



# Report on the Borderlands

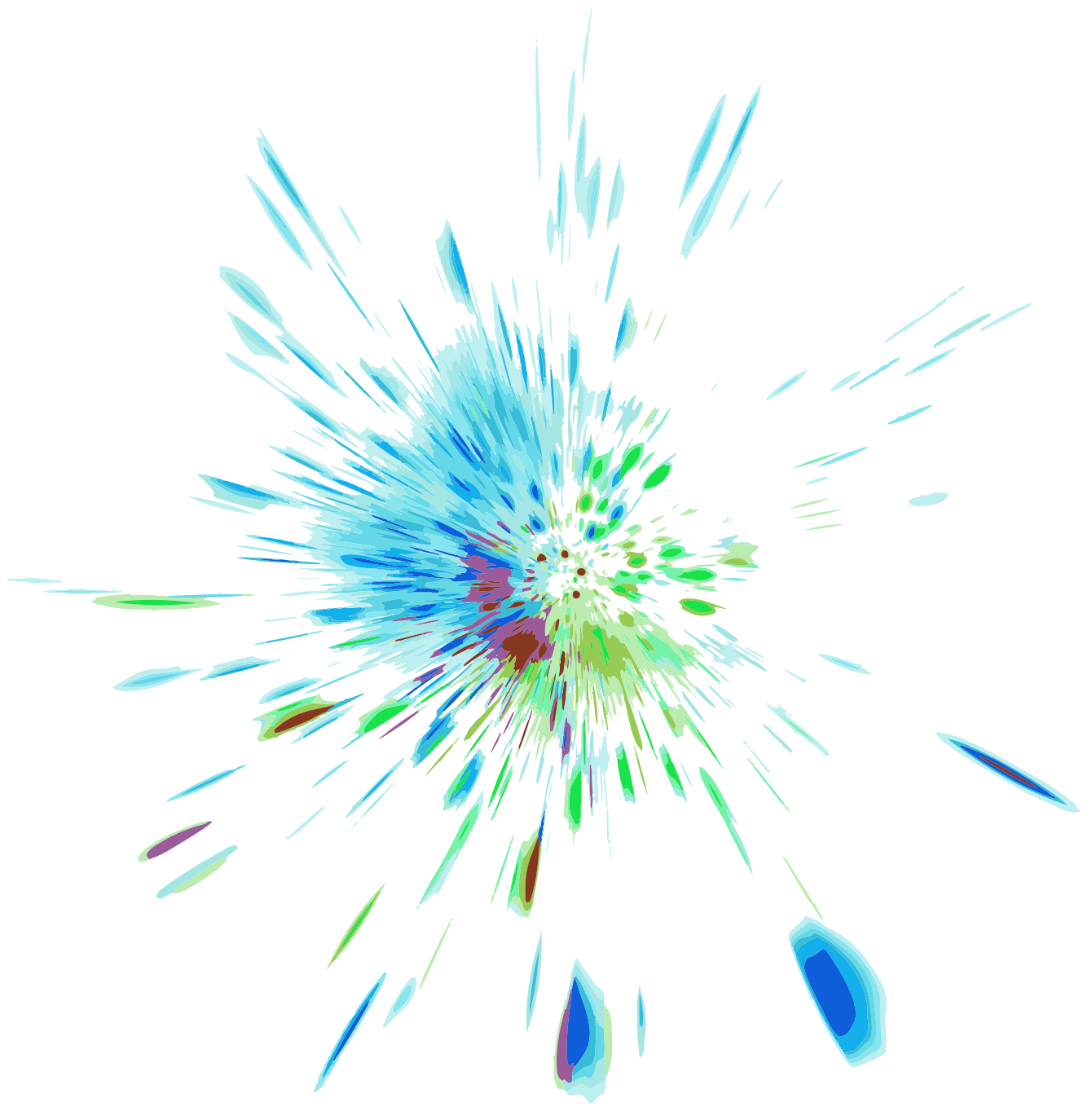


**How Racism, Militarization, and Surveillance Create a Human Rights Crisis on the U.S.-Mexico Border**



NNiRR

October, 2022



Front Art by María Blanco:  
Borders and Wall 3



## **Spotlight Report on the Borderlands**

**How Racism, Militarization, and Surveillance Create a Human Rights Crisis on the  
U.S.- Mexico Border**



**NNiRR**

**National Network for Immigrant and Refugee Rights**

[www.nnirr.org](http://www.nnirr.org)





Art by María Blanco:  
Borders and Wall 3

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Collage by Guillermo Prado with photographs by David Maung and Pedro Ríos.



Report on the Borderlands



# Executive Summary

## Spotlight Report on the Borderlands

### How Racism, Militarization, and Surveillance Create a Human Rights Crisis on the U.S.-Mexico Border

NNIRR's Spotlight Report on the Borderlands analyzes the lethal effects of immigration deterrence and militarization on border communities. The report documents the ways in which these policies persistently violate the rights of people of color on the borderlands and contribute to the death and suffering of migrants and refugees. In each chapter, the authors paint a dangerous picture of the current state of surveillance and militarization in their communities, where racism, xenophobia, homophobia, and transphobia leave migrants and refugees no choice but to cross through the most dangerous and desolate regions of the border. This militarized approach to migration governance also creates an environment where Indigenous sovereignty is violated, and entire communities are dehumanized.

The militarization of the U.S.-Mexico borderlands has caused thousands of migrant deaths and disappearances since 1994—when Border Patrol first implemented its “prevention through deterrence” strategy. Along with militarization, the U.S. has pursued an aggressive denial of entry to Black and Brown migrants and asylum seekers fleeing their homelands in search of safety and security for themselves and their families. Instead of protecting, as required by U.S. and international law, the U.S. government continues to endanger the lives of migrants, their families, and people seeking refuge.

As documented in these articles, race, ethnicity, nationality, and citizenship, serve as defining factors in migration journeys. These racialized experiences make people of Indigenous and Black ancestries the particular target of immigration enforcement. These particular communities overwhelmingly experience forced displacement and genocide in their countries of origin. Indigenous Peoples, as noted in these articles, are the explicit target of racism and violence at the hands of U.S. border agents and government officials and are systematically denied the right to asylum and safety. According to 2021 data from the Transactional Records Access Clearinghouse, a premier information and research center on federal enforcement, the majority of immigration judges (60%) have an asylum denial rate of 70 percent or higher.

Militaristic and surveillance technologies structure a racially discriminatory environment that precludes the enjoyment of human rights on the borderlands. The massive investment in military technologies, surveillance cameras, towers, drones, and other technological interventions create more precise forms of racial and ethnic profiling and discrimination. Border control agencies have unlimited power to stop, arrest, detain, frisk, and shame people of color, who must regularly negotiate transit between checkpoints to attend school, work, or access essential services such as food and healthcare. The Tohono O'odham Nation has documented frequent Border Patrol harassment and interrogations when traveling through their own territories while border militarization desecrates their sacred sites and landmarks. The increasing migration of Black and Afrodescendants through the borderlands, as widely documented in Del Rio, Texas has once again exposed the racist legacy and violence permeating border governance.

## Executive Summary

Current migration and border management approaches are creating a human rights catastrophe where thousands of migrants have gone missing or perished in the vast territories of the borderlands. As documented by our report, families and under-resourced community organizations are confronted with a web of morgues, medical examiners, forensic pathologists, embassies, and consular offices to investigate and track individual missing persons. Shamefully, these organizations must fundraise the costs of their own operations to recover, identify and reunify families with the remains of their loved ones. After decades of thoroughly documenting migrant deaths, we are certain that pain, trauma, and death are the central and intended consequences of the U.S. immigration deterrence model.

Against this background, immigration discussions are still centered on bolstering the connection between border control, national security, and migration. Both political parties insist that border security, a euphemism for border militarization, should be a precursor to any meaningful immigration reforms. This approach includes multi-billion-dollar commitments to surveillance infrastructure, border walls, border patrol agents, stations, bases, and other technological interventions while subjecting border communities to poverty and disinvesting in social infrastructure and safety nets. Militarization encroaches and restricts peoples' mobility, deters community engagement, and undermines political participation.

NNIRR expresses concern that immigration deterrence and militarization have become the cornerstone of the U.S. approach to migration governance, with a principal focus on the externalization of borders, as the primary means to regulate migration with Mexico and Central America. The Spotlight Report on the Borderlands calls attention to the fact that immigration deterrence and border externalization will never make migration safe, regular, or orderly; instead, these practices set the basis for use of excessive force, acts of torture, and other threats to physical integrity. As the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related intolerance has noted, border externalization does not affect all groups equally but they in fact have a "disproportionate impact on persons from Africa, Central and South America and South Asia."

