

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

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RESEARCH
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Illustration Credit: Sergio Ortiz Borbolla

WOLA
Advocacy for Human Rights in the Americas



Kino Border Initiative
Iniciativa Kino
para la Frontera

“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 Border Patrol hit him and ran over his leg on a four-wheeler



Photo Credit: CBP

Illustration Credit: Sergio Ortiz Borbolla

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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 credible 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: Kino Border Initiative
Illustration Credit: Sergio Ortiz Borbolla

Introduction

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.

This report is divided into three sections.

Section I cites recent examples of alleged CBP and Border Patrol abuses that have come to light through one of two accountability pathways – either through the agencies initiating investigations on their own, or through an outside party uncovering the abuse and initiating a complaint.

Section I notes the severity of the crimes and abuses investigated on the first pathway. Because our organizations track abuse and pursue complaints, we mainly focus on the second pathway. In our experience, while neither pathway leads very often to justice, **it is very rare to see an outside complaint result in either a disciplinary measure or a policy change.**

Section II explains how the DHS accountability system is meant to work. Four accountability offices, with overlapping responsibilities, now exist within DHS and CBP to investigate abuse allegations. All four have

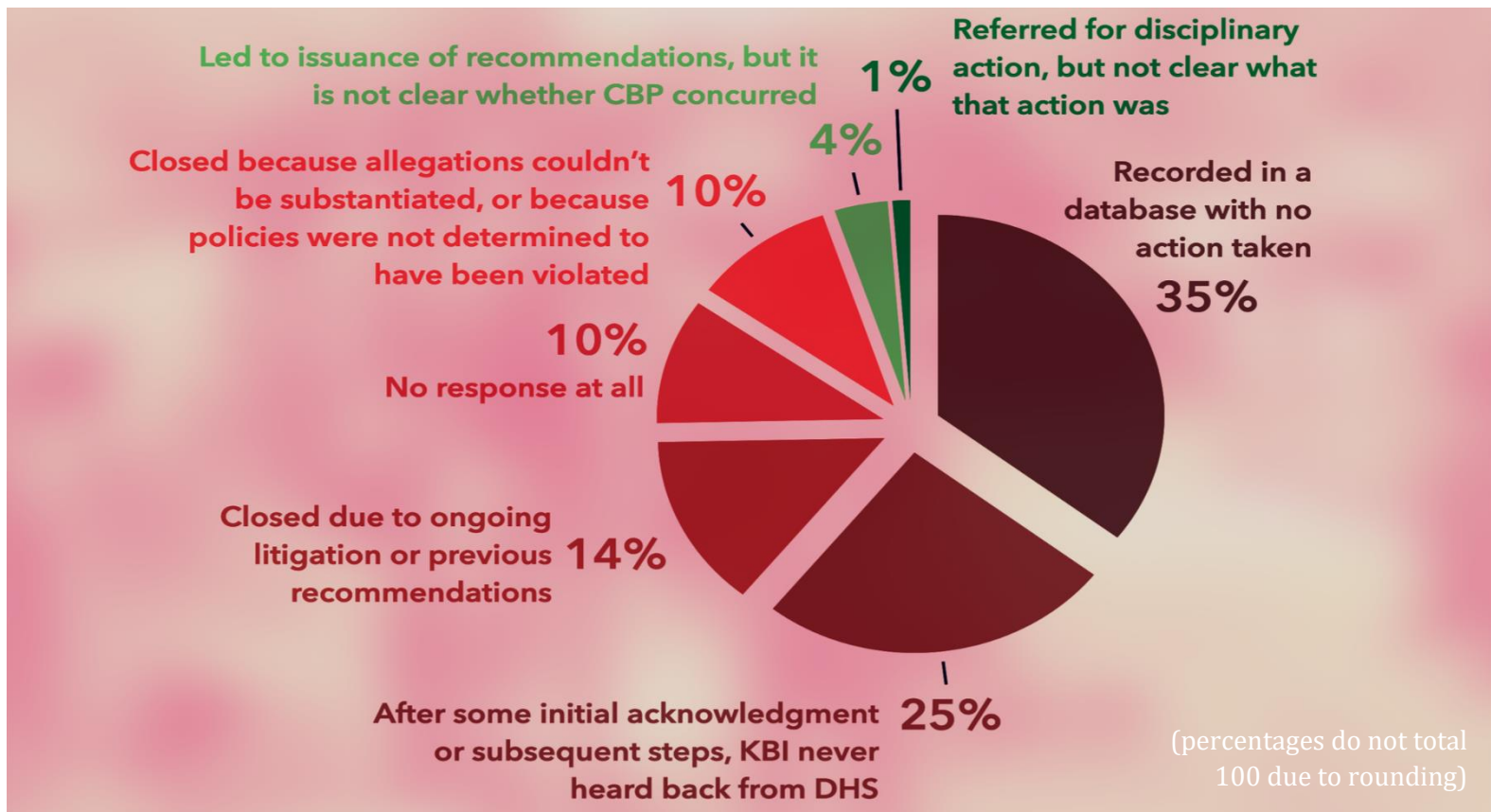
separate complaint intake forms and procedures. Cases can get passed back and forth between agencies and responses, if at all, come slowly. Only some agencies can enforce discipline or ensure that their recommendations are enacted. All face personnel and other resource inadequacies.

Section III explores why complaints so often fail to lead to justice. It lays out several of the most frequent “failure points” in DHS’s and CBP’s accountability system.

Of 78 complaints that KBI filed between 2020 and 2022:

- 28 (36%) got recorded in a database with no action taken.
- 20 (25%) “died”: after some initial acknowledgment or subsequent steps, KBI never heard back from DHS at all.
- 11 (14%) were closed due to ongoing litigation or previous recommendations.
- 8 (10%) received no response at all.
- 8 (10%) were closed because allegations couldn’t be substantiated or because policies were not determined to have been violated.
- 3 (4%) led to issuance of recommendations, but it is not clear whether CBP concurred with the recommendations.
- 1 (1%) was referred for disciplinary action, but is not clear what that action was.

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.



Section III includes vivid examples from KBI's complaints narrating each of these "failure points." **Some of the cases are egregious, and the victims must be bewildered by the absence of even a formal acknowledgement that what was done to them was wrong.**

Section IV of this report offers more than 40 recommendations pointing the way toward the more effective and credible accountability system that is so urgently needed to improve U.S. federal border law enforcement agencies' abysmal human rights record.

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.**

We recommend significant changes:

- To the *complaints process*, to improve accountability for complaints that follow the "second path" (initiated by outside actors like NGOs).
- To the *investigations process*, especially at OPR and the DHS Office of Inspector General (OIG).
- To the *disciplinary process*, which desperately needs an effort to shore up its credibility.
- To *congressional oversight*, to make it more effective and energetic, without necessarily being adversarial.
- To the CBP and Border Patrol *organizational culture*, which too frequently stands in the way of accountability.

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.

WOLA and KBI hope this report helps to move U.S. border governance toward this outcome.



Photo Credit: CBP

Illustration Credit: Sergio Ortiz Borbolla

I. Abuse by CBP and Border Patrol: two accountability pathways

Our organizations' tracking of Customs and Border Protection (CBP) and Border Patrol abuses and improper conduct reveals patterns of troubling behavior that rarely get held accountable. This behavior ranges from misuse of force, to endangerment of vulnerable people, to racial profiling, to confiscation of valuables and documents, to politicized insubordination.

Efforts to achieve accountability for these abuses and events, which rarely succeed, follow two broad paths.

In the first accountability path, **authorities launch investigations on their own initiative**, with no need for an outside complaint to initiate the investigation. That usually happens when investigators are present or arrive on scene, when local law enforcement is involved, when the severity rises to the level that the law requires congressional notification, or when media coverage or other profile-raising activity compels action.

This first path would also get triggered if agents or officers, troubled by their colleagues' behavior, choose to blow the whistle and alert internal accountability offices. Little evidence, however, points to this happening often. That is less a reflection of agents' and officers' character than of existing incentives and disincentives, like the perceived probability of achieving a meaningful response, or the probability of retribution or harm to one's own career.

On the second accountability path, no investigation would happen at all without **an outside party, like a victim or their advocate, initiating a complaint**. That “initiation” often occurs through filing a complaint with the Department of Homeland Security’s (DHS) civil rights complaints system, the Office of Civil Rights and Civil Liberties (CRCL). In some cases it involves alerting CBP’s internal affairs body (Office of Professional Responsibility, OPR), DHS’s Inspector General’s Office (OIG), or the Office of the Immigration Detention Ombudsman (OIDO) if alleged abuse occurs in ICE or CBP custody. At times, it means outside actors using informal methods to pressure for investigation, such as through legislative staff inquiries or generating media coverage.

This report will focus on cases within this second path: abuses committed in the U.S.-Mexico border region by CBP officers or Border Patrol agents, which would be unknown, unrecognized, and forgotten without the actions of victims, their advocates, or other non-governmental actors. In nearly all cases, these outside actors’ complaints ensure that the abuse allegations become part of the public and official record. However, **in nearly none of these cases—for reasons that this report will explain—do outside complaints lead to abusers being held meaningfully accountable**. This hard fact is unacceptable. It calls for deep reform.

I.A. ABUSES THAT GET INVESTIGATED WITHOUT OUTSIDE ACTORS’ INSTIGATION

Before moving on to this second, extensive set of CBP and Border Patrol abuses, **this report must first acknowledge the victims whose cases follow the first accountability path**. Because they involve other law enforcement agencies being present on scene, or because they trigger congressional notification and automatic involvement of OPR and OIG, these are some of the most severe and concerning cases. Here, too, accountability is rare.

Since 2020, **WOLA and KBI are aware of 13 cases of fatalities** in which there is reason to believe that CBP officers or Border Patrol agents may have (1) used deadly force under circumstances in which it is unclear whether they faced an imminent threat of death or bodily injury, or (2) failed to prevent the death of an individual in custody.

- [July 9, 2020](#): A CBP officer and a contract security guard shot and killed an unidentified Mexican man, who was apparently wielding a knife, just inside the U.S. border at the Calexico, California port of entry.
- [October 23, 2020](#): A Border Patrol agent shot and killed David Angel Villalobos Baldovinos, a Mexican citizen, following an alleged scuffle at the San Ysidro port of entry south of San Diego.
- [January 29, 2021](#): A Border Patrol agent shot and killed Diosmani Ramos, a Cuban migrant, as he emerged from the Rio Grande in Hidalgo, Texas holding a stone. Ramos’s partner said the agent shot him a second time, after he was already wounded on the ground.
- [May 14, 2021](#): Three Border Patrol agents shot and killed San Diego resident Silvestre Vargas Estrada through the windshield of his car, following a pursuit in Campo, California.
- [August 2, 2021](#): A Salvadoran man, Jason González Landaverde, died while in Border Patrol custody in the field near Eagle Pass, Texas. CBP reported that he became “unresponsive” after being restrained for having become “unruly.”

- [February 19, 2022](#): A Border Patrol agent shot and killed Carmelo Cruz Marcos, a citizen of Mexico, at night on a desert trail near Douglas, Arizona. The agent claimed that Cruz Marcos sought to evade capture and threatened to throw a rock at him.
- [May 24, 2022](#): Abigail Roman Aguilar, a citizen of Mexico, died of stab wounds to the upper chest following a reported “altercation” with a Border Patrol agent, who stabbed Aguilar with a knife.
- [October 4, 2022](#): Border Patrol agents shot and killed Mexican citizen Manuel González Morán inside the Ysleta Border Patrol station in eastern El Paso, Texas. González reportedly threatened agents with a pair of scissors; a security camera in the room was not functioning at the time of the incident.
- [October 30, 2022](#): Members of Border Patrol’s tactical unit, BORTAC, shot and killed an individual on U.S. soil near San Luis, Arizona. A Border Patrol camera had shown a member of the group holding a gun, and the agency reported that a handgun was found near the man’s body. CBP’s statement did not specify what provoked the agents to open fire.
- [January 13, 2023](#): An ill, unidentified migrant, who had reportedly become “agitated and began to kick the interior” of a Border Patrol vehicle died while being transported, shackled, through rural Arizona to receive medical attention. Agents did not realize he had died until they arrived.
- [March 14, 2023](#): Body-worn camera footage released by CBP showed a Border Patrol agent shooting and killing U.S. citizen Noe Mejia, the apparently unarmed driver of a car suspected of smuggling migrants, at point blank range in Sasabe, Arizona.
- [May 17, 2023](#): Anadith Danay Reyes Álvarez, an 8-year-old citizen of Honduras, died in a Harlingen, Texas Border Patrol facility while her family was in its ninth day of CBP custody. Anadith suffered from a chronic heart condition and sickle cell anemia, and tested positive for influenza while in CBP custody. Anadith was experiencing abdominal pain, vomiting and a high grade fever. Medical staff refused multiple pleas from Anadith’s mother to call her an ambulance. Anadith’s case was the first death of a child in CBP custody since 2019. In 2018 and 2019, six children died while in, or soon after leaving, CBP custody.¹
- [May 18, 2023](#): Border Patrol agents shot and killed Raymond Mattia, a 58 year-old member of the Tohono O’odham nation, while Mattia was steps from the front door of his home in the community of Menager’s Dam (also known as Ali Chuk), Arizona. Three agents, part of a group accompanying Tohono O’odham Nation police, fired their weapons at Mattia, striking him nine times. Commanded to drop his weapon, Mattia tossed a sheathed machete or hunting knife toward agents. Commanded to take his hand out of his jacket pocket, Mattia pulled out his hand holding an object. The agents fired numerous times, killing Mattia. The object in his hand was a mobile phone.

Some serious cases, though not fatal, involve individuals being wounded by CBP officers or Border Patrol agents, with no indication that the officers or agents faced a threat to their lives or safety.

- [June 16, 2021](#): A Border Patrol agent in Nogales, Arizona fired a 9 millimeter handgun round at an SUV, striking Marisol García Alcántara, a 37-year-old undocumented Mexican mother of three who

¹ Molly Hennessey-Fiske, “Six Migrant Children Have Died in U.S. Custody. Here’s What We Know about Them,” Los Angeles Times, May 24, 2019, <https://www.latimes.com/nation/la-na-migrant-child-border-deaths-20190524-story.html>.

was riding in the vehicle's backseat. Ms. García, who has bullet fragments lodged in her brain, was deported without speaking to any agency investigating her shooting.

- [December 12, 2021](#): A CBP officer fired four times at a sedan approaching the San Ysidro Port of Entry “at a high rate of speed” with Russian asylum seekers aboard. Two occupants of the sedan “suffered minor head contusions.” It was [known](#) at the time that Russian asylum seekers in Tijuana were renting cars and attempting to drive over the borderline at the San Ysidro port, not to do harm but to reach U.S. soil to request asylum.
- [February 14, 2022](#): An unidentified Salvadoran woman claimed that a Border Patrol agent severely beat her during her apprehension in Calipatria, California, that she was denied medical attention, and that agents separated her from her 10-year-old daughter. The case came to light only because she was charged with assaulting and intimidating the agent whom she says attacked her.
- [July 11, 2022](#): One unidentified individual was injured after Border Patrol shot at a van in Calexico, California.

An especially controversial use of force category for which investigations usually originate from within DHS is **Border Patrol's risky high-speed pursuits**, on public roads, of vehicles suspected of carrying undocumented migrants. Chases resulted in accidents that killed 23 people in 2021 and 21 people in 2022, up from 14 in 2020 and 2 in 2019, according to the ACLU's [count](#).

DHS has launched internal investigations as a result of media coverage of Border Patrol agents' **improper use of force in crowd control situations** since 2020. In 2020, the Trump administration [deployed](#) agents to confront protesters in Portland, Oregon, where they were recorded grabbing individuals off of a street and pushing them into unmarked vans while wearing uniforms with no insignia. In September 2021, agents on horseback were [recorded](#) charging menacingly at a group of Haitian migrants, including children, during a large-scale migration event in Del Rio, Texas.

I.B. ABUSES THAT ARE ONLY KNOWN DUE TO OUTSIDE ACTORS' COMPLAINTS

Many abuses do not garner media or Congressional attention. Investigators and law enforcement never arrive at the scene, and DHS and CBP leadership likely don't know they even occurred. These cases would be lost to all scrutiny without the initiative of victims, their advocates, media, or other outside actors who alert DHS accountability offices.

These cases are the main focus of this report. As with cases that take the first path, though, meaningful accountability for abuse is exceedingly rare. In fact, as Section III below will demonstrate, much of the time the accountability offices take no action whatsoever.

Cases resulting from outside action or complaints make up the majority of examples of abuse in WOLA's “Border Oversight” [database](#), which captures examples known since 2020. These cases do not involve loss of life, but they do involve suffering and endangerment inflicted by CBP and Border Patrol personnel. Some of this suffering is grave, including bodily harm and mistreatment of minors. Much of it is

“everyday” acts of cruelty and victimization that point to a pervasive toxicity within federal border law enforcement agencies’ organizational culture.

This abusive and improper behavior falls into several categories. For each, we provide just a few emblematic examples.

I.B.1. CONDITIONS OF ARREST OR APPREHENSION

Some serious allegations of human rights abuse involve the moment that migrants come into contact with, or into the custody of, CBP and Border Patrol personnel. It is at the moment of apprehension that some migrants, including women and children, describe being struck or threatened with violence, at times with drawn guns, dogs, or oncoming vehicles. Following apprehension, some migrants describe being subject to “rough rides,” [defined](#) as “the practice of intentionally operating a vehicle in a manner that causes passengers physical harm, fear, or other discomfort.”²

- [February 18, 2020](#): During the apprehension of a Honduran couple and their six-week-old baby, the agent who apprehended them subjected them to a reckless “rough ride” through uneven terrain, severely jostling baby “Sofia.” According to an ACLU complaint, the agents who fingerprinted the mother yelled at her, telling her she was a terrible mother for bringing her baby to the United States.
- [April 17, 2021](#): A Salvadoran woman, her 1-year old daughter, 1-year old son, brother, cousin, and cousin’s daughter, entered the United States, hoping to seek asylum. According to a report from KBI and NETWORK, when they saw a Border Patrol truck approaching them, they stopped and waited. An agent exited the truck, pulling a gun on the mother, calling them “terrorists”, “rats”, and “criminals”. He continued to pull his gun on them, even after they were crying and asking for asylum. A second agent arrived and de-escalated the situation. The woman repeated her asylum request to 7 or 8 more agents, was ignored, and told the agents didn’t speak Spanish.
- [February 14, 2022](#): The *San Diego Union-Tribune* narrated the experience of a Salvadoran mother fleeing death threats, who crossed the border in eastern California with her children. They stopped to rest with a group of other migrants when Border Patrol agents found them, and began beating the mother in front of her children. She reported thinking she would die from being hit so many times. One of her sons threw rocks near the agent to get him to stop. They were then transported to the Border Patrol station, where the woman was bleeding and bruised, and did not receive medical attention. She was handcuffed and separated from her children for over a month.

I.B.2. CONDITIONS IN CUSTODY

After turning themselves in to, or being apprehended by, CBP or Border Patrol, migrants usually spend time in the agencies’ jail-like holding facilities, which were designed more than a decade ago for a population of single, mostly male migrants. These facilities are meant for stays of 72 hours or less while

² Mitra Ebadolahi et al., “ACLU Foundation of San Diego and Imperial Counties and ACLU Border Rights Center Letter to DHS Inspector-General Joseph Cuffari Re: U.S. Customs and Border Protection and Border Patrol’s Abuse and Mistreatment of Detained Sick Children,” February 18, 2020, <https://cbpabusestest2.files.wordpress.com/2020/10/2020-02-18-dhs-oig-cmplt-2-final.pdf>.

migrants undergo processing, but at times of heavy migration, migrants can be confined to CBP and Border Patrol cells for a week or more.

After emerging from custody, migrants often speak of frigid, crowded, unsanitary conditions in which they are denied basic hygiene, have no privacy even while using toilets, and must sleep on benches or floors. **Denial of needed medical care** is frequent, and in some of the worst recent cases has caused severe injury and lost pregnancies. CBP officers and Border Patrol agents use **abusive language** with migrants in their custody, which at times meets the definition of sexual harassment. Numerous migrants, including children, report **denial of food or water** while in custody, with agents responding angrily to requests, even from children. Attorneys accuse CBP and Border Patrol of **blocking asylum seekers' access to counsel** while in custody.

