trafficking victims; individuals apprehended with family members who would be deported separately if one or both were prosecuted; and individuals with mental or physical health needs. This exercise of discretion is well within CBP's purview and is in line with the spirit of the Administration's guidance in the "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants" memo released in November 2014, which seeks to encourage agents and officers to weigh humanitarian factors and other positive equities when implementing deportations.[25]

Recommendation: DHS must put in place a standard process to determine familial relationships among apprehended migrants and should take care to preserve family unity upon deportation. The agency should avoid repatriating family members to separate ports of entry—a practice exacerbated by the ATEP program—undercutting the agency's stated goal of preserving family unity and promoting migrants' safety and security in the days and weeks after deportation.

Recommendation: DHS should take care to preserve the unity of additional categories of family members apprehended together. DHS must work to ensure its policy of recognizing the familial relationship of common–law spouses is carried out in practice. Moving beyond current policy, which aims to maintain family unity for immediate family members (parents, children, spouses, and siblings), DHS should expand its principle of family unity to include uncles, aunts, cousins, and in–laws and should ensure that migrants be repatriated with their traveling companions in general if they so choose.

Recommendation: 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.

Appendix

The survey instrument used to generate the data for this report, "Survey of Migrants: Crossing, Apprehension, Detention, and Deportation," was collected from a sample of deported Mexican migrants between July 2014 through March 2015 at the Aid Center for Deported Migrants (CAMDEP, by its Spanish acronym) cafeteria in Nogales, Sonora, Mexico. Migrants were interviewed by Kino Border Initiative (KBI) staff, who were trained in the survey instrument, and volunteers on different days of the week and throughout a range of months. A total of 358 surveys were collected, almost nine out of 10 in 2014. More than half of the surveys were collected in November (89), December (62), and October (52). Before their morning meal, KBI staff and volunteers would give a brief explanation of the survey and its objectives. After finishing their meal, volunteers or staff again approached tables of migrants asking for volunteers to take the survey, and they were very willing to collaborate. Staff and volunteers orally administered the survey and entered the answers by hand. The main limits on the number of surveys collected was the volunteer time required to accurately administer them.

Key questions from the survey used in the analysis of this report are translated below:

- Were you deported at night or during the day?
- Since your recent deportation to Mexico, have you been a victim of any type of abuse?
- When you entered the United States, were you accompanied by a family member?
    - If yes, who accompanied you (mark all that apply):
        - wife/husband
        - father/mother
        - son/daughter
        - brother/sister
        - grandchild
        - niece/nephew
        - cousin
        - uncle/aunt
        - grandparent
        - partner
- From the time of your apprehension until the time of your deportation by the Border Patrol, were you separated from a member of your immediate family (child, spouse, parent, sibling)?
    - If yes:
        - Is s/he a minor?
        - Did s/he remain accompanied by an adult?
- If the Border Patrol separated you from a member of your immediate family:

- Did they ask you if you were traveling with family members?
- Did you inform them that you were traveling with family members?
- If no, why not?
  - They didn't ask
  - I didn't think it mattered
  - I didn't want them to know we were related
  - Another reason

- Did they explain why you were separated?

- When and under what circumstances were you separated from you immediate family member(s)?
  - Before being apprehended by migration authorities
  - Your family member escaped (and wasn't apprehended)
  - Your family member was jailed by migration authorities, and you weren't
  - You were jailed by migration authorities, and your family member wasn't
  - You were deported by migration authorities to different border cities
  - You don't know where your family member is
  - Another reason/cause
- Because of having been separated from your family member(s),
  - . . . have you suffered from financial problems because your family member carried your money?
  - . . . do you feel less secure?
- From the time of your capture until your deportation to Mexico, were you the victim of any type of abuse or mistreatment by the Border Patrol?
  - If yes, what abuse/mistreatment? (mark all that apply):
    - Physical abuse
    - Verbal abuse
    - Insufficient food in detention
    - Extortion
    - Racial/ethnic discrimination
    - Sexual abuse, harassment
    - Rape
    - Inhuman conditions in detention center
    - Poor conditions during detainee transportation
    - Denial of medical services
    - Dog bite
    - Another abuse/mistreatment
- Did Border Patrol agents confiscate your belongings without returning them?

- Did Border Patrol agents confiscate money you carried with you?
  - If yes, did they give you a check for the value of cash taken?
    - Were you able to cash it?
- If you were the victim of any abuse or mistreatment by Border Patrol agents, did you file a complaint?
  - If yes, were you satisfied with the response?
  - If you didn't file a complaint, why didn't you? (mark all that apply)
    - didn't know you had the right?
    - didn't think it would make a difference?
    - fear of retaliation
    - another reason

References

1 U.S. CBP. nd. "U.S. Border Patrol Fiscal Year Staffing Statistics (FY 1992 – FY 2014)." *United States Customs and Border Protection, Summaries and Stats*. Washington, DC. Retrieved from the Internet on June 25, 2015.