This report is part of a broader Spotlight Initiative to advance human rights on the US-Mexico border. The Spotlight Report brings together multiple datasets (including in-depth interviews, ethnography, surveys, and participatory mapping) to create a broad and holistic understanding of the human cost of the immigration deterrence model. By encouraging the interaction between data sets, we hope communities can gain a well-rounded understanding of the social, historical, and political context of the state of human rights at the US-Mexico border.

Through this report, we urge Congress to take bold action to save lives, create meaningful livelihoods and conditions at the border, and safeguard the primacy of human rights when addressing international migration. Spotlight on the Borderlands is directed to U.S. policymakers, urging them to implement policy changes to remedy and strengthen U.S. and international commitments to protect and uphold the rights of migrants, asylum-seekers, and border communities. ✚





# RECOMMENDATIONS

## **We urge U.S. policymakers to:**

- Assess all border laws, policies, and procedures to ensure the centrality of human rights.
- Save lives and establish coordinated international efforts on the crisis of missing migrants by supporting and implementing Objective 8 of the Global Compact for Migration. The objective encourages an enhanced international collaboration to prevent migrant deaths, identify the dead, and locate the missing.
- Address the impacts of racism and xenophobia by creating regulatory frameworks that strengthen human rights, racial equality, and non-discrimination in immigration law and border enforcement.
- Uphold the rights of Indigenous People. Respect and honor Indigenous sovereignty, autonomy, self-determination, and Indigenous Peoples' right to mobility across the border.
- Create gender-responsive legislation to address the specific challenges and vulnerable situations that women, girls, and gender non-conforming people face at all stages of migration, and particularly at the border.
- End prosecutions of people in situations of vulnerability, especially migrants and asylum seekers.
- End all forms of immigrant incarceration and ensure rights-centered, community-based, non-custodial alternatives to detention.
- Create real mechanisms for holding immigration enforcement agents directly accountable for violations of the human rights of migrants, refugees, and border communities.
- Create and expand rights-respecting regular pathways for safe, orderly, and regular migration.
- Demilitarize all U.S. immigration and border governance. Rescind all collaboration between the military and U.S. Customs and Border Protection, U.S. Border Patrol, and other agencies engaged in asylum and migration-related procedures.
- Pass inclusive and rights-affirming legislation to regularize the status of undocumented migrants and refugees that includes direct pathways to naturalization.



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# Summary of initial findings:

- The U.S. immigration deterrence model directly leads to migrant deaths and disappearances and reinforces racial, ethnic, national, and religious profiling. U.S. border control singles out indigenous, dark-skinned Latino families and Black communities, including those in transit or residing on the U.S.-Mexico border region, making them the explicit target of surveillance and enforcement.
- Historical racism, forced displacement, and genocide throughout the Americas are the root causes of the growing involuntary migration of Indigenous Peoples. Indigenous Peoples experience differentiated violence at the border, and they are often the target of racial discrimination at the hands of U.S. border agents and government officials.
- The externalization of the U.S. immigration deterrence model fuels anti-Black racism and turns borders into sites of criminalization and dehumanization. The border externalization project subjects Black migrants and asylum seekers to intensified racial policing resulting in high levels of physical and emotional trauma and gross human rights violations.
- Border enforcement threatens Indigenous livelihoods. Border walls and roving patrols cause the ecological destruction of territories. These militarized practices desecrate and block access to indigenous mobility across their territories and desecrate traditional sites of Indigenous spiritual and cultural practice.
- The externalization of immigration makes it significantly more difficult for asylum-seekers to establish claims—especially for those fleeing severe domestic abuse and violence and subjects many women and LGBTQ people to dangers that originally compelled them to flee.
- Smart border enforcement technologies intensify the precision of racial discrimination by regulating and controlling the mobility of border communities through checkpoints, cameras, drones, and surveillance towers. These technologies also push migrants into deserts and mountains, fueling the crisis of migrant deaths.
- Official Border Patrol statistics recorded 8,050 migrant deaths at the border from 1998 to 2020 – an average of 365 deaths a year. Preliminary figures reveal 557 deaths for 2021. According to community organizations and forensic anthropologists, these numbers represent a systemic undercounting of the number of missing and deceased migrants in the borderlands.



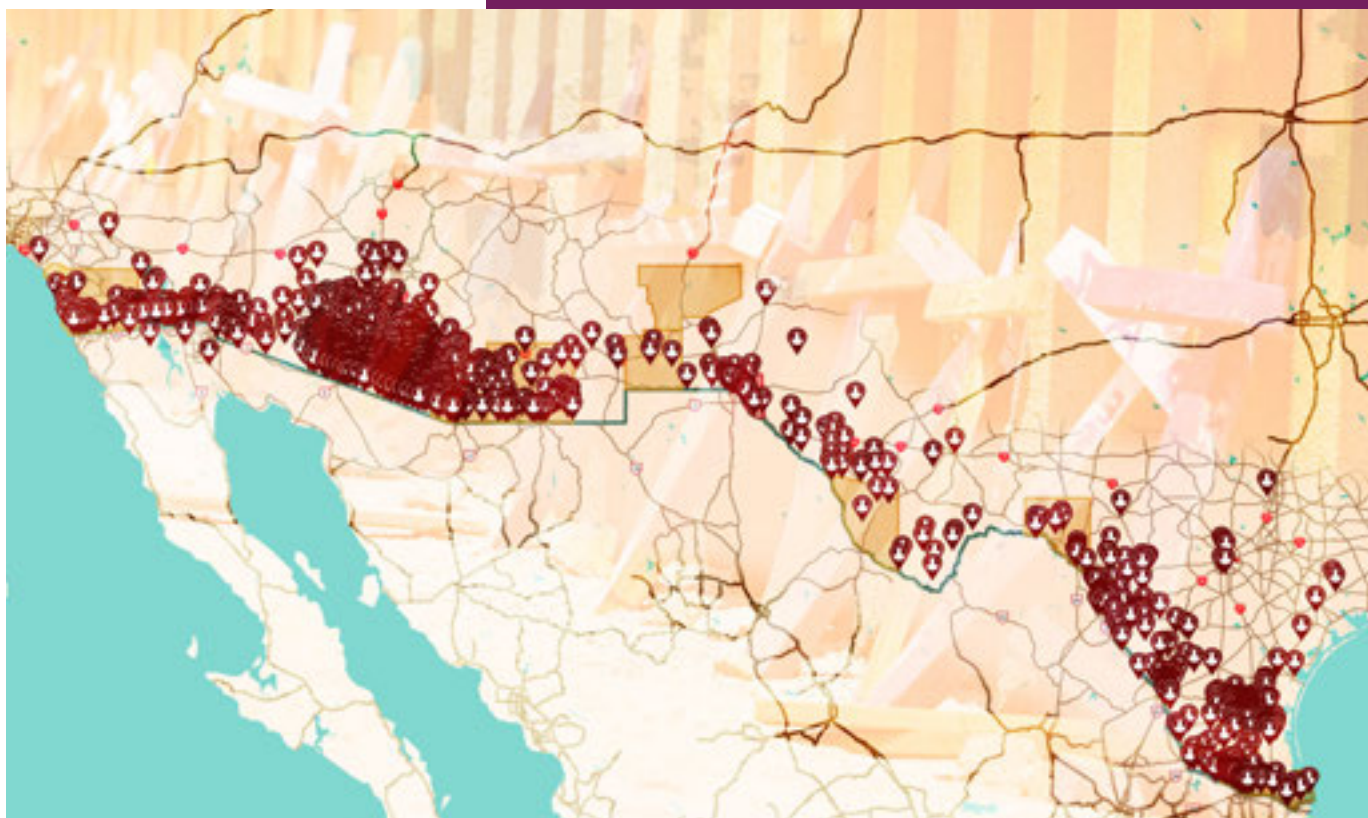
- The systemic and widespread abuses by U.S. Border Patrol reflect historical and institutional racism and discrimination imposed on border communities. According to the Southern Border Communities Coalition, since 2010, there have been over 200 fatal encounters with Customs and Border Protection agents. Of these, 58 deaths have occurred from use-of-force incidents, and 72 deaths resulted from vehicle pursuits.
- U.S. criminalization of migration subjects people in vulnerable situations to arbitrary arrest and detention. The U.S. maintains more than 200 jails and detention centers used by Immigration and Customs Enforcement to detain and imprison migrants and their families. Detained migrants protesting conditions of incarceration through peaceful protests, prolonged hunger strikes, and desperate suicide attempts face severe ICE and private security retaliation. These practices include pepper spray, solitary confinement, force-feeding, and other forms of severe punishment.



Collage by Guillermo Prado with photographs by Gregory Bull and Pedro Ríos.



