

Bordering on Criminal:

The Routine Abuse of Migrants in the
Removal System



Part I: Migrant Mistreatment While in U.S. Custody

by Daniel E. Martínez, Jeremy Slack, and Josiah Heyman

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PART I:

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ABOUT THE IMMIGRATION POLICY CENTER

The Immigration Policy Center, established in 2003, is the policy arm of the American Immigration Council. IPC's mission is to shape a rational conversation on immigration and immigrant integration. Through its research and analysis, IPC provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy in U.S. society. IPC reports and materials are widely disseminated and relied upon by press and policymakers. IPC staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. IPC is a non-partisan organization that neither supports nor opposes any political party or candidate for office. Visit our website at www.immigrationpolicy.org and our blog at www.immigrationimpact.com.

ABOUT THE AUTHORS

Daniel E. Martínez is an Assistant Professor in the Department of Sociology at The George Washington University. He received a Ph.D. from the School of Sociology at the University of Arizona in May of 2013, and holds an M.A. in Sociology and M.S. in Mexican American Studies, also from the University of Arizona. His research and teaching interests include criminology, juvenile delinquency, race and ethnicity, and unauthorized immigration. Martínez is particularly interested in the increasing legal and social criminalization of unauthorized migration. He is one of three co-principal investigators of the *Migrant Border Crossing Study*, a Ford Foundation-funded research project that involves interviewing recently deported unauthorized migrants about their experiences crossing the U.S.-Mexico border and residing in the United States. Martínez also does extensive research on undocumented border-crosser deaths along the U.S.-Mexico border.

Jeremy Slack is a Doctoral Candidate in the School of Geography and Development at the University of Arizona and holds an M.A. in Latin American Studies, also from the University of Arizona. He is currently conducting research and field work in northeastern Mexico assisted by a grant from the Drugs, Security and Democracy Fellowship Program administered by the Social Science Research Council and the Universidad de Los Andes in cooperation with, and with funds provided by, the Open Society Foundations and the International Development Research Centre, Ottawa, Canada. Slack is also one of three co-principal investigators of the *Migrant Border Crossing Study*. He has published on issues relating to violence, migration, drug trafficking, and the criminalization of migration. Slack will be finishing his dissertation in 2014.

Josiah Heyman is Professor of Anthropology and Chair of the Department of Sociology and Anthropology at the University of Texas, El Paso (since 2002). He is also the endowed Professor of Border Trade Issues. His research has included (among other topics) the officers of U.S. border agencies and U.S. border control policies from a human security and human rights perspective. He is the author or editor of *States and Illegal Practices* (Berg, 1999), *Finding a Moral Heart for U.S. Immigration Policy: An Anthropological Perspective* (American Anthropological Association, 1998) and *Life and Labor on the Border: Working People of Northeastern Sonora, Mexico, 1886-1986* (University of Arizona Press, 1991), and is the author of more than one hundred and thirty scholarly articles, book chapters, and essays. He is currently on the Board of Directors of the Society for Applied Anthropology. He has also participated in numerous community initiatives addressing public policies and human rights at the U.S.-Mexico border.

About This Series

This is the first in a series of three reports we will be releasing that highlight findings from the second wave of the Migrant Border Crossing Study (MBCS). Wave II of the MBCS, currently housed in the Center for Latin American Studies at the University of Arizona and the Department of Sociology at George Washington University, is a binational, multi-institution study of 1,110 randomly selected, recently repatriated migrants¹ surveyed in six Mexican cities between 2009 and 2012 (see las.arizona.edu/mbc for the full report and methodology).

This report focuses on the mistreatment of unauthorized migrants while in U.S. custody. Overall, we find that the physical and verbal mistreatment of migrants is not a random, sporadic occurrence but, rather, a systematic practice. One indication of this is that 11% of deportees report some form of physical abuse and 23% report verbal mistreatment while in U.S. custody—a finding that is supported by other academic studies and reports from non-governmental organizations. Another highly disturbing finding is that migrants often note they are the targets for nationalistic and racist remarks—something that in no way is integral to U.S. officials' ability to function in an effective capacity on a day-to-day basis. We find that, when they occur, physical and verbal abuses are usually perpetrated during the apprehension process.

When taken in the context of prior studies, it appears that the abuse of migrants while in U.S. custody is a systemic problem and points to an organizational subculture stemming from a lack of transparency and accountability in U.S. Customs and Border Protection. These patterns of abuse have brought scrutiny to the Border Patrol's use-of-force policies and created tension in border communities. Future research should examine the longer-term social and psychological consequences of these types of abuse for migrants and their loved ones.

Introduction

Between 2010 and 2013 there were at least 20 recorded killings of Mexican nationals or Mexican Americans by U.S. authorities near the border.² The majority of victims were in U.S. custody, but six were actually standing in Mexico when killed. U.S. officials have justified some of these deaths by suggesting that those killed were suspected drug smugglers or had thrown rocks at agents, while human rights groups argue that most were simply immigrants who were victims of excessive use of force by U.S. authorities. Regardless of the circumstances of each case, serious questions have been raised about the use-of-force policies of U.S. Customs and Border Protection (CBP)—the parent agency of the Border Patrol within the Department of Homeland Security (DHS).³

Cross-border killings of young people have elicited concerns from activists and non-governmental organizations, and have been covered extensively by media outlets. For instance, the case of 16-year-old José Antonio Elena Rodríguez, who was shot multiple times in the back and head on October 10, 2012, has provoked a public outcry and large protests. Rodríguez was allegedly walking to help his brother close a convenience store in Nogales, Sonora, when Border

Patrol agents standing in the U.S. shot down through the border fence and killed him from the top of a 20-foot hill.⁴ Despite public attention surrounding this case, the names of the agents involved have not been released, nor have the video recordings of the shooting been made publically available—not even to the family’s attorney.

