

Documented Failures: the Consequences of Immigration Policy on the U.S.-Mexico Border

Executive Summary

Michael S. Danielson
American University

Report prepared for the Kino Border Initiative
Nogales, Arizona, U.S.A. and Nogales, Sonora, Mexico
with funding from Catholic Relief Services of Mexico

February 12, 2013

This report presents systematic documentation of the experiences of migrant women, men and children repatriated from the United States to cities along Mexico's northern border, with particular emphasis on the Nogales, Arizona/Nogales, Sonora, Mexico area. The report addresses five common problems experienced by Mexican and Central American migrants before and during migration and upon apprehension, detention and deportation by U.S. migration authorities. The areas of investigation are:

1. The separation of migrants from family members they were traveling with when apprehended and deported by the U.S. Border Patrol. Migrants are often separated from their families, friends and loved ones during the process of deportation. This separation places migrants—the great majority of whom are from parts of Mexico very far from the northern border or Central American countries—in situations of unwarranted vulnerability in an increasingly dangerous region of Mexico.

2. Family separation as a driver of migration and a continuing complication for families of mixed-legal status. As the number of mixed immigration status families is steadily increasing, mothers, fathers, and guardians who are deported by Immigration and Customs Enforcement (ICE) are often separated from their citizen children, who remain in the U.S. with their other parent, guardians, other family members, or in foster care. This section also examines how many of those deported by U.S. migration authorities were attempting to reunite with immediate family members already living in the United States.

3. Violence as a cause of migration and abuses and physical security threats experienced by migrants during northward journeys, border crossing, and after deportation from the United States. As levels of violence directly and indirectly related to drug trafficking have increased throughout Mexico and Central America in recent years, violence has become an



Kino Border Initiative
Iniciativa Kino para la Frontera

increasingly common cause of migration. Furthermore, the growing prevalence of violence along the border means migrants are often the victims of theft and physical, verbal and sexual abuse at the hands of criminal gangs, human smugglers, human traffickers and thieves, risks that ought to be taken into consideration by U.S. migration authorities when deporting unauthorized immigrants to northern Mexico border towns.

- 4. Abuses and misconduct committed by the U.S. Border Patrol and other U.S. migration authorities.** Based on multiple data sources, the report demonstrates that there is systematic abuse and misconduct in the process of apprehending, detaining and deporting undocumented migrants. One in four migrants surveyed (24.8%) reported being abused in some way by U.S. Border Patrol agents, and data show that Department of Homeland Security (DHS), and particularly the Border Patrol, systematically deny Mexican migrants the right to contact their consulate.

- 5. Abuses and misconduct committed by local police in Mexico.** When traveling north, as well as after deportation, migrants are in a particularly vulnerable position and can be taken advantage of by local, state, and federal authorities in Mexico. This section provides estimates of the extent of these abuses, finding that men are more likely to be abused by Mexican police than women, and Central Americans are more likely to be abused by Mexican police than their Mexican migrant counterparts.

Exploration of the five themes above reveals a complex set of distinct, but interrelated problems. The final section of the report provides a list of recommendations that, if implemented, would begin to address the most pressing problems faced by immigrants and their families. Further elaboration of the recommendations listed below can be found on pages 30-33 of the report.

Recommendations

Limiting family separation during the deportation process

1. DHS must put in place a standard process to determine familial relationships among apprehended migrants and take steps to ensure that deportation practices do not needlessly separate family members.
2. DHS should expand its principle of family unity to include uncles, aunts and cousins, particularly striving to ensure that migrants are deported with their traveling companions.
3. The Operation Streamline program should be suspended pending the results of independent cost-benefit analysis. By targeting first-time border crossers, Operation Streamline not only diverts non-violent immigrants into the federal criminal justice system and U.S. prisons, but further exacerbates the problems of family separation.

Reuniting transnational families and limiting the separation of mixed-legal status families already established in the U.S.

4. To protect family unity, families should not be separated when reasonable alternatives are available. Customs and Border Protection (CBP) should exercise prosecutorial discretion in favor of preserving family unity in decisions to apprehend, detain, or remove migrants with U.S. citizen or resident family members.
5. Staff of detention facilities, as well as pertinent federal, state and local personnel who interact with separated children, should be required to undergo training on parental rights and humanitarian and due process protections.
6. In cases in which a U.S. citizen child will stay in the United States when her or his parent is deported, a standard protocol developed in collaboration with the child welfare system should be in place to ensure that those who will care for the child (be they extended family members, godparents, or others) gain the status of legal guardians.

7. Establish Immigration and Customs Enforcement and U.S. Border Patrol ombudsmen in order to provide a mechanism for continued transparency, accountability, oversight and improvement over time.

Protecting migrants in a context of increasing violence in Mexico and Central America

8. Further steps should be taken to ensure that U.S. Border Patrol and ICE are properly referring migrants who express fear of return for further vetting by U.S. Citizenship and Immigration Service (USCIS) officers to make the most accurate determinations possible of asylum eligibility and eligibility for other forms of humanitarian relief (withholding of removal under the Convention Against Torture, U or T visa eligibility, etc.).
9. Additional steps should be taken to ensure that migrants are returned to safe locations during daylight hours when deported, and if possible, for them to be assisted to return to their homes in Central America or in the interior of Mexico, should this be their preference.
10. Improve coordination between state and federal governments to address the problems of violence experienced by migrants when crossing the border at the hands of criminals, human smugglers, and human traffickers.
11. Design and implement bi-national registries with Mexico, Guatemala, Honduras, and El Salvador of migrant deaths and ensure full investigation of all migrant deaths by the proper authorities.
12. Both Mexican and U.S. authorities must ensure that victims of physical and sexual violence are afforded the right to fully participate in criminal justice proceedings and to remain in the country where the underlying incident occurred pending the conclusion of such proceedings.
13. Steps must be taken to ensure that migrants know their rights, and are provided with reasonable mechanisms through which to exercise them.

Limiting abuse and misconduct by the U.S. Border Patrol

14. Additional training should be provided to CBP agents and oversight and evaluation of operations should be strengthened.
15. CBP should be required to publicly report all incidents in which a migrant is seriously injured or killed by a CBP agent.
16. CBP and ICE should adopt a uniform complaint process across all sectors.
17. Detention facilities and holding cells operated by CBP should ensure that migrants are fully apprised of their constitutionally protected human and civil rights.
18. The Inspector General for the DHS must investigate evidence of a pattern of abuse by CBP, in particular verbal and physical abuse of migrants, and denial of migrants' rights to contact relevant consular authorities.

Limiting the abuse of migrants by local police in Mexico

19. INM agents and Mexican Federal Police should follow their existing protocol when verifying the legal status of Central American migrants within their territory.
20. Mexico's National Human Rights Commission (NHRC) should gather and publish reliable data on abuses against migrants, including murders, kidnappings, rapes, torture, extortion and unlawful detention.
21. All complaints filed by migrants should jointly go to the NHRC, as well as the state-level human rights commissions.
22. The Mexican government should be particularly attentive to the safety of humanitarian workers serving migrants, as their safety is critical to preserving protection space within Mexico and at its northern border.

Kino Border Initiative
www.kinoborderinitiative.org

Jesuit Refugee Service/USA
www.jrsusa.org

Jesuit Conference of the United States
www.jesuit.org