## Mapping for Human Rights on the Borderlands



**MISSING  
or  
DECEASED**

In addition to this human rights report, NNIRR Spotlight Initiative includes a **human rights mapping project**. The map provides a visual narrative of the effects of militarization and deterrence on border communities and those migrating through the U.S.-Mexico border region. This map also displays a set of human rights indicators to facilitate monitoring, progress, and fulfillment of local, state, and federal government obligations in protecting the rights of migrants, refugees, and communities along the borderlands.



**AID  
ORGANIZATIONS**



**DETENTION  
CENTERS**



**CHECKPOINTS**



**HOSPITALS**



# Overview of the Spotlight Report

By Alma Maquitico

NNIRR's *Spotlight Report on the Borderlands* provides an overview of the dismal state of human rights on the U.S.-Mexico border. NNIRR's report highlights the experiences of frontline leaders and organizers with direct experience, both in theory and practice, of migrant human rights. Their contributions uncover the direct relationship between border militarization and its explicit racially discriminatory impact on the lives of Black, Indigenous, and other racialized communities migrating through or residing in the U.S.-Mexico borderlands.

Our purpose is to deepen an understanding of the intersectional and interwoven consequences of militarization and border control and how this approach provokes overlapping violence and vulnerabilities in Black and Brown communities in the borderlands.

The militarization of the U.S.-Mexico border—corridors of transit and entry, checkpoints, and detention centers—has caused dramatic increases in migrant mortality rates, sexual and gender-based violence, kidnappings, extortions, and unquantifiable rates of mental and emotional trauma. Despite widespread documentation of how immigration deterrence repeatedly puts people's lives at risk—and the growing evidence of the commanding power of border control agencies over the lives of migrants, citizens, and refugees—U.S. policy-makers and the immigrant rights community have too often come to accept border communities as necessary collateral damage in negotiations for pro-immigration reform.

Fifteen years ago, María Jiménez expertly characterized this militarized phenomenon in her article *War in the Borderlands* as a case where the borderlands are a “war zone,” where border guards are “the embattled troops,” and immigrants are “the enemy.” All three branches of government have facilitated the expansion of military frameworks into civilian life, securing power, resources, and military technology, and allowing U.S. border agencies to operate on the margins of any civilian oversight or accountability. This militaristic approach, reinforced by ethno-nationalistic ideals embedded in immigration and border policies nearly a century ago, made Indigenous, Asian, Mexican, and Black bodies the explicit target of policing, regulation, and control. Expert advocates have noted that these policies have been revitalized to prosecute migrants and asylum-seekers, leading to criminally charging almost 1,094,065 migrants and asylum seekers for entry-related offenses between 2004 and 2020.

The Immigration Reform and Control Act (IRCA), the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), and the Antiterrorism and Effective Death Penalty Act, further fueled the mass incarceration of migrants and created the infrastructure for summary deportations that continues to grow today. This ever-evolving assortment of laws, institutions, budgets, personnel, militaristic operations, and expanded geographies, has made the act of crossing the border more violent and deadly by subjecting people to cruel and degrading treatment and multiple forms of human rights violations. This includes the systematic denial of due process rights, denial of medical treatment, harsh detention conditions, and dehumanizing treatment which have become acceptable norms of the U.S. immigration and border policing regime.

This criminalization coded into law provides the political and social justification for the dehumanizing treatment of migrants by immigration and border police forces. As thoroughly described in this report, the humiliating

treatment and other forms of rights violations specifically target Black, Indigenous and people with indigenous phenotypes and occur without real oversight or accountability. Civil society organizations must resort to Freedom of Information Act (FOIA) lawsuits to obtain meager and heavily redacted information regarding conditions, procedures, misconduct, and even disaggregated data of migrants under the custody of U.S. Immigration and Customs Enforcement (ICE), and U.S. Department of Homeland Security (DHS).

### **The U.S. Lethal Disregard for Human Life**

In recent years, smart border technologies have taken center stage in border policing strategies. These seemingly benevolent technologies play a critical role in reinforcing a quasi apartheid regime, where checkpoints, cameras, drones, blimps, and surveillance towers are placed within communities to administer and, more precisely, regulate people's mobility. As evidenced in this report, private corporations collect massive amounts of data without public scrutiny. This parallel border regime further expands and reinforces frameworks for deploying increasingly dehumanizing AI technologies against vulnerable groups and shifts migrants into dangerous routes where they perish from exhaustion, hypothermia, dehydration, and other preventable deaths.

Currently, in Mexico, Guatemala, El Salvador, and Honduras, thousands of families are actively looking for loved ones who went missing on their journeys to the United States. Their search is a tragic continuum of the violence embedded in border management programs. These families confront a myriad of bureaucratic procedures, medical examiners, racist landowners, U.S. CBP agents, and underfunded consular offices to locate their missing loved ones or recover their bodies. Meagerly funded, community organizations conduct the traumatic work of conducting intakes, searching through deserts, mountains, and unidentified graves for thousands of people who have disappeared in their journeys to the United States.

Human rights defenders and forensic anthropologists estimate that there are two bodies missing for each body recovered. Since 2014, more than 11,305 men, women, and children have died during migration, according to the estimates of the Colibri Center for Human Rights and Coalición de Derechos Humanos in Arizona. Through the eyes of community organizations accompanying the thousands of surviving families, we hope Spotlight Report on the Borderlands will help bring light to the mounting human catastrophe of death and missing migrants while urging policymakers and the broader immigrant rights movement to include in their considerations the plight of those who are demanding justice.





The U.S. migration management approach is being exported to other countries with a poor track record of upholding human rights. This “border externalization” project includes the expansion and projection of U.S. immigration and border controls outside the national territory. In the Central American region, this approach has been aggressively pursued through bilateral and trilateral agreements with Central American countries to conduct “pushbacks,” hardened borders, deploying programs such as the Migrant Protection Protocols and operationalizing U.S. Title Code 42 to repel asylum seekers. These U.S. externalization practices violate the principle of non-refoulement, the cornerstone of the right to asylum, guaranteed under national and international refugee laws.

U.S. border externalization, laundered as humanitarian interventions or economic development packages, most often include technical and military assistance to harden borders and further criminalize migration. Asylum seekers from Haiti, Honduras, Guatemala, El Salvador, and Africa have been subjected to undue violence, kidnappings, sexual and gender-based violence, enduring a sustained pattern of human rights violations—what the Special Rapporteur on the human rights of migrants has described as a “lethal disregard of human life” to describe the unlawful and dangerous pushback practices occurring systematically across international borders.

### **The Future of the U.S.- Mexico Border Must Be Human Rights Centered**

As climate change is rapidly becoming the biggest catalyst of human mobility within and across borders—and as noted by the UN Intergovernmental Panel on Climate Change (IPCC)—climate change intensifies the various economic, ecological, and political drivers of migration. We urge policymakers to observe migration through the prism of climate change and to reorient migration policies and institutions towards creating regular, rights-respecting pathways for those compelled to leave their countries due to sudden-onset and slow-onset disasters and other multilayered forms of displacement. Current visa requirements in countries with well-documented climate and human rights vulnerabilities, including Guatemala, El Salvador, Honduras, and Haiti, make it almost impossible for people to obtain visas. They are forced to flee without immigration documents. U.S. policy-makers should urgently increase their commitments to work with other countries to create mitigation and adaptation initiatives in poor countries particularly affected by the climate crisis, while committing to financing for loss and damage in affected countries, including support for the displaced.

With the 2022 U.S. elections looming, xenophobic narratives have started permeating the national imagination with hyperbolic calls for “border security.” In states such as Texas, right-wing politicians have begun manufacturing border closures and food shortages to inflame and mobilize racial hatred against migrants. At the same time, middle-of-the-road politicians present border security as an imperative that all sides “must” agree on as a condition for passing substantial immigration legislation—all to the detriment of the human rights of migrants and people of color on the borderlands.

Spotlight on the Borderlands provides U.S. policymakers and the immigrant rights community an opportunity to gain analytical and policy clarity on the impacts of border management strategies on the lives of migrants, refugees, and those residing on the U.S.-Mexico borderlands. We urge our friends and allies to advocate for legislation to address the structural racism—which shapes all facets of the immigration process—and affirm the centrality of human rights.

## On the methodology for the Spotlight Report

In order to overcome the challenges associated with documenting the difficult-to-see dynamics about the size and scope of human rights concerns on the borderlands, NNIRR utilized various data gathering methods, allowing us to see the border through the prism of human rights. During this year-long process, we utilized expert testimony, community surveys, citizen ethnography, and participatory mapping to document the landscape of concerns for border communities.