Other cases have received attention from U.S. policymakers. Several years ago, 16 members of Congress demanded an investigation into the death of Anastasio Hernández Rojas, who died after being beaten and tazed.⁵ The investigation led to a review of CBP use-of-force policies, their training procedures, and the extent of non-lethal options available to agents. Many of Congress’s recommendations regarding agents’ training and the increased availability of non-lethal technologies, such as access to bean bag guns and pepper launchers, were well received by non-governmental organizations and the public alike. But Border Patrol Chief Mike Fisher rejected the recommendation that CBP revisit its use-of-force policy, especially with regard to rock-throwing incidents. In a recent interview with the Associated Press, Fisher stated that the recommended use-of-force policies would be “too restrictive” and that “just to say that you shouldn’t shoot at rock-throwers or vehicles for us, in our environment, was very problematic and could potentially put Border Patrol agents in danger.”⁶ There have been no fatalities of U.S. agents due to rock-throwers, and the general lack of oversight and transparency in these cases has raised alarm throughout border communities.

Use of force is indicative of a wider range of abuse issues in the patrolling, arrest, detention, and removal processes. We find widespread, significant, and sometimes quite serious physical and verbal abuses in the Migrant Border Crossing Study (MBCS). Of respondents, 11% reported physical abuse and 23% reported verbal abuse. These included physical acts that resulted in serious injuries in some cases, as well as harsh verbal attacks. Documented cases of abuses are frequently dismissed as the work of a “few bad apples,” or reduced to individual-level poor judgment, and therefore outside the scope of institutional responsibility. However, MBCS results are supported by multiple reports and scholarly articles that have also found consistent rates of physical and verbal abuse among deportees.⁷ A 2011 report by No More Deaths found that 10% of deportees reported experiencing physical violence by U.S. authorities.⁸ An academic study with Salvadoran deportees between 1999 and 2000 found a slightly higher physical abuse rate at about 16%.⁹ A separate sample collected by the same scholars in 2002 among 300 Salvadoran deportees found similar results, with 20% reporting at least one or more forms of physical abuse during the apprehension process, and 11% during detention.¹⁰ These consistent results across multiple studies suggest that abuse of migrants while in U.S. custody is a systematic problem relating to an ongoing institutional culture rather than simply a consequence of a few people who are acting inappropriately.

This report provides much-needed details about the patterns of abuse found along the border, and therefore can help policymakers specify ways to increase oversight, find appropriate measures to improve training, and identify avenues for people to report mistreatment and monitor follow-up activities. This is particularly important in regard to a lack of transparency in investigations surrounding fatalities caused by Border Patrol agents, whereupon evidence is not made public.¹¹ While our data do not speak directly to lethal use of force, this research points

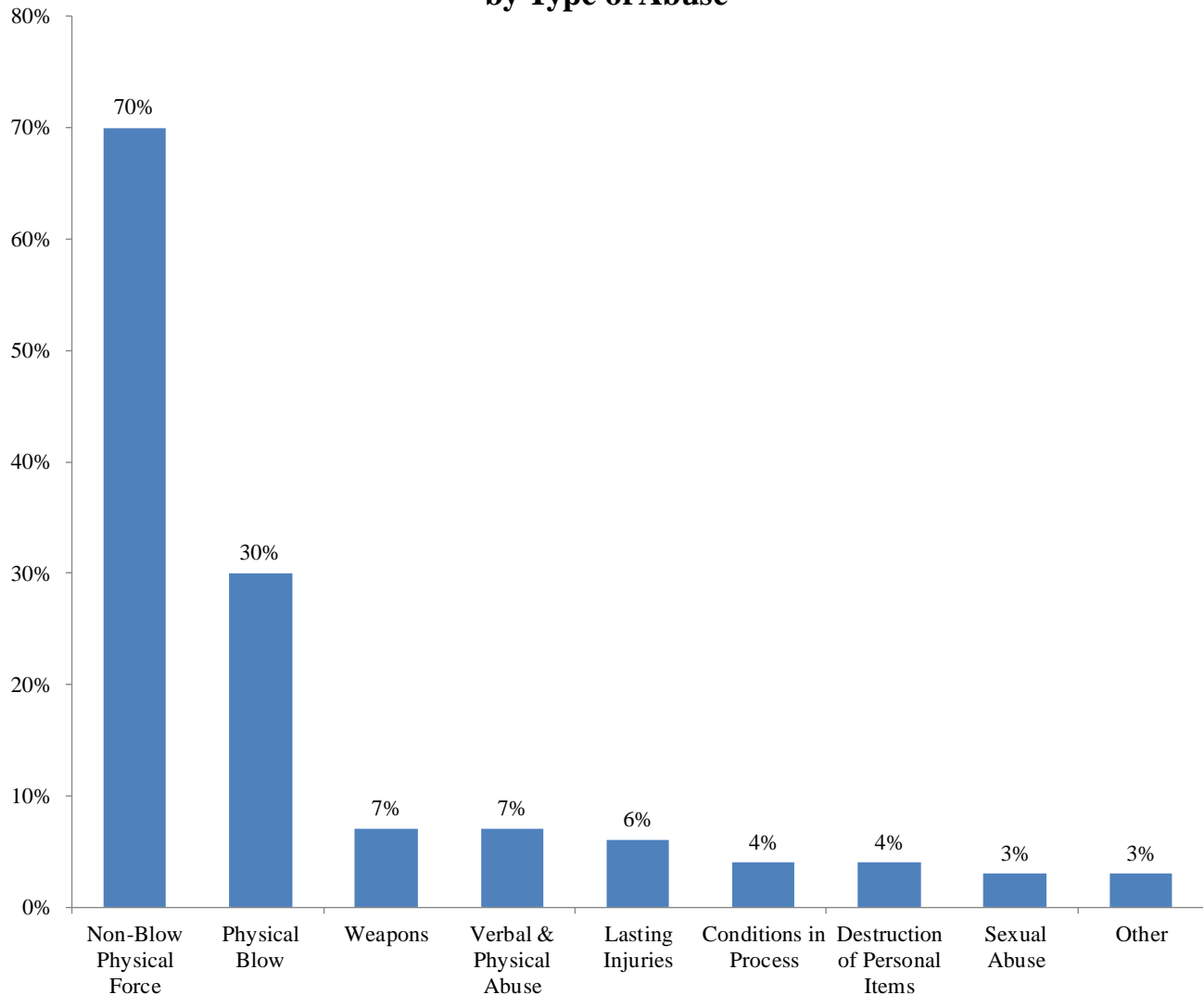
to patterns of abuse that must be addressed in order to reduce needless deaths that have inflamed tensions along the border. We begin by highlighting findings on physical and verbal abuse of migrants while in U.S. custody, and follow by describing the agencies most frequently associated with abuse among our sample. Findings from the MBCS help shed light on how non-lethal, everyday encounters could be prevented from turning into fatal events.

