

ABUSES AT THE U.S.-MEXICO BORDER: HOW TO ADDRESS FAILURES AND PROTECT RIGHTS

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(Abridged version)



Photo Credit: CBP

Illustration Credit: Sergio Ortiz Borbolla



Kino Border Initiative
Iniciativa Kino
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“Border Patrol has the right to apprehend someone, but in the proper way, not wrongfully. Many people are afraid of the Border Patrol. Thanks be to God- He gave me the strength to endure and overcome what they [Border Patrol] did to me...People do not have to put up with Border Patrol’s abuses. Because it’s difficult, and my case is one example. An example for many people who maybe also have been run over, like me...

It is an example that I share with fellow migrants, so that they don’t become demoralized. If the Border Patrol hits you, demand your rights, because we all have rights.”

“Marco Antonio” who filed a complaint after the Border Patrol hit him and ran over his leg on a four-wheeler



Photo Credit: CBP
Illustration Credit: Sergio Ortiz Borbolla

Executive Summary

A U.S.-Mexico border that is well governed and that also treats migrants and asylum seekers humanely can go hand in hand and should not be seen as an unattainable aspiration. For this to happen, U.S. government personnel who abuse human rights or violate professional standards, must be held to account within a reasonable amount of time and victims must receive justice. Right now, at the U.S.-Mexico border, this rarely happens.

- Customs and Border Protection (CBP), the federal government's largest civilian law enforcement agency, has a persistent problem of human rights abuse without accountability. Many, if not most, CBP officers, and agents in CBP's Border Patrol agency are professionals who seek to follow best practices. However, the frequency and severity of abuse allegations indicate that a substantial number of officers and agents don't meet that standard. Further, the record suggests that existing investigations are flawed and incomplete, while disciplinary procedures are not compelling enough to change their behavior.
- This report gives numerous examples of alleged abuse, as well as insubordinate or politicized behavior since 2020. Some of the cases are severe, involving misuse of force or even loss of life. Many other examples of cruelty and victimization take place on a daily basis, such as unprovoked violence during arrests, abusive language, denial of food or medical attention, family separations, non-return of documents and valuables, dangerous deportations, racial profiling, and falsifying migration paperwork. The Washington Office on Latin America (WOLA) keeps a regularly updated database documenting these abuses.

- The investigations of many of these allegations would not take place without the work of outside actors like human rights defenders, journalists, whistleblowers and the victims themselves. Investigations can begin in two ways. Some—often, the most serious cases—start at U.S. government investigators’ own initiative, especially if the site of the abuse is a crime scene. Many others require outside actors to take the first step. Without their initiative, most such cases would never be investigated at all—and, as this report shows, many still don’t get investigated.
- For a victim or advocate seeking to make a complaint and achieve redress, the accountability process is bewildering, opaque, and slow-moving. Right now, outside efforts to gain accountability for abuse must go through a convoluted system that has been cobbled together in the 20 years since the Department of Homeland Security’s (DHS) founding. Four agencies with overlapping responsibilities handle complaints and pass cases between each other. All suffer from personnel and other capacity shortfalls, and some have insufficient power to make their recommendations stick.
- There are several frequent “failure points” where cases commonly lead nowhere, leaving victims without justice and harming the credibility of the DHS accountability process. In its accompaniment of migrant victims who come from CBP custody to its shelter in Nogales, Sonora, Mexico, the Kino Border Initiative (KBI) often sees complaints go nowhere. Cases get entered into a database without further action. They get closed because of ongoing litigation, even about general topics, or because “policy was not violated.” Cases get forwarded to other agencies, then nothing happens. Sometimes, there is no response at all. This report’s second section documents painful examples of abuses suffered and what this inability to get past “failure points” looks like, including to victims—some of whom are deported without ever speaking to an investigator.