NNIRR worked alongside grassroots leaders and organizations on the borderlands and surveyed 30 organizations through digital platforms and in-depth interviews, mapping the work of 253 grassroots groups and social service organizations working to address the human rights crisis, often under-resourced. In this first Spotlight report, NNIRR is releasing the first installment of articles on the borderlands. Simultaneously, we are releasing the Spotlight digital map, a participatory human rights resource for grassroots communities and activists to access place-based information on critical services such as health, food security, emergency housing, and legal services for border communities and migrants, refugees, and other displaced persons on the move.

The Spotlight report on the Borderlands is an invitation to engage in a wider and more inclusive conversation about the future of human rights and migration governance at the U.S.-Mexico border. ✚

Calls for justice litter the Mexican side of the Wall in Nogales after the Border Patrol shooting of 16 year-old Jose Antonio Elena Rodriguez, who was shot 8 times, including twice in the head and five times in the back, by Border Patrol agents in 2012. He was not wielding any weapon at the time of the shooting (Robbins 2013). Photo by Bryce Newell. Art work Melani Cervantes y Pablo Paredes.







Collage by Guillermo Prado with photographs by David Maung and Pedro Ríos.





A Border Patrol agent on horseback grabs a Haitian migrant on the banks of the Rio Grande River in Del Rio.  
Original photo by (AFP/Getty Images)



# Chronicling the Border Patrol Culture of Abuse and Impunity



By Pedro Ríos

**O**n May 28, 2010, over a dozen border agents brutally beat and Tasered 42-year-old Anastasio Hernández Rojas, a father of five and 26 year resident of San Diego, CA. Anastasio was hogtied and had his clothing partially removed during the violent encounter. By the time he arrived at the hospital, Anastasio was braindead and had suffered a heart attack. The incident occurred at the San Ysidro Port of Entry when a Border Patrol agent was attempting to deport Anastasio after he and his brother had been apprehended in eastern San Diego County. The incident was disturbing and violent, but equally unsettling were the actions Border Patrol agents took to derail the investigation that would have placed greater attention on the culture of abuse and impunity that defines the agency since its incorporation in 1924.

The case has become emblematic of an agency that enjoys excessive power but is unaccountable, operates without proper oversight mechanisms, and is opaque, at best. At no time in its nearly 100-year history has a Border Patrol agent been convicted while on duty for being involved in an incident that has resulted in the loss of life. According to the Southern Border Communities Coalition, since 2010, there have been over 200 fatal encounters with Customs and Border Protection agents, which includes encounters with Border Patrol agents. Of these, 58 deaths have occurred from use-of-force incidents, and 72 deaths resulted from vehicle pursuits.

In use-of-force incidents and in-vehicle pursuits, as in the case of Anastasio, Border Patrol uses secretive shadow units whose sole purpose has been to cover up agent misconduct and to “mitigate civil liability” for the agency. Since at least 1987, the Critical Incident Teams (BPCITs) have been operating unlawfully, under the direction of the Border Patrol Sector Chiefs, without a Congressional mandate, appearing at scenes to collect evidence, interview witnesses, write reports, and interact with local law enforcement agencies tasked with leading investigations. A Border Patrol presentation describes BPCITs in this way: “Unlike an ‘Internal Affairs’ division of a police agency, C.I.I.T. is an investigative unit that prepares an administrative report *that preserves and protects* the integrity of the Border Patrol and its personnel” (italicizes added for emphasis).

In a letter sent to Congress requesting congressional investigation and oversight hearings on the unlawful operation of the BPCITs, the Southern Border Communities Coalition detailed the ways that a BPCIT unit obstructed justice in Anastasio’s case. This included failing to notify the San Diego Police Department about the incident, controlling witness lists, tampering with evidence, altering reports, omitting and destroying video evidence, and inappropriately using an immigration subpoena to obtain medical records, among other irregularities.

## BCITs: To Preserve and Protect Border Patrol Abuse

It is important to note that BPCITs are rarely mentioned in any formal CBP documents, including the CBP’s Use of Force Administrative Guidelines and Procedures Handbook. The chairs of the House Committee on Oversight and Reform, and the House Committee on Homeland Security sent a letter dated January 24, 2022 to CBP Commissioner Chris Magnus requesting information about the BPCITs. In the letter, they mention an interview by a member of a BPCITs in the court case of Border Patrol agent Lonnie Swartz who killed 16-year-old



## Chronicling the Border Patrol Culture of Abuse and Impunity

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The militarization of border communities relies on and reinforces a culture of abuse and impunity that Border Patrol agents, and CBP, have normalized for decades. The following recommendations provide a roadmap for addressing the injustices that Border Patrol has imposed on border communities for nearly a century.

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José Antonio Elena Rodríguez in a cross-border shooting in 2012 in Arizona. In the statement, the Border Patrol agent stated BPCITs “investigated and collected forensic data in regards to shootings, use of force incidents, collisions, [and] things like that.”

Recently, when a Border Patrol agent shot Marisol García Alcántara in the head on June 16, 2021, in Nogales, AZ, a BPCIT unit intervened and appeared to have taken over the investigation, leaving the Nogales Police Department to attend to perimeter duties. By Border Patrol’s own admission, there is no standardized “training, equipment, and procedures related to critical incident response” for BPCITs, and the limited guidance provided seems to obfuscate their legal authority.

Just as BPCITs are becoming known to the public, so is the awareness that Border Patrol officials can get away with atrocious behavior. When Border Patrol agents on horseback pushed back and appeared to whip Haitian asylum seekers in Del Rio, TX in September 2021, public outcry caused an overwhelming reaction by public officials. The images evoked comparisons to slave patrols of the early eighteenth century, as well as militias that have been part of the border enforcement landscape and who have colluded with Border Patrol agents for years.

Department of Homeland Security Secretary Alejandro Mayorkas promised a swift investigation into the cruel comportment of Border Patrol agents, stating “The department does not tolerate any mistreatment of any migrant and will not tolerate any violation of its values, principles, and ethics.” President Biden announced the suspension of the horse patrols as if this was supposed to reckon with the legacy of white supremacy endemic to the Border Patrol’s origins. But the Office of the Inspector General declined to investigate the case and referred it back to the CBP’s Office of Professional Responsibility, which is known to protect agents. The investigation is still pending and yet to be resolved.

Similarly, thousands of current and former Border Patrol agents who participated in a racist and misogynistic private Facebook group included high-ranking officials like the Border Patrol’s chief, Carla Provost. There, they mocked deceased migrants and shared sexualized images of Rep. Alexandria Ocasio-Cortez. Only two agents involved were disciplined. Rep. Carolyn B. Maloney, the Chairwoman of the Committee on Oversight and Reform expressed disappointment in “CBP’s broken disciplinary process.” But the truth is that the disciplinary process is designed to protect Border Patrol agents. It is how violence and a culture of impunity are institutionalized within the Border Patrol.

It is that same institutionalized violence that resulted in the death of several children under Border Patrol custody in 2018 and 2019. In the case of 16-year-old Carlos Gregorio Hernández Vásquez who died in a South Texas Border Patrol cell, he collapsed on the floor of his cell and remained there for hours without any supervision. The video contradicts the Border Patrol’s records, where they logged that they checked on him three times during the night without any notations of his deteriorating health, and that the agents found him deceased in the morning. In fact, it was the boy detained with Carlos who alerted the agents that Carlos was not responsive.





When a Border Patrol agent shot 20-year-old Claudia Patricia Gómez González, an Indigenous Mayan woman from Guatemala, in the head in May 2018, Border Patrol misrepresented their actions to mislead the investigation of the fatal encounter. The Border Patrol agent reported that Claudia was an assailant who attacked the agent with blunt objects and then rushed at him. The Border Patrol later changed its story, removing any mention of blunt objects. A witness at the location of the incident also contradicted the Border Patrol's version of the events, challenging the notion that Claudia and others with her were throwing anything at the Border Patrol agent. The culture of impunity exists because deceit has been normalized and tolerated, allowing for abuses to be the norm.

Human Rights Watch released a report in October 2021 documenting over 160 cases alleging abusive practices by DHS officials, including Border Patrol agents, between 2016 and 2021. They include "allegations of physical, sexual, and verbal abuse, due process violations, harsh detention conditions, denial of medical care, and discriminatory treatment at or near the border." Before them, No More Deaths also released *A Culture of Cruelty*, where they presented over 30,000 incidents of Border Patrol abuse and mistreatment from Fall 2008 to Spring 2011. The cases documented included physical, verbal, and psychological abuse, dangerous transportation and repatriation practices, and inhumane processing center conditions, among others. Before that in 2008, No More Deaths had already presented over 400 accounts of brutality by Border Patrol agents in a two-year period. Hours after publishing the second report, Border Patrol agents targeted No More Deaths volunteers by raiding their humanitarian aid station and by seeking prosecution of their volunteers, a move many considered to be retaliatory.