Javier is a 35-year-old male from the Mexican state of Hidalgo. He attempted to cross the border near Nogales, Sonora, in January 2012 with a group from his community. Javier was on his way to meet up with friends in New York, where he planned on living and working for a few years before returning home. However, Javier was apprehended by the Border Patrol while the group was resting a few hours after crossing into the United States. When asked if he had experienced physical abuse while in U.S. custody, he replied, “Yes, in the processing center. They pushed me around. And they didn’t let us sleep. Every time we started to sleep they forced us to get up and march or clean the room. We didn’t sleep the entire night. They [the agents] took away our watches so we didn’t know what time it was. I was forced to look at the floor and wasn’t allowed to look up.” [Interviewed on January 15, 2012.]

Physical Mistreatment while in U.S. Custody

Physical mistreatment of unauthorized migrants while in U.S. custody is far from an uncommon occurrence. As noted, 11% of the 1,095 MBCS respondents who answered the question on physical abuse reported being hit, pushed, grabbed, or attacked physically while in U.S. custody.¹² Respondents were asked to recall in detail the nature of the physical mistreatment they experienced. We identified seven main categories of physical abuse types: “Non-Blow Physical Force” (70%), “Physical Blow” (30%), “Use of Weapons” (7%), “Lasting Injuries” (6%), “Bad Conditions in Processing” (4%), “Destruction of Personal Items” (4%), and “Sexual Abuse” (3%) {see Figure 1}. These figures include multiple mentions and therefore do not sum to 100%. A tally and breakdown of each type of physical abuse can be found in Appendix A.

Figure 1: Physical Mistreatment While in U.S. Custody, by Type of Abuse



Source: MBCS II, N = 120

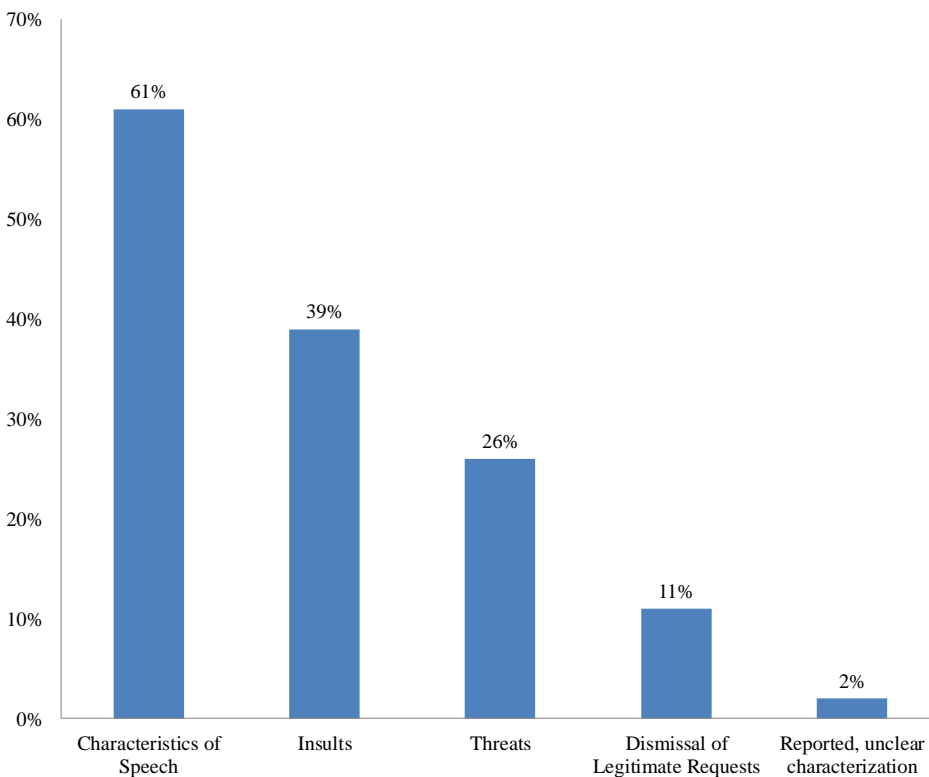
Among the 11% of MBCS II respondents who reported being physically mistreated, the majority (70%) reported experiencing a non-blow form of physical force directed at them, including being pushed or pulled, being dragged or lifted, having pressure exerted upon them with a fist, arm, or knee, being placed in painful or stressful positions, having handcuffs placed on them too tightly, or being spat upon. About one third (30%) of the 120 respondents who reported experiencing physical abuse indicated they were the target of a physical blow, including being hit or kicked, hit with an object, pushed against an object, or hit/thrown while already constrained. Perhaps of most concern are the 6% and 3% of respondents who indicated they received lasting injuries or were sexually abused while in U.S. custody.

Verbal Mistreatment While in U.S. Custody

While physical abuse of migrants is far from a rare occurrence, verbal mistreatment of migrants while in U.S. custody is much more common. Twenty-three percent of the 1,092 respondents who answered the question reported being yelled at, threatened, or verbally abused while in U.S. custody.¹³ Again, this verbal abuse rate is consistent with the 26% reported by Phillips, Hagan, and Rodríguez in their 2006 study, but greater than the 14% noted in the 2011 No More Deaths report. This verbal abuse rate is, however, about nine percentage points lower than the 34% found in Wave I of the MBCS between 2007 and 2009 in Nogales, Sonora.