- “If you keep complaining I will put you with the dogs,” a [Border Patrol agent said](#) to a woman when she refused to undress during a search upon her apprehension, according to a complaint filed by the ACLU Foundation of San Diego and Imperial Counties and ACLU Border Rights Center.
- [August 1, 2021](#): A Guatemalan man entering the United States in a group of six was apprehended by Border Patrol agents and was pushed to the ground with a knee on his back. According to a report from KBI and NETWORK, another man from the group attempted to run, so the agents released their dog to attack him. He was knocked face down into a cactus. When the injured men asked for help, the agent refused: “this is what happens to people who come here.” A third member of the group was suffering from dehydration and vomiting, asking for water. An agent put his foot on the man’s back and kneeled on him. He did not receive water until nearly two hours later.

Some of the most disturbing examples of mistreatment in CBP and Border Patrol custody involve **abuse of migrant children**, particularly unaccompanied minors. In recent testimonies, children have told of agents using abusive, profane, and racist language, kicking and shoving them, denying them food and hygiene, withholding bedding and other comforts as punishment, and accusing them of lying or falsifying documents, amid other allegations.

- [September 25, 2021](#): A report from the Border Network for Human Rights narrated the experience of a Mexican man and his 13-year-old son, who were crossing the Rio Grande into the United States when they saw a Border Patrol truck approaching. They stopped and waited. Upon the truck’s arrival, an officer quickly got out, screamed at them, and proceeded to aggressively grab the boy and press him against the ground. The man told the officer he couldn’t treat his son that way and that he would report him. The officer then threw the man on the ground and grabbed him by the neck, calling him “trash” and saying to go ahead and report him. The agent then called for backup, and all who arrived ignored the man’s request to report the mistreatment of his son.
- [October 9, 2021](#): A 15-year old girl was detained by two agents in Arizona. According to a complaint filed by four children’s defense organizations, she reported being violently grabbed by the sweater and being forced face-down to the ground while the officer put his knee on her back while handcuffing her. She was pinned to the ground for approximately 2 minutes, causing difficulty breathing. During the violent encounter, she sustained abrasions and bruises to her face

and legs. She was not treated for her injuries, and besides an interview with an officer regarding the incident, there was no follow-up or explanation.

- [March 18, 2021](#): The same complaint recounted the experience of three siblings, 5, 6 and 15 years old, who were detained by CBP officers in Texas and held for 16 days. Officers believed the 15 year old was lying about her age, and they intimidated her so she would admit she was the mother of the children, rather than a sibling. The siblings experienced aggressive behavior from the officers, like threats of beating them with a nightstick, yelling, and verbal attacks saying they never should have come to the United States.

I.B.3. FAMILY SEPARATIONS

It is in CBP and Border Patrol custody that most family separations continue to happen. Though the scale is not as massive as during the Trump administration, children continue to be taken from grandparents, uncles, adult cousins, legal guardians, and other caretakers who are not part of a traditional nuclear family—or from parents, if agents find that they fail a background check or wish to prosecute them. U.S. Department of Health and Human Services data show that **102 migrant children were separated from parents during fiscal year 2022, and advocates allege that the actual rate of separations is higher.**³ U.S. border authorities also continue frequently to separate husbands and wives, and adult siblings.

- [March 7, 2021](#): KBI and NETWORK reported that a Cuban man and his wife crossed into the United States and were detained, searched, and their documents confiscated. Agents separated the couple, even though they told the agents that they were together. The man repeatedly requested asylum for him and his wife, but after five days, he was expelled to Tijuana in the early morning hours, with no explanation and without his wife. A week later, he tried to cross again at Yuma, as his wife was still in U.S. custody. He was then expelled to Nogales.
- [Mid-February 2022](#): Two unaccompanied minor brothers were apprehended in the desert by Border Patrol. The older brother, who was 17, told KBI that they were taken in for processing and questioned separately. The agents accused the older brother of lying about his age. They said his birth certificate was fake and threatened him with a 10-year prison sentence if he didn't state his real age. They eventually expelled him to Nogales, and he did not know the whereabouts of his little brother.
- [Mid-September 2021](#): A 16-year-old Nicaraguan boy was separated from his parents when his family sought asylum in Eagle Pass, Texas. According to a report from Human Rights First, during detention, CBP tore up the boy's birth certificate, accused him of lying about his age and his family, and threatened to imprison him and his family if he didn't sign a document stating that he was 18 years old. After severe intimidation, he signed the document and was jailed alone in an adult ICE detention facility for one-and-a-half months, including eighteen days in an isolation cell.

³ "Monthly Report to Congress on Separated Children" (Washington: U.S. Department of Health and Human Services, 2022), <https://www.hhs.gov/sites/default/files/september-2022-monthly-report-on-separated-children.pdf>; Anna-Catherine Brigida and John Washington, "Biden Is Still Separating Immigrant Kids From Their Families," The Texas Observer, November 21, 2022, <https://www.texasobserver.org/the-biden-administration-is-still-separating-kids-from-their-families/>.

I.B.4. NON-RETURN OF BELONGINGS AND CONFISCATION OF DOCUMENTS

While in CBP and Border Patrol custody, numerous migrants report non-return of belongings. Agents confiscate, and either destroy or do not return, cash, jewelry, religious items, mobile phones, medicines, and items of sentimental value, from family photos to children’s stuffed animals. In many cases, confiscated items include official documents like identification cards, birth certificates, medical records including proof of vaccination, and evidence crucial for pursuing asylum cases.

- [Late March, 2022](#): Border Patrol expelled a young Guatemalan woman to Nogales, Mexico after she had been repeatedly raped by the guides who brought her across the border into the United States. She showed paperwork from the hospital examination to a Border Patrol agent as proof of the attack, and the agent confiscated it. The woman was expelled back to Mexico without the documentation, where she shared what happened with KBI. The Guatemalan consulate later attempted to help the woman apply for a U-Visa (for victims of criminal activity) since she had experienced the crime in the United States, but she no longer had any of the medical documentation to substantiate it.
- [August 1, 2022](#): A letter from the ACLU of Arizona contended that Border Patrol agents in Yuma had confiscated at least 64 turbans from asylum seekers of the Sikh faith during the first 7 months of the year, including at least 50 in the prior 2 months. “Forcibly removing or targeting a Sikh’s turban or facial hair has symbolized denying that person the right to belong to the Sikh faith and is perceived by many as the most humiliating and hurtful physical and spiritual injury that can be inflicted upon a Sikh,” the letter noted.
- [November 6, 2022](#): A migrant woman from Venezuela who crossed the U.S.-Mexico border told the CBS program *60 Minutes* that Border Patrol agents kept several of her family’s personal documents, including their passports, Venezuelan identification cards, her children’s birth certificates and her husband’s drivers license. Agents told her they would receive their documents during their immigration court hearing. Her family had yet to receive a court appointment, and attorneys said it was unlikely that documents confiscated along the southern border would be transferred to courts across the United States.

I.B.5. DANGEROUS DEPORTATION

Between March 2020 and May 2023, when DHS implemented the Title 42 pandemic expulsion authority, CBP and Border Patrol interpreted Title 42 as superseding repatriation arrangements with Mexico. These arrangements, reached in the mid-2010s, seek to avoid practices that remove Mexican nationals to likely danger in Mexican border cities.⁴ During the pandemic, agents often expelled migrants—including families with children and individuals in poor health—into Mexican border cities in the middle of the night when no services were available, security risks were very high, and temperatures were often very low. Cases of dangerous deportation also include **removals of people with legal status in the United**

⁴ “Updated U.S.-Mexico Local Repatriation Arrangements,” U.S. Department of Homeland Security, May 31, 2022, <https://www.dhs.gov/publication/updated-us-mexico-local-repatriation-arrangements>.

States, and many **returns of especially vulnerable individuals** like injured people, unaccompanied minors, or victims of sexual violence, kidnapping, and other crimes suffered while in Mexico.

The Title 42 policy ended on May 11, 2023, but as this report goes to publication in July 2023, our organizations are concerned that the new rule may continue Title 42's re-definition of what is a "normal" repatriation. Mexico has agreed to accept deportees of other nationalities deemed ineligible for asylum under a new Biden administration rule. This rule presumes ineligibility for asylum if non-Mexican nationals do not have an appointment, made using the CBPOne smartphone application, to present at the port of entry and did not first seek asylum in another country en route. We are concerned about the possibility of continued non-recognition of existing repatriation agreements designed to limit dangerous deportations, including at which ports of entry repatriations occur and the times of day they are allowed, with more restrictive hours for unaccompanied minors and other vulnerable populations.

- [Early November 2022](#): KBI spoke with a Mexican migrant who sought asylum in the United States after she and her husband spent a month in captivity, kidnapped for ransom by organized crime. Despite explaining the persecution they fled in Guerrero and the hostage situation they had just escaped, CBP expelled them back across the border to the same area where they had been held hostage, with no explanation.
- [February 13, 2021](#): The *Dallas Morning News* told the story of Pedro Gómez, from Guatemala, and Jhon Jairo Uscha Alcoser, from Ecuador, who ended up in Border Patrol custody after falling from the border wall in late January 2021. Gómez told the *Morning News* that, with two broken ankles, he could not walk: "I crawled inside the *migra* vehicle." Uscha Alcoser said that agents made him stand up even though, as the *Morning News* noted, x-rays "later revealed broken tendons and a fractured back and pelvis." Border Patrol expelled both injured men "into the small town of Palomas, across from Columbus, New Mexico, far from where they fell from the wall." Palomas is isolated and has few services.
- [January 6, 2022](#): KBI spoke with a young Guatemalan man who had tried to cross into the United States to seek asylum after fleeing threats from extortionists in his hometown. He fell and injured his knee while traveling in the desert. Although he reported his injury to immigration officials, he was not offered medical attention. He was expelled to Nogales at 3AM, where he spent the night exposed in the plaza downtown until the sun came up.

I.B.6. DENIAL OF PROTECTION TO THE MOST VULNERABLE MIGRANTS

Including by employing the Title 42 expulsions policy, CBP officers and Border Patrol agents rapidly return to Mexico individuals and families who are under threat or suffered violent crimes in Mexico, or who have other vulnerabilities like disability, age, young children, or LGBTQ status. Migrants accuse U.S. personnel of **lying to or deliberately misleading** them, in some cases leading them to believe that they were about to be reunited with U.S.-based loved ones before expelling them into Mexico or Haiti. Even before Title 42 went into effect, KBI often documented Border Patrol agents attempting to prevent

Mexican families from accessing asylum through wrongful removals and misuse of expedited removal; we are concerned that these practices will continue or even intensify in the post-Title 42 era.⁵

- [February 27, 2021](#): The Arizona-based Florence Immigrant and Refugee Rights Project was alerted to a pregnant woman in Border Patrol custody at a local hospital. Fearing she would be removed without due process and concerned about the vulnerability of pregnant women at the border, the Florence Project requested she be released to the community rather than sent to Mexico. Border Patrol never responded. Two days later the woman reached out from Nogales, Sonora seeking aid.
- [October 13, 2021](#): A Honduran family held in Border Patrol custody, before entering detention, was asked for the contact information of their relatives in the United States; they were assured that they would contact them and be reunited. After two days, the Honduran news website *ContraCorriente* reported, they were put on a bus, taken to the airport, and put on a flight to Villahermosa, Tabasco, Mexico. The family did not know they were being taken to Mexico until they landed. No explanations were given, and they were then picked up by Mexican immigration and boarded onto a new bus taking them back to Honduras.
- [March 2022](#): According to a report from Human Rights First, the Haitian Bridge Alliance, and Al Otro Lado, CBP officers turned away a Mexican asylum seeker and her children who fled Guerrero after the woman's husband and teenage son were murdered. The woman brought photos of the chopped-up bodies of her loved ones as evidence of the danger the family had fled. "I'm not here because I want to be here. I'm here to save the lives of my children," she told the San Diego *Union-Tribune*. The family spent the night outside the San Ysidro port of entry until Mexican officials pressured them to leave.

I.B.7. FALSIFYING PROTECTION-SEEKING MIGRANTS' DOCUMENTS

CBP and Border Patrol personnel stand accused of **falsifying or negligently handling asylum seekers' paperwork** on numerous occasions. Entering wrong, or invented, addresses, or failing to file notices with immigration courts, has complicated thousands of asylum cases. In other cases, migrants—including children—report being **compelled to sign English documents** that they don't understand, with resulting harm to their requests for protection in the United States.

- [2021](#): A complaint from four children's defense organizations described the experience of a 17-year-old child from Romania who was held in CBP custody for five days. "D.S." did not have access to sufficient interpretation services and was forced to sign some documents that were never explained to him in Romanian. D.S.'s passport was never returned to him.
- [September 15, 2022](#): A letter from several non-profit organizations and a *BuzzFeed* article pointed to border law enforcement officials inventing addresses around the United States and adding them to asylum seekers' immigration paperwork when those asylum seekers lack U.S. relatives, contacts, or specific destinations. In most cases, the addresses that officials—usually Border Patrol agents—added to documents like immigration-court hearing notices and Notices to Appear were

⁵ "Border Patrol Increasingly Removing Mexican Asylum Seekers Without a Hearing," Kino Border Initiative, October 4, 2019, <https://www.kinoborderinitiative.org/border-patrol-increasingly-removing-mexican-asylum-seekers-without-a-hearing/>.

those of non-profit service providers in cities around the United States. CBP and Border Patrol do not inform those service providers. “Catholic Charities in New York City received over 300 [people given] such notices,” the letter read.

I.B.8. DISCRIMINATION AND HARASSMENT

In their interactions with migrants, and—according to media reports—in their interactions with U.S. citizens, legal residents, and even their own colleagues, CBP and Border Patrol personnel face numerous recent allegations of discrimination and harassment. This includes cases of **racial discrimination or profiling** against Black and Latino individuals; cases of **sexual assault, harassment, or other gender-based harm** both in the field and in a workplace that, in Border Patrol’s case, is [about 95 percent](#) male; and cases of **discrimination or aggression toward LGBTQ individuals**.

- [July 7, 2020](#): Among examples of abusive language from CBP and Border Patrol personnel detailed in a complaint from the ACLU Foundation of San Diego and Imperial Counties and the ACLU Border Rights Center was: “*Desgraciada, ¿porque tienes tantos niños si no los puedes cuidar? Puta, prostituta.*” “Disgraced woman, why do you have so many kids if you can’t take care of them? Slut, prostitute.” The complaint noted that “agents bully LGBTQ people,” reporting an agent asking a holding cell of boys aged 13 to 17, “Which of you faggots suffer from asthma?”
- [April 7, 2022](#): The Project on Government Oversight (POGO) revealed the existence of a 2018 DHS OIG survey that had found more than 10,000 CBP, ICE, Secret Service, and Transportation Security Administration (TSA) employees experienced sexual harassment or sexual misconduct at work. That was more than a third of the survey’s 28,000 respondents. Of these, 78 percent said they did not report the incident, often out of a belief that doing so would derail their careers. The Inspector General has still not reported these results.

1.B.9. INSUBORDINATE OR HIGHLY POLITICIZED CONDUCT

Several recent episodes point to a **highly politicized culture**, particularly within Border Patrol, that is not appropriate for a professional law enforcement agency. Resulting behaviors range from the workplace harassment discussed above, to **toleration of, or collusion with, vigilante “militia” groups** in border areas. Meanwhile, as we discuss further below, the DHS and CBP **accountability and disciplinary apparatus** rarely issues meaningful punishments for abusive behavior, which means there is little disincentive for engaging in this conduct.

- [May 24, 2021](#): Video footage depicted a Border Patrol agent having a conversation at a Texas checkpoint with members of a militia group, “Veterans on Patrol.” The unidentified Border Patrol agent tells the militia members, “You guys are very effective and a lot of fun. You can’t talk to every agent the way you talk to me. Maybe 90% of the people you can. We’ve got some strange f—ing ducks, man.” The agent concludes saying, “Citizens, I don’t mind anything you guys do... Whatever you do, man. ... Hey, I appreciate it.”
- [September 10, 2022](#): CBP stopped updating its “@CBPWestTexas” Twitter account after an unidentified employee used it to share former Trump advisor Stephen Miller’s view that “Biden’s

eradication of our border means we are no longer a Republic,” and to issue “likes” to homophobic tweets.

- [April 4, 2022](#): In a *Fox News* appearance, National Border Patrol Council union President Brandon Judd accused the Biden administration and the Democratic Party of allowing migrants into the United States “to change the demographics of the electorate.” According to journalist Melissa del Bosque, “Judd was echoing the ‘great replacement theory,’ a white-supremacist belief with roots in the French nationalist movement of the early 20th century.”

I.B.10. CIVIL LIBERTIES AND PRIVACY INFRINGEMENTS

CBP, with its Border Patrol component, is by far the largest law enforcement agency in the federal government, and it has sweeping powers to surveil, search, seize, and detain. Fear that these powers may be misused is aggravated by recent cases of **civil liberties infringements, misuses of intelligence capabilities, harassment of journalists, and intimidation of humanitarian workers.**

- [December 11, 2021](#): A *Yahoo News* investigation of Jeffrey Rambo, a Border Patrol agent assigned to the Counter Network Division of CBP’s National Targeting Center in 2017 and 2018, revealed serious infringements of the privacy of U.S. citizens not suspected of committing any crimes. Rambo led a team that dug through classified government databases to uncover information about the private lives of as many as 20 U.S. journalists. An analyst on the team regularly investigated congressional staffers’ travel and looked for “inappropriate contacts between people.” As of December 2021, Rambo remained on duty.
- [August 7, 2020](#): Sources inside DHS raised concerns to *NBC News* about the Trump administration’s use of Border Patrol agents and other DHS personnel to confront protesters in Portland, Oregon. Nate Snyder, an Obama-era DHS counterterrorism official, told NBC that Trump “wants his own state-run police force” that can commit “violence against protesters without coordinating with local law enforcement.”
- [October 5, 2020](#): Border Patrol agents, including members of BORTAC, a SWAT team-like unit, carried out their second raid of the year on a desert facility operated by the faith-based humanitarian group No More Deaths (NMD). Border Patrol agents stormed the camp in a convoy of vehicles that included a Bearcat tank. A Border Patrol helicopter buzzed the camp, flying so low that its rotor wash destroyed a NMD tent and storage shed.

I.C. ABUSES REPORTED BY KINO BORDER INITIATIVE (NOGALES, SONORA, MEXICO): 2020-2022

KBI has assisted migrants in filing formal complaints about their treatment by CBP, and by Border Patrol in particular, since 2015. From this work, KBI concludes that **abuse by U.S. authorities during the migration journey is unfortunately common.**

KBI performs an intake survey with every migrant person who arrives at its migrant aid center in Nogales, Mexico, to better understand their experiences. One survey question asks if migrants experienced any rights violations on their journey, and which actors perpetrated these abuses.

In 2020, KBI received 442 reports of abuse by U.S. authorities, meaning that 18 percent of new arrivals had experienced abuse by a U.S. authority. Allegations pointed to Border Patrol agents in 52 percent of reports. In 2021, KBI received 1,668 reports of abuse by U.S. authorities (experienced by 20 percent of new arrivals), 94 percent of which Border Patrol allegedly perpetrated. In 2022, KBI received 615 reports of abuse by U.S. authorities (experienced by 10 percent of new arrivals), with Border Patrol accused in 75 percent of cases.

Reports of abuse by U.S. authorities, as a share of all KBI migrant intakes			
Year	Reports of Abuse	Percentage of All Intakes	Border Patrol Accused
2020	442	18%	52%
2021	1,668	20%	94%
2022	615	10%	75%

These abuses span many categories, such as night-time expulsions, expulsion of unaccompanied minors under Title 42, confiscation or non-return of belongings, and excessive use of force. In 2022, the types of abuse reported most frequently were due process violations, medical neglect, excessive force or physical abuse, and inhumane detention conditions.