- The status quo is unsustainable. Strengthening accountability will require action from many quarters. The way ahead involves improving the complaints process, investigations, discipline, congressional oversight, and cultural change. WOLA and KBI researchers drew on our experience, on many conversations with advocates and officials, and on extensive reading of existing literature to pull together more than 40 recommendations. Among them:
 - The complaints process: it is urgent to improve personnel capacity to reduce caseloads, to ease intakes, to offer real-time feedback to complainants about the status of their cases, to inform about resulting recommendations, and to explain why investigations were terminated.
 - Investigations: it is crucial to relieve complainants of the burden of knowing which of four agencies to complain to, to stop the DHS Inspector General (OIG) from freezing investigations by holding on to cases without acting, to improve agencies' ability to handle complaints with multiple allegations, to build up staffing, to deploy and use more body-worn cameras, to ensure that victims are interviewed, and to make top-level management changes at the OIG.
 - Discipline: it is vital to strengthen CBP's use of force standard to "necessary and proportionate," to make it more difficult to overrule investigators' disciplinary recommendations in human rights cases, to get officials in the chain of command out of discipline decisions, and to empower the National Use of Force Review Board to issue quicker, tougher decisions.
 - Congressional oversight: legislators and their staff need to carry out more hearings, issue more written inquiries, and add more reporting requirements about accountability, while passing legislation to clarify oversight agencies' jurisdictions and increase their funding.

- **Cultural change:** key steps include getting the Border Patrol Union out of human rights and other misconduct cases involving members of the public, taking stronger measures on sexual harassment and bolstering the recruitment of women, protecting whistleblowers, closing the current loophole allowing racial profiling, and taking Border Patrol agents out of asylum processing.

This agenda of recommended reforms is ambitious, and many sectors have roles to play: DHS officials, legislators, NGOs, journalists, philanthropists, and—first and foremost—agents and officers themselves. But as the many examples of injustice documented here make clear, there is no choice: this is a matter of democratic rule of law, both at the border and beyond it



Photo Credit: CBP
Illustration Credit: Sergio Ortiz Borbolla

Why is this important?

This report is a product of our organizations' years of work documenting human rights violations committed by U.S. federal law enforcement forces at the U.S.-Mexico border.

- The Washington Office on Latin America (WOLA), based in Washington D.C, maintains a database of about 400 cases—many of them severe—compiled since 2020.
- The Kino Border Initiative (KBI) has documented thousands of cases of abuse narrated by migrants who have sheltered at its facilities in Nogales, Sonora, Mexico. Based on these often severe cases, KBI has generated hundreds of formal complaints since 2015 in an effort to improve accountability.

We offer this report in the belief that it is possible to enact common-sense reforms that stop cruelty and align border governance with democratic values, even at a time when larger national debates on border and immigration policy are polarized and paralyzed. Regardless of where they stand politically, we believe that nearly all Americans—and nearly all employees of U.S. Customs and Border Protection (CBP) and its Border Patrol agency—agree that the abuses and behaviors described here are unacceptable. We believe that nearly all might share our view that this report's described "failure points" on accountability are fixable.

We hope that this report inspires, energizes, and offers a roadmap to advocates, scholars, journalists, legislative oversight staff, executive-branch policymakers, and others who agree that the present state of abuse and accountability at the U.S.-Mexico border demands deep reform. We publish with a key audience in mind: the agents and officers, at all levels of CBP and Border Patrol, who seek to do their job honorably and without a political agenda, and who recognize the harm that persistent impunity does to their institutions.