2 Graff, Garrett M. 2014. "The Green Monster: How the Border Patrol became America's most out–of–control law enforcement agency." *Politico*, November/December 2014. Retrieved from the Internet at http://www.politico.com/magazine/story/2014/10/border–patrol–the–green–monster–112220.html#.Vb_aMvlViko on August 3, 2015.

3 Written correspondence, James Tomsheck, former Assistant Commissioner of Internal Affairs, CBP, August 12, 2015.

4 Written correspondence, James Tomsheck, former Assistant Commissioner of Internal Affairs, CBP, August 12, 2015. According to Commissioner Tomsheck these private BI contractors, who were awarded more than $360 million contracts from September 2006 through December 2012, reduced their costs by compromising quality.

5 CBP Integrity Advisory Panel. "Draft – Interim Report." U.S. Department of Homeland Security Advisory Council. June 29, 2015.

6 United States, Customs and Border Protection. 2014.

7 Rosenblum, Marc R. and Doris Meissner with Claire Bergeron and Faye Hipsman. 2014. *The Deportation Dilemma*: *Reconciling Tough and Humane Enforcement*. Washington, DC: Migration Policy Institute.

8 Seghetti, Lisa. 2014. "Border Security: Immigration Enforcement Between Ports of Entry." Congressional Research Service, 7–5700, R42138

9 Seghetti, Lisa. 2014, *Ibid*.

10 These include a finding that increased enforcement beginning in the 1990s and accelerating after 9/11, did not slow migration flows, undercut the objectives of lowering the number of undocumented immigrants, as more chose to settle in the U.S. permanently rather than move back and forth between their home communities and the U.S. Furthermore, increases in border enforcement pushed migration flows to unpopulated areas in the desert and mountains, thus sparking the growth and sophistication of the migrant smuggling industry and increasing the number of migrant deaths during border crossings. See Cornelius, Wayne A. 2001. "Death at the border: Efficacy and unintended consequences of U.S. immigration control policy." *Population and development review* 27.4: 661–685 and Cornelius, Wayne. 2004 "Evaluating Enhance US Border Enforcement", Washington, DC: Migration Policy Institute.

11 Also deeply concerning was the finding of the report that CBP may be in violation of U.S. treaty obligations for its failure to have guidance on using Operation Streamline with migrants "who express credible fear of persecution or return to their home countries." See, Office of the Inspector General. U.S. Department of Homeland Security. 2015. "Streamline: Measuring Its Effect on Deterring Illegal Border Crossing." OIG–15–95. Washington, DC: U.S. Department of Homeland Security.

12 Danielson, 2013. *Documented Failures*: *The Consequences of Immigration Policy on the US–Mexico Border*. Report prepared for the Kino Border Initiative, Nogales, Arizona, U.S.A., and Nogales, Sonora, Mexico, with funding from Catholic Relief Services of Mexico, February 12, 2013.

13 U.S. Department of Justice. "Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity." December 2014.

14 Written correspondence, James Tomsheck, former Assistant Commissioner of Internal Affairs, CBP, August 12, 2015.

15 Martinez, Daniel E., Guillermo Cantor, and Walter A. Ewing. 2014. "No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse." Washington, DC: American Immigration Council, Special Report, May, 2014.

16 DHS (U.S. Department of Homeland Security). 2004. "Memorandum of Understanding between The Department of Homeland Security of the United States of America and the Secretariat of Governance and the Secretariat of Foreign Affairs of the United Mexican States, on the Safe, Orderly, Dignified and Humane Repatriation of Mexican Nationals." February 20, 2004.

17 Danielson, 2013, *Ibid*

18 Danielson, Michael S. 2014. "Consequences of the 'Consequence Delivery System': Family Separation during the Deportation Process at the U.S. – Mexico Border." Invited presentation at "Abriendo Caminos Hacia la Hospitalidad." The annual conference of the Jesuit Migration Network of Central America and North America, Guadalajara, Mexico, November 3 – 4, 2014.

19 Seghetti, Lisa. 2014, *Ibid*.

20 Danielson, 2013, *Ibid*.

21 Department of Homeland Security 2014. "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants." Memo from DHS Secretary Jeh Johnson, November 20, 2014. Retrieved from the Internet at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf on August 8, 2015.

22 See "Border Security, Economic Opportunity, and Immigration Modernization Act." S744, 2013.

23 Immigration and Customs Enforcement. 2011. "Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs." Memo from ICE Director John Morton, June 17, 2011. Retrieved from the Internet at http://www.ice.gov/doclib/secure–communities/pdf/domestic–violence.pdf on August 5, 2015, and Department of Homeland Security 2014, *Ibid*.

24 Immigration and Customs Enforcement. nd. "Stakeholder Procedures for Requesting a Detention Facility Tour." U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations, Office of State, Local, and Tribal Coordination. Retrieved from the Internet at http://www.ice.gov/doclib/ero–outreach/pdf/access–directive–stakeholder.pdf on August 5, 2015.

25 Department of Homeland Security 2014, *Ibid*.

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