The prevalence of abuse by Border Patrol reported to KBI is likely an undercount, as it requires that migrants self-report to KBI staff and therefore recognize that their experience of being abused was not, in fact, just the normal cost of crossing the border. Further, many other migrants who faced abuses and were removed to Nogales may never have arrived at KBI and did not have a chance to report.

People who experienced abuse may have reasons for deciding not to file a formal complaint. Some fear it will harm their future immigration processes, or that they might face retaliation if the offending agent is aware of the complaint. Some feel that filing a complaint is not worth the effort, as KBI staff clearly explain to potential complainants that there is no personal benefit in doing so and there is often no response to these complaints at all.

In addition, filing complaints is time and resource intensive. Many NGOs across the border lack the capacity to file complaints as they struggle to meet humanitarian needs. This leads us to believe that **the complaints outlined in this report represent only a small fraction of what migrant people are actually experiencing at the hands of CBP and Border Patrol.**

These are only the cases in which migrants or other victims have dared to discuss what happened to them, usually because a service provider like KBI or an advocate or journalist was there to record it. In border sectors with less of a presence of outside “denouncers”—for instance rural areas like Del Rio, Texas or Yuma, Arizona, or the south Texas region across from Mexico’s very dangerous state of

Tamaulipas, where fewer service providers operate—many abuses may be occurring without anyone to take note of them.

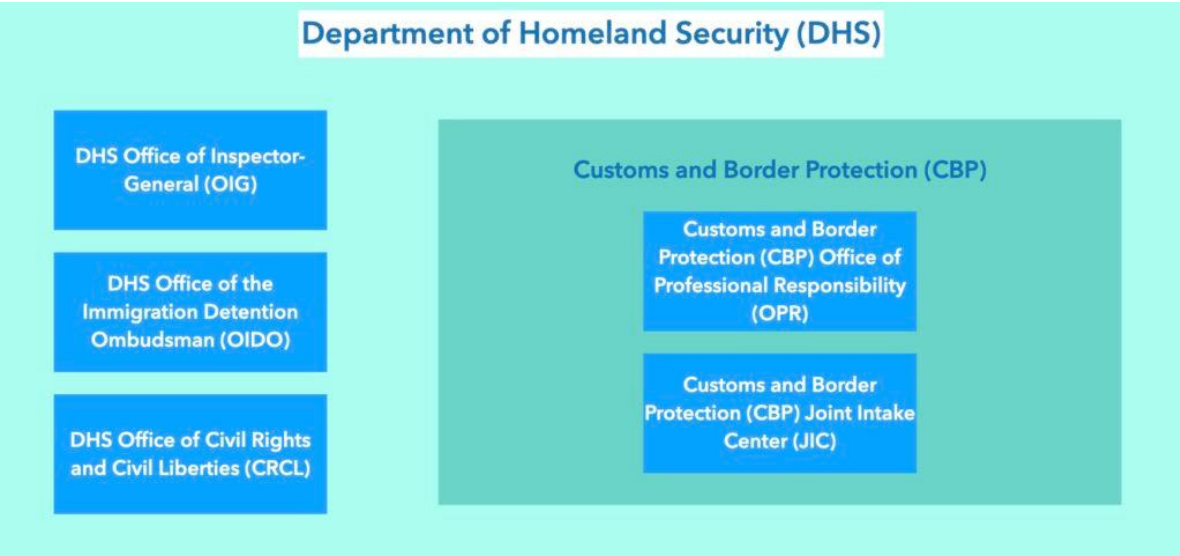
This report's first section has established, with a preponderance of examples, that abuse events and allegations committed by CBP and Border Patrol personnel are pervasive and severe. The examples cited in Section I have occurred just since 2020. Some, particularly the most severe cases, are known because DHS accountability agencies have initiated investigations. Most of the cases presented here, though, would have gone completely unknown without reporting from victims and those, outside of government, who accompany them. **That such abuses are happening so frequently at CBP and Border Patrol indicates that DHS's accountability system has done little to dissuade or disincentivize them.**

This report's next section explores what that system looks like, and why abusive and unprofessional behavior persists in spite of it. It focuses on the process for achieving accountability for abuses that take the "second path," becoming known due to the work of outside actors.

II. The DHS accountability process: Four offices with overlapping authority

This "second path" involves several accountability offices that people outside of the government—such as individual migrants who have experienced abuse by Customs and Border Protection (CBP) personnel and advocates who support them at the U.S.-Mexico border—may petition to file a complaint. These include:

- the Department of Homeland Security's (DHS) Office of Civil Rights and Civil Liberties (CRCL);
- the DHS Office of Inspector General (OIG);
- Customs and Border Protection's (CBP) Joint Intake Center (JIC) and Office of Professional Responsibility (OPR); and
- the DHS Office of the Immigration Detention Ombudsman (OIDO).



CRCL	OIDO	OIG	OPR
<p>Investigates individual civil rights and civil liberties complaints</p> <p>Stores complaints in database</p> <p>Analyzes patterns of abuse to make policy recommendations to DHS</p>	<p>Investigates complaints about conditions in DHS custody, which includes violations of civil rights and civil liberties</p> <p>Uses case management model, conducts unannounced visits to detention centers, and makes recommendations to DHS agencies</p>	<p>Investigates allegations that reflect systemic violations- abuses of civil rights, civil liberties, racial/ethnic profiling, etc.</p>	<p>Investigates allegations of employee corruption, criminal and administrative misconduct, use of force incidents, deaths in custody, and detention standards</p> <p>Has criminal investigative power- best recipient for complaints needing immediate tactical response- especially when evidence is available</p>

These accountability offices have overlapping authority, and both non-governmental actors and those within government struggle to understand which are responsible for taking action in which cases. As the examples below illustrate, these offices often pass complaints between one another, resulting in weaker accountability: wait times of months to years to receive any communication from these agencies, or complaints even getting completely lost in the process.

II.A. DHS OFFICE OF CIVIL RIGHTS AND CIVIL LIBERTIES



The DHS Office of Civil Rights and Civil Liberties (CRCL) investigates civil rights and civil liberties complaints filed by the public and government agencies. Under Title 6 U.S. Code, Section 345 and Title 42 U.S. Code, Section 2000ee-1, CRCL's Compliance Branch can investigate civil rights and civil liberties

complaints, such as discrimination based on a protected characteristic (such as race, religion, sexuality), violation of rights while in immigration detention or as a subject of immigration enforcement, violation of due process rights, and physical abuse or any other type of abuse.⁶ In addition to responding to individual complaints, CRCL provides policy advice to DHS and its agencies on civil rights and civil liberties issues.

Advocates have been in conversation with CRCL, trying to understand more clearly the Office's response to complaints. CRCL Compliance officials have explained that when they receive a complaint, they may or may not investigate it. The CRCL Process Team intakes all complaints and tags them with keywords, such as "excessive use of force" or "medical care." The CRCL Process Team may flag a complaint for investigation if the case satisfies certain conditions: that the allegation is within its jurisdiction; that it is related to an issue it has not yet covered; that it is part of a pattern showing potential civil rights or liberties violations; that it is particularly concerning or egregious; and that the Team has enough information to fully investigate. If these conditions are met, the Process Team brings the complaint to a Team meeting to decide whether an investigation should be opened.

When CRCL is considering investigating a complaint, the agency must first send it to the DHS OIG, which has the "right of first refusal." DHS OIG can investigate allegations of criminal, civil, and administrative misconduct by DHS employees, contractors, grantees, and programs.⁷ If OIG does not keep the complaint, then CRCL can investigate.

⁶ "Establishment of Officer for Civil Rights and Civil Liberties | Homeland Security," U.S. Department of Homeland Security, August 22, 2022, <https://www.dhs.gov/publication/establishment-officer-civil-rights-and-civil-liberties>; "42 USC 2000ee-1: Privacy and Civil Liberties Officers," U.S. Code, December 17, 2004, [http://uscode.house.gov/view.xhtml?req=\(title:42%20section:2000ee-1%20edition:prelim\)](http://uscode.house.gov/view.xhtml?req=(title:42%20section:2000ee-1%20edition:prelim)); "Compliance Branch | Homeland Security," U.S. Department of Homeland Security, March 16, 2023, <https://www.dhs.gov/compliance-branch>.

⁷ "Frequently Asked Questions," DHS Office of Inspector General, accessed May 13, 2023, <https://www.oig.dhs.gov/about/faqs>.

According to DHS’s Management Directive 810.1, which dates back to 2004, within 5 days of deciding it will not investigate, the OIG must return the complaint to the DHS agency that forwarded the complaint. There is no time limit, however, for OIG to decide whether to take on a case in the first place.⁸

If CRCL does investigate a complaint, it can do a “short form” investigation, a full investigation, or refer it to the agency (such as CBP or ICE) whose personnel allegedly perpetrated the abuse to have its Office of Professional Responsibility investigate the complaint. Upon concluding an investigation, CRCL can make recommendations to the agency or to DHS (about 18 percent of complaints closed in 2021 resulted in recommendations to an agency), or it can close a complaint with informal advice (about 12 percent of complaints closed in 2021 resulted in informal advice).⁹ CRCL requests that DHS agencies respond to its recommendations within 60 days, either to concur and provide a plan for implementation, or to not concur and explain why. CRCL states that it monitors its policy recommendations, but it is unclear how it does so, as the Office has no power to enforce its recommendations.

The most common action that CRCL takes, though, is recording the complaint in its database, which it calls the “information layer,” and taking no further action to investigate. CRCL Compliance has shared with advocates that 70 percent of complaints that the Office receives are not investigated: instead, they are added to the information layer for analysis of patterns and trends. In 2022, CRCL opened 829 complaint investigations out of 2,400 complaints received, meaning it sent about 65 percent of complaints that year to its information layer. There is not currently transparency regarding under what conditions CRCL considers that a pattern may exist and an investigation is necessary, beyond the requirement that a large, but unspecified, number of similar complaints emerge.

II.B. DHS OFFICE OF INSPECTOR GENERAL



CRCL is not the only DHS accountability office tasked with investigating civil rights concerns. The **DHS Office of Inspector General (OIG)** has overlapping authority, according to Management Directive 810.1, that charges it with investigating “allegations [that] reflect systemic violations,

such as abuses of civil rights, civil liberties, or racial and ethnic profiling, serious management problems within the department, or otherwise represent a serious danger to public health and safety.”¹⁰ The CBP Office of Professional Responsibility (OPR) also investigates civil rights violations, especially when they may involve a criminal violation that could result in charges against a CBP agent. These overlapping mandates mean that accountability offices pass complaints between one another in an attempt to establish which is competent in which situations.

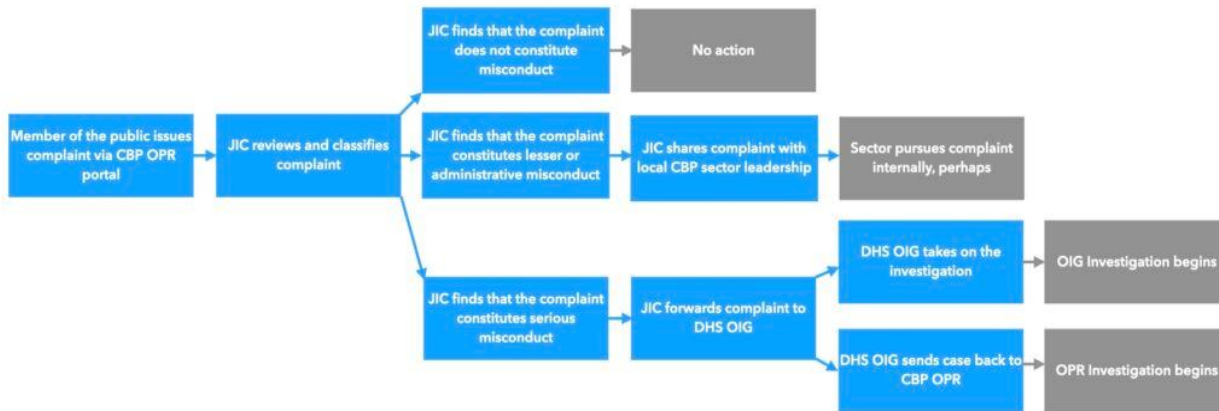
⁸ “Management Directive System MD Number: 0810.1” (Department of Homeland Security, June 10, 2004), <https://www.oig.dhs.gov/sites/default/files/0810.1%20The%20Office%20of%20Inspector%20General.pdf>.

⁹ “U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties Fiscal Year 2021 Annual Report to Congress” (Washington: U.S. Department of Homeland Security, December 12, 2022), https://www.dhs.gov/sites/default/files/2022-12/FINAL%20CRCL%20FY%202021%20Annual%20Report_508.pdf.

¹⁰ “Management Directive System MD Number: 0810.1.”

CBP also has its own accountability mechanisms that may investigate civil rights concerns or employee misconduct. Members of the public can send complaints to CBP **OPR** using a public portal. However, CBP also uses a DHS database called the **Joint Intake Center (JIC)**, which the Department calls a “central clearinghouse” for allegations of misconduct regarding CBP or ICE. From the JIC, CBP forwards serious allegations to DHS **OIG** for right of first refusal.

Path of a complaint submitted to CBP OPR’s public portal



JIC personnel may decide that a complaint does not constitute misconduct serious enough to send to the DHS **OIG**, and on to **OPR**. Such cases deemed to be “lesser or administrative misconduct” are sent instead to local CBP sector leadership, where local management may lack incentive to investigate and discipline its own agents.

II.C. CBP OFFICE OF PROFESSIONAL RESPONSIBILITY



Allegations of misconduct that **OPR** does send to the **JIC**, and that the **OIG** does not keep for investigation, may then be sent back to CBP’s **Office of Professional Responsibility (OPR)** for investigation. **OPR** is charged with investigating allegations of “employee corruption and serious misconduct,” use of force incidents and deaths in CBP custody, among other responsibilities.¹¹ **OPR** is headquartered in Washington DC and maintains field offices throughout the United States.

OPR was created in 2016 through the Trade Facilitation and Trade Enforcement Act. This law gives **OPR** criminal investigative authority and also creates overlapping responsibility with DHS **OIG**, which still has not been resolved. In 2020, Congress authorized \$74.3 million to hire 300 additional **OPR** investigative agents to staff up to 550 investigative special agents, determined to be the correct ratio to CBP’s 46,000 agents in the field. After the 2022 Homeland Security Appropriations Act released the funds, **OPR** began the process of getting staffing levels up to 700 personnel, including investigative agents and support staff, which would be twice the number of investigators as DHS **OIG**.

¹¹ “Office of Professional Responsibility,” U.S. Customs and Border Protection, December 30, 2022, <https://www.cbp.gov/about/leadership-organization/professional-responsibility>.

While this sounds like a robust investigative capacity, the 2023 CBP budget request noted that 60 percent of OPR’s budget “is consumed by legally required five-year reinvestigations for Federal employees.”¹² Further, subsequent Appropriations bills have expanded OPR’s role further, to include responsibilities such as the implementation of body-worn cameras for CBP agents and oversight of detention standards.

Advocates are concerned, meanwhile, that OPR is hiring agents who previously worked with [Border Patrol Critical Incident Teams](#), units that, until their October 2022 dissolution, would arrive on-scene and carry out their own investigations. These Critical Incident Teams stood accused of tampering with evidence and obstructing investigations in order to exonerate agents.

II.D. DHS OFFICE OF THE IMMIGRATION DETENTION OMBUDSMAN



The **Office of the Immigration Detention Ombudsman (OIDO)** is another accountability office within DHS, created by the Consolidated

Appropriations Act of 2020.¹³ OIDO takes individual complaints about conditions in DHS custody using a case management model, conducts unannounced visits to detention facilities, and makes recommendations to DHS agencies. The statute establishing OIDO requires that the Office’s functions be “complementary” to existing DHS agencies’ functions, including CRCL.

As a newer accountability office, OIDO currently monitors detention conditions in 20 states. In these areas of operation, OIDO prioritizes presence in ICE detention due to limited capacity, and does not yet monitor conditions in CBP custody in all of its locations. For instance, OIDO is not yet monitoring CBP custody conditions in Arizona.

In conversations with advocates, DHS staff recommended that complaints regarding DHS detention be sent only to OIDO, in order to avoid delays caused by the need to resolve jurisdictional overlap between accountability offices. Staff shared that the OIG does not have first right of refusal over complaints sent to OIDO, as is the case for OPR and CRCL. However, other accountability offices suggest sending complaints to multiple offices given their overlapping authority.

OIDO’s 2022 report to Congress described the overlap between OIDO and CBP OPR in particular.¹⁴ The report stated that OIDO has established a partnership with CBP’s Joint Intake Center, and that “cases involving CBP are now deconflicted by being redirected to OIDO for intake and processing using combined resources.” The report describes specially trained OIDO employees who can access the JIC and choose to open cases that other offices, such as OIG and CRCL, have declined. According to the report, this allows OPR to focus on other cases.

¹² “U.S. Customs and Border Protection Budget Overview” (Washington: Department of Homeland Security, March 28, 2022), https://www.dhs.gov/sites/default/files/2022-03/U.S.%20Customs%20and%20Border%20Protection_Remediated.pdf.

¹³ “6 USC 205: Ombudsman for Immigration Detention,” U.S. Code, December 20, 2019, [https://uscode.house.gov/view.xhtml?req=\(title:6%20section:205%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:6%20section:205%20edition:prelim)).

¹⁴ “2022 OIDO Annual Report to Congress.” June 15, 2023, <https://www.dhs.gov/sites/default/files/2023-06/2022%20OIDO%20Annual%20Report.pdf>.

This collection of DHS and CBP accountability offices is intended to provide pathways for individuals to seek accountability and justice after experiencing abuse at the hands of CBP personnel. Each office has its own online portal through which complaints may be filed:

- [DHS CRCL](#) (with buttons linking to other languages)
- [CBP OPR](#) ([Spanish](#))
- [DHS OIG](#)
- [DHS OIDO](#) (Other languages' forms [in PDF format](#))

It would take an individual hour to fill out the information at the separate portal corresponding to each accountability office that might have authority over a complaint. **In practice, these mechanisms are only accessible to individuals accompanied by a civil society organization** that can help navigate their overlapping authorities, find ways to simultaneously notify various offices of the same complaint, and dedicate time to sending follow-up messages when there is no response, as these offices recommend that complainants do if they do not hear back. Even then, a well-equipped civil society organization is at a disadvantage if it lacks years of hard-won knowledge about the most effective channels for initiating complaints, which may vary by sector and by the degree of interest and political will shown by agencies' local-level management.

Civil society is disenchanted with these processes, after seeing a majority of complaints result in no accountability. Even when advocates send an email containing the complaint and "CC" every existing accountability office, these mechanisms routinely fail to provide accountability or redress for well-documented examples of abuse of migrants.



Photo Credit: CBP

Illustration Credit: Sergio Ortiz Borbolla

III. Failure points

KBI has helped migrants to use DHS complaint processes since 2015, and has experienced firsthand many of these systems' shortcomings.

- In 2017, KBI's report "[Intake without Oversight](#)" documented 49 complaints, covering a variety of abuses from excessive use of force to medical neglect, filed between October 2015 and March 2017. Of those, KBI only received notifications regarding complaint investigations in 13 cases. For the remaining 36 cases, KBI only received communication to confirm receipt of the complaint, to confirm the complaint would be recorded in the "information layer," or to state that CRCL either planned to or had already investigated the complaint, with no further details.¹⁵
- In 2021, KBI [wrote](#) to DHS Secretary Alejandro Mayorkas, highlighting DHS accountability offices' ongoing issues of non-response. The letter reported that KBI had filed 73 complaints between 2017 and 2021, and of the 63 complaints for which DHS acknowledged receipt, it only provided definitive results in 14 cases, 12 of which were dismissed.¹⁶

¹⁵ "Intake Without Oversight: Firsthand Experiences with the Customs and Border Protection Complaints Process" (Nogales: Kino Border Initiative and Jesuit Conference of Canada and the United States, 2017), https://www.kinoborderinitiative.org/wp-content/uploads/2017/11/IntakeWithoutOversight_v06.pdf.