### **Threat of a National Security Police Force**

Over 30 years, other civil society organizations have raised serious concerns about Border Patrol and immigration agents' flagrantly abusive practices. In

1992 Human Rights Watch issued a lengthy report denouncing that Border Patrol agents enjoyed "impunity for shootings" and "torture and sexual abuses," among other egregious activity, including against minors. Similarly, from 1988 to 1992, the American Friends Service Committee published a series of three reports that detailed seizures of property, physical abuse, illegal conditions of detention, denial of due process, inappropriate use of firearms, and the improper arrest of U.S. citizens and legal residents.

In January 2020, former President Trump designated CBP, which includes the Border Patrol, as a "security agency." This new designation added another layer of secrecy where transparency should be prioritized, as it shields CBP personnel from having information disclosed to the public. In a memo to CBP agents, former CBP's Acting Commissioner Mark Morgan wrote, "This policy change now protects all CBP employee names from subsequent responses to Freedom of Information Act requests or other public disclosures for CBP employee data." For an agency that has normalized mistreatment and abusive practices, it is troubling that the public will no longer have access to the names of agents involved in misconduct. When CBP and other federal officers were deployed to Portland, OR to "protect" federal buildings, they also arrested people while covering up their names and badges. Morgan justified agents not needing to identify themselves, citing it was for everyone's protection.

This is especially concerning because the Border Patrol has played a prominent role in suppressing First Amendment-protected activities. And Border Patrol high-ranking officials have long pursued a national police force status, as former Senior Border Patrol Agent and Intelligence Agent with the U.S. Border Patrol has explained. A leaked document from the Department of Homeland Security to then-Senator Kamala Harris provides a sense of the scope of activities CBP engaged in at protests in the aftermath of the police killing of George Floyd, to support and augment local police authorities. +



# RECOMMENDATIONS

## **We urge U.S. policymakers to:**

- To assess all border policies, practices, procedures, strategies, and laws to ensure the centrality of the human rights and dignity of all migrants.
- To end all deterrence strategies, measures, practices and policies that cause immeasurable migrant suffering, death and abuse, particularly against vulnerable groups.
- To demilitarize all U.S. immigration and border governance and prohibit all collaboration between the military and U.S. Customs and Border Protection and U.S. Border Patrol, law enforcement, and other agencies conducting asylum and migration-related procedures.
- Uphold the right to seek asylum within U.S. jurisdiction. Infuse resources to facilitate immigration procedures for asylum-seekers, trafficked persons and ensure protection to migrants in situations of vulnerability with access to safety, food, shelter, healthcare, and other essential services.
- To immediately examine the racially disproportionate impacts of immigration policing and “prevention through deterrence” on border communities.
- To prosecute hate violence and abuse of authority by Border Patrol and other immigration agents perpetrated against migrants, refugees, asylum-seekers, and border communities on the basis of race, color, religion, national origin, sexual orientation, gender, gender identity, or disability.
- To hold Border Patrol agents accountable for human rights violations, including negligence in search and rescue, use of force and abuse of authority.
- To hold accountable U.S. Border Patrol agents willfully engaged in obstruction of justice, including the unlawful Critical Incident Teams.
- To immediately dismantle Border Patrol’s unlawful Critical Incident Teams, which are secret cover-up units, and reopen and prosecute cases where Border Patrol agents willfully engaged in obstruction of justice.



Photo by Pedro Ríos.





Ofelia Rivas, 59, gazes at the U.S.-Mexico border fence near her home in the O'odham community of Ali Jegk in Arizona.  
Mamta Popat / Arizona Daily Star



# Violation of Indigenous Peoples' Rights at the U.S.-Mexico Border



By Giovanni Batz

Indigenous Peoples are often invisibilized, erased, and marginalized when discussing U.S. immigration reform and border issues. Historical racism, forced displacement and genocide throughout the Americas are some of the root causes that are increasing involuntary migration of Indigenous Peoples. Indigenous Peoples also experience violence in migration through the militarization of borders, as well as racist treatment and discrimination at the hands of U.S. border agents and government officials. The U.S. government labeling of Indigenous Peoples as “Hispanic,” “Latina/o/x” or through a nationality such as Guatemalan or Mexican, contributes to this long legacy of colonial erasure.

This section examines some of the issues confronting Indigenous Peoples within immigration and the U.S.-Mexico border. It starts by providing a general overview of the challenges and violences that Indigenous Peoples are subjected to at the U.S.-Mexico border. This is followed by examining a case study involving Maya migration from Guatemala to the US. It then offers some policy recommendations.

Within the international community, there does not exist a definition for Indigenous Peoples. The United Nations estimates that there are approximately “**370 million** Indigenous Peoples living in over **90** countries.” There are an estimated **41.8 to 53.4 million** Indigenous Peoples that make up **826** Indigenous nations in Latin America. There are over **551** indigenous languages spoken in Latin America, wherein Nahuatl, K’iche’ and Aymara each have over **one million** speakers, and Quechua and Guarani with over **5 million** speakers. Bolivia and Guatemala are majority Indigenous. Countries with the largest diverse language speakers include: Brazil with **186** Indigenous languages, Colombia **65**, Mexico **67**, Peru **47**, Venezuela **37**, Bolivia **33**, Guatemala **24**, and Paraguay **20**.

Indigenous Peoples are guaranteed a wide array of rights which are outlined in international agreements such as the International Labor Organization (ILO) Convention **169** and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Particular nation-states also have their own guidelines and laws that offer protection and rights to Indigenous Peoples. Oftentimes, these rights are violated, ignored and actively dismissed by national governments. Instead, Indigenous Peoples confront increasing militarization due to neoliberal policies that have furthered land dispossession and promotion of megaprojects such as mining, hydroelectric plants, and infrastructure. For example, colonial borders have divided the ancestral territories of the Tohono O’odham, which is further threatened with the possibilities of the expansion of the border wall. The U.S.-Mexico border bi-sects the lands of over **36** federally recognized Indigenous nations.

## Violence against Indigenous Peoples at home and on the U.S.-Mexico Border

The contemporary settler colonial state under neoliberal capitalism has fueled historical discrimination, racism, displacement, and genocide. As a result, Indigenous Peoples continue to experience marginalization, violence and forced migration. The ILO found that **45.5%** of Indigenous Peoples in Latin America and the Caribbean lived in poverty. Violence against Indigenous Peoples, land defenders, water protectors, and activists continues to grow at alarming rates and, in **2021**, at least **33** Indigenous rights defenders were killed.

## Violation of Indigenous Peoples' Rights at the U.S.-Mexico Border

Indigenous Peoples often seek exile abroad as a result of systematic oppression, and structural and state-sponsored violence. According to Global Witness:

**212** land and environmental defenders were killed in **2019**... Over two-thirds of killings took place in Latin America... Indigenous Peoples continue to be at a disproportionate risk of reprisals, with **40%** of victims belonging to indigenous communities. Between **2015** and **2019** over a third of all fatal attacks have targeted Indigenous People – even though Indigenous communities make up only **5%** of the world's population...

Indigenous Peoples' rights are further violated when crossing through Mexico and at the U.S.-Mexico border by inhumane deterrence policies such as Title 42 and MPP, and the lack of language interpreters for those detained by U.S. Border Patrol. A joint report by Indigenous Alliance Without Borders/Alianza Indígena Sin Fronteras (AISF) and International Maya League (IML) found "that close to **20%** of Original Peoples arriving to this North American territory (Southern Arizona) are Indigenous and speak their Indigenous language." In addition, they argue that:

Indigenous peoples are denied both due process and their identity through language exclusion coupled with their erasure as distinct peoples through statistical omission and erroneous Latino or Hispanic categorization... At the U.S.-Mexico border and throughout the U.S. immigration system, Indigenous peoples' rights to due process are violated because they cannot communicate their reasons for fleeing, nor their basic or urgent medical needs in Spanish or English. These human rights violations can contribute to their deaths.

The historical racist attitudes against Indigenous Peoples from Border Patrol and immigration officials also contribute towards human rights violations through excessive force, killing, violence, and assault against migrants, including children; crimes committed with impunity. A study by the American Immigration Council found that there exists an internal and long "persistent culture of racism" in the Border Patrol. Agents and officials have engaged in racist behaviors and treatment against migrants who are dehumanized with racial and derogatory slurs such as "filthy Indian", "wetback", "beaners", "savages", "subhuman shit", among others.

### State-sponsored violence in Guatemala

Maya migrants from Guatemala have experienced violence, human rights violations and death at the U.S.-Mexico border. Forced displacement and migration increased during the Guatemalan Civil War (1960-1996), where a United Nations Truth Commission report found that **200,000** died, **83%** were Indigenous, and the military was responsible for **93%** of these deaths. The report states that the Guatemalan government committed "acts of genocide" against the Maya. While the Peace Accords ended the war, neoliberal policies, structural inequalities, widespread corruption and impunity have continued to negatively impact Maya communities. Today in Guatemala, Indigenous Peoples consist of **22** Maya groups, the Xinka and Garifuna.