Among those who reported verbal abuse, respondents were asked to recall in detail the nature of the verbal mistreatment they experienced. We identified four main categories of verbal abuse types: “Characteristics of Speech” (61%), “Insults” (39%), “Threats” (26%), and “Dismissal of Legitimate Requests” (11%) {see Figure 2}. Again, these figures include multiple mentions and therefore do not sum to 100%. A tally and breakdown of each type of verbal abuse can be found in Appendix B.

Figure 2. Verbal Mistreatment While in U.S. Custody, by Type of Abuse



Source: MBCS II, N = 252

Among the 252 respondents noting verbal abuse, 61% highlighted the characteristics of speech directed at them as a form of verbal abuse. This includes being cursed at, yelled at in an angry tone, or being told something in English that they could not understand, but that they interpreted as a form of verbal mistreatment due to the tone used and body language. Nearly

40% of the 252 people who reported verbal abuse mentioned that they were the target of direct insults. These insults consisted of nationalistic or racist slurs, insults related to crossing the border without authorization, aspersions against immigrants, false accusations, or other general insults. Comments regarding a migrant's gender or presumed sexual orientation were also mentioned. Some respondents also indicated that they were made fun of by agents or were treated as a source of amusement. Twenty-six percent indicated they were threatened, including with physical harm or additional legal sanctions, while 11% explicitly mentioned that they had legitimate requests denied.

One of the most troubling findings from this study is the prevalence of racialized insults directed at unauthorized migrants. This suggests a substantial issue relating to the training of agents, particularly the sensitivity of agents when interacting with diverse populations. It is difficult to justify how statements such as “fucking wetback,” “dirty little Mexican woman, let’s see if you cross again after this!” or “Mexican pieces of shit” are integral to agents’ abilities to carry out day-to-day duties (Interview dates and locations: August 10, 2011, Juárez; August 10, 2011, Mexico City; September 8, 2011, Nuevo Laredo).

Pablo, a 41-year-old male from Guanajuato, Mexico, last tried crossing the border near Tecate, Baja California, in July of 2011. He had agreed to pay a coyote \$1,500 to take him to his destination in Orange County, California. After walking through the desert for three days with his coyote and 10 other migrants, the group was stopped by the Border Patrol. The group was forced to walk single-file towards the Border Patrol vehicle. Pablo was the last person in line when an agent kicked him in the back and swore at him. Once inside the vehicle, one of Pablo’s traveling companions let out a scream in frustration over being caught. The agent turned to the group and demanded to know who had screamed. When no one spoke up the agent threatened to punish the entire group. The man confessed to yelling out and the agent proceeded to beat him inside the patrol unit. [Interviewed on October 12, 2011.]

Agency Involvement in Abuse

We also asked respondents to recall the agency that was involved in the verbal and physical abuse. Table 1 provides a breakdown of verbal and physical abuse by agency, but this data must be interpreted with care. The rates reflected in table 1 are not the abuse rates pertaining to each agency, but rather a measure of which agencies were most involved in the abusive acts reported by the deportees who were interviewed. Given that unauthorized border crossers are most likely to encounter Border Patrol agents—rather than, say, Immigration and Customs Enforcement (ICE) agents—one would expect the Border Patrol to be more involved in the abusive acts reported by border crossers. This explains why 75% of people who reported verbal abuse, and 67% of those who were physically abused, noted that the agent who committed the abuse worked for the Border Patrol. In a similar vein, relatively few unauthorized border

crossers came into contact with ICE or local law enforcement officials, therefore these organizations appear less often in table 1. For instance, 73% of MBCS respondents reported at least one U.S. Border Patrol agent present during their apprehension, compared to 22% who indicated the presence of law enforcement, and 4% who reported being apprehended by at least one ICE agent. Because Border Patrol is the agency most likely to come into contact with unauthorized migrants, especially within the 100km border zone, immediate training measures must be implemented by this agency to greatly reduce the frequency of verbal and physical abuse migrants experience while in custody.

Table 1. Agency of Mistreatment While in U.S. Custody

	Percent
Agency Implicated in <i>Physical</i> Mistreatment¹	
<i>US Border Patrol</i>	67%
<i>Police / Sheriff / Local law enforcement</i>	17%
<i>Immigration and Customs Enforcement (ICE)</i>	11%
<i>Guard in detention</i>	3%
<i>US Marshalls</i>	3%
Agency Implicated in <i>Verbal</i> Mistreatment²	
<i>US Border Patrol</i>	75%
<i>Immigration and Customs Enforcement (ICE)</i>	11%
<i>Police / Sheriff / Local law enforcement</i>	9%
<i>Guard in detention</i>	2%
<i>US Marshalls</i>	1%
<i>Wackenhut / G4S</i>	1%

1.) N = 118

2.) N = 216

Source: *Migrant Border Crossing Study, Wave II*

Although detention guards, agents of private security companies, and U.S. Marshalls were only implicated in 4% of instances of verbal abuse and 6% of cases of physical abuse, we are especially concerned about this handful of cases. These instances of abuse occurred while the unauthorized migrant was already secured in U.S. custody (post-apprehension) and under operational control, and likely while already constrained. Further, these cases of abuse are of concern given immigration detainees' limited rights and access to legal counsel, especially considering many feel they have little recourse or opportunities to denounce these instances of abuse prior to deportation.

Conclusions

One of the biggest challenges of studying migrant mistreatment while in U.S. custody, especially with regard to people who express interest in filing complaints or pressing charges, is that there is little to no effective action they can take. While the recommendations about additional training and access to non-lethal weapons are an important step, they do not address the more serious concerns regarding perceptions within border communities that the Border Patrol operates with complete impunity and no oversight, especially within 100km of the international line. Recent information that an agent involved with the fatal shooting of 17-year-old Ramses Barron Torres had requested a pepper ball (a non-lethal weapon) immediately before Torres was shot has increased calls for more access to these technologies.¹⁴ However, video footage has still not been made available to the public following the decision to close this and other cases.