¹⁶ Joanna Williams, "Letter to Secretary Alejandro N. Mayorkas," February 11, 2021, <https://www.kinoborderinitiative.org/wp-content/uploads/2021/02/KBI-Complaint-Summary-Cover-Letter-2-11-21.pdf>.

- Also in 2021, KBI and NETWORK compiled a [report](#) summarizing 35 complaints that KBI filed between October 2020 and July 2021. The report highlights that of these 35 complaints, not one resulted in a response to KBI or the complainant about any disciplinary action taken against the CBP agents who perpetrated the abuses.¹⁷

Unfortunately, these patterns remain in place today. Between 2020 and 2022, KBI filed 78 complaints with CRCL and/or OPR. KBI often jointly submits complaints to multiple oversight agencies, by “CC”-ing the appropriate agencies on one email submitting the complaint. For instance, in cases of egregious and/or physical abuse by BP agents, KBI forwards complaints to both CRCL and CBP OPR. In cases regarding detention conditions, KBI forwards complaints to CRCL and OIDO.

Despite this practice, the response to the majority of these cases was either that CRCL recorded the allegation in its “information layer” and closed the case, that CRCL closed the case due to ongoing litigation or previous recommendations, or that CRCL forwarded the complaint to OIG and KBI never heard anything more.

¹⁷ “Due Process Denied” (Nogales: Kino Border Initiative and NETWORK Lobby for Catholic Social Justice, August 2021), <https://networklobby.org/wp-content/uploads/2021/08/KINO-NETWORK-CBP-Abuses-consolidated.pdf>.

Outcomes of Complaints filed with CRCL, OPR, and/ or other Accountability Office 2020-2022

<u>Failure Point</u>	<u>Number of Complaints</u>	<u>Percentage of Complaints (n=78)</u>
CRCL recorded allegation in "information layer," and closed case	28	36%
CRCL closed case due to ongoing litigation or previous recommendations	11	14%
CRCL couldn't substantiate allegations or found that there was no violation of policy/procedure, and closed case	8	10%
No response at all	8	10%
CRCL forwarded complaint to OIG, and case "died" (KBI heard nothing more)	15	19%
CRCL/OPR took initial steps to investigate (i.e. interview with complainant, or planned a site visit), and then case "died"	2	3%
CRCL forwarded complaint to JIC/CBP/OPR, and case "died"	3	4%
CRCL emitted recommendations related to complaint	1	1%
CRCL forwarded complaint to OIG and OPR; allegations were substantiated and referred for disciplinary action	1	1%
CRCL Immigration Section responded offering to assist with parole to admit migrant into United States	1	1%

In some cases, KBI has experienced wait times of up to 2 years to receive any response from CRCL, even an acknowledgement of receipt. In 2020, KBI filed 17 complaints, 7 of which took between 1-2 years to receive any communication or response. In 2021, KBI filed 44 complaints, 9 of which took between 1-2 years to receive any response. In 2022, KBI filed 17 complaints, 5 of which still have not received any response.

This wait time seriously hinders effective investigations, as access to evidence and contact with witnesses and victims deteriorate over time. In the case of “Carlos” (case outlined below), Border Patrol perpetrated the abuse at the DeConcini Port of Entry, where there are cameras and likely other witnesses. But KBI received its first communication about the complaint nearly 2 years after filing it. In that response, CRCL requested KBI’s help locating and speaking with “Carlos,” but KBI was no longer in contact with him after 2 years.

The rest of this section provides illustrative examples of these “failure points” in the accountability process. These come mainly from KBI’s direct experience with the 78 complaints filed between 2020 and 2022. All names are changed to protect victims’ privacy.

III.A. CRCL RECORDED ALLEGATION IN “INFORMATION LAYER,” AND CLOSED CASE: 28/78

Complaint:

“**Cristian**” was apprehended in the desert. While he was walking, a helicopter appeared above him, and he sat down on the ground, then laid down. As he laid down, he felt a scorpion sting him on his hip. Soon, Border Patrol trucks approached from all sides and an agent came out. Cristian told him he had been stung and needed medical attention, but the agent told him to wait until the arrival of other migrants whom the helicopter was pushing back. He tried to drink water, but it was getting harder to breathe and his throat felt tingly. He asked for medical attention again, but the agent told him to be quiet. He waited in the heat for an hour and a half until BP took them to Yuma in the early afternoon. Upon arrival, the migrants were inspected and Cristian had to lift up his shirt. He did so and showed the agent the big swollen bump on his hip, asking for medical attention, but she said to wait. Agents put him in a holding cell. He couldn’t eat because his throat felt like it was closing up. He fell asleep, thinking he might die. At around 3 am, he woke up after the agents had a shift change. An agent approached and Cristian showed him the sting. The agent seemed scared and surprised and took him to the hospital, after he had been asking for medical attention for over 12 hours. The doctors took him to the ER and gave him an anti-venom shot and antibiotics. Upon release, the agents took the medical paperwork, and he was only given antibiotics sporadically in custody.

Outcome:

KBI filed a complaint on October 20, 2022, and CRCL responded over 3 months later: “After carefully reviewing the information you provided, CRCL has recorded it in our database. This will allow us to track the issues you raised in order to identify potential patterns of civil rights or

civil liberties allegations within our jurisdiction. Accordingly, CRCL will take no further action on the information you provided at this time.”

III.B. CRCL CLOSED CASE DUE TO ONGOING LITIGATION OR PREVIOUS RECOMMENDATIONS: 11

Complaint:

“Damien” fled Jamaica to seek asylum in the United States. His friends in Jamaica had told him that you can seek asylum once you’re inside the United States, so he decided to run toward the port of entry and cross the international boundary while shouting that he was there to seek asylum in order to access a credible fear interview. As he crossed, two CBP officers grabbed a plastic barrier and threw it at him. He fell to the ground and two officers began beating him with their fists as he lay on the ground. One put his foot on his neck and yelled, “Don’t move.” They dragged him by his clothes along the concrete into a room that was under a roof of the checkpoint. His legs and arms were completely scraped. A woman officer saw the 2 agents dragging him and said that it was wrong, but they told her to get out of there. The agents took him inside a room and pushed him against the wall, telling him not to look at anything and to keep facing the wall. The agents asked Damien why he had come and he said to seek asylum. They asked where he was from and when he said Jamaica, they responded, “That’s what a bunch of you have been doing. You’re getting out of here,” and they expelled him to Nogales, Sonora.

Outcome:

KBI filed the complaint on June 26, 2021. Two months later, CRCL responded, confirming receipt of the complaint. Nine months after receiving the complaint, CRCL responded: “DHS placed this complaint on hold due to pending class action lawsuits relating to the issues you have raised in your complaint, including: *Huisha-Huisha et al. v. Gaynor et al.*, (1:21-cv-00100 (D.D.C. January 12, 2021) and *P.J.E.S. v. Wolf et al.*, (1:20-cv-02245 (D.D.C. August 14, 2020). Because that litigation remains ongoing, CRCL has decided to close this complaint. If, following the conclusion of the litigation, you believe that any civil rights or civil liberties issues have not been adequately addressed, please feel free to file a new complaint with CRCL.” The response added, “Following investigations of other complaints relating to CBP’s enforcement of Title 42, CRCL also made recommendations in 2021 to CBP regarding medical treatment and humanitarian protections for persons subjected to expulsion under Title 42.”

III.C. CRCL COULDN’T SUBSTANTIATE ALLEGATIONS OR FOUND THAT THERE WAS NO VIOLATION OF POLICY/PROCEDURE, AND CLOSED CASE: 8

Complaint:

“Mauricio” presented himself at Nogales’s DeConcini Port of Entry multiple times in May 2021 to seek asylum after he had received death threats and survived attempted kidnapping in Nogales. One night, he fled toward the border because he feared for his life. As he entered the area where cars lined up towards the United States, 12 CBP officers beat him with their fists and feet, kicking

him all over his body. They expelled him instantly, even though he told them people wanted to kill him in Mexico. Upon his expulsion, the Mexican Red Cross took him to the hospital.

Outcome:

KBI filed a complaint on May 25, 2021. On June 2, 2021, CRCL told KBI they sent the complaint to OIG. On September 14, 2022, 15 months after receiving the complaint, CRCL sent KBI a closure letter, stating they had received a copy of OIG's investigation and based on its review of that report, CRCL stated that it was unable to substantiate the allegations. The investigation had taken over a year to perform, and the victim was not interviewed.

Complaint:

"Eliezer" was apprehended by Border Patrol in the desert. An agent forcefully pulled him off the ground by the back of his neck and yelled at him in English, which he didn't understand. The agent handcuffed Eliezer and connected him to 2 other people in handcuffs. A Border Patrol dog weaved in between their legs and one man handcuffed to them fell, pulling down the others. Eliezer fell to his knees and the handcuffs tightened even more. He told the agents the cuffs were too tight and asked if he could please loosen them a little. The agent didn't respond and only looked at him. When they finally took the cuffs off later, his wrists were bruised.

Outcome:

KBI filed the complaint on April 7, 2021. Four months later, CRCL said they sent the complaint to OIG. Six months after sending the complaint, KBI received a closure letter stating: "CRCL conducted an investigation into your complaint. We requested and reviewed additional information from CBP, which provided records, signed statements from the apprehending USBP agents, policy guidance, training materials, and other information related to your allegations. Based upon our careful review of that information, CRCL is unable to substantiate your allegations. We are closing this complaint as of the date of this letter." CRCL had only reviewed information from CBP and heard nothing from the victim.

Complaint:

"Brenda" was apprehended by Border Patrol in the desert. Agents ran towards her, which frightened her, so she ran. She fell over a huge rock that she hadn't seen, and lay on the ground in pain for 40 minutes while agents found the other people in her group. She yelled for help, thinking they had left her behind, until finally an agent returned. He put her on a stretcher, gave her IV fluids, and ripped open her clothes to look for other injuries. They put her in an open trailer to transport her, where she was under the August sun with her clothes ripped open and exposing her skin. They took her to a hospital in Tucson, where doctors said she had a broken tibia. They gave her a leg brace and prescribed her medicine, but she never got the medicine. A Border Patrol agent had her leave the hospital only in a paper hospital gown with no underwear underneath. The agent took her medical paperwork away. They brought her to a cold room in Border Patrol custody. She could not walk on her own because of the pain she was in and was forced to soil herself in the hospital gown she was wearing because she could not walk to the bathroom.

Later, they brought in a wheelchair and said she was going to Mexico. She asked them not to send her in this condition, and to at least give her the medical paperwork so she knew what medication she needed. They gave the paperwork back with many pages ripped off the front. They wheeled her out, still only wearing the soiled paper gown, and put her in a vehicle. While they drove, she said she had to use the bathroom but the agent wouldn't stop for a bathroom even though they made stops to pick up other people on the way. She had to use the plastic bag they gave her for her belongings and open it up to urinate in the bag. When she arrived in Nogales, Sonora, the Mexican Red Cross saw her condition and called an ambulance to bring her to the hospital in Nogales.

Outcome:

KBI sent the complaint to CRCL on August 30, 2021. On October 21, 2021, CRCL stated that it had forwarded the complaint to OIG. On April 27, 2022 (7 months after receiving the complaint), CRCL communicated: "Based on the review of information we received, it appears that the medical care provided to Ms. [redacted] complied with the policies and procedures that existed at that time. Regarding Ms. [redacted]'s access to a restroom while being transported, we asked CBP to take measures to ensure that this situation does not recur."

III.D. NO RESPONSE AT ALL: 8

Complaint:

"Adriana" was apprehended by Border Patrol. They took all her belongings away, saying they would be sent with her to the next location. Among the items taken were her diabetes medication, despite her protests that she needed it; her cell phone; and 5,020 pesos (\$264 USD). They sent her to the Central Arizona Complex in Florence. The next day, she asked about her medicine, but the agents said there was no medicine among her belongings. She was detained for 15 days and could not communicate with her family. She later learned her children called the Mexican consulate because they thought she might have died, and that the Consulate was unresponsive. Twice, she was made to sign paperwork in English that she did not understand. Only later did she learn that she was detained for so long because they kept her as a witness to testify against the person who helped her cross. The whole time she was detained, she felt unwell because they began to give her a medication for her diabetes that was not the same as the one she usually took. It caused headaches, dizziness, joint pain, and inflammation. She saw a doctor once while detained, but because of the language barrier, she was not able to explain the type of diabetes she has. She was deported to Nogales, Sonora without any of her belongings.

Outcome:

KBI sent this complaint on August 10, 2022, to CRCL and copied the Joint Intake Center. The JIC requested her "A" number (identification number assigned to people in detention) and there was no further communication. KBI has received no response from CRCL over nine months later.

III.E. CRCL FORWARDED COMPLAINT TO OIG, AND CASE “DIED” (KBI HEARD NOTHING MORE): 15

Complaint:

“Carlos” was apprehended by Border Patrol in the desert, after he had been forced to work for an organized crime group for six months near Altar, Mexico, due to being unable to pay their extortion fee. He told agents he was afraid to return to Mexico for this reason, and they said they would decide whether to send him to his native Guatemala or to Nogales, Sonora. They expelled him to Nogales at 2 am. As agents were unloading him and other migrants at DeConcini Port of Entry, one agent said “*Dónde está el pendejo?*” (where is that idiot?), referring to Carlos. When Carlos tried to ask why he was being expelled to Mexico as he is a Guatemalan national, the agent had his baton ready and threatened to hit Carlos in the head. He hit him with the baton on his knee, causing it to swell. Carlos thought it was broken and could barely walk.

Outcome:

KBI sent this complaint on November 4, 2020, and received the first communication about the case on August 15, 2022 (22 months later). A CRCL staff member said he was “in receipt of DHS OIG’s investigation” and wanted to locate Carlos to talk with him. He said, “In the DHS OIG report of investigation, they stated they were unable to locate Mr. [redacted], which was one of the reasons the case was not prosecuted. Would you be able to assist me in locating Mr. [redacted] for an interview?”

Nearly 2 years later, KBI was no longer in contact with Carlos and could not assist. KBI then received a communication stating: “DHS OIG investigated the allegations and subsequently the complaint was referred within DHS. You may contact the DHS OIG for additional information.” A KBI staff member responded to ask how KBI could learn more about the outcome of the OIG investigation. OIG responded that filing a Freedom of Information Act request was the only way to get more information, even if Carlos himself reached out personally to request it.

III.F. CRCL/OPR TOOK INITIAL STEPS TO INVESTIGATE (I.E. INTERVIEW WITH COMPLAINANT, OR PLANNED A SITE VISIT), AND THEN CASE “DIED”: 2

Complaint:

Border Patrol apprehended “Berto” in the desert after he had been walking for 8 days. The agent put him in cuffs and was yelling at the group to get down and not touch their backpacks. Berto asked if he could get something to drink from his backpack and the agent responded, “No—if you want water, there’s water in your country. This is my country. You just come here to screw around, what are you doing here?” He shoved Berto face down into a rock and kicked his head and stood on top of him with all his weight, yelling “this is my country!” Berto cried out and then lost consciousness. When he came to, blood was flowing over his face. Border Patrol sent a search dog over to lick the blood off his face. The same agent who kicked and stood on him then

saw how much he was bleeding and unlocked his cuffs, jabbed him in the side, and signaled that he should run away. But he could only see out of one eye and was in no condition to run.

The agents then walked them to their vehicle. The same agent that had just attacked Berto said not to worry, because they would take him to a good doctor, and laughed. When they arrived at the Border Patrol station in Tucson, the agent who seemed to be the supervisor saw Berto's face covered in blood and asked what happened. Berto explained and the supervisor took pictures of his injuries. Berto insisted twice that they take him to the hospital, and the supervisor finally did. When the agent assigned to guard him in the hospital asked what had happened and Berto started to tell him, the agent just started laughing and talking to the nurse in English. They expelled Berto to Nogales, Sonora.

Outcome:

KBI sent the complaint to CRCL and OPR on July 11, 2022. An OPR Special Agent did an in-person interview with Berto at the port of entry the following day, but KBI has received no follow-up nearly 1 year later. Berto speaks an indigenous language, and Spanish is his second language. The OPR agent conducted the interview in Spanish but had very weak Spanish skills, so the KBI staff member observing the interview could tell there was a language barrier. Berto finally got an appointment at the port of entry through CBPOne after being stranded in Nogales for eight months, and three months of battling with the CBPOne application.

**III.G. CRCL FORWARDED COMPLAINT TO JIC/CBP/OPR, AND CASE
“DIED”: 3**

Complaint:

“Silvia” was walking in the desert when two Border Patrol agents on four-wheelers came toward her. One of the agents hit her left leg with their four-wheeler, and the impact threw her to the ground. Her whole ankle and lower leg were swollen for days. She received no medical attention for her injuries, and it was not until she was expelled to Nogales, Sonora that she received injections and physical therapy for the pain.

Outcome:

KBI sent the complaint to CRCL and OPR on August 4, 2021; an OPR staff member emailed a Joint Intake Center case number the following day. To this day, KBI has not received any further communication.

Complaint:

“Iliana” was walking in the desert with a group when a Border Patrol vehicle approached and two male agents apprehended them. The agents interviewed them one by one. The agent interviewing Iliana told her he was going to search her so she took off her jacket, leaving her in a T-shirt, so he could see that she wasn't hiding anything. He said he had to pat her down. She asked if a female agent could do it and he said he had to do it. She repeatedly said she wanted a female agent and he said he would do it. He touched her breasts and crotch during the search. She told him she wasn't hiding anything and he said, “I want to check again.” He groped her in

the same way, touching her breasts. When she was back with the others, she asked the other woman traveling in their group if she had been searched the same way, and she said no.

Outcome:

KBI sent the complaint on November 18, 2021, and CRCL responded about one month later: “CRCL has reviewed your correspondence and shared it with the CBP office responsible for coordinating efforts to prevent sexual abuse and assault in CBP custody in order to inform them of your allegations so they can take the appropriate steps required by regulation and CBP policy.” KBI never heard anything more.

III.H. CRCL EMITTED RECOMMENDATIONS RELATED TO COMPLAINT: 1

Complaint:

“Claudia” fled Honduras. On her migration journey, she was raped in Mexico. Upon being apprehended by Border Patrol, she was eight months pregnant. As she was walking in the desert, she began to feel contractions. After being apprehended, she told an agent she was in pain and having contractions. She asked to go to the bathroom and once she came back, the agent told her to get in the vehicle. It was only when she saw the port of entry that she realized they were trying to expel her to Mexico, not take her to get medical attention. She told the agents she could not return to Honduras or Mexico for her safety and they told her, “you have to do it legally” and “you can’t come to the United States without permission.”

Outcome:

KBI sent this complaint on April 27, 2020. In early May 2020, CRCL responded that they were forwarding it to OIG. On September 22, 2021, 17 months later, KBI received a CRCL letter stating: “CRCL has concluded its investigation of your complaint alleging that CBP’s treatment of Ms. [redacted] was not in accordance with CBP’s civil rights and civil liberties obligations when it allegedly apprehended Ms. [redacted] while she was pregnant and experiencing contractions and expelled her without providing medical care or a medical screening. Your complaint further alleged that Ms. [redacted] expressed a fear of being returned to Mexico but was not referred to U.S. Citizenship and Immigration Services prior to her expulsion. Following our investigation, CRCL made recommendations to CBP regarding medical treatment and humanitarian protections for persons subjected to expulsion under the Centers for Disease Control and Prevention public health authority in 42 U.S.C. § 265 (‘Title 42’).”

However, KBI was not made aware of what these recommendations were or how they could see them until a newly hired CRCL staff member reached out in September 2022, more than two years after the complaint’s date of issue. KBI staff asked CRCL to clarify what previously emitted recommendations the office was using as a basis to continually close complaints. The CRCL staff member then pointed KBI to redacted recommendations published on CRCL’s website.¹⁸ The

¹⁸ Katherine Culliton-Gonzalez and Susan Mathias, “Complaint 20-07-CBP-0640: Providing Medical Care and Humanitarian Protections to Undocumented Individuals During the COVID-19 Public Health Emergency” (Department of Homeland Security Office

recommendations asked for CBP’s concurrence or non-concurrence within 60 days. KBI has been asking CRCL for information about whether CBP concurred or not, but it has been unable to say. CRCL has no enforcement power to compel agencies to implement their recommendations. Still, CRCL continues to close new complaints that it considers to be related to these recommendations.