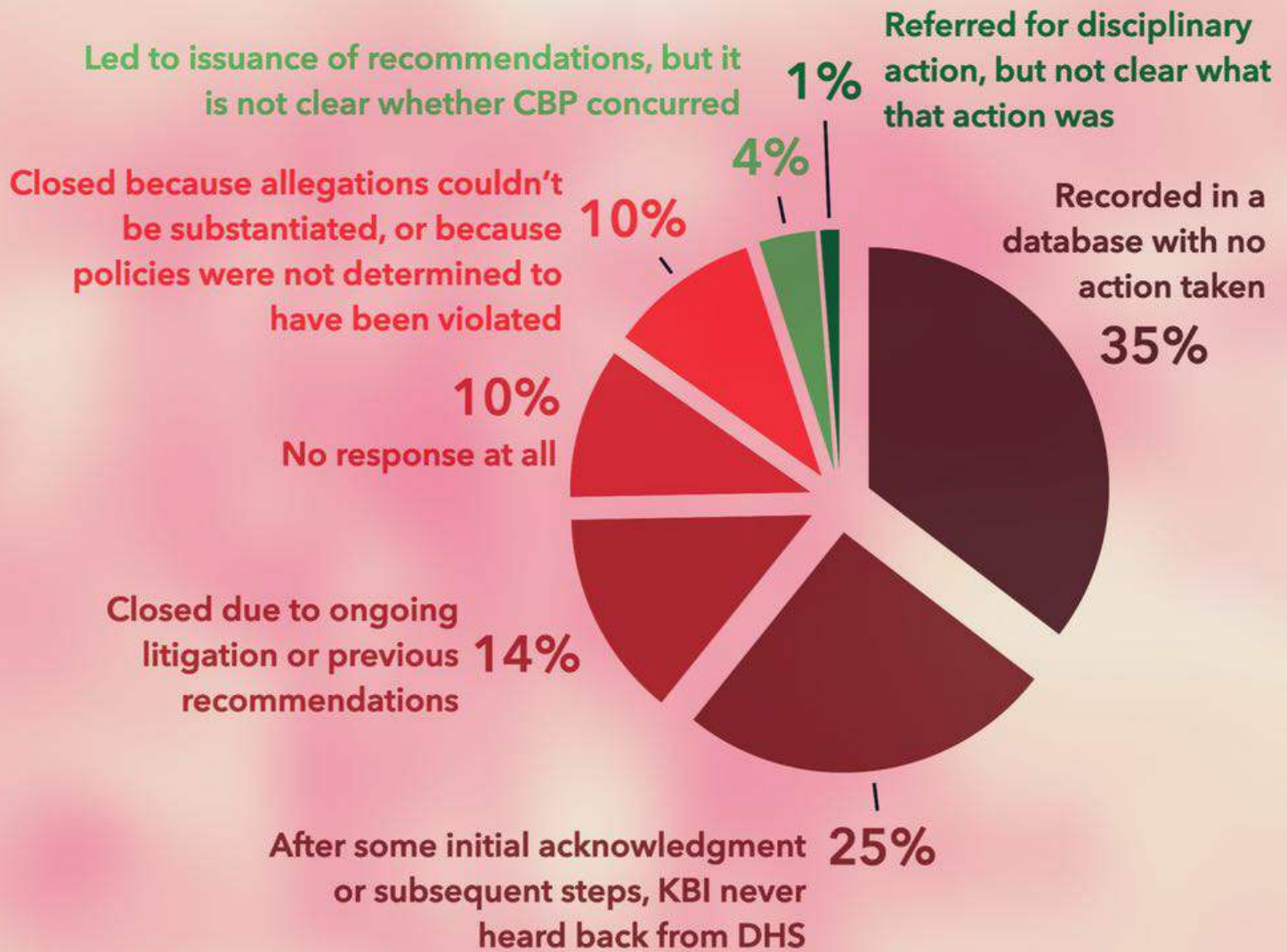
We have documented a reality that—when viewed together, not as a drumbeat of isolated episodes—is frankly shocking. High-profile cases of misuse of lethal force, dangerous vehicle pursuits, or fatal neglect happen amid an everyday backdrop of cruel, dehumanizing, and even racist conduct. CBP and Border Patrol personnel routinely use physical violence, including with women and children, without a self-defense justification. They regularly intimidate migrants with abusive, even racist or sexist, language. They deport and expel people under conditions that they know to be dangerous. They separate families. They confiscate and fail to return important documents and valued belongings. They refuse food, water, and medical assistance. They falsify documents. They commit racial profiling. They sexually harass migrants, and their own colleagues. They violate privacy and civil liberties, and they espouse politicized and insubordinate views.