The abuses documented in the MBCS are neither isolated cases, nor are they standard protocol. Dismissal of these abuses as isolated incidents negates the responsibility of U.S. authorities to address the behavior of their personnel as well as the institutional cultures that have developed within their ranks. In order to fully address this issue and all of its binational implications, it is imperative that U.S. officials create transparent avenues with which to file complaints of mistreatment and ways in which interested parties can follow up on pending investigations.

Appendix A. Physical Mistreatment While in U.S. Custody

	Percent
Reported <i>physical</i> abuse by US authorities¹	11%
Mentions of specific physical abuse types among those who reported abuse (includes multiple mentions)²	
NET Non-Blow Physical Force	70%
<i>Push / pull</i>	40%
<i>Pushed to ground</i>	4%
<i>Drag, lift</i>	6%
<i>Wrestle, twisted part of body</i>	8%
<i>Pressure with fist, arm, knee</i>	1%
<i>Choke</i>	1%
<i>Painful / stressful positions</i>	2%
<i>Sit, lie on painful object (thorns, etc.)</i>	3%
<i>Overly tight handcuffs</i>	7%
<i>Spit on</i>	1%
<i>Tied</i>	1%
NET Physical Blow	30%
<i>Hit, kick</i>	13%
<i>Hit with object</i>	2%
<i>Pushed against object (e.g., wall, car)</i>	10%
<i>Hit when constrained / controlled, thrown when constrained</i>	3%
<i>Other</i>	1%

(Appendix A continued on next page)

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NET Weapons	7%
<i>Taser</i>	1%
<i>Rubber bullet / balls</i>	1%
<i>Dogs</i>	4%
<i>Gun (threat--no cases of shooting)</i>	2%
NET Verbal Abuse Accompanying Physical Abuse	7%
NET Lasting Injuries	6%
<i>Bruise, scrape, break skin</i>	2%
<i>Broken, dislocated</i>	2%
<i>Other</i>	3%
NET Bad Conditions in Process	4%
<i>Bad transportation conditions</i>	2%
<i>Bad detention conditions</i>	1%
<i>Deprivation of sleep, water, food</i>	2%
NET Destruction of Personal Items	4%
<i>Broke personal item</i>	2%
<i>Threw away water, food</i>	2%
<i>Other</i>	1%
NET Sexual Abuse	3%
NET Other	3%

1.) Among 1,095 respondents, 11% (120) reported physical abuse.

2.) Percentages are for the 120 respondents who reported experiencing a form of physical abuse.

Note: The "NET" macro-categories represent unique mentions within a specific category, and therefore do not equal the sum of the individual subcategories. For instance, a respondent may have reported being "kicked" as well as "hit with an object". Each instance was recorded under the "NET Physical Blow" subcategories, but only count once towards the "Net Physical Blow" macro-category.

Source: *Migrant Border Crossing Study, Wave II*

Appendix B. Verbal Mistreatment While in U.S. Custody

	Percent
Reported <i>verbal</i> abuse by US authorities¹	23%
Mentions of specific verbal abuse types among those who reported abuse (includes multiple mentions)²	
NET Characteristics of Speech	61%
<i>Curses (specific)</i>	36%
<i>Angry tone or yelling</i>	17%
<i>Insulting command (Spanish informal, e.g., vete)</i>	4%
<i>Something in English or otherwise not understood</i>	8%
<i>Command that migrant interprets as abuse, but not evident</i>	11%
NET Insults	39%
<i>Nationalistic/ethnic/race (anti-Mexican)</i>	18%
<i>Wrong to violate immigration law, cross border, etc.</i>	4%
<i>Other aspersions against immigrants (e.g. welfare, births, jobs)</i>	2%
<i>Gender, sexuality</i>	4%
<i>Made fun of (source of amusement)</i>	6%
<i>Accusations (e.g., non-Mexican, drug smuggler)</i>	3%
<i>Other insults</i>	8%
NET Threats	26%
<i>To do physical harm to migrant</i>	9%
<i>To punish migrant legally</i>	12%
<i>To take away needed items (blankets, food, etc.)</i>	1%
<i>Other/Unspecified</i>	5%
NET Dismissal of Legitimate Requests	11%
<i>Silencing/dismissing legitimate requests (e.g., water, medical, legal)</i>	7%
<i>Told have no rights, denied a legal right</i>	4%
NET Reported, unclear characterization	2%

1.) Among 1,092 respondents, 23% (252) reported verbal abuse.

2.) Percentages are for the 252 respondents who reported experiencing a form of verbal abuse.

Note: The "NET" macro-categories represent unique mentions within a specific category, and therefore do not equal the sum of the individual subcategories. For instance, a respondent may have reported being called a "racial slur" as well as accused of being a "drug smuggler". Each instance was recorded under the "NET Insults" subcategories, but only count once towards the "Net Insults" macro-category.

Source: *Migrant Border Crossing Study, Wave II*

Endnotes

¹ For the purposes of this report, we use the terms “repatriation” and “deportation” interchangeably, referring to the physical act of removing someone from the country, as opposed to the legal distinction between a voluntary repatriation, which is a civil infraction, and a formal deportation, which may be either criminal or civil in nature.

² Elliot Spagat, “[Border Patrol Continue Killing People Who Throw Rocks](#),” *Associated Press*, November 5, 2013; Southern Border Communities Coalition, “[Border Patrol Abuse Since 2010: 22 Killed by Customs and Border Protection](#),” last viewed December 7, 2013.

³ Danielle Powell, “[Cross Border Killings: By the Numbers](#),” Aljazeera’s *Fault Lines* blog, September 7, 2013.