In 2020, “Claudia” had been calling KBI monthly to ask about the status of her investigation. By the time CRCL shared information about the recommendations, though, Claudia had stopped calling, and she almost certainly does not know that her complaint ever had any impact. Even though it resulted in a recommendation, the process failed to uphold the dignity of the victim, which should be a basic mission of any accountability office.

III.I. CRCL FORWARDED COMPLAINT TO OIG AND OPR; ALLEGATIONS WERE SUBSTANTIATED AND REFERRED FOR DISCIPLINARY ACTION: 1

Complaint:

“Marco Antonio” had been walking for several days in the desert when three Border Patrol four-wheelers emerged and quickly closed in on him and his group. He turned and started to run, and a four-wheeler hit him from behind. The front bumper hit him and one of the front wheels ran over his right leg. He started seeing stars and almost passed out from the pain. Marco Antonio was already on the ground, but an agent pushed him down and got on top of him to handcuff him. Marco Antonio shouted in pain and said his leg was injured, but the agent ignored him. Another agent approached, uncuffed him, and asked him if he could walk. He said no, so the agent carried him to a four-wheeler and he drove him over an hour to a place where an ambulance met them. At the hospital, they gave him IV fluids and anesthesia and performed an X-ray. They found that a leg joint was dislocated, and they relocated it. Around 1:00 am, a Border Patrol agent took him out of the hospital and took him to an immigration station. The next day, they transferred him to Nogales and tried to turn him over to Mexican officials, but the officials wouldn’t accept him in his condition, given that he couldn’t walk. So, the Border Patrol drove him back to the immigration station and expelled him at 10:00 pm to Nogales, Sonora when Mexican officials were no longer present.

Outcome:

KBI submitted the complaint on April 4, 2022, and an OPR special agent did an in-person interview at the port of entry the next day. A KBI staff member accompanied Marco Antonio, and though they used an interpreter, they relied on the KBI staff member for some interpretation. For instance, Marco Antonio used the word “canilla” to refer to his shin, which is common in Guatemala, but the interpreter did not understand what it meant, so the KBI staff member had to explain. With KBI’s assistance, Marco Antonio was able to retain legal representation from a non-profit organization to assist with paroled entry into the US. With their help and the

collaboration of OPR, he was paroled into the United States six months later due to his need for ongoing medical care stemming from the injury. One year after submitting the complaint, KBI received notice that OIG and OPR had investigated and substantiated the allegations and that the matter was referred for disciplinary action. KBI has no more details about what disciplinary action resulted.

III.J. CRCL IMMIGRATION SECTION RESPONDED OFFERING TO ASSIST WITH PAROLE: 1

Complaint:

“Emely” turned herself in to Border Patrol to seek asylum. She was eight months pregnant at the time. She had been walking through the desert and it had been hours since she had last felt the baby move. She told the agent she was pregnant and she hadn’t felt the baby move for hours and asked for medical care so someone could check that everything was okay with her pregnancy. The agent said no, and told her to sit down and wait. They took her to warehouse-like buildings (likely a processing facility), and there an agent looked at her and asked if she was pregnant. When she said yes and asked again for medical attention, he said she had to wait. She saw people in blue surgical uniforms/scrubs, so she approached a man in scrubs and told him she was pregnant and had not felt her baby move for a long time and asked if he could give her a medical check-up. He told her she had to wait. She heard agents yelling at people there, so she decided not to ask for medical care anymore, even though she was concerned because the baby usually moved a lot. They put her and other migrants on buses after night fell and expelled them all to Nogales, Sonora.

The next morning, she woke up with pain in her lower back, which intensified into contractions. At the migrant shelter, they took her to the hospital, where they told her that her baby was no longer alive.

Outcome:

KBI filed a complaint on October 7, 2022, with CRCL, OPR, and OIDO. An OPR Special Agent did a phone interview with Emely a few days later. A staff member from the CRCL Immigration Section also reached out to look into paroling Emely into the United States as a Title 42 exemption based on the gravity of the case. Neither one of these follow-ups resulted in help for Emely because she stopped responding to KBI’s calls.

Other common “failure points” are not necessarily drawn from KBI’s experience filing complaints, but appear to arise frequently enough to deserve mention in the remainder of this section.

III.K. DISCIPLINARY BODIES WITHIN CBP AND DHS CLOSE CASES OR REDUCE RECOMMENDED PUNISHMENTS

Even when agencies find that abuses took place, discipline can be elusive.

In fiscal 2021, CBP’s National and Local Use of Force Review Boards (NUFRB and LUFRB, committees of senior leaders from CBP, which may include personnel from the Department of Justice, DHS, and U.S. Immigration and Customs Enforcement, ICE) reviewed 684 cases of use of force. In 660 cases (96 percent), these boards declined to issue sanctions, finding that CBP agents’ actions were either “within policy” or outside policy with further “action unwarranted.” Of the remaining 24 cases, 11 ended up with counseling for the agents involved; the other 13 cases—including 2 fatal cases—remained under investigation or pending action as of April 2022.¹⁹

Other examples of lack of discipline include the [failure](#), discussed in Section I above, to discipline Border Patrol agent Jeffrey Rambo for digging into a journalist’s personal information, as well as:

- The inability of Agent Amanda Cali to hold a co-worker accountable for a sexual assault suffered in [August 2020](#) in upstate New York. According to the *New York Times*, “She reported the episode to her supervisor, but the supervisor said the agent in question deserved support because he had been at the agency so long.”²⁰
- The case of Janine Bouey, a 60-year-old Black former Los Angeles Police Department officer, who stated that upon crossing through the San Ysidro port of entry south of San Diego in [June 2020](#), she was repeatedly shackled, sexually assaulted (at one point with a canine), sworn at, and forced to disrobe without privacy by CBP agents. “To her knowledge, no disciplinary action was taken and the officers involved in the incident remain at work,” Alliance San Diego reported.²¹

Another example is Border Patrol’s notorious 2019 “Facebook group” [scandal](#), first revealed by *ProPublica*. As the House Oversight Committee found in 2021, although CBP’s Discipline Review Board recommended punishments for 60 agents, most saw their penalties reduced, often dramatically.²²

III.L. OPR FAILS TO RESPOND TO COMPLAINT

[August 30, 2020](#): *Politico Magazine* published an account by Tianna Spears, a Black U.S. diplomat who had been assigned to the U.S. consulate in Ciudad Juárez. She described CBP officers subjecting her to regular,

¹⁹ “Report on Internal Investigations and Employee Accountability FY2021” (Washington: U.S. Customs and Border Protection, April 14, 2022), <https://www.cbp.gov/document/report/report-internal-investigations-and-employee-accountability-fy2021>.

²⁰ Eileen Sullivan, “Top Border Patrol Official Resigned Amid Allegations of Improper Conduct,” *The New York Times*, January 22, 2023, sec. U.S., <https://www.nytimes.com/2023/01/21/us/politics/top-border-patrol-official-resigned.html>.

²¹ “Abuse, Assault and Impunity at DHS Must Stop: Former LAPD Officer Subjected to Sexual Assault by DHS Sues the Agency,” Alliance San Diego, June 16, 2021, https://www.alliancesd.org/abuse_assault_and_impunity_at_dhs_must_stop_former_lapd_officer_subjected_to_sexual_assault_by_dhs_sues_the_agency.

²² “Border Patrol Agents in Secret Facebook Group Faced Few Consequences for Misconduct” (Washington: U.S. House of Representatives Committee on Oversight and Accountability Democrats, September 14, 2021), <https://oversightdemocrats.house.gov/cbp-report>.

blatant racial profiling whenever she crossed back into El Paso. “[O]fficers in primary inspection still made sarcastic comments, cruel jokes and belittling jabs implying I was not a U.S. diplomat, not a U.S. citizen and had stolen my own car.” Spears said that as of August 2020, 18 months after complaining to CBP’s upper management, she got no response to her complaint from CBP OPR.

III.M. VICTIM OR WITNESSES DEPORTED WITHOUT BEING CONTACTED BY INVESTIGATORS

Following the notorious September 2021 [incident](#) in which Border Patrol agents on horseback charged at Haitian migrants in Del Rio, Texas, attorneys representing victims lamented that OPR, in July 2022, “released their report without interviewing a single Haitian.”²³ Another prominent recent case was that of [Marisol Gómez Alcántara](#), shot in the head by a Border Patrol agent in 2021 while a passenger in a car, but deported without any contact with investigators. (See the discussion of Ms. Gómez’s case in the “first path” narrative in Section I of this report.)

III.N. OIG CARRIES OUT AN INVESTIGATION AND DELAYS OR REFUSES RELEASE OF RESULTS

A striking example, discussed in Section I above, is the Project on Government Oversight’s (POGO) [April 2022](#) revelation of a 2018 DHS OIG survey that had found more than 10,000 CBP, ICE, Secret Service, and Transportation Security Administration (TSA) employees experienced sexual harassment or sexual misconduct at work. The OIG has never released a report with this survey’s findings, and POGO found that it seriously watered down another report about DHS law-enforcement personnel found to have committed domestic violence when off duty.²⁴

²³ Rafael Bernal, “Haitian Advocates File Lawsuit against Biden Administration over Del Rio,” Text, The Hill (blog), September 30, 2022, <https://thehill.com/latino/3669222-haitian-advocates-file-lawsuit-against-biden-administration-over-del-rio/>.

²⁴ Adam Zagorin and Nick Schwellenbach, “Protecting the Predators at DHS,” Project On Government Oversight, April 7, 2022, <https://www.pogo.org/investigation/2022/04/protecting-the-predators-at-dhs>.



Photo Credit: CBP

Illustration Credit: Sergio Ortiz Borbolla

IV. Recommendations to Improve Accountability

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.

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IV.A. MAKING THE COMPLAINTS PROCESS WORK

Accountability requires careful oversight, and a large component of that is the ability to receive, process, and adjudicate complaints as quickly and efficiently as possible. That ability is lacking, as this report amply demonstrates, and as KBI has documented in reports and letters since 2017.

The complaints process is too complex, with overlapping responsibilities and opaque procedures. Advocates often try to make complaints to various accountability offices due to their overlapping jurisdictions. Even so, there are remarkably few examples of victims who, after submitting a complaint, have achieved a result that restores the harm done and upholds their dignity. In too many cases, they receive no response at all.

To improve the complaints process, particularly at CRCL, our organizations offer 10 recommendations.

IV.A.1. IMPROVE THE COMPLAINT INTAKE PROCESS

Advocates and others filing complaints lack clarity on how to do so in a way that ensures that the appropriate oversight agency receives them. For instance, a 2012 DHS document, “How to File a Complaint with the DHS,” explains, “As an alternative to reporting a complaint to the DHS Office of Inspector General (OIG), complaints involving CBP or Immigration and Customs Enforcement (ICE) employees can be sent to the Joint Intake Center.”²⁵ The document, however, does not explain why doing so would be appropriate or what would be the advantage of taking this route.

The DHS document also names CRCL as an appropriate agency to reach out to in the event of “physical abuse or any other type of abuse.” However, an official from another oversight agency interviewed for this report said that CRCL is most appropriate for “macro” problems and not for individual complaints that need quick resolution. This official suggested that advocates should send complaints that represent a long-standing pattern of abuse to CRCL and send complaints that need an immediate and individual solution to OPR.

However, nearly every abuse that advocates see requires an individualized solution while also forming part of a long-standing pattern of abuse. Oversight agencies must improve the complaint intake process so that agencies can simultaneously redress individual complaints and analyze patterns of abuse.

After years of advocacy in this arena, KBI has learned that the most effective way to file a complaint is to send an email “CC”-ing the intake emails of all oversight agencies that could possibly be involved in investigating the complaint. A senior DHS official acknowledged, “‘Go to everybody’—that’s still the best answer. I’d rather get it in more places than not, and we might have different parts of the pie.”²⁶ However, an individual complainant seeking redress for an abuse would have no way to know that.

Also, even when KBI sends copies to the JIC and OPR in addition to CRCL, many complaints go unanswered. Most recently, OIDO responded to a complaint KBI sent to CRCL and copied OIDO, requesting that KBI fill out OIDO’s separate case form. Generally, it is only when KBI leverages its staff’s personal contacts and the interest of specific investigating agents who care about improving oversight, particularly within OPR, that KBI has received a more timely and individualized response.

²⁵ “How to File a Complaint with the Department of Homeland Security” (U.S. Department of Homeland Security, October 3, 2012), https://www.dhs.gov/sites/default/files/publications/dhs-complaint-avenues-guide_10-03-12_0.pdf.

²⁶ Senior DHS Officials, Interview with senior DHS officials, Microsoft Teams, April 21, 2023.

CRCL recently created an online portal to submit complaints. It uses the same format as the agency's PDF complaint document, so it is unclear how the portal will improve the current process for complainants or CRCL staff.

IV.A.2. CREATE A SINGLE COMMON INTAKE FORM FOR CRCL, OPR, OIG, AND OIDO

Given the overlapping responsibilities of the accountability offices, KBI has found it beneficial to send complaints to all of the offices that could potentially investigate the allegations. However, each office has its own portal and complaint format, and one office may not accept a complaint formatted for another. Merely getting the complaint to the correct office, so that it might take action, requires migrants and advocates to spend hours reformatting and re-submitting complaints to different agencies.

The four agencies should work together to create a single common intake form that would solicit the information necessary for any office to open an investigation. This shifts the burden away from survivors and their advocates. A more streamlined complaints process could encourage more NGOs to take the time to file complaints, beneficial to survivors and accountability offices alike.

IV.A.3. MAINTAIN A WEBSITE WHERE THE PUBLIC CAN SEE THE LAST ACCOUNTABILITY ACTION TAKEN IN A CASE

It should be easy for complainants and their advocates to know the most recent step that agencies have taken to act on their complaints and to hold personnel accountable. Even a phone call should be unnecessary. The four agencies should maintain online, password-protected, regularly updated resources (or, ideally, one DHS-wide resource that combines information from all four) that make clear the most recent "accountability step" taken in each case.

Complainants or advocates would create online identities with unique passwords. Upon logging in, they would be able to view the most recent status of each of their complaints. Just as someone tracking a package for a purchase can see whether it is "shipped," "in transit," or "out for delivery," someone tracking their complaint should be able to see whether it is "shared with OIG," "under local law enforcement investigation," "under OPR investigation," "recommendations issued," "case closed," or similar.

IV.A.4. DEVELOP A PROCESS FOR HANDLING COMPLAINTS THAT INVOLVE MULTIPLE ALLEGATIONS

Some officials interviewed for this report conveyed that CRCL, CBP OPR, and DHS OIG have difficulty processing what they called "hybrid complaints": letters or other documents that narrate more than a few abuses all at once, and that may combine different categories of abuses. CRCL stated that such complaints can be useful for identifying systemic problems, but that may not be satisfactory for a victim seeking redress for a specific case. When attorneys or advocates send what an official called a "giant letter," agencies appear to get paralyzed, unable to decide how to break apart the cases presented and which agencies should pursue them. Often, as a result, nothing happens.

The general inability to process "hybrid complaints" is not the fault of the complainants or the organizations advocating for them. Often, organizations are made aware of so many cases that presenting each as separately filed complaints is either impractical or would divorce the alleged abuse from the larger context in which it is happening. (An example would be four legal aid organizations' joint

complaint about abuses of unaccompanied children in CBP custody in 2021, which lists several dozen separate abuses that could have led to a flood of complaints.²⁷⁾

This problem can be addressed by having the agencies set up an internal process to “break apart” hybrid complaints on their own, dividing each into individual cases as necessary, and ideally in coordination with the complainant. That process should also have clear ground rules for quickly deciding which agency should follow up on each case.

It can also be solved by having agencies communicate more clearly to the public the format of complaint that works best for this process. Even without this process, it is incumbent on CRCL and other agencies, as soon as possible, to provide clearer public guidance regarding characteristics of complaints that would increase the likelihood of speedier consideration.

IV.A.5. ISSUE PROMPT WRITTEN CONFIRMATION OF RECEIPT OF COMPLAINTS

The 2016 Final Report of the CBP Integrity Advisory Panel recommended that CBP “acknowledge all complaints received from the public.”²⁸ All agencies must provide an initial response, acknowledging receipt of complaints, 100 percent of the time.

CRCL officials state that they aim to get a written response to a complainant within 30 days. KBI’s experience, documented above, shows that this does not happen systematically.

IV.A.6. ENSURE THAT UPON ACKNOWLEDGEMENT CRCL ASSIGNS A POINT OF CONTACT FOR EACH COMPLAINT

The complainant should know whom to contact to discuss their case, with a direct phone number or extension and e-mail address. Given the lamentably high staff turnover rate that some of these agencies suffer, it is critical that the point of contact’s replacement reach out to complainants upon taking over, and automatically receive all emails and calls related to the case without the complainant needing to take action.

IV.A.7. PUBLISH CRCL’S RECOMMENDATIONS AND OUTCOMES

When CRCL resolves a complaint or series of related complaints, it sometimes issues recommendations to the relevant DHS agency. CRCL usually publishes redacted recommendations online in its Library of Recommendations and Investigation Memos. (DHS officials interviewed made clear that CRCL is not the redactor of its reports on recommendations: “to the extent that we can share, we share.”²⁹) CRCL also submits an annual report to Congress, in which it outlines in general terms its recommendations issued over the past year, though this report is usually issued more than a year after the fiscal year it covers has ended.

However, CRCL has routinely failed to make complainants aware that their complaints have contributed to recommendations. “People who have filed complaints with the Office don’t receive a readout of what

²⁷ Peter A Schey and Carlos Holguín, “Alleged Abuse of Unaccompanied Minors in Customs and Border Protection Custody” (Center for Human Rights and Constitutional Law, April 11, 2022), <https://www.documentcloud.org/documents/21694269-alleged-abuse-of-unaccompanied-minors-in-customs-and-border-protection-custody>.

²⁸ “Final Report of the CBP Integrity Advisory Panel” (Washington: Homeland Security Advisory Panel, March 15, 2016), https://www.dhs.gov/sites/default/files/publications/HSAC%20CBP%20IAP_Final%20Report_FINAL%20%28accessible%29_0.pdf.

²⁹ Senior DHS Officials, Interview with senior DHS officials.

those recommendations were, or what the findings of their investigation were,” Shaw Drake, then of ACLU Texas, said at an October 2022 WOLA event. “Those recommendations, unlike Inspector General reports, are not made public. It’s even harder to follow up on those to force the agency to adopt them or to even pressure them into commenting on why they have or haven’t.”³⁰

In complaint closure letters, CRCL often cites that it has previously “emitted recommendations” related to the complaint at hand and therefore is closing it. However, closure letters do not provide a name for the recommendations, a hyperlink, or any direct way to find them. CRCL closes complaints related to recommendations emitted in the past, considering that due diligence has already been performed.

CRCL staff confirmed that they do not send the recommendations to the complainant whose allegations started the investigation. This is because negotiations with the DHS agency that receives the recommendations are deliberative and may be ongoing, so CRCL does not share recommendations until it has a final agency decision.

In contrast, CRCL’s authority, under Section 504 of the Rehabilitation Act of 1973, to investigate and provide remedy for disability discrimination complaints among DHS employees has much higher standards: if CRCL receives a complete complaint, it is required to investigate it, issue a determination letter within 180 days, remedy the complaint and share this remedy in detail with the complainant regardless of whether the agency concurs with the findings.

Where allegations of abuse by border law enforcement agencies are concerned, there is currently no way to know whether the agencies receiving CRCL’s recommendations have concurred with them or not. In redacted recommendations CRCL has published on its website, the recommendations clearly state: “We request that [DHS agency] provide a response to CRCL in 60 days whether it concurs or non-concurs with these recommendations. If you concur, please include an action plan.” However, there is no published record of the agency’s response or action plan. CRCL has no enforcement power, yet it is charged with “monitoring” the implementation of its recommendations.