Guatemala is currently experiencing a weakening of democratic structures and the further entrenchment of corruption and impunity. The country is plunging into further



violence and civil strife, contributing to the forced displacement and migration of thousands. Some of the root causes of the war, such as land and structural inequalities and the marginalization and exploitation of Indigenous Peoples continues. In recent years, the Guatemalan State has become increasingly militarized and has overused states of calamity, prevention, exceptions and states of sieges to suspend civil liberties to varying degrees, and has criminalized, persecuted, and arbitrarily arrested activists, Indigenous leaders, journalists, and environmentalists. States of sieges have often been declared to break-up protests against extractivist industries, and have led to arrests, bloodshed, and the killing of community leaders and activists. As a result, some fear that the government is regressing towards authoritarianism. The Human Rights Ombudsman of Guatemala, Jordán Rodas Andrade, warned in December 2021 that Guatemalan President Alejandro Giammattei's administration was undoing the gains of the 1996 Peace Accords and that a network of organized crime had been embedded within the government and was "seriously threatening democracy and social peace." This, he said, presents significant danger to human rights activists and journalists, adding that this violence could be the warning signs of "an arbitrary and oppressive regime that would once again have Guatemalan families mourning and also forcing new human displacements".

Indigenous communities and the ancestral authorities have been at the forefront in struggling against government abuses, corruption and impunity. Yet,

many Indigenous leaders and land defenders have been arbitrarily arrested and persecuted. For example, Bernardo Caal Xol (Q'eqchi) became a political prisoner for resisting the Oxec hydroelectric plant, and in 2018, was sentenced to over seven years in prison. Between January and December 2020, there were at least "**1,004** attacks and **15** killings" of community leaders and human rights activists and defenders (*Human Rights Watch 2021*). The U.S. has and continues to support corrupt Central American governments and presidents with military aid and other financial assistance. This includes former Honduran President Juan Orlando Hernandez (2014-2022) who has been implicated in narcotrafficking. Former Guatemalan president Jimmy Morales (2016-2020) used military vehicles donated by the U.S. Department of Defense to intimidate human rights activists and personnel from the UN's International Commission Against Impunity in Guatemala (CICIG), which was forced out of the country in **2019** and viewed as a step backwards in the fight against corruption.

### Mayas in forced migration

Recent Central American migration has steadily increased since 2015, and a significant percentage has been from Guatemala (*See Tables 1 and 2*). Unaccompanied Children from Guatemala were the largest group detained at the border: **13,589** in 2016, which more than doubled in 2019 to **30,329** (an **123.188%** increase). Single adult Guatemalans detained in 2016 was **32,621**, and increased to **60,589** in 2021 (an **85.74%** increase).

**Table 1: Unaccompanied Children Encounters by Country**

| Country     | FY15   | FY16   | FY17   | FY18   | FY19   | FY20   | FY21 TD MAR |
|-------------|--------|--------|--------|--------|--------|--------|-------------|
| El Salvador | 9,389  | 17,512 | 9,143  | 4,949  | 12,021 | 2,189  | 3,755       |
| Guatemala   | 13,589 | 18,913 | 14,827 | 22,327 | 30,329 | 8,390  | 18,372      |
| Honduras    | 5,409  | 10,468 | 7,784  | 10,913 | 20,398 | 4,454  | 11,949      |
| Mexico      | 11,012 | 11,926 | 8,877  | 10,136 | 10,487 | 14,359 | 11,785      |

Source: U.S. Customs and Border Protection



**NNiRR**

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**Table 2: Single Adult Encounters by Country**

| Country     | FY16    | FY17    | FY18    | FY19    | FY20    | FY2021 TD MAR |
|-------------|---------|---------|---------|---------|---------|---------------|
| El Salvador | 27,222  | 16,495  | 12,751  | 20,893  | 9,960   | 17,343        |
| Guatemala   | 32,621  | 26,387  | 42,994  | 48,606  | 27,948  | 60,589        |
| Honduras    | 22,258  | 17,110  | 26,161  | 44,981  | 25,152  | 47,684        |
| Mexico      | 175,353 | 116,790 | 139,860 | 149,967 | 228,842 | 242,290       |

**Source:** U.S. Customs and Border Protection

The 2018 Guatemalan Census states that Indigenous Peoples make up **44%** of the population, but some have argued that this figure is meant to erase Indigenous Peoples, and that the population is actually higher and represent **75-80%** of the population. The undercount is attributed to the racism inherent in data collection in Guatemala, and which also appears in the lack of data collection on Indigenous Peoples by US immigration officials. As a result, there does not exist exact figures on how many Indigenous Peoples are coming from Guatemala, Latin America and elsewhere. This creates many problems such as respecting Indigenous rights and access to Indigenous interpreters.

Despite the difficulties in obtaining concrete data on the number of Maya peoples from Guatemala, there have been multiple estimates. Anthropologist Lauren Heidbrink claims that about **"95%** of returned minors" are Maya (primarily Mam and K'iche') from the Departments of Quetzaltenango, Totonicapán, San Marcos, and Huehuetenango. The joint report by the Alianza Indígena Sin Fronteras and International Mayan League cited above found that "A groundbreaking study of asylum seekers in Tucson, AZ, migrant shelters from 2014-2017 demonstrates **60%** were from Guatemala and, of those, **30%** were primarily speakers of Maya languages."

In 2021, data from the Transactional Records Access Clearinghouse (TRAC) at Syracuse University found that there were at "least **40** different languages" spoken by "nearly **30,000** migrants with pending MPP cases," which included Indigenous languages such as Quechua and various Maya languages. According to the study, among these pending cases, there were at least **245** Maya language speakers: **71** Mam, **59** K'iche', **40** Q'eqchi', **25** Q'anjob'al, **16** Akateko, **10** Cubulco Achi, **seven** Chalchiteco, **five** Chuj, **five** Jakalteka, **four** Kaqchikel, and **three** Chuj. There were also other Indigenous languages reported such as Quechua with **eight** speakers, **six** Miskito and three Garifuna speakers. These figures likely capture just the minimum amount of Indigenous language speakers, given that oftentimes asylum seekers and migrants from Latin America may be denied the opportunity to declare their Indigenous identity, not given the right or option of an interpreter, assumed to be Spanish speakers, or do not mention them in credible-fear interviews due to historical racism, among other reasons.





The U.S. government's abusive treatment of migrants is further exacerbated by the lack of interpreters, the horrendous conditions of detention centers, lack of quality and safe healthcare, and denial of basic human rights to detained Indigenous Peoples. These horrendous conditions have caused the deaths of migrants and children. Most notably, the deaths of Maya children while in US custody between 2018 and 2019 highlights this. While in immigration detention, these children died:

**Jakelin Caal Maquin** (Q'eqchi'), 7 years-old, who died December 8, 2018 from a bacterial infection (streptococcal sepsis);

**Felipe Gomez Alonzo** (Chuj), 8 years-old, who died December 24, 2018 from a flu and bacterial infection;

**Juan de León Gutiérrez** (Ch'orti'), 16 years-old who died April 30, 2019 from an infection;

**Wilmer Josue Ramirez Vasquez** (Ch'orti'), 2-year-old who died May 16, 2019 from pneumonia;

and **Carlos Hernandez Vásquez** (Achi), 16-years-old who died May 20, 2019 from Influenza A virus.

Moreover, Maya migrants have also been victims of Border Patrol use of deadly force, such as **Claudia Patricia Gómez González** (Mam), a 20 years-old who was murdered on May 23, 2018 by a CBP officer after being shot in Rio Bravo, Texas. ▣



Photo by Pedro Pardo/AFP/Getty Images.

# RECOMMENDATIONS

*U.S. immigration enforcement and border control are violating the rights of Indigenous Peoples and putting their lives into a precarious situation while in U.S. detention at the U.S.-Mexico border.*

## **We urge U.S. policymakers to:**

- Demilitarize the U.S.-Mexico Border;
- Respect and honor Indigenous sovereignty, autonomy and self-determination, and recognition of Indigenous Rights as outlined in International Labor Convention 169, the United Nations Declaration on the Rights of Indigenous Peoples, and other national and international instruments and agreements;
- End harmful and inhuman immigration policies, including U.S. Title Code 42 and Migrant Protection Protocols (MPP);
- Increase support and provide interpreters to all Indigenous peoples to ensure that their human rights and rights to asylum are respected;
- Investigate human rights abuses and cases of deaths of Maya children and peoples mentioned above; and,
- End all U.S. military aid to Central American countries, which have used the armed forces to persecute human rights activists, community leaders and Indigenous peoples.