⁴ Ted Robbins, “[Frustration Mounts Over Unresolved Border Patrol Shootings](#),” NPR, April 11, 2013; Danielle Powell, “[Cross Border Killings: By the Numbers](#),” Aljazeera’s *Fault Lines* blog, September 7, 2013.

⁵ George Zornick, “[Border Patrol Will Continue Using Lethal Force on Rock-Throwers](#),” *The Nation* blog, November 6, 2013.

⁶ Ibid.

⁷ Scott Phillips, Nestor Rodríguez, and Jacqueline Hagan, “[Brutality at the Border: Use of Force in the Arrest of Immigrants in the United States](#),” *International Journal of the Sociology of Law* 30, no.4 (December 2002): 285-306; Scott Phillips, Jacqueline Maria Hagan, and Nestor Rodríguez, “[Brutal Borders? Examining the Treatment of Deportees During Arrest and Detention](#),” *Social Forces* 85, no. 1 (September 2006): 93-109; No More Deaths, *A Culture of Cruelty: Abuse and Impunity in Short-Term U.S. Border Patrol Custody* (Tucson, AZ: 2011).

⁸ No More Deaths, *A Culture of Cruelty: Abuse and Impunity in Short-Term U.S. Border Patrol Custody* (Tucson, AZ: 2011).

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¹⁰ Scott Phillips, Jacqueline Maria Hagan, and Nestor Rodríguez, “[Brutal Borders? Examining the Treatment of Deportees During Arrest and Detention](#),” *Social Forces* 85, no. 1 (September 2006): 93-109.

¹¹ Danielle Powell, “[Cross Border Killings: By the Numbers](#),” Aljazeera’s *Fault Lines* blog, September 7, 2013.

¹² Jeremy Slack, Daniel E. Martinez, Scott Whiteford, and Emily Peiffer, *In the Shadow of the Wall: Family Separation, Immigration Enforcement, and Security* (Tucson, AZ: Center for Latin American Studies, University of Arizona, March 2013).

¹³ Ibid.

¹⁴ Curt Prendergast, “[In moments before fatal shooting, a call for non-lethal weapons](#),” *Nogales International*, November 25, 2013.

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Part II: Possessions Taken and Not Returned

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ABOUT THE AUTHORS

Daniel E. Martínez is an Assistant Professor in the Department of Sociology at The George Washington University. He received a Ph.D. from the School of Sociology at the University of Arizona in May of 2013, and holds an M.A. in Sociology and M.S. in Mexican American Studies, also from the University of Arizona. His research and teaching interests include criminology, juvenile delinquency, race and ethnicity, and unauthorized immigration. Martínez is particularly interested in the increasing legal and social criminalization of unauthorized migration. He is one of three co-principal investigators of the *Migrant Border Crossing Study*, a Ford Foundation-funded research project that involves interviewing recently deported unauthorized migrants about their experiences crossing the U.S-Mexico border and residing in the United States. Martínez also does extensive research on undocumented border crosser deaths along the U.S.-Mexico border.

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This report focuses on the issue of repatriated migrants' belongings being taken and not returned by U.S. authorities. Overall, we find that the taking of belongings and the failure to return them is not a random, sporadic occurrence, but a systematic practice. One indication of this is that just over one-third of deportees report having belongings taken and not returned. Perhaps one of the most alarming findings is that, among deportees who were carrying Mexican identification cards, 1 out of every 4 had their card taken and not returned. The taking of possessions, particularly identity documents, can have serious consequences and is an expression of how dysfunctional the deportation system is. Our study finds that migrants processed through Operation Streamline, or held in detention for a week or longer, are most likely to have their possessions taken and not returned.

Introduction

Non-governmental organizations and immigrant rights' groups have raised concerns about the mistreatment of unauthorized migrants while in U.S. custody. Unauthorized migrants report experiencing physical and verbal mistreatment by U.S. authorities and are often compelled to sign documents by U.S. authorities that they do not fully comprehend. Upon arrival in Mexico, repatriated migrants frequently find themselves in danger, wandering the streets of unfamiliar border towns trying to decide their next move. This report explores issues related to what possessions have been taken away and not returned to deportees by U.S. authorities. These belongings are an important source of protection, be it in the form of money to help them buy a bus ticket home, identifying documents that allow them to receive a wire transfer, a cell phone with emergency contacts, or even a change of clothes for extra warmth during cold winter nights. Moreover, the decision to remain in Mexico or cross back into the United States may hinge upon the resources available to migrants.

While some Mexican government aid is available to deportees in Mexico while near the border, most deportees can only expect a safe place to stay for a couple of nights and a few meals at church-run or privately operated migrant shelters, or a discounted bus ticket home from Grupos Beta,² which is often still too expensive. Without money or identifying documents, the option of taking a bus south becomes at least as difficult as crossing back into the United States. Moreover, without access to money, deportees become vulnerable to extortion from people who offer to receive a transfer in their name with the hope that they will hand over the cash once transferred. Others are deceived into accepting short-term employment or offers of safe passage to the United States from people who may in fact be involved with human smuggling, trafficking, or kidnapping operations. This is particularly problematic in the border cities most affected by organized crime, especially in northeastern Mexico.

With 34% of all respondents reporting that at least one of their belongings was taken and not returned during their most recent apprehension, it is clear that this is a systematic problem. In this report we demonstrate that there are specific parts of the processing and detention experience that increase the rate at which possessions are lost or taken and not returned. From the moment of apprehension until deportation, unauthorized migrants pass through a complex process often involving multiple agencies and court systems, as well as local, state, federal, and for-profit detention centers. Data from the Migrant Border Crossing Study (MBCS) show that being tried through Operation Streamline—a mass federal immigration trial system further discussed below—or being detained for longer periods of time results in higher rates of lost possessions. We conclude that this problem stems from a lack of inter-agency standardization and cooperation, particularly between Customs and Border Protection (CBP), the U.S. Department of Justice’s Federal Bureau of Prisons, and the Department of Corrections (DOC). Greater coordination and cooperation is necessary to deal with the special needs of deportees, which in turn will help to create a more secure border not only for deportees, but also for residents on both sides of the border.