It is concerning that CRCL closes incoming complaints related to issues about which it has previously created recommendations, without being able to enforce or effectively monitor these recommendations, even as the DHS agencies continue to commit the same abuses. CRCL staff confirmed that they have limited options when the DHS agency does not concur, sharing that if they continue to receive new complaints regarding the same issue, they must attempt to open a new investigation and issue new recommendations if the complaints show something novel that the original investigation might have missed.

Informing complainants about the outcomes of investigations and recommendations is critical to the credibility of the entire process. In 2014 the ACLU and the Women’s Refugee Commission recommended that DHS “provide complainants a summary regarding the outcome of their complaint within one year, including findings of fact, findings of law, action taken, and available redress.”³¹ The CBP Integrity Advisory Panel recommended that CBP “notify complainants by letter of the results of such complaints,

³⁰ “Abuse, Accountability, and Organizational Culture at U.S. Border Law Enforcement Agencies” (Washington Office on Latin America, October 18, 2022), <https://www.youtube.com/watch?v=zC84VI67wLk>.

³¹ Jen Podkul and Neema Singh Giuliani, “Recommendations to DHS to Improve Complaint Processing” (ACLU, Women’s Refugee Commission, May 5, 2014),

https://www.aclu.org/sites/default/files/assets/14_5_5_recommendations_to_dhs_to_improve_complaint_processing_final.pdf.

including administrative or disciplinary action, if any, to the extent permitted by law and legitimate privacy concerns.”³² The recommendations of both of these groups remain relevant and important.

IV.A.8. CRCL MUST BE MORE PROACTIVE ABOUT INITIATING “PATTERN OF ABUSE” INVESTIGATIONS

CRCL needs an internal system that can flag a “pattern of abuse” investigation when it receives a certain number of complaints about the same type of abuse (or “primary allegation,” as CRCL reporting refers to it).

The majority of closure letters from CRCL cite that the complaint has been recorded in the agency’s “information layer.” As the situation currently stands, it is not clear what amount or severity of built-up complaints triggers the agency to initiate a pattern of abuse investigation. CRCL staff have only referred to a “tipping point” that would potentially lead to an investigation of a recurring issue.

An added challenge emerges in cases where CRCL previously investigated and emitted recommendations to an agency, but related complaints continue, potentially due to the agency’s non-concurrence with the recommendations. It appears that CRCL cannot open a new investigation unless the new complaints contain novel information that was not included in the original investigation. This means there may be no redress for patterns of abuse that continue even after an investigation concludes with recommendations to make changes.

It is necessary that CRCL release transparent information about what standards the Office uses to decide when a pattern exists in the information layer, and when that pattern would trigger an investigation and policy recommendations. “We know it when we see it” is not enough: an objective standard should exist that requires CRCL to open an investigation once it has received a certain number and severity of related complaints. Further, CRCL should release transparent information about how it escalates patterns of abuse if they continue to occur even after investigations and recommendations.

IV.A.9. COMPLAINANTS SHOULD KNOW WHERE COMPLAINTS ARE BEFORE THE FOUR OFFICES (CRCL, OPR, OIG, AND OIDO) AT ALL TIMES

“In 2019,” the Project on Government Oversight (POGO) observed, “DHS committed to ‘developing a case tracking system that will track disciplinary and adverse actions across all components and will develop a reporting process to capture, manage, and monitor components’ management of discipline and adverse action [by] March 31, 2022.”³³

This is a solid recommendation—but that date has passed, and no such tracking system exists, at least not in any format available to complainants. The passing of complaints and cases between CRCL, OPR, and OIG continues (as discussed in recommendation 2a below), in a manner so opaque that complainants have little way of knowing which agency may be “holding” their case at any given moment. Adopting the online, password-protected resource proposed in recommendation 1c above could alleviate this.

³² “Final Report of the CBP Integrity Advisory Panel.”

³³ Sarah Turberville and Chris Rickerd, “An Oversight Agenda for Customs and Border Protection: America’s Largest, Least Accountable Law Enforcement Agency” (Washington: Project on Government Oversight, October 12, 2021), <https://www.pogo.org/report/2021/10/an-oversight-agenda-for-customs-and-border-protection-americas-largest-least-accountable-law-enforcement-agency>.

IV.A.10. CRCL MUST OFFER COMPLAINANTS A CLEAR EXPLANATION OF WHY A COMPLAINT ENDED UP IN THE AGENCY’S “INFORMATION LAYER” INSTEAD OF TRIGGERING AN INVESTIGATION

An individual or organization informed that their case will receive no further consideration deserves an explanation why CRCL opted to take no further action beyond noting it in its database. This is especially important when the complaint involves physical abuse.

IV.B. STRENGTHENING INVESTIGATIONS

Whether an external organization enters a complaint, or whether a case originates at DHS investigators’ initiative, the quadripartite model of CBP oversight—with CRCL, OPR, OIDO, and OIG sharing overlapping responsibilities—is confusing and often frustrating for all involved.

A lack of clarity about responsibilities, a lack of transparency about cases’ progress, a lack of clear timeframes for action, and a lack of resources combine in a way that can benefit those who commit offenses. These factors also serve as convenient pretexts for inaction when political will for more energetic oversight is weak.

IV.B.1. END THE LACK OF JURISDICTIONAL CLARITY BETWEEN AGENCIES: PREVENT CASES FROM BEING “SHUFFLED AROUND”

As noted in Section II above, the DHS OIG has the “right of first refusal” for taking on complaints issued to CRCL. CBP OPR must also send to the OIG all cases of “serious allegations”: allegations of misconduct serious enough to merit at least a two-week suspension.³⁴ “Right of first refusal” means that, in these cases, CRCL and OPR cannot move ahead on their investigations until the OIG notifies them that it will not take on the case.

OIG should have a firmer time limit by which it must decide whether to take a case

As Section II explains, if the OIG decides not to investigate a case, Management Directive 810.1 gives it five business days to notify the DHS agency that forwarded the complaint of that decision and return the complaint. There is no time limit, however, for OIG to make that decision about whether to take on a case.

While DHS officials claim that decisions often come quickly, lags are common. At present, whether the agency awaiting the OIG’s decision is OPR or CRCL, delays are frequent. At times, OPR personnel must proactively contact the OIG in order to shake loose its decision about whether to proceed on a case. Changes to the management directive would reduce these delays, especially if these changes make clear that OIG’s refusal to promptly hand off to other agencies in serious cases should be a rare exception, not the norm.

Waiting for the OIG’s decision can cause investigations to become needlessly delayed. It can take OIG “a month to open their mail,” one DHS official remarked. By then, many cases are likely to have gone cold.

This is unacceptable: at least in cases of serious misconduct, corruption, or use of force, Management Directive 810.1 must be amended to give OIG a time limit—which should be measured in days or a small number of weeks—within which to decide whether it will proceed with an investigation. Should that time

³⁴ Senior DHS Official, Interview with senior DHS official, Microsoft Teams, March 14, 2023.

limit expire, the case should immediately and automatically revert back to the relevant accountability agency, OPR or CRCL, so that it may take on the investigation as expeditiously as possible.

An actual process for “de-confliction” should exist, between the OIG and the other accountability agencies, for determining jurisdiction when a case involves multiple agencies

This requires, at least in part, completing an overdue revision of the 2004 management directive. In its 2015 interim report, the CBP Integrity Advisory Panel issued a de-confliction recommendation that remains relevant and urgent, eight years later. Recommendation 4 called on CBP to work with DHS to amend a 2004 Management Directive (810.1) so that the OIG would “ordinarily defer” to OPR when allegations involve corruption, misuse of force, and other serious misconduct allegations. Currently, such cases go immediately to OIG, which risks delaying investigation, “unless failure to do so would pose an imminent threat to human life, health or safety, or result in the irretrievable loss or destruction of critical evidence or witness testimony.”

Should the OIG refuse to defer in a case, the Integrity Advisory Panel proposed that “the default position” should be that personnel from the OIG and OPR investigate jointly. Finally, the panel recommended: “In any event, it should be clarified that the commencement of an investigation by IA [now OPR] will not be delayed while OIG is evaluating whether to take an investigation.”³⁵

In their explanatory statement on the 2022 Homeland Security Appropriations law, issued on March 9, 2022, congressional appropriators gave DHS six months to issue a revised version of Management Directive 810.1, in which the OIG’s “jurisdiction shall be reviewed to ensure it is narrowly tailored to ensure that the Department’s other oversight functions [CRCL and OPR] are able to continue to execute their responsibilities.”³⁶ As our organizations publish this report in July 2023, the congressional deadline is now ten months past, and DHS has produced no new directive.

While the CBP Integrity Panel’s recommendations dealt with jurisdictional overlaps between the OIG and CBP OPR on cases like corruption or use of force, similar questions persist between the OIG and CRCL when a case involves a civil rights violation. Here, more than a DHS directive might be needed to clear things up: the issue lies with the law as currently drafted.

A recent enhancement to the Inspector General Act of 1978 (Section 417 of Title 5 U.S. Code) gives the DHS OIG a greater role in investigating violations of civil rights and civil liberties. While stronger civil rights investigations are welcome, the change makes it less clear which agency—OIG or CRCL—is ultimately responsible for civil rights cases. To further confuse matters, OPR may claim jurisdiction if the civil rights violation is a criminal matter. Congress must disentangle this snarl of statutory authorities.

Be able to handle “hybrid complaints”

The point presented in recommendation IV.A.4. above is also relevant to cases of jurisdictional overlap. If an external complainant submits a document laying out several cases, and if the cases presented appear to fit within different accountability agencies’ jurisdictions, the result must not be inaction. The agencies

³⁵ “Interim Report of the CBP Integrity Advisory Panel” (Washington: Homeland Security Advisory Panel, June 29, 2015), <https://www.dhs.gov/sites/default/files/publications/DHS-HSAC-CBP-IAP-Interim-Report.pdf>.

³⁶ “Congressional Record: Proceedings and Debates of the 117th Congress, Second Session” (U.S. Congress, March 9, 2022), <https://www.congress.gov/117/crec/2022/03/09/168/42/CREC-2022-03-09-bk3.pdf>.

need to develop a clear process for assigning responsibilities raised by “hybrid complaints,” as victim-survivors and their advocates are very likely to keep submitting complaints in this format.

IV.B.2. STRENGTHENING INVESTIGATIONS AT CBP’S OFFICE OF PROFESSIONAL RESPONSIBILITY (OPR)

Of the most serious investigations, for instance, those involving physical abuse and use of force, the preponderance of cases goes before CBP OPR. In such cases, OPR faces the difficult but indispensable demand to investigate all misconduct allegations both quickly and thoroughly. We offer four key recommendations here.

Ensure that investigators are independent by minimizing hiring from within CBP

Particularly when under pressure to add personnel quickly, OPR may end up hiring career Border Patrol agents or CBP officers. Agents and officers may be more likely to understand patterns of behavior surrounding abuses and the operational contexts in which they occur. However, agents and officers are also more likely to be imbued with these agencies’ organizational culture, which has favored impunity for some of the very troubling abuses and behaviors described in this report’s first section.

Many agents and officers surely reject this culture and wish to work within OPR to change it. Those in charge of increasing OPR’s staffing must take great care to review backgrounds and references to ensure that any new hires from within CBP truly fit this description.

Our organizations underscore a recommendation made by POGO in 2021: “Congress should audit the backgrounds of investigators at CBP, who are often former officers or agents, and examine whether the proportion of such investigators aligns with law enforcement best practices.”³⁷

This is doubly true in the case of former members of Border Patrol’s notorious [Critical Incident Teams](#) (CITs), an internal structure that CBP terminated in 2022 amid allegations that the teams hindered investigations and worked to exonerate agents who may have committed wrongdoing. With that background, the probability is high that former CIT personnel might be insufficiently aggressive in reducing impunity. Following the CITs’ dissolution, it is troubling that, as the Southern Border Communities Coalition has noted, OPR is hiring the former teams’ members.³⁸ Any candidates for OPR investigator positions who have CIT experience deserve extreme scrutiny to overcome a presumption of ineligibility.

Hiring from outside CBP, or even DHS, carries other advantages. Individuals who have worked elsewhere in government, or the private and nonprofit sectors, come from different organizational cultures and bring fresh perspectives and best practices that accountability agencies could do well to adopt. A greater diversity of hires helps avoid “groupthink” and the tendency to perpetuate inefficiencies “because we’ve always done it this way.”

³⁷ Turberville and Rickerd, “An Oversight Agenda for Customs and Border Protection.”

³⁸ Vicki B. Gaubeca and Andrea Guerrero, “New Information That Raises the Stakes on the Investigation of Border Patrol Critical Incident Teams (BPCITs) and Implicates Other Parts of CBP,” August 11, 2022, https://assets.nationbuilder.com/alliancesandiego/pages/409/attachments/original/1660253686/Letter_to_Congress_re_BPCIT_Aug_2022_r1.pdf?1660253686.

Provide more feedback to complainants

“The Office of Professional Responsibility was granted in 2016, by legislation, the authority to be federal criminal investigators. Along with that came a number of requirements that the office is still not in compliance with,” Shaw Drake, then of ACLU Texas, explained at an October 2022 WOLA discussion. “One of them is something called feedback. So they’re required to give feedback to complainants stemming from that legislation, and they still don’t have policies on the books to do that. But they have committed to us and to other organizations that they intend to institute policies that better provide feedback to complainants about the outcome of their investigations.”³⁹

In line with this report’s recommendation (IV.A.2) that DHS maintain a website where the public can see the last accountability action taken in a case, our organizations echo and emphasize Drake’s call on OPR to complete and begin implementing its policy on feedback to complainants. As Drake explained, this would create “a system whereby in the future, complaints that are filed with OPR get at least some indication of how they were investigated, what the investigation found, what outcomes came from those investigations.”

All agencies’ investigators, including OPR, must actually talk to victims, who are often migrants

A common problem with accountability agencies’ investigations is a frequent failure to interview or consult with victims, in some cases including victims of serious misuse of force. Often, non-citizen victims are removed from the United States without ever talking to an investigator.

KBI has received multiple closure letters stating that the complainant’s allegations could not be substantiated, explaining that the investigation consisted of talking with the CBP agents, reviewing CBP policy, etc., with no mention of interviewing the impacted person or even having attempted to do so. It is concerning if oversight agencies only interview the federal law enforcement agencies accused of these abuses without also talking to the impacted person, interviewing other witnesses who are not government employees, reviewing camera footage when it exists, and taking other steps to ensure a balanced investigation.

If a non-citizen victim files a complaint with CRCL, OPR, OIG, or OIDO, that individual should not be removed from the country without first being interviewed by an investigator. If they are removed, the investigator must show that they have made a good-faith effort, including overseas travel if necessary, to contact and interview the victim who issued the complaint.

Contact with victims—whether in-country or removed—should happen in a timely manner. When agencies delay initial action on a complaint, losing valuable weeks or months, the likelihood of victims being unreachable increases.

Complete adoption of body-worn cameras, dash cameras, and security cameras, and ensure that they are functioning and recording

Footage from body-worn and dashboard cameras makes OPR investigators’ work much more effective. Rapid deployment of this equipment must be an utmost priority. CBP’s August 2021 publication of a directive governing this technology’s use was an important step.⁴⁰ So is the public sharing of body-worn

³⁹ “Abuse, Accountability, and Organizational Culture at U.S. Border Law Enforcement Agencies.”

⁴⁰ “CBP-Directive-4320-030B: Incident-Driven Video Recording Systems” (U.S. Customs and Border Protection, February 2022), <https://www.cbp.gov/sites/default/files/assets/documents/2022-Feb/CBP-Directive-4320-030B-IDVRS-signed-508.pdf>.

camera footage on three occasions, between April and June 2023, on CBP’s Accountability and Transparency web page.⁴¹

In its May 23, 2023 announcement of a new department-wide body-worn camera policy, DHS revealed that CBP has distributed 7,000 cameras to its workforce since the August 2021 publication of an agency directive.⁴² The Biden administration’s 2024 Homeland Security budget request includes \$19.6 million to fund “the expansion to 4,275 additional body-worn cameras” for CBP’s Office of Field Operations officers.⁴³

IV.B.3. STRENGTHENING INVESTIGATIONS AT DHS OFFICE OF INSPECTOR-GENERAL

As discussed above, the DHS OIG has the “right of first refusal” on whether to investigate most complaints and cases, whether they originate from within the agency or from outside complainants. This agency plays a crucial role in overseeing the U.S. government’s largest civilian law enforcement agencies, but it is in a poor state of health.

A June 2021 Government Accountability Office report found “long-standing management weaknesses” at DHS OIG, including “work quality concerns, high leadership turnover,” operating without a strategic plan, and a steadily increasing amount of time taken to complete reports.⁴⁴ In all of fiscal year 2022, the OIG completed just 11 reports overseeing CBP’s U.S.-Mexico border mission.⁴⁵

Give OIG more power to compel CBP to follow its recommendations

The OIG’s “reports include recommendations to the agency [like CBP],” ACLU’s Drake explained, “but of course, the agency is under no obligation to institute any of those recommendations and oftentimes disputes the findings and provides comments on their opinion about the recommendations, but there’s really no ability to force them” to adopt the recommendations and make changes.⁴⁶

The appendices of the OIG’s semi-annual reports to Congress list hundreds of open recommendations from past reports, many of them issued to CBP. This is a problem: when there is no consequence for ignoring a recommendation, harmful behaviors and practices are much more likely to persist. The OIG needs the ability to attach sanctions to recommendations that remain open or unresolved for too long, and the will to do so.

⁴¹ “CBP Acting Commissioner Miller’s Statement Concerning Release of Body-Worn Camera Footage,” U.S. Customs and Border Protection, April 12, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-acting-commissioner-miller-s-statement-concerning-release-body>; “CBP Releases Body-Worn Camera Footage from Agent-Involved Shooting,” U.S. Customs and Border Protection, May 2, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-body-worn-camera-footage-agent-involved-shooting>.

⁴² “DHS Announces First Department-Wide Policy on Body-Worn Cameras,” U.S. Department of Homeland Security, May 23, 2023, <https://www.dhs.gov/news/2023/05/23/dhs-announces-first-department-wide-policy-body-worn-cameras>; “CBP Agents and Officers Begin Use of Body-Worn Cameras,” U.S. Customs and Border Protection, August 4, 2021, <https://www.cbp.gov/newsroom/national-media-release/cbp-agents-and-officers-begin-use-body-worn-cameras>.

⁴³ “U.S. Customs and Border Protection Budget Overview Fiscal Year 2024 Congressional Justification” (U.S. Department of Homeland Security, March 9, 2023), <https://www.dhs.gov/publication/congressional-budget-justification-fiscal-year-fy-2024>.

⁴⁴ “DHS Office of Inspector General: Actions Needed to Address Long-Standing Management Weaknesses” (Washington: U.S. Government Accountability Office, June 3, 2021), <https://www.gao.gov/products/gao-21-316>.

⁴⁵ “Audits, Inspections, and Evaluations: CBP Fiscal Year 2022,” DHS Office of Inspector General, accessed April 5, 2023, https://www.oig.dhs.gov/reports/audits-inspections-and-evaluations?field_dhs_agency_target_id=1&field_fy_value=2.

⁴⁶ “Abuse, Accountability, and Organizational Culture at U.S. Border Law Enforcement Agencies.”

