

February 11, 2021

Secretary Alejandro N. Mayorkas  
U.S. Department of Homeland Security  
245 Murray Lane, SW  
Washington, DC 20528-0075

Dear Secretary Mayorkas:

We write to request that you address the abuses of power, due process violations, and breaches of human rights that immigrants at the border routinely experience at the hands of Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) agents. Specifically, we ask that you meet with individuals who have submitted unanswered complaints for violations and discuss with them the steps the Department of Homeland Security (DHS) will take to ameliorate the structural deficiencies in which these abuses are rooted.

The Kino Border Initiative (KBI) is a binational nongovernmental organization that provides humanitarian aid to migrants in Nogales, Sonora, Mexico and advocates for just and humane immigration policies on both sides of the U.S.-Mexico border. We work closely with the Florence Immigrant and Refugee Rights Project (FIRRP) to provide legal orientations and assistance to migrants in Nogales, Mexico. We look forward to working with you and civil society actors in supporting President Biden's efforts to build a humane immigration system. Towards that end, we offer to facilitate dialogue between you and other DHS representatives, immigrants who have submitted complaints for DHS mistreatment, and other nongovernmental organizations endorsing humane border practices.

Since 2015, the KBI has helped migrants returned to Mexico to navigate the CBP complaints process and record their accounts. FIRRP has also identified and followed up with complainants in the course of their legal orientation and representation work. This letter summarizes 73 complaints of families and individuals who have sought our assistance from 2017 through early February 2021. Six of the abuses we recount below occurred under the Biden administration, highlighting that policy pronouncements alone are a necessary, but insufficient, remedy.

The attachments to this letter provide both summary as well as detailed information on the treatment and conditions that led to these complaints. We urge you to address the violations documented by our organizations.

### **Areas of Abuse**

The majority (50) of the complaints we detail in the attachments stem from CBP's systemic failure to follow due process requirements for asylum seekers. These reflect four areas of due process concerns: wrongful expedited removal; improper Title 42 expulsions; violation of Migrant Protection Protocol (MPP) guidance, and inappropriate metering. These complaints

ought to factor heavily into the DHS reviews of expedited removal, Title 42, and MPP, which President Biden announced in his February 2<sup>nd</sup> Executive Order.

- Twenty-four due process complaints relate to wrongful expedited removal orders. In 19 instances, agents failed to refer a person to an asylum officer following that person's expression of fear of persecution or return, or a stated intent to apply for asylum. Another five complaints indicate that agents did not adhere to federal regulations requiring an agent to ask about a person's fear and record their responses. Four of these complainants were prosecuted for illegal entry, and three are asylum seekers who testified against smugglers.
- Thirteen complaints regard due process deficiencies with Title 42 expulsions, in which a CBP agent failed to consider application of the humanitarian exception authorized in the Department of Health and Human Services Centers for Disease Control and Prevention order. Three of these complaints involve insufficient or withheld medical care, and two include physical abuse. Moreover, three of these wrongful expulsions occurred after President Biden's inauguration and involve agents affirmatively misrepresenting asylum law.
- Eight due process complaints concern individuals returned under the Migrant Protection Protocols who were not allowed to provide proof or details of crimes committed against them in Mexico -- including kidnapping, assault, and extortion -- contrary to the MPP Guiding Principles.
- Five complaints involve due process violations in the metering process, three of which resulted in serious crimes committed against individuals waiting in the queue to seek asylum. One resulted in an unlawful turnback of an unaccompanied minor.

Nine complaints relate to physical abuse at the hands of CBP agents, two of which occurred under President Biden's administration. All involve subdued or surrendering individuals. Among these is an instance of a group of agents unleashing a dog to attack a seated individual, while one filmed the incident on a cell phone and others trained their weapons on the individual who was too fearful to defend himself against the dog.

CBP or ICE detention conditions are at the heart of five complaints. Four of these involve inadequate or withheld medical care, including one person whose injury went unaddressed for four months while in ICE detention.

Five complaints involve theft of a person's property or failure to return possessions, including cell phones and cash. Without these items, individuals returned to Mexico became even more vulnerable.

The removal process itself forms the basis of four complaints, including two family separations.

## Complaint Investigation Process

While the KBI advocates eliminating the systemic deficiencies causing these violations, we also are concerned about ongoing problems with the inefficient and ineffective complaint investigation process. As we detailed in a 2017 report,<sup>1</sup> CBP Office of Professional Responsibility, DHS Civil Rights and Civil Liberties, and the DHS Office of Inspector General are simultaneously responsible for oversight and investigation of complaints. Many complaints are not investigated by any of these three offices, but rather are addressed at the station level, regardless of the severity of the complaint. CRCL responded to 18 complaints stating only that it recorded the information in its database, rather than indicating it initiated an investigation. Out of the 63 complaints that a DHS office has acknowledged receiving, definitive results have been provided in only 14 cases. (Twelve complaints were dismissed or archived and 2 resulted in recommendations.) Considering the patterns of abuses we have observed, a more troubling problem with this system is its general failure to identify repeated infractions at a specific station or those within a particular abuse category.

We expect that DHS, under your leadership, will address the failures that led to the violations documented by the KBI and FIRRP and we welcome the opportunity to assist you in this work. These efforts must aim to correct the culture of impunity among agents and officers in the field, including holding individual employees and their supervisors responsible for past abuses. It is paramount, however, to acknowledge that individuals who submitted the complaints detailed here are still waiting for redress. Many have been victimized in Mexico following unlawful returns, scarred by CBP physical abuse, and otherwise left without the protection to which they are entitled under international and domestic law for asylum claims ignored. We urge you to take a first step in addressing these concerns by meeting with the people in Nogales, Sonora affected by harmful DHS policy and practice. Please advise us by February 22<sup>nd</sup> regarding your availability for a meeting.

Thank you for your attention to these concerns.

Regards,



Joanna Williams

Director of Education and Advocacy – Kino Border Initiative

Attachments: Complaint summaries and complaint details.

CC: With redacted summary attachment, various members of the 117<sup>th</sup> Congress.

---

<sup>1</sup> Kino Border Initiative, *Intake Without Oversight: Firsthand Experiences with the Customs and Border Protection Complaints Process* (July 2017) ([https://www.kinoborderinitiative.org/wp-content/uploads/2017/11/IntakeWithoutOversight\\_v06.pdf](https://www.kinoborderinitiative.org/wp-content/uploads/2017/11/IntakeWithoutOversight_v06.pdf)).