Not all Border Patrol agents and CBP officers behave in these ways. It's most likely that a majority do not. But it is too uncommon to hear of "good" agents daring to speak up when they witness their colleagues committing the kind of acts that our organizations are able to document so frequently.

Examples of border law enforcement personnel being held accountable for these abuses, meanwhile, are vanishingly rare. The lack of accountability is so widespread that it helps cement in place a culture that enables human rights violations. The abuses keep coming because impunity is so likely.

This is why it is so crucial that mechanisms exist to hold rights abusers accountable. U.S. law governing foreign assistance allows aid to flow to another country's police or military unit with a troubled human rights record, only if the recipient country "is taking effective steps to bring the responsible members of the security forces unit to justice." Similarly, the Department of Homeland Security (DHS) has a system in place that exists to take these "effective steps." This system, however, needs an overhaul.

The following chart shows results of 78 complaints that KBI filed between 2020 and 2022:



Overall, 95 percent of the complaints KBI filed resulted in no accountability outcome at all. That is to say: they led to no proper investigation or disciplinary action. Only 5 percent led to either policy recommendations or discipline recommended for the agent in question.

Recommendations to Improve Accountability

Some of these recommendations are technical, seeking to streamline unnecessarily cumbersome procedures. Some are budgetary, focused on addressing resource shortfalls. Some demand culture change, personnel changes, and a fundamentally different approach to oversight. Most would require little or no legislation from the deadlocked 118th Congress. Our organizations believe that such changes—well beyond a mere rearranging of organizational charts—are warranted by the severity of the abuses we continue to document.

Changing an abusive culture, and increasing the probability of accountability, can take many years and will face political headwinds. But as the many, often shocking, abuses documented in this report make plain, there is no other choice. The United States must bring its border law enforcement agencies' day-to-day behavior back into alignment with its professed values.

Public trust in U.S. border governance requires it to be rights-respecting and consistently professional. It should be a model that the rest of the Western Hemisphere could learn from at a time of historic migration. And when it is not, it must have the means to take effective steps to hold its personnel accountable.

This report documented a chronic problem of human rights abuse within the U.S. federal government's border law enforcement agencies. Curbing this problem requires increasing accountability for abuse when it happens. If the probability of discipline increases, behavior that is abusive and contrary to good border governance will decline. If the probability of redress increases, victims will be more willing to come forward.

WOLA and KBI hope these recommendations help to move U.S. border governance toward this outcome. Below is a summary of recommendations, the chart indicates the corresponding government level to which these recommendations apply.

1. Making the complaints process work

- Improve the complaint intake process
- Create a single common intake form
- Maintain a website that shows the last accountability action taken
- Handle complaints that involve multiple allegations
- Issue prompt written confirmation of receipt
- Assign a point of contact for each complaint
- Publish the office for Civil Rights and Civil Liberties' recommendations and outcomes
- More proactively initiate “pattern of abuse” investigations
- Tell complainants which agency has their complaints
- Clearly explain why complaints end up in the “information layer”

2. Strengthening investigations

- End the lack of jurisdictional clarity between agencies
 - OIG should have a firmer time limit to decide whether to take a case
 - An actual process for “de-confliction” should exist between agencies
 - Be able to handle “hybrid complaints”
- Strengthening investigations at CBP's Office of Professional Responsibility (OPR)
 - Ensure that investigators are independent by minimizing hiring from within CBP
 - Provide more feedback to complainants
 - Investigators must actually talk to victims, who are often migrants
 - Adopt and use body-worn cameras, dash cameras, and security cameras

- Strengthening investigations at DHS Office of Inspector-General
 - Give OIG more power to compel CBP to follow its recommendations
 - Encourage an early change in the Inspector General