Socorro is a 56-year-old grandmother from the Mexican state of Puebla who has U.S.-citizen family members. She last tried crossing the border near Agua Prieta, Sonora, where she paid a coyote \$3,000 to guide her. She was on her way to Phoenix, Arizona, where she had lived the past 10 years, to resume working in a restaurant kitchen. After traveling on foot through the hills of Cochise County with several other people, the group was picked up by a van and began making its way to Phoenix. However, the van was stopped by the U.S. Border Patrol and everyone apprehended. Socorro was sent to Tucson, Arizona, tried through Operation Streamline, and sentenced to 60 days in a detention facility. During the course of her encounter with U.S. authorities, her purse, Mexican identification card, son’s identification card, glasses, MXP \$2,500, USD \$20, clothing, and medication were all taken from her and not returned before she was deported to Nogales, Sonora. (Interviewed on January 28, 2010.)

Operation Streamline

Aside from being one of the most controversial aspects of current immigration enforcement, stemming from questions regarding a lack of due process and prosecutorial independence,³ being processed through Operation Streamline is one of the processes most associated with having one's possessions taken and not returned. Table 1 illustrates that 57% of migrants who were processed through Operation Streamline report having a possession taken and not returned, compared to just 23% of those processed through other means such as a lateral repatriation, a voluntary repatriation, or Secure Communities.

Table 1. Comparison between people processed through *Operation Streamline* and those processed through other means¹

Variable	<i>Operation Streamline</i> (39% of sample)	Other Removal Program (61% of sample)	Difference
Possessions taken and not returned	57%	23%	34%***

1.) Excludes people who crossed, were apprehended, and deported in sectors not practicing *Operation Streamline*

N = 877

Note: * p < 0.05, ** p < 0.01, *** p < 0.001 indicate the difference is statistically significant

Source: *Migrant Border Crossing Study, Wave II*

Operation Streamline, which is currently operational in all but three Border Patrol sectors, is characterized by mass federal immigration trials. The aim of Operation Streamline is to charge and convict first-time crossers of “unauthorized entry” (a misdemeanor under 8 U.S.C. § 1325) and repeated crossers of “unauthorized re-entry” (a felony charge under 8 U.S.C. § 1326) in an attempt to reduce future unauthorized crossing attempts.⁴ Unauthorized entry can carry a six-month sentence in an immigration detention facility. However, “if the defendant’s prior removal occurred after a felony conviction, the maximum possible penalty under 8 U.S.C. § 1326 is 10 years in prison. If the prior removal occurred after an aggravated felony conviction as defined by 8 U.S.C. § 1101(a)(43), the penalty can be up to 20 years.”⁵ The rate at which unauthorized migrants are processed through Operation Streamline varies across sectors, with some sectors, including Tucson and Del Rio, processing more than others. The proposed and amended Senate immigration bill (S. 744), which has been stalled in the House of Representatives, would expand removals similar to those carried out in Operation Streamline to all Border Patrol sectors, and triple the number of people processed through the program in the Tucson Sector from 70 per day to 210.⁶

Furthermore, as noted in table 2, migrants who report being detained for a period of one week or longer also report having possessions taken and not returned at a higher rate (53%) than those detained for less than a week (22%).

Table 2. Comparison between people detained *ONE WEEK OR LONGER* compared to detained less than a week

Variable	Detained (39% of sample)	Not detained (61% of sample)	Difference
Possessions taken and not returned	53%	22%	31%***

N = 1,093

Note: * p < 0.05, ** p < 0.01, *** p < 0.001 indicate the difference is statistically significant

Source: *Migrant Border Crossing Study, Wave II*

We find that the transfer of migrants between law-enforcement agencies that have different policies, standards, and practices for handling possessions is the most likely explanation for these striking differences, as the types of possessions allowed to follow a detainee vary between organizations. For example, the U.S. Marshalls operate according to policies regarding possessions set forth by the U.S. Department of Justice’s Federal Bureau of Prisons, while the U.S. Border Patrol has a completely different set of policies and procedures. Because people routinely pass into the custody of the U.S. Marshalls during Operation Streamline, this may account for a large portion of the disparity. In a similar vein, being transferred to or held by a state’s Department of Corrections may result in having possessions discarded that have not been claimed within 30 days after a migrant has left the facility. This is a highly problematic policy that disproportionately affects unauthorized migrants because, unlike U.S.-citizen inmates, most unauthorized migrants do not have social contacts near the border who can claim their possessions on their behalf. The problem of people being deported without their possessions will likely be exacerbated if pending immigration legislation is enacted in its current form unless clear policies are outlined to ensure that people can feasibly retrieve their belongings.

Possessions Taken and Not Returned

As noted in table 3, 34% of MBCS respondents report having at least one of their possessions taken and not returned prior to being repatriated to Mexico. This figure excludes mentions of perishable items such as food and water that migrants may have been traveling with before being apprehended by U.S. authorities (roughly 2%).⁷ While some people report being allowed to eat and drink their remaining provisions upon apprehension, others have them thrown away. This is an important difference for those who have been rationing their food for several days while crossing the border. Among the 34% of those reporting having possessions taken and not returned, 31% specifically mention clothes or luggage, which causes problems for people deported during the winter, when some regions of the border experience frequent temperatures below freezing. Among those who have belongings taken and not returned, 21% of deportees report losing a cell phone, which is often the only way to communicate with friends or family. One in five also notes that they have money taken and not returned, with an average of \$55 per person. This is an especially problematic occurrence because it is hard to determine whether or not loss of money is due to systemic issues or individual-level negligence by U.S. authorities. Deportees often express skepticism that their possessions, especially new cell phones and cash, were truly discarded. The combination of a lack of oversight and the

frequency of lost belongings creates the appearance of corruption, if not conditions that are rife for exploitation.