Encourage an early change in the Inspector General, whose political will to investigate human rights issues has come into question, and who does not appear to have the confidence of much of the workforce

Since his mid-2019 confirmation, DHS Inspector General Joseph Cuffari has served an embattled tenure. “Cuffari’s three years as Homeland Security’s inspector general have been marked by numerous allegations of partisan decision-making and investigative failures—including, most recently, his decision in February to scrap efforts by his department to recover Secret Service texts sent during the Jan. 6 insurrection,” the *Washington Post* reported in August 2022.⁴⁷

Since 2019, the majority of lawyers in the OIG’s Office of Counsel have left, creating “a revolving door that has hindered oversight of DHS,” NPR reported.⁴⁸ As discussed above, POGO revealed that Cuffari’s office stifled internal personnel surveys pointing to widespread sexual harassment and toleration of domestic abusers in law enforcement positions.⁴⁹ In 2022, anonymous OIG employees “representing every program office at every grade level” drafted a blistering letter calling for Cuffari’s removal.⁵⁰ The Inspector General’s Ph.D. has even been called into question.⁵¹

Its role in guaranteeing Americans’ security, and the troubling frequency of human rights abuses, make DHS too important to be overseen in such a stormy, disorderly manner. Out of respect for the autonomy of inspectors-general, President Biden has refused to remove Joseph Cuffari. Our organizations join POGO’s repeated calls on the President to make an exception in his case.⁵²

IV.C. STRENGTHENING DISCIPLINE

The frequency with which punishments are overruled or actions found to be within CBP’s use of force policy is incongruent with the often severe abuses that this report’s first section documents. It points to levels of impunity for human rights abuse similar to those found among the militaries and police forces of Latin American nations where WOLA engages with partners defending rights and democracy.

⁴⁷ Lisa Rein, Carol D. Leonnig, and Maria Sacchetti, “Homeland Security Watchdog Previously Accused of Misleading Investigators, Report Says,” *Washington Post*, August 12, 2022, <https://www.washingtonpost.com/politics/2022/08/03/homeland-security-joseph-cuffari-watchdog-report/>.

⁴⁸ Claudia Grisales, “DHS Watchdog Appointed by Trump Has Fueled an Exodus of Agency Lawyers, Sources Say,” NPR, October 12, 2022, <https://www.npr.org/2022/10/12/1127014951/dhs-inspector-general-cuffari-trump-jan-6>.

⁴⁹ Zagorin and Schwellenbach, “Protecting the Predators at DHS.”

⁵⁰ Nick Schwellenbach, “DHS Watchdog Staff Call on Biden to Fire Inspector General Cuffari” (Washington: Project on Government Oversight, September 23, 2022), <https://www.pogo.org/investigation/2022/09/dhs-watchdog-staff-call-on-biden-to-fire-inspector-general-cuffari>.

⁵¹ Noah Lanard, “The DHS Inspector General Claimed to Have a Philosophy Ph.D. He Doesn’t.,” *Mother Jones*, accessed April 5, 2023, <https://www.motherjones.com/politics/2020/05/the-dhs-inspector-general-claimed-to-have-a-philosophy-phd-he-doesnt/>.

⁵² Danielle Brian, “POGO Calls on Biden to Remove Inspectors General Cuffari, Ennis,” Project On Government Oversight, March 8, 2023, <https://www.pogo.org/letter/2023/03/pogo-calls-on-biden-to-remove-inspectors-general-cuffari-ennis>; Danielle Brian, “Opinion | A Promise Joe Biden Should Break,” *Washington Post*, August 2, 2022, <https://www.washingtonpost.com/opinions/2022/08/02/fire-dhs-inspector-general-cuffari/>.

IV.C.1. CBP'S ABILITY TO INVESTIGATE ITSELF IN CRIMINAL MATTERS MUST BE CURTAILED

In 2014, DHS delegated to CBP the authority to investigate its own employees for alleged criminal misconduct, a step billed as “part of a larger effort to hold the workforce accountable.”⁵³ U.S. law (Title 6, Section 211(j), U.S. Code) empowers OPR to “investigate criminal and administrative matters and misconduct.”

It is rare for a law enforcement agency to have the power to investigate its own personnel for criminal matters. This may be part of the reason why it has proven impossible to convict a CBP employee for a human rights abuse committed on duty, no matter how serious.

The track record calls at least for carving out this self-investigation power in cases of human rights abuse. This, however, would require a statutory change that the current (118th) U.S. Congress is unlikely to take up.

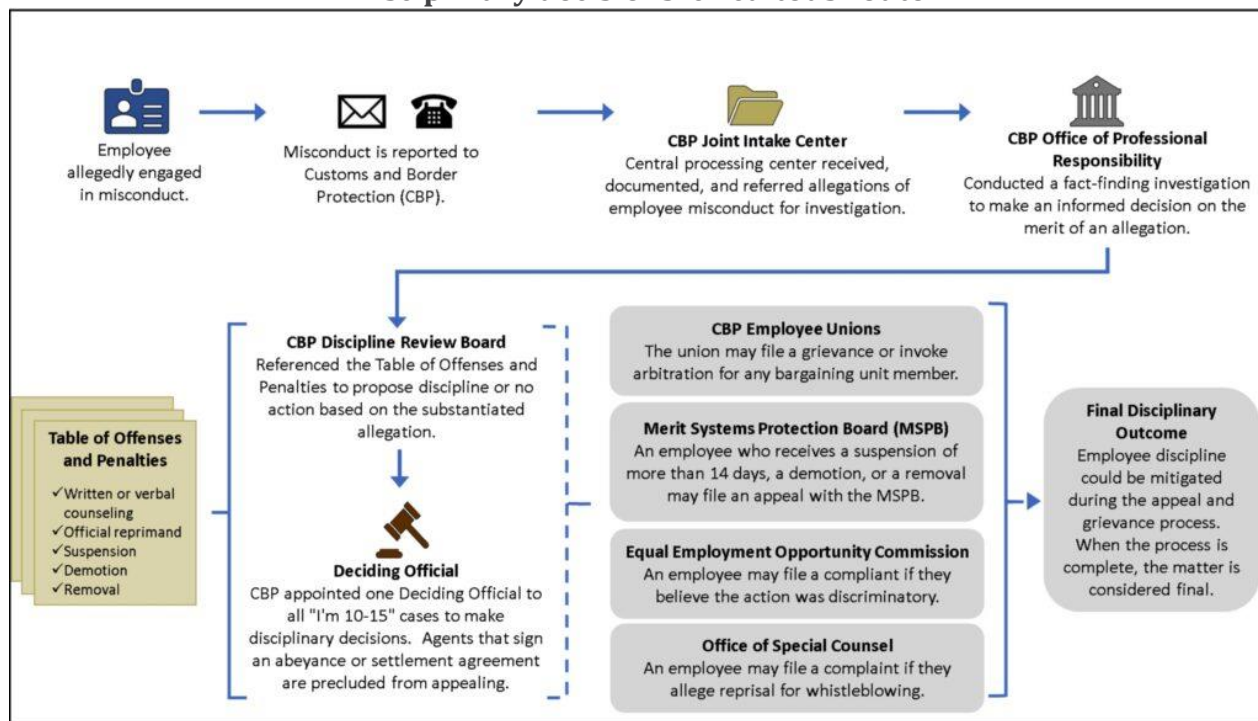
Barring that, our organizations recommend that the Department of Justice play a clearer role when CBP personnel commit what could be criminal abuses. One means of doing that would be to assign a special U.S. assistant attorney to CBP to carry out internal criminal investigations and prosecutions. This official should be independent in form and function, with no prior background as an employee of the agency.

IV.C.2. ON OTHER MATTERS, OPR'S DISCIPLINARY RECOMMENDATIONS SHOULD NOT BE SO EASILY OVERRULED

When OPR does not refer a case for criminal prosecution, and instead recommends administrative disciplinary measures, the process of meting out an actual punishment is convoluted and untransparent.

⁵³ “DHS Delegates Criminal Misconduct Investigative Authority to CBP,” U.S. Customs and Border Protection, September 18, 2014, <https://www.cbp.gov/newsroom/national-media-release/dhs-delegates-criminal-misconduct-investigative-authority-cbp>.

Disciplinary decisions' circuitous route



Source: U.S. House of Representatives Committee on Oversight and Accountability Democrats, September 14, 2021: <https://oversightdemocrats.house.gov/cbp-report>

Page 6 of the House Oversight Committee's report on the Border Patrol Facebook group included a graphic showing the circuitous process that an investigation takes, from CBP's Joint Intake Center, to OPR, to CBP's Discipline Review Board and an appointed "deciding official." That official is usually within the accused agents' chain of command. OPR effectively "cedes authority over investigations to the human resources component" of CBP, as POGO put it in a 2021 report.⁵⁴

Whatever punishment those bodies recommend may then be appealed:

- CBP employee unions can file a grievance that goes to arbitration, as though the abuse were a labor rights matter.
- The accused might appeal to the U.S. government's independent Merit Systems Protection Board, which is meant to protect employees from management abuses.
- Other bodies exist if the employee believes they were the victim of discrimination or whistleblower reprisal.

A large share of recommended punishments were appealed in the case of the Facebook scandal, most often through union grievances. As a result, "Of the 58 agents that CBP found to have committed misconduct but did not remove from their positions, 57 continue to work in positions of power over migrants, including families with children."⁵⁵

⁵⁴ Turberville and Rickerd, "An Oversight Agenda for Customs and Border Protection."

⁵⁵ "Border Patrol Agents in Secret Facebook Group Faced Few Consequences for Misconduct" (Washington: U.S. House of Representatives Committee on Oversight and Accountability Democrats, September 14, 2021), <https://oversightdemocrats.house.gov/cbp-report>.

IV.C.3. HOLD DHS TO PROMISED REFORMS TO THE DISCIPLINARY PROCESS

Of the disciplinary system, a DHS official told us, “There is a problem here, reforms were promised, we’re all waiting to see what the reforms are.”⁵⁶ This official was referring to DHS Secretary Alejandro Mayorkas’s June 16, 2022 order for the Department to reform its employee misconduct discipline processes, based on the unpublished results of an earlier 45-day review.⁵⁷

“I have directed the Department to implement significant reforms to our employee misconduct discipline processes,” the Secretary stated, “including centralizing the decision-making process for disciplinary actions and overhauling agency policies regarding disciplinary penalties.”

To date, if such changes have begun implementation, there is no public disclosure. These necessary reforms are still pending.

IV.C.4. LET CBP’S COMMISSIONER SUSPEND OR FIRE THE MOST EGREGIOUS OFFENDERS

This recommendation amplifies one issued in 2016 by the CBP Integrity Advisory Panel:

Give the Commissioner the authority, similar to that of the Federal Bureau of Investigation Director, to summarily suspend without pay and/or terminate law enforcement employees of CBP who have committed egregious, serious and flagrant misconduct, such as, accepting bribes in exchange for being influenced in their official duties.⁵⁸

IV.C.5. GET FIELD OFFICE DIRECTORS AND SECTOR CHIEFS OUT OF DETERMINING THEIR SUBORDINATES’ PUNISHMENTS

Often, the “deciding official” on discipline review cases is the leadership of the Border Patrol sector where the agent facing allegations is employed. This, ACLU’s Drake explained, means “that the supervisors and bosses of the individual agent who has done something wrong get a chance to make their own decisions about what discipline is sought against the agent. Of course, there’s a conflict of interest there, because no supervisor looks good when their agents below them are being doled out extensive disciplinary measures.”⁵⁹

“This system leads to localized discrepancies in discipline and an incentive to protect colleagues in the field,” POGO’s 2021 report explained. “Indeed, many complaints are not even elevated to headquarters, but rather retained locally through an opaque determination that the alleged misconduct is not serious enough to be reported to CBP’s central complaint processing entity, the Joint Intake Center.”⁶⁰

It is abundantly evident how this system sets up incentives and leads to outcomes that create strong obstacles to accountability for abuse and misconduct. This system should not be adjusted: it should be scrapped entirely. Those in an agent’s chain of command should not have a role in determining discipline.

⁵⁶ Senior DHS Official, Interview with senior DHS official.

⁵⁷ “Secretary Mayorkas Directs DHS To Reform Employee Misconduct Discipline Processes,” U.S. Department of Homeland Security, June 16, 2022, <https://www.dhs.gov/news/2022/06/16/secretary-mayorkas-directs-dhs-reform-employee-misconduct-discipline-processes>.

⁵⁸ “Final Report of the CBP Integrity Advisory Panel.”

⁵⁹ “Abuse, Accountability, and Organizational Culture at U.S. Border Law Enforcement Agencies.”

⁶⁰ Turberville and Rickerd, “An Oversight Agenda for Customs and Border Protection.”

IV.C.6. ON USE OF FORCE CASES, MOVE FROM A “REASONABLENESS” STANDARD TO A “NECESSARY AND PROPORTIONATE” STANDARD

One reason that so many use of force cases are found to be “within policy” is that CBP’s use of force policy employs a “reasonableness” standard to determine whether a use of force, including deadly force, was justified.

The CBP use of force policy explains that a law enforcement officer (LEO) may use force when the officer “has a reasonable belief that the subject of such force poses an imminent threat of death or serious bodily injury to the LEO or to another person.”⁶¹ A migrant picking up a rock or making a sudden move could be interpreted as “reasonably” justifying a disproportionate use of force, like firing a weapon—and the case could be dismissed as “within policy.”

As the Southern Border Communities Coalition has explained, internationally recognized law enforcement standards now go beyond “reasonableness.”⁶² The 1979 UN Code of Conduct for Law Enforcement Officials applies a standard of “necessary and proportionate” to govern law enforcement’s use of force.⁶³ That means that the decision to use force not only must be deemed necessary, but the force used was matched to the perceived threat. Many of the cases described in this report’s first section do not appear to describe responses that were “proportionate.”

IV.C.7. MAKE THE USE OF FORCE REVIEW BOARD MORE EFFECTIVE

Any board that can fully exonerate 96 percent of use of force cases deserves much closer scrutiny, because it is not increasing the probability of being held accountable, and thus not likely to be affecting agents’ behavior.

These case outcomes point to likely dysfunction in the National and Local Use of Force Review Boards. What that dysfunction is falls outside the scope of this report, as the preponderance of serious use of force cases take what we have called the “first accountability pathway” of authorities investigating on their own initiative. Still, our organizations note that these boards urgently require energetic scrutiny, with an eye toward diagnosing necessary reforms.

IV.C.8. GET THE UNION AND LABOR-MANAGEMENT ARBITRATION OUT OF THE DISCIPLINARY PROCESS FOR HUMAN RIGHTS CASES

Union grievance arbitration and Merit Systems Protection Board appeals are meant to defend workers from abusive or arbitrary management practices. Seeking accountability for a human rights abuse is emphatically not an abusive or arbitrary management practice.

The presumption, in cases of alleged human rights abuses, should be that the disciplinary decision is not a labor matter. To portray it as such, the accused should have to meet a high evidentiary standard before bringing it to appeals and arbitration.

⁶¹ “2023 Update to the Department Policy on Use of Force” (U.S. Department of Homeland Security, February 6, 2023), <https://www.dhs.gov/publication/2023-update-department-policy-use-force>.

⁶² “Protect Dignity End Impunity” (Southern Border Communities Coalition, March 2023), https://assets.nationbuilder.com/alliancesandiego/pages/409/attachments/original/1679604157/SBCC_DIGNITY___IMPUNITY.v3.pdf?1679604157.

⁶³ “Code of Conduct for Law Enforcement Officials” (UN Office on Drugs and Crime, December 17, 1979), https://www.unodc.org/pdf/criminal_justice/Code_of_Conduct_for_Law_Enforcement_Officials_GA_43_169.pdf.

In fact, our organizations uphold the 2016 recommendation of the CBP Integrity Advisory Panel for such cases:

Place CBP law enforcement personnel into Excepted Service in light of the critical national security mission of CBP's Border Patrol Agents along our nation's land borders and CBP Officers at our nation's ports of entry. A law enforcement organization, such as CBP, is not benefitted, and the deterrent effect of discipline is substantially undermined, by lengthy post-discipline hearing processes of the Merit System Protection Board and collective bargaining agreement appeals to outside arbitrators.⁶⁴

This recommendation of the Integrity Advisory Board has not been implemented.

IV.D. STRENGTHENING CONGRESSIONAL OVERSIGHT AND APPROPRIATIONS

Agencies like CRCL, OPR, OIG, and OIDO are not the only bodies empowered to guarantee transparency and accountability over federal border law enforcement agencies' conduct. The U.S. Congress, in its constitutional oversight and appropriations roles, has a vital role to play as well, especially its committees on Homeland Security, the House Oversight and Accountability Committee; the Judiciary subcommittees on border security; and the Appropriations subcommittees on Homeland Security.

In recent years, Congress has increased funding for DHS's oversight agencies and required CBP to produce more reports on investigations and discipline, which are valuable resources. These are important steps. However, despite the severity of the patterns of abuse documented in this report's first section, congressional oversight bodies tend to prefer raising issues in private briefings and communications, rather than scrutinizing these agencies in public.

IV.D.1. CONGRESSIONAL COMMITTEES SHOULD, IN A MORE PUBLIC WAY, ASK QUESTIONS, DOCUMENT PROBLEMS, SUGGEST ALTERNATIVES, AND MEASURE IMPROVEMENT

The House Oversight Committee's October 2021 report on Border Patrol's secret Facebook group was a very useful public resource, but it was unusual.⁶⁵ Such reports are scarce, as are hearings covering these issues, questions asked of officials at hearings, GAO reports, and other tools that could, by virtue of being public, make accountability and discipline a more central part of the public debate on border security and migration.

Hold more hearings on this subject, and ask more questions at hearings

During the spring of 2023, congressional committees brought in U.S. officials—most often, DHS Secretary Alejandro Mayorkas—to testify about the situation at the U.S.-Mexico border and other challenges facing DHS. Some of these hearings have been highly partisan, focusing on shifting blame for recent increases in migration and fentanyl seizures.

Despite suggestions from a coalition of advocates, our organizations are not aware of a single legislator asking an official about CBP abuses or accountability during spring 2023's cycle of politicized hearings. Hearings should be a strong forum for advancing oversight, voicing concerns, and obtaining new information about efforts to curb abuse and misconduct. But they have been a missed opportunity.

⁶⁴ "Final Report of the CBP Integrity Advisory Panel."

⁶⁵ "Border Patrol Agents in Secret Facebook Group Faced Few Consequences for Misconduct."

Demand more rigor in responding to reporting requirements about complaints and discipline

Congress has been quite tolerant of DHS's chronic lateness in publishing and submitting reports required by law on abuses, discipline, and accountability. As a result, even for issues as serious as agent-involved fatalities, data aren't provided until many months (or even years) after the end of the fiscal years in which events occurred.

Legislative oversight personnel need to prod DHS harder to produce delayed reports, even pausing obligations of funds if necessary. Once reports are produced, reporting that is vague, shoddy, or deliberately obfuscatory should trigger follow-up questions and demands for greater detail about abuses, investigations, and consequences. Responses to such questions, to the greatest extent practicable, must also be publicly available.

The Government Accountability Office, the U.S. Congress's auditing arm, produced an important 2021 report about management weaknesses at the DHS OIG. Congress should ask the GAO to perform a larger evaluation of DHS's larger quadripartite accountability and discipline arrangement, which—as discussed in much of this recommendation section so far—suffers from stark design flaws and implementation shortcomings.

IV.D.2. INCREASE CONGRESSIONAL STAFF FOLLOW-UP ON OUTSTANDING COMPLAINTS

When an important abuse complaint gets stuck or “disappears” within DHS's accountability offices, complainants should be able to appeal for effective action from oversight personnel at relevant congressional committees. Our organizations uphold POGO's 2021 recommendation that “Congress should assist NGOs in getting adequate responses to past-filed complaints and require oversight components to explain their lack of communication.”⁶⁶

IV.D.3. INCREASE CONGRESSIONAL PRESSURE ON DHS TO AMEND THE 2004 MANAGEMENT DIRECTIVE (810.1) AND FURTHER CLARIFY ACCOUNTABILITY OFFICES' JURISDICTIONS

As this report shows, many abuses would never be brought to light if not for victim-survivors and advocates who dedicate time and energy to filling out complaint forms. Congress needs to help make this process more accessible.

Congressional staff should advocate for the immediate revision of Management Directive 810.1 and ask DHS to create a transparent de-confliction process. Further, congressional staff should request that DHS create accessible public-facing information explaining the jurisdiction of each accountability office and outline best practices for how to submit complaints.