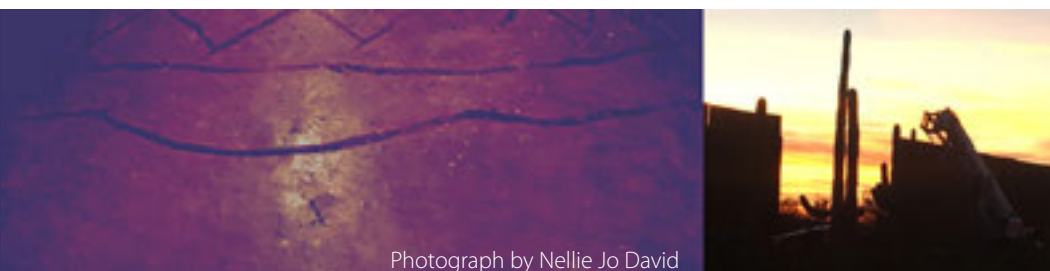
Over a hundred years ago, Hia-Ced O’odham still had communities where the bombing range, National Park Service (NPS), Bureau of Land Management (BLM), and settlements now exist. From Puerto Peñasco to Sonoyta to Ajo to Yuma, all of the mountains and villages had O’odham names. Our ancestors had full lives without crossing borders or ever seeing a bomb or military cruiser in sight. They were truly free.

We kept our past freedoms in mind when we took actions to protect the land. Despite borders and barriers between us, O’odham continue to run in prayer for the land, water and all life. We remain connected to the land despite the desecrations that happen to it. During the border wall construction, we witnessed an indescribable loss. We did the best we could while facing incredibly difficult times.

In September of 2019, O’odham ran from the Hia-Ced O’odham village of Darby Wells to A’al Waippia, also known as Quitobaquito, to pray for protection. In February of 2020, O’odham from both sides of the border gathered in ceremony. It was one of the last beautiful moments together before the installation of Trump’s wall. In March 2020, Covid19 became known to the world. This made Ajo especially vulnerable, due to the man camps and travel between construction workers. Wall workers were the first to bring the epidemic. That summer, the water level at A’al Waippia/Quitobaquito sank to dangerous lows.

In August of 2020, a group of O’odham took action to block panels from Stinger Bridge and Iron from transport to Eloy. In September, Amber Ortega and myself went to check on A’al Wappia. We went our separate ways to pray for the spring and heard the crushing sounds of construction vehicles. When we found each other, we didn’t hesitate to run in front of the heavy machinery that happened to be breaking ground. We remained there all morning. Subsequently, we were manhandled by border patrol and arrested by cross deputized National Park Service agents. We were then taken to CoreCivic, where we spent the night and the following day.

In the time that followed, O’odham and allies put their bodies on the line, holding a series of actions stopping construction. By September 28, 2020, NPS issued another closure order effectively closing off the Quitobaquito area completely. In October, on Indigenous People’s Day, O’odham water and land protectors and allies were tear gassed and pelted with rubber bullets. Twelve were arrested. We spent the last two years worrying about our battles in court. After so many battles and losses, Ortega and her attorney Amy Knight’s religious freedom win symbolized what we knew all along. We did what we could to protect what was right, and we will continue to fight for our sacred places. +



Photograph by Nellie Jo David

## Taking Action Against Militarization and the Wall on O’odham Land

By Nellie Jo David



A dead Saguero Cactus is seen on the ground near the United States-Mexico border wall in Organ Pipe National Monument, south of Ajo, Arizona, on Feb. 13, 2020. (Sandy Huffaker/AFP via Getty Images)









# Combating Transnational Efforts to Detain and Deport Black Migrants Traveling to the U.S.–Mexico Border



**By Tsion Gurmu**

*Legal Director, Black Alliance for Just Immigration*

**W**e are living in a moment when issues of Black disenfranchisement, racist violence, and political repression are at the forefront of national consciousness—and this moment is ripe for change. As the Black Alliance for Just Immigration (BAJI) and our partners continue to demand “Black Lives Matter,” our goal is to highlight the importance of this movement for Black people in the U.S. and for our Black comrades fleeing violence and conflict across the globe.

This article will highlight the experiences of Black migrants at Mexico’s southern border, whose harrowing journeys to the U.S. through Central and South America—crossing jungles and rivers while dodging militias and robbers—is made even more traumatic by the anti-Black racism and human rights abuses endured in the custody of Mexican immigration officials while trapped in Tapachula, Mexico. Our article explores the question of how the U.S. and Mexico stem the flow of “unwanted people,” specifically Black migrants, by turning borders into a site of dehumanization, criminalization, militarization, and state impunity.

Although refugees are generally understood to be an exception to conceptions of state sovereignty and the rule of law—as it is accepted and agreed as a matter of international law that they must cross in an irregular way while fleeing imminent harm—it is clear that rich states, like the U.S., are developing legal and illegal mechanisms and devices to keep refugees out by externalizing immigration enforcement into poorer countries that have few resources to provide security, education, healthcare and other services for refugee communities. These agreements, at the heart of racialized border regimes, exist in almost every country across the world in efforts not to deal with the issue of forced migration and deny migrants, especially Black migrants, access to rights and protection. These are a transnational effort to shut down access to refugee protections.

African migration to the Americas has been steadily increasing since the end of the 20th century. With migration to Europe becoming increasingly difficult, African migrants have been forced to rely on permissive immigration policies in Ecuador, Brazil, or Guyana as entry-points for a difficult and dangerous journey by land towards Mexico and then to the United States or Canada. African migration to and through Mexico continues to increase as more Africans flee their countries of origin and use the Americas as a corridor to seek refuge in the U.S. or Canada, despite the fact that it is more difficult to transit through Central America due to increasingly restrictive immigration policies including **Title 42** and the Migrant Protection Protocols (“MPP”).

African migrants typically first enter the continent through visa-friendly countries such as Ecuador and Brazil. As asylum seekers typically do not have visas and the access to travel through international airports, they are forced to utilize smugglers and trafficking to access safety. This overland migration route usually originates in

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Brazil, then Peru, Ecuador, Colombia, Panama, Costa Rica, Nicaragua, Honduras, and Guatemala, then to reach Mexico and eventually the U.S.

The violence faced by migrants begins in their countries of origin and continues during their transit through Central America, into Mexico, while crossing the U.S. border, and even upon arrival within the US. Africans traveling through Central America confront different forms of violence, including racialized violence. Black migrants in particular are easily identified as migrants and targeted for arrest based on travel without proper documentation.

Many of the Black migrants BAJI has worked with throughout Mexico experienced several arrests in Central America, as well as a wide variety of abuses while in detention. In addition to the risks of extortion, kidnapping, violence, and abuse that all migrants face, migrant women are vulnerable to gender-based violence, including rape and sexual assault. Language and cultural barriers increase the vulnerability of Black migrants. They have less access to services when traveling through a continent where services are not provided in their native language. (See BAJI Report; *“There is a Target on Us: The Impact of Anti-Black Racism on African Migrants at Mexico’s Southern Border.”* 2021)

BAJI’s legal team is combating the U.S. government’s decimation and manipulation of the asylum system to work against poor Brown and Black migrants by providing direct legal support to Black immigrants across the United States and Black migrants traveling through Mexico. Our legal team is also engaged in advocacy and litigation against strategies at the U.S. southern border that restrict access to the asylum system, including interception, turn-backs, zero tolerance enforcement, the separation of children from parents, requiring asylum-seekers to await the U.S. asylum process in Mexico, and barring asylum to most migrants who arrive at the U.S.-Mexico border.

### African Migrants Organize

In 2019, while working with asylum seekers in Tijuana, BAJI learned that thousands of Black migrants from Africa and the Caribbean were trapped in the southern Mexico city of Tapachula because Mexico’s immigration authorities were suddenly denying them the exit permits necessary to proceed north to the U.S.-Mexico border. During the course of the last administration, we witnessed Black migrants face threats by authorities in Honduras, Guatemala, and Mexico as a direct result of the U.S. increasingly externalizing its southern border and outsourcing its immigration enforcement to other countries. This is a direct result of the racialization of immigration laws, which deem who is a credible migrant, who is worthy of status in the U.S., and who is considered a threat. Faced with the U.S. and Mexican administrations working together to externalize U.S. immigration enforcement into Mexican territory, resulting in the Mexican government’s refusal to permit Black migrants from traveling to the U.S.-Mexico border to seek asylum, Black migrants did what we do best—we organized!