Finally, 70% of all MBCS respondents reported that they were traveling with Mexican identifying documents. Among those, 26% indicate that they had those documents taken and not returned prior to deportation. This is by far the most important item one can lose while in U.S. custody. Widespread extortion and harassment by Mexican officials has been linked to lack of identification. One cannot receive a wire transfer, get a job, board an airplane, or access certain state services without official documents. Moreover, standard procedures for recuperating or getting duplicates of these documents are varied, but often require individuals to return to the state where they were born, which may be hundreds of miles away. Mexican and U.S. officials must work together to ensure that people retain documents and can replace those that are lost.

Miguel is a 41-year-old male from the Mexican State of Puebla. In 2011 he made his first attempt at crossing the border near Sonoyta, Sonora. Although he had never lived or worked in the United States, he was on his way to New York, where he planned on working for a couple of years before returning to Puebla. After traveling through the desert for four days, he was apprehended by the U.S. Border Patrol, processed through Operation Streamline in the Tucson Sector, and sent to a Corrections Corporation of America (CCA) detention facility in Florence, Arizona. During the course of his processing and detention, Miguel had his Mexican identification card, medication, and the little money he had all taken and not returned. Miguel spent two months in detention and was deported to Juárez, Chihuahua—a city with one of the highest homicide rates in Mexico. (Interviewed on July 12, 2011.)

Table 3. Possession taken and not returned by US authorities, by type (includes multiple mentions)

Percent who had one of the following items taken and not returned	34%
Specific mentions among those who had items taken and not returned:	
<i>Clothes / Backpack</i>	31%
<i>Cell phone</i>	21%
<i>Money</i>	20%
Median amount lost (US dollars)	\$55
<i>Wallet / Purse</i>	15%
<i>Jewelry</i>	11%
<i>Medicine</i>	5%
<i>Credit / Debit Card</i>	2%
Percent who were carrying identifying Mexican documents	70%
<i>Among those who had identifying documents, rate at which they were taken and not returned</i>	26%

1.) N = 1,092

Moreover, there appear to be significant differences in these rates between U.S. Border Patrol sectors. In particular, people crossing into and being repatriated or deported from the El Paso Sector report having possessions taken and not returned at a much higher rate than anywhere else (table 4). This is largely due to increased use of Operation Streamline and longer periods of detention for migrants in this sector. In both of these cases, migrants are much more likely to be in the custody of different agencies, such as the U.S. Marshalls or local law enforcement. Nevertheless, it is clear that certain sectors have a much better record than others. Therefore, it is important to focus on best practices to produce some standardization among the agencies that take custody of migrants and their personal belongings.

Table 4. Possessions Taken by U.S. Authorities and Not Returned

	Percent
All Respondents	34%
<i>By Sector of Crossing ¹</i>	
San Diego	26%
Tucson	31%
El Paso	85%
Laredo	3%
<i>By Sector of Deportation ²</i>	
San Diego	38%
El Centro	16%
Tucson	35%
El Paso	65%
Laredo	21%
Mexico City (MIRP)	20%

1.) Excludes people who successfully arrived at their desired destination and limited to Sectors with at least 75 observations (N = 610). Associations are statistically significant beyond the 0.00 alpha-level. Respondents that had only food or water taken and not returned coded as "0".

2.) Limited to deportation areas with at least 75 observations (N = 1,036). Associations are statistically significant beyond the 0.00 alpha-level. Respondents that had only food or water taken and not returned coded as "0".

Source: *Migrant Border Crossing Study, Wave II*

Conclusion

Data collected through the second wave of the MBCS among randomly selected, recently repatriated migrants demonstrate that the loss of personal possessions is a systemic problem resulting from lack of accountability and the transferring of deportees between law-enforcement agencies without uniform standards of conduct. The call to expand Operation Streamline to all Border Patrol sectors and to triple the number of people processed through the program in the Tucson Sector, as currently outlined in S. 744, would only increase the rate at which people have their belongings taken and not returned. Establishing a uniform set of policies and procedures for the handling and movement of possessions that is specific to immigration detainees, rather than to the institution that currently holds them in custody, would greatly improve the likelihood that detainees are returned to their home country along with their rightful belongings. Moreover, there should be clearer channels to recuperate lost possessions; specifically, a chain of custody that can easily be followed to help people retrieve their belongings. A combination of rules that apply to the unique situation of deportees and increased oversight and transparency will go a long way to creating a safer border, where people can make decisions about what to do next with as many options open to them as possible. Failure to address this problem would result in an unnecessary burden placed on repatriated migrants themselves and on border residents.

Endnotes

¹ For the purposes of this report, we use the terms “repatriation” and “deportation” interchangeably, referring to the physical act of removing someone from the country, as opposed to the legal distinction between a voluntary repatriation, which is a civil infraction, and a formal deportation, which may be either criminal or civil in nature.

² Grupos Beta is a Mexican Federal agency (part of the *Instituto Nacional de Migración*) that provides migrants with information about the dangers of crossing the border on their trajectories north. The agency also provides resources and aid upon repatriation, including food/water, medical attention, and discounted bus tickets to migrants’ communities of origin. See http://www.inm.gob.mx/index.php/page/Grupo_Beta for more information.

³ Joanna Lydgate, *Assembly-Line Justice: A Review of Operation Streamline* (The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, University of California, Berkeley Law School, January 2010).

⁴ Ibid.

⁵ Ibid, p. 3.

⁶ *S. 744: Border Security, Economic Opportunity, and Immigration Modernization Act*, p. 82.

⁷ Table 1 also provides the percentages for specific mentions of types of possessions. We must note that the percentages reported in table 1 for specific types of belongings, other than those for Mexican identifying documents (which was asked systematically through a closed-ended question) were constructed using open-ended responses, so they may include multiple mentions of possession types. Further, we did not systematically exclude people who were *not* traveling with any possessions other than the clothes on their backs. Given these considerations, our figures likely *underreport* the true numbers of specific types of belongings being taken and not returned.

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