3. Strengthening discipline

- Curtail CBP's ability to investigate itself in criminal matters
- OPR's disciplinary recommendations should not be so easily overruled
- Hold DHS to promised reforms to the disciplinary process
- Let CBP's Commissioner suspend or fire the most egregious offenders
- Get field office directors and sector chiefs out of determining subordinates' punishments
- Move from a "reasonableness" to a "necessary and proportionate" standard for use of force
- Make the Use of Force Review Board more effective
- Get the union and labor-management arbitration out of human rights cases

4. Strengthening congressional oversight and appropriations

- Ask questions, document problems, suggest alternatives, and measure improvement
 - Hold more hearings and ask more questions
 - Demand more rigor in responding to reporting requirements
- Increase congressional staff follow-up on outstanding complaints
- Press DHS to amend the 2004 Management Directive (810.1) and clarify jurisdictions
- Increase appropriations for accountability agencies

5. Overcoming an accountability-resistant organizational culture

- Discontinue the National Border Patrol Council's role in most discipline cases
- OIG must act on data about sexual harassment and off-duty domestic violence
- Border Patrol must recruit more women
- Protect whistleblowers
- Close the racial profiling loophole
- Take agents out of asylum processing



Photo Credit: CBP
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What is to be done next?

This agenda of recommended reforms is ambitious. Moderates in Washington, ever cautious about being misconstrued as “anti-law enforcement” as another major election approaches, might argue that it is too ambitious. Those who would remake the United States’ entire border and migration apparatus from the ground up might argue that it is not ambitious enough.

To all sides, including some of CBP and Border Patrol’s most fervent partisans, WOLA and KBI wish to leave a message on which all of us should be able to agree: that the examples of abuse and unprofessional behavior documented in this report are unacceptable. They are unacceptable in their frequency, and in the severity of their cruelty. They are, above all, unacceptable in the difficulty with which perpetrators are held accountable and victims are dignified—whether investigations take the first pathway of alerts from within, or the second pathway of outside complaints.

If there is broad consensus that the current state of human rights at the border is unacceptable, then addressing it requires starting somewhere.

We all have roles to play.

- Congress can ask more questions and devote more resources to give investigators the tools they need.
- Journalists and their editors can increase their scrutiny.
- DHS management can, within existing authorities, change incentive structures that now favor impunity.
- Outside advocates can document new examples and patterns of abuse, and demand accountability while proposing reforms.

- Service providers on both sides of the border can more systematically capture reports of abuse that they receive from the people in their care, and channel those reports to trusted partners who can assist with complaints.
- Philanthropists can prioritize funding to increase the (currently very small) number of service providers and advocates who have the bandwidth necessary to document abuse, shepherd cases through the byzantine complaints process, and demand reform.
- The Mexican government's consulates, as well as those of other countries whose citizens frequently migrate through the U.S.-Mexico border region, can document abuse more thoroughly and demand better treatment of their citizens and others deported into Mexican territory. Mexico's prosecutors and investigators can act far more assiduously to punish state agents who mistreat migrants on Mexican soil.

Much of the work to reform this unacceptable situation, however, is up to CBP officers and Border Patrol agents themselves, and the people who manage them. The second pathway toward accountability, requiring outside actors to initiate complaints, should not be the main way that we find out about, and achieve justice for, human rights violations. Much more has to come from within.

When an agent witnesses behavior that is cruel, unprofessional, or illegal, that agent should be incentivized—by policy, by management, by culture, and by the probability of an effective, well-resourced response—to report it. Pending a quick and thorough review of the facts, the institution should uphold and reward that officer or agent for doing so. Doing the right thing in the face of a colleague's wrongdoing is always an act of courage. But it should require far less courage than it appears to require now.

Our organizations fervently believe that this sort of change is possible.

Read the complete report:

<https://www.wola.org/analysis/accountability-for-abuses-at-the-u-s-mexico-border-how-to-address-failures-and-protect-rights>



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