

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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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

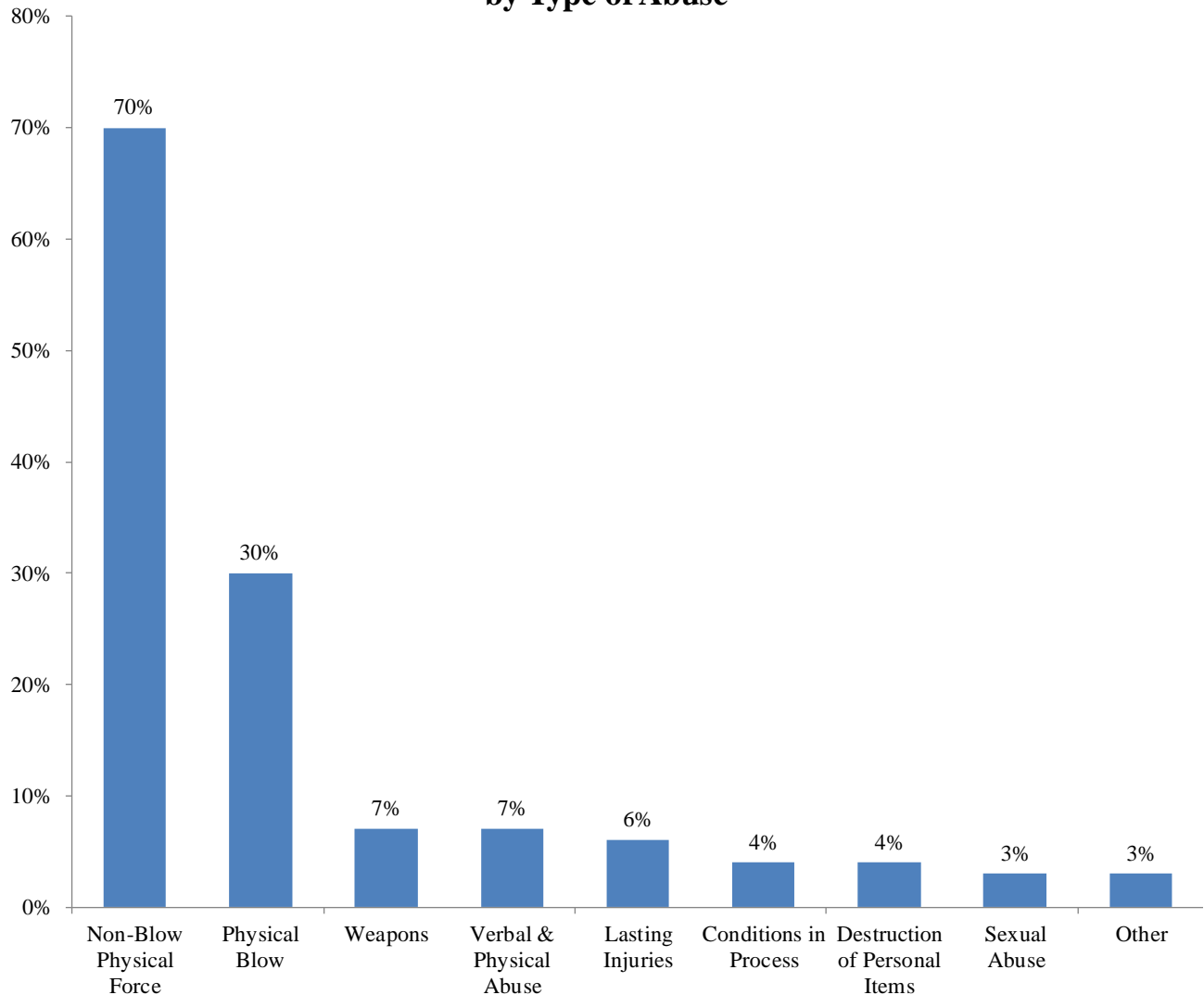
to patterns of abuse that must be addressed in order to reduce needless deaths that have inflamed tensions along the border. We begin by highlighting findings on physical and verbal abuse of migrants while in U.S. custody, and follow by describing the agencies most frequently associated with abuse among 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

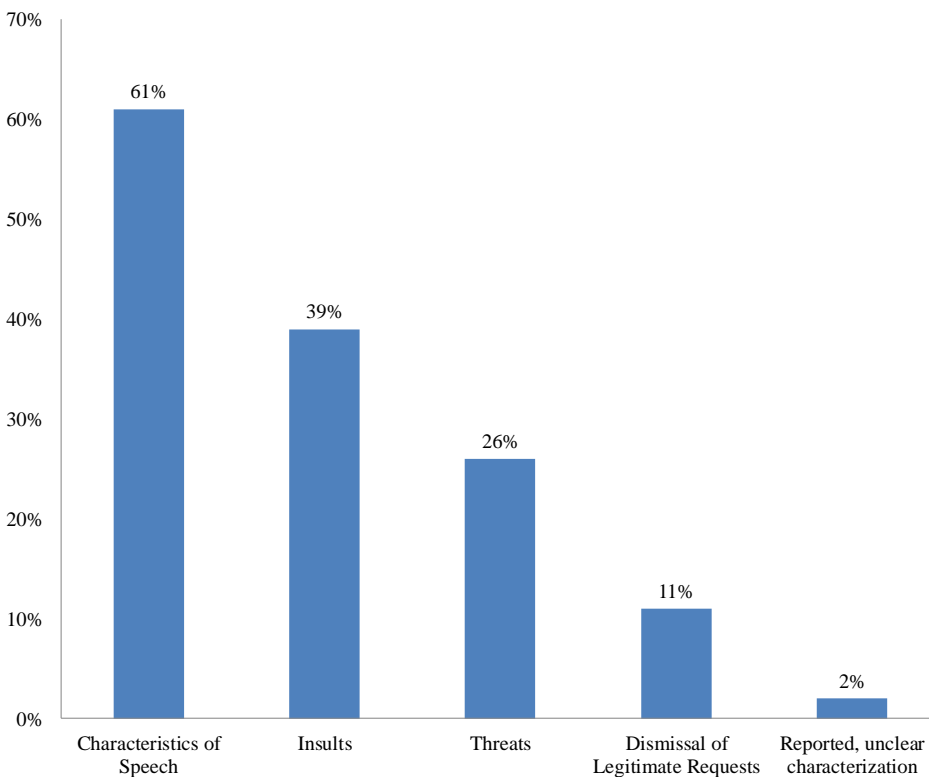
Among the 11% of MBCS II respondents who reported being physically mistreated, the majority (70%) reported experiencing a non-blow form of physical force directed at them, including being pushed or pulled, being dragged or lifted, having pressure exerted upon them with a fist, arm, or knee, being placed 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).

⁹ 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.

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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