IV.D.4. INCREASE APPROPRIATIONS IN ORDER TO ENSURE THAT ACCOUNTABILITY AGENCIES ARE FULLY STAFFED AND RESOURCED

CRCL's *Fiscal Year 2021 Annual Report to Congress* calls the agency “an office of nearly 100 people in a Department with more than 240,000 employees.”⁶⁷ Further, only some CRCL staff work in the Compliance section, which investigates complaints. This would imply that CRCL lacks the personnel

⁶⁶ Turberville and Rickerd, “An Oversight Agenda for Customs and Border Protection.”

⁶⁷ “U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties Fiscal Year 2021 Annual Report to Congress.”

strength necessary to process complaints in a timely manner. A high ratio of cases per employee appears to be a reason why complaints fall through the cracks.

As noted in IV.A.7. above, the Rehabilitation Act of 1973 requires DHS CRCL to remedy complaints and respond to complainants within 180 days, in cases of disability discrimination among DHS employees. This timeframe—six months—is reasonable for investigation and redress from a sufficiently resourced agency. Victims of alleged abuse at the hands of CBP or Border Patrol personnel should receive similar treatment for their filed complaints.

That may require two acts of Congress: a change in CRCL’s authority calling for it to provide responses within a reasonable time limit, and sufficient appropriations to give the agency the personnel and other capacity needed to do so.

As noted above, **CBP OPR** faces the difficult but indispensable demand to investigate all misconduct allegations both quickly and thoroughly. As anyone who has ever managed a project knows, “quickly” and “thoroughly” doesn’t mean “inexpensively,” and adequate staffing is the greatest expense.

In 2015, the CBP Integrity Advisory Panel recommended that OPR have a personnel strength of “550 Full Time Equivalent (FTE) 1811 criminal investigators,” up from about 200 at the time.⁶⁸ Seven years later, in March 2022, the 2022 Homeland Security appropriation allocated sufficient funding (\$74.3 million) to raise OPR’s staffing level to 550 criminal investigators and support staff.⁶⁹

This funding, however, is available only until the end of fiscal year 2023 (September 30, 2023). This gave the agency 18 months to hire about 350 new investigators and support staff during one of the tightest job markets in modern U.S. history.⁷⁰ While it is important for OPR to act as assiduously as possible to reduce personnel gaps and caseloads, congressional appropriators must be flexible: unspent 2022 hiring funds must not expire in September 2023.

As of 2021, the **DHS OIG** had 773 staff positions, 701 of which were filled, 625 of them for program positions.⁷¹ This is a surprisingly small number of personnel to perform in-depth oversight of CBP, ICE, Coast Guard, TSA, Secret Service, FEMA, Cybersecurity and Infrastructure Security Agency (CISA), Office of Intelligence and Analysis, and smaller agencies, with a total personnel strength of 240,000. And of these, a significant majority of the 625 program positions are dedicated to audits and management reviews which, while important, do not address the dramatic human rights concerns that this report describes.

Without a significant increase, the OIG will continue to operate at a slow pace, unable to keep up with the fast tempo of new complaints and cases.

⁶⁸ “Interim Report of the CBP Integrity Advisory Panel.”

⁶⁹ “Congressional Record: Proceedings and Debates of the 117th Congress, Second Session.”

⁷⁰ Senior DHS Official, Interview with senior DHS official.

⁷¹ “DHS Office of Inspector General.”

IV.E. OVERCOMING AN ACCOUNTABILITY-RESISTANT ORGANIZATIONAL CULTURE

Despite the often heartbreaking gravity of abuses like those narrated in this report, accountability is often frustrated by an organizational culture at CBP and Border Patrol that fiercely opposes it. Especially in the case of Border Patrol, U.S. border law enforcement agencies’ “paramilitary” culture and expectation of impunity have been the subject of numerous books and articles.⁷² As POGO observed in 2021, “What sets CBP apart—despite its police posture and quasi-military stance—is a deep-seated sense of exceptionalism and a tradition of evading even the meager oversight and accountability mechanisms that other law enforcement agencies are subject to.”⁷³

Our organizations have no doubt that a strong majority of Border Patrol agents and CBP officers are law-abiding and would not themselves engage in cruel or abusive behavior. We note, though, that examples of such “good” agents speaking up about their colleagues’ “bad” actions appear to be vanishingly rare. This, along with a union that frequently works to oppose or water down discipline, contributes to a culture in which loyalty to the organization appears to outweigh loyalty to the rights-respecting principles that a democratic society demands.

⁷² Among many examples:

- Jenn Budd, *Against the Wall: My Journey From Border Patrol Agent to Immigrant Rights Activist* (New York: Heliotrope Books, 2022);
- Reece Jones, *Nobody Is Protected: How the Border Patrol Became the Most Dangerous Police Force in the United States*, First Hardcover Edition (Berkeley, California: Counterpoint Press, 2022);
- Francisco Cantú, *The Line Becomes a River: Dispatches from the Border*, First Riverhead trade paperback edition (New York: Riverhead Books, 2019);
- Josiah Heyman and Murphy Woodhouse, *The Shadow of the Wall: Violence and Migration on the U.S.-Mexico Border* (University of Arizona Press, 2018), <https://doi.org/10.2307/j.ctt20krzfr>;
- Kelly Lytle Hernández, *Migra!: A History of the U.S. Border Patrol*, 1st ed. (University of California Press, 2010), <https://www.jstor.org/stable/10.1525/j.ctt1pnfhs>;
- Katy Murdza and Walter Ewing, “The Legacy of Racism within the U.S. Border Patrol” (Washington: American Immigration Council, February 2021), https://www.americanimmigrationcouncil.org/sites/default/files/research/the_legacy_of_racism_within_the_u.s._border_patrol.pdf;
- Ryan Devereaux, “Border Patrol Politicization Was Explicit Under Trump. It’s Up to Biden to Contain It.” *The Intercept*, December 27, 2020, <https://theintercept.com/2020/12/27/border-patrol-trump-biden-politics/>;
- Melissa del Bosque, “A Group of Agents Rose Through the Ranks to Lead the Border Patrol. They’re Leaving It in Crisis.” *ProPublica*, February 10, 2020, <https://www.propublica.org/article/a-group-of-agents-rose-through-the-ranks-to-lead-the-border-patrol-theyre-leaving-it-in-crisis>;
- Melissa del Bosque, “Checkpoint Nation,” *The Texas Observer*, October 8, 2018, <https://www.texasobserver.org/checkpoint-nation/>;
- A. C. Thompson, “Years Ago, the Border Patrol’s Discipline System Was Denounced as ‘Broken.’ It’s Still Not Fixed.” *ProPublica*, June 20, 2019, <https://www.propublica.org/article/border-patrol-discipline-system-was-denounced-as-broken-still-not-fixed>;
- Garrett M. Graff, “The Green Monster,” *Politico Magazine*, December 2014, <http://politi.co/2id3243>;
- Daniel E. Martinez and Guillermo Cantor, “No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse” (Washington: American Immigration Council, May 4, 2014), <https://www.americanimmigrationcouncil.org/research/no-action-taken-lack-cbp-accountability-responding-complaints-abuse>.

⁷³ Turberville and Rickerd, “An Oversight Agenda for Customs and Border Protection.”

Changing an organizational culture that is tolerant of abuse can take many years. Much of this change comes from increasing the probability that agents and officers will be held accountable, through the measures described above. Other changes have to do with the makeup of the agencies themselves.

IV.E.1. DISCONTINUE THE NATIONAL BORDER PATROL COUNCIL’S ROLE IN DISCIPLINE CASES INVOLVING HUMAN RIGHTS ABUSE, CORRUPTION, SEXUAL HARASSMENT, AND MISCONDUCT INVOLVING MEMBERS OF THE PUBLIC

The National Border Patrol Council (NBPC) is a union claiming to be “the exclusive representative of approximately 18,000 Border Patrol Agents and support personnel assigned to the U.S. Border Patrol.”⁷⁴ (Border Patrol had 19,306 agents as of the second quarter of fiscal year 2022.⁷⁵) Like most unions, NBPC represents members in collective bargaining and in disputes over labor standards (overtime, benefits, and similar questions). Like many law enforcement unions, NBPC also fiercely and vocally defends agents accused of human rights abuse, and—as noted in the “discipline” discussion above—frequently appeals disciplinary decisions in such cases. In its public messaging, NBPC often adopts extreme political positions, favoring restrictionist immigration policies, endorsing Donald Trump and other candidates promising to halt legal as well as illegal immigration, pre-judging asylum seekers as “scammers,” and even parroting the white supremacist “replacement theory” in public appearances.⁷⁶ The NBPC’s activities go well beyond defending its members’ labor conditions: it is now a principal pressure group for hardline border policies and for shielding members from accountability.

In January 2020, the Trump administration designated CBP a “security agency,” which means that employees’ names are no longer included in responses to Freedom of Information Act requests. This designation should have stripped the NBPC of its status as a union since federal law (Title 5 U.S. Code, Section 7112(b)(6)) holds that employees whose work “directly affects national security” may not be represented by a labor organization.⁷⁷

Whether the NBPC should exist at all is beyond this report’s scope. However, given its precarious legal status, its high degree of politicization, and its contribution to a toxic organizational culture that weakens accountability, our organizations strongly recommend that the union play no role in cases involving allegations of human rights abuse, corruption, internal rights matters like sexual harassment, or any other type of misconduct for which the victims are members of the public.

⁷⁴ “National Border Patrol Council: Home,” National Border Patrol Council, accessed April 17, 2023, <https://bpunion.org/>.

⁷⁵ “Border Security Status Report Second Quarter, Fiscal Year 2022” (Washington: U.S. Department of Homeland Security, January 19, 2023), https://www.dhs.gov/sites/default/files/2023-03/Departmental%20Management%20and%20Operations%20%28DMO%29%20%E2%80%93%20PLCY%20%E2%80%93%20Border%20Security%20Status%20Report%2C%20Second%20Quarter%2C%20FY%202022_0.pdf.

⁷⁶ Border Patrol Union – NBPC [@BPUnion], “Repeat after Us: Poor Economic Conditions Do Not Qualify Anyone for Asylum. The Vast Majority of Asylum Apps Are Fraudulent. Most Will Never Show for Their Court Date. It’s a Scam. Have a Nice Day.,” Tweet, Twitter, November 29, 2022, <https://twitter.com/BPUnion/status/1597613491551993856>; Will Carless, “‘Replacement Theory’ Fuels Extremists and Shooters. Now a Top Border Patrol Agent Is Spreading It.,” USA TODAY, May 15, 2022, <https://www.usatoday.com/story/news/nation/2022/05/06/great-replacement-theory-border-patrol-racist-talking-point/9560233002/>.

⁷⁷ “5 USC 7112: Determination of Appropriate Units for Labor Organization Representation” (U.S. Code), accessed April 17, 2023, [http://uscode.house.gov/view.xhtml?req=\(title:5%20section:7112%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title5-section7112\)&f=treesort&edition=prelim&num=0&jumpTo=true](http://uscode.house.gov/view.xhtml?req=(title:5%20section:7112%20edition:prelim)%20OR%20(granuleid:USC-prelim-title5-section7112)&f=treesort&edition=prelim&num=0&jumpTo=true).

IV.E.2. OIG MUST ACT ON THE VERY SERIOUS DATA GATHERED ABOUT SEXUAL HARASSMENT, AND OFF-DUTY DOMESTIC VIOLENCE, WITHIN THE ORGANIZATION

As discussed in recommendation 2f, a draft, never-published report by the DHS OIG includes data from a survey of 28,000 of the Department's employees. Of those respondents, 10,000—more than one-third—said that they experienced sexual misconduct on the job between 2012 and 2018. Only 22 percent formally reported it. “Among those who did report, a substantial number—about 41%—say doing so ‘negatively affected their careers,’” according to POGO, which revealed this survey's existence in 2022, after OIG sat on the report for four years.⁷⁸ POGO also found that OIG heavily censored an earlier report revealing the extent of domestic violence committed by DHS law enforcement personnel.

The pervasiveness of sexual misconduct within DHS, and the lack of urgency with which the OIG approached the survey results, illustrate the toxicity of border law enforcement agencies' organizational culture. If many employees themselves do not feel safe on the job—even to denounce sexual misconduct or harassment—then it is unsurprising that so many non-employees, both migrants and U.S. citizens, have negative experiences with CBP and Border Patrol.

Current and former employees have documented an inability to achieve redress for serious sexual harassment or assault allegations: it is a central subject of the 2022 memoir of former agent Jenn Budd.⁷⁹ Chris Magnus, who served as CBP's commissioner from 2021 to 2022, told the *New York Times* that several women had described the agency's sexual misconduct process to him “as pointless, especially when it involves complaining to a supervisor who may be close friends with the accused. ‘Too many of these guys just sort of stick together and protect each other,’ Mr. Magnus said. ‘It's a culture of a wink and a nod.’”⁸⁰

Changing this aspect of the agencies' culture requires more determined movement against impunity. That in turn requires the OIG and OPR to act to curb such behavior, far more forcefully than they do now, and with backing from the highest levels.

Women who work for CBP must be able to demand, and receive, redress for on-the-job sexual harassment and abuse—including alerting law enforcement when laws are violated—without lighting their careers on fire. That so many women in the agency continue to view this as impossible is a searing indictment. The inaction of DHS accountability agencies and congressional oversight bodies is frankly shocking.

IV.E.3. BORDER PATROL MUST RECRUIT MORE WOMEN

Women comprise an average of 15 percent of the workforce of federal law enforcement agencies. But not Border Patrol, where the share of women has remained at about 5 percent for years.⁸¹ Cultural change requires more gender diversity within the workforce. Yet CBP continues to carry out most of its recruitment at events heavily attended by men, like rodeos and the April 2023 annual meetings of the National Rifle Association.⁸²

⁷⁸ Zagorin and Schwellenbach, “Protecting the Predators at DHS.”

⁷⁹ Budd, *Against the Wall: My Journey From Border Patrol Agent to Immigrant Rights Activist*.

⁸⁰ Sullivan, “Top Border Patrol Official Resigned Amid Allegations of Improper Conduct.”

⁸¹ John Burnett, “Border Patrol Completes Recruitment Drive Aimed At Women,” NPR, December 17, 2014, sec. National, <https://www.npr.org/2014/12/17/371364713/border-patrol-completes-recruitment-drive-aimed-at-women>; Turberville and Rickerd, “An Oversight Agenda for Customs and Border Protection.”

⁸² “CBP Events Calendar,” U.S. Customs and Border Protection, April 14, 2023, <https://www.cbp.gov/cbp-events-calendar>.

IV.E.4. PROTECT WHISTLEBLOWERS

Cultural reform and accountability depend on people within border law enforcement agencies being able to come forward with information about abuse, corruption, and misconduct without fear of retribution or seeing their careers derailed. As noted in the sexual harassment cases above, and as indicated by the lack of employees coming forward to denounce cases of human rights abuses, CBP’s whistleblower protections currently lack credibility. The agency has a long way to go before employees who witness or suffer wrongdoing will trust the process enough to engage in it.

IV.E.5. CLOSE THE RACIAL PROFILING LOOPHOLE

According to current DHS policy, “CBP personnel may use race or ethnicity when a compelling governmental interest is present and its use is narrowly tailored to that interest. National security is *per se* a compelling interest.”⁸³ While the policy seeks to “tailor” the use of racial profiling, this represents an enormous loophole: a carve-out, upheld by Supreme Court rulings allowing profiling for “Hispanic appearance,” that applies to virtually no other U.S. law enforcement agencies.⁸⁴

Our organizations echo POGO’s 2021 recommendation that the Department of Justice’s “2014 Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity should be strengthened to close a glaring loophole that exempts law enforcement activity at the nation’s borders from this guidance.”⁸⁵

IV.E.6. TAKE AGENTS OUT OF ASYLUM PROCESSING

Border Patrol agents frequently complain about being pulled away from law enforcement duties to process large numbers of arriving asylum-seeking migrants. Advocates for migrants’ rights, meanwhile, contend that Border Patrol agents are not trained to work with populations who, like asylum seekers, are trauma victims seeking to turn themselves in. KBI has documented numerous allegations of CBP and Border Patrol personnel abusing and disrespecting vulnerable people seeking to apply for asylum.

This points to a big and rare area of agreement between agents and advocates: armed, uniformed agents shouldn’t take the lead in processing asylum seekers. Our organizations recommend that processing—background, identity, and family relationship verification, health checks, initial asylum paperwork—be carried out by civilians trained to work with vulnerable, traumatized populations.

CBP’s hiring of about 1,100 Border Patrol “processing coordinators” to handle such tasks, along with plans to take on an additional 460 “processing assistants” at CBP and ICE in 2024, are steps in the right direction.⁸⁶ As nine years of large-scale protection-seeking migration make clear, the post of “processing coordinator” needs to become a permanent position with a professional career path, instead of a short-term contract.

⁸³ “CBP Policy on Nondiscrimination in Law Enforcement Activities and All Other Administered Programs,” U.S. Customs and Border Protection, accessed April 17, 2023, <https://www.cbp.gov/about/eeo-diversity/policies/nondiscrimination-law-enforcement-activities-and-all-other-administered>.

⁸⁴ Murdza and Ewing, “The Legacy of Racism within the U.S. Border Patrol.”

⁸⁵ Turberville and Rickerd, “An Oversight Agenda for Customs and Border Protection.”

⁸⁶ “CBP Highlights Top 2022 Accomplishments,” U.S. Customs and Border Protection, January 30, 2023, <https://www.cbp.gov/newsroom/national-media-release/cbp-highlights-top-2022-accomplishments>; “Statement by Secretary Mayorkas on the President’s Fiscal Year 2024 Budget,” U.S. Department of Homeland Security, March 9, 2023, <https://www.dhs.gov/news/2023/03/09/statement-secretary-mayorkas-presidents-fiscal-year-2024-budget>.

An important processing change would remove CBP officers and Border Patrol agents from their current role in screening Mexican unaccompanied child migrants for protection concerns. Currently, agents are empowered to determine whether an unaccompanied child from a “contiguous” country might be in danger if returned. Few agents are trained to make this evaluation, and they may place Mexican children at serious risk of harm, as WOLA has documented.⁸⁷ Getting CBP personnel out of this determination would require Congress to adjust existing law (the 2008 William Wilberforce Trafficking Victims Protection Reauthorization Act).

⁸⁷ Natasha Pizzey and James Fredrick, “Forgotten on ‘La Frontera’: Mexican Children Fleeing Violence Are Rarely Heard,” WOLA, January 22, 2015, <https://www.wola.org/analysis/forgotten-on-la-frontera-mexican-children-fleeing-violence-are-rarely-heard/>.



Photo Credit: Kino Border Initiative
Illustration Credit: Sergio Ortiz Borbolla

Conclusion

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. In fact, we believe that it shouldn't even be controversial.

Glossary

Acronym	Term
ACLU	American Civil Liberties Union
BP	Border Patrol
BORTAC	Border Patrol Tactical Unit
BPCIT	Border Patrol Critical Incident Teams
CBP	Customs and Border Protection
CRCL	Office of Civil Rights and Civil Liberties
DHS	Department of Homeland Security
GAO	Government Accountability Office
ICE	Immigration and Customs Enforcement
JIC	Joint Intake Center
KBI	Kino Border Initiative
LGBTQ	Lesbian, gay, bisexual, transgender, and queer
LUFRB	Local Use of Force Review Board
NETWORK	NETWORK Lobby for Catholic Social Justice
NBPC	National Border Patrol Council
NUFRB	National Use of Force Review Board
OIDO	Office of the Immigration Detention Ombudsman

OIG	Office of the Inspector General
OPR	Office of Professional Responsibility
POGO	Project on Government Oversight
WOLA	Washington Office on Latin America

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is a bi-national organization located in Nogales, Arizona and Nogales, Sonora, Mexico. KBI provides humanitarian aid to migrants in Nogales, Sonora and engages in education and advocacy on both sides of the border with a vision of promoting humane, just, and workable migration.

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is a leading research and advocacy organization advancing human rights in the Americas. We envision a future where public policies protect human rights and recognize human dignity, and where justice overcomes violence. WOLA tackles problems that transcend borders and demand cross-border solutions. We create strategic partnerships with courageous people making social change—advocacy organizations, academics, religious and business leaders, artists, and government officials. Together, we advocate for more just societies in the Americas.



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