In Tapachula, African migrants organized and formed the Assembly of African Migrants, outlined their demands and protested their maltreatment. The Assembly of African Migrants in Tapachula represented a collective of over 3,000 people, including Black



individual adults, children and families from Angola, Burkina Faso, Cameroon, Eritrea, Ethiopia, Ghana, Guinea, Liberia, Mali, Mauritania, the Central African Republic, the Democratic Republic of the Congo, the Republic of the Congo, Senegal, Sierra Leone, and Togo. The Assembly released a powerful statement outlining their demands, and coordinated press conferences and several protests to advocate for their dignity and human rights.

BAJI is a proud signatory to the Assembly's demand statement, which denounces the human rights abuses African and Caribbean migrants experienced in their home countries and during their perilous journeys to the U.S.-Mexico border. The demands articulate the experiences of Black migrants: "We have slept in the middle of the mud, we have gone hungry and drank rainwater to survive... We have seen bodies of migrant brothers on the road, dead of exhaustion, or drowned in the rivers." (*See Communication: Assembly of African and African Migrants in Tapachula, Voces Mesoamericanas*)

In addition to uplifting the demands of the Assembly, BAJI organized a delegation to southern Mexico to bear witness, engage in advocacy, and document the human rights abuses experienced by Black migrants traveling through Mexico. While providing legal workshops and humanitarian support to the Black migrants in Tapachula from January to December 2019, we witnessed the growing population of African and Caribbean migrants being met with increasingly violent anti-Black racism.

From within the Siglo XXI detention facility ("21st Century") to the streets of Tapachula, a number of Black migrants were met with equal or greater life-threatening violence than the persecution they fled in their home countries. Black migrants in Mexican immigration detention have been severely beaten by government officials, subjected to verbal and psychological torture, medical neglect, discriminatory food rationing, and various other abuses. While BAJI was working in Tapachula, a Haitian man, Maxene Andre, died in immigration detention, and we worked with Black migrants to

organize protests and advocate for justice. Rui, an Angolan migrant living in Tapachula, expressed, "We left home with hopes of a better future, but here [in Tapachula, Mexico] we have less safety and access to basic needs than we did in our home countries. We need to be somewhere where we are able to live freely and safely, and access basic rights like the right to education and the ability to care for ourselves."

### Combating Mexico's Anti-Black Racism

Despite the abuses experienced by Black migrants in Tapachula, there appeared to be little to no avenues to report and prevent anti-Black violence. BAJI addressed this problem by looking at anti-Black racism in Mexico from the vantage point, experiences, and analysis of Black migrants in Tapachula. We interviewed Black migrants about their experiences with, and perspectives on, anti-Black racism in Mexico. All the Black migrants interviewed were in Tapachula at the time. Since then, a number of them have made it into the U.S. and are currently represented by BAJI's legal team in their immigration court proceedings.

Black migrants we interviewed were from various countries including Angola, Cameroon, Congo, the Democratic Republic of the Congo ("DRC"), Eritrea, Ethiopia, Ghana, Guinea, Haiti, and Sierra Leone. These Black migrants were forced to flee for a multitude of reasons ranging from political and ethnic violence to the enforcement of anti-homosexuality legislation in our home countries. However, one commonality across many countries is that the forced migration patterns were and are fueled by U.S. foreign policies and religious influences that have led to political instability, decimated economies, criminalized LGBTQ+ people, and worsened conditions for women in Black majority countries. Unfortunately, for all of the Black migrants we spoke to, the trauma experienced in their home countries was compounded in Mexico due to the racism and human rights violations they experienced at the hands of Mexican immigration officials and the general public.





## Combating Transnational Efforts to Detain and Deport Black Migrants Traveling to the U.S.-Mexico Border

To provide legal support and document the human rights abuses experienced by Black migrants in Tapachula, BAJI set up tents (literal tents) to work with Black migrants in the encampment outside Siglo XXI. This area was transformed into a makeshift refugee camp, as Mexico does not have refugee camps—people live on the streets, or in “so-called” shelters where they are abused, and have no access to basic needs like food, water, healthcare, and protection from abuses. It was here that we saw how rampant anti-Black racism is throughout the very detention facilities that are intended to provide “protection” for Black asylum-seekers.

Black migrants are compelled to enter detention in order to access exit permits or any other form of documentation in order to travel north to the U.S.-Mexico border. Interviewees outlined the complex regulations guiding their livelihoods and the difficulty of obtaining documentation to travel, all of which increases vulnerability to further arrests and abuse.

Even outside of detention, Black migrants described being subjected to police violence, language barriers, extreme forms of social isolation and psychological harm in public life, employment discrimination, housing discrimination, denied access to public education, as well as verbal and physical violence at the hands of police and members of the public. Interviewees like Adamo, whose name has been changed for security reasons, lost family members during the journey to Mexico, only to experience more harms and discrimination while in Mexico. He expressed: “We passed through rivers and great hardship to arrive here and look at how they welcome us—with hate and racism.”

The Assembly of African Migrants resisted by refusing to accept violence and abuse in Tapachula! Black migrants were constantly organizing and protesting while trapped in Tapachula. They made their presence felt to all by marching throughout the city with signs and chants demanding racial equity and freedom of movement. The protests were effective, which is no surprise as many migrants had extensive organizing and movement-building experience from their home countries. Myself and other BAJI staff were present and participated in these protests in Tapachula because we know that throughout our long and harrowing journeys to the US, Black migrants consistently face unwavering violence, mistreatment, and imprisonment. However, like our siblings in Tapachula, we have no choice but to remain resilient because returning to our home countries is not an option. Unfortunately, the stories of Black migrants, and our resistance movements, while seeking refuge are too often untold and overlooked.

### **“There is a Target on Us.”**

Black migrants rarely occupy a central place in the larger narratives about migration through Central America. Thanks to our partners at IMUMI, (Institute for Women in Migration, Instituto para las Mujeres en la Migración), BAJI produced a report in response to major failure of public discourse and policy analysis, and to address anti-Blackness in a systematic way.



BAJI sought to understand how Black migrants experienced anti-Black racism in Mexico. There is a Target on Us report also documented how asylum seekers were forced to wait in Mexico, and perhaps other transit countries, at great risk of extortion, kidnapping, and violence.

BAJI has continued closely monitoring the situation of Black migrants in southern Mexico. In 2021, the Black migrants there were either deported, escaped north to the U.S.-Mexico border, or were given status by the Mexican government (which they also utilized to travel to the U.S.-Mexico border). In 2020, the makeshift camp outside Siglo XXI was quashed by the Instituto Nacional de Migración (INM, National Institute for Migration) and most Black migrants were either granted asylum or green cards based on “statelessness.”

### How the U.S. Curtails Access to Asylum

During our legal workshops BAJI warned folx against accepting forms of “relief” from Mexico because of the consequences for their U.S. asylum claims. Many unknowingly signed immigration documents during their interactions with Mexican immigration officials. Most folx were under duress, misled by immigration officials who failed to provide necessary translation/interpretation to ensure that migrants understood the Mexican immigration process. The INM pressured migrants to accept particular immigration outcomes. Others felt compelled to seek asylum because of the third country transit ban, hoping they would be denied (in order to be eligible for asylum in the U.S.) or planned to simply abandon their Mexican asylum claims once metered into the U.S. Due in part to language barriers and a lack of legal representation, numerous Black migrants were tricked into signing immigration documents without understanding their significance or potential implications for later seeking asylum in the U.S.

As a result, many Black migrants were granted asylum or obtained permanent residence in Mexico. The permanent residence process was expedited specifically for Black migrants camped outside of Siglo XXI at the end of 2019 to quickly shut down the camp.

BAJI then began preparing our legal clients to be able to meet one of the exceptions to firm resettlement—no significant ties to the third country or restrictive conditions. However, some individuals were unable to meet one of the exceptions to firm resettlement, after running past all of the hurdles to the U.S. border, and they were deemed not qualified for asylum. This is a prime example of how the U.S. government has been curtailing the definition of “refugees” by manipulating the law and externalizing borders and enforcement into Mexico to prevent access to asylum.

Through connecting with other advocates, researching Mexican immigration statistics, and completing BAJI’s report with IMUMI, we learned that over 500 individuals were granted permanent residence based on “statelessness” in Mexico last fiscal year, most of whom are Black migrants with evidence of their citizenship. BAJI returned to Tapachula in 2022, exploring the possibility of filing an action on behalf of Black migrants before regional and international human bodies to draw attention to this problematic practice of wrongly granting Mexican permanent residence based on “statelessness” that has—like many other issues—so little attention.

The Biden administration continues to implement policies in collaboration with the Mexican government to continue undermining asylum protections, including launching a militarized response to block, corral and deport asylum seekers—effectively sealing the southern border. These laws regulating the movement of people are part of a larger project of codifying a white supremacist state, maintained through visa restrictions and asylum bans preventing people from seeking refuge after their home countries have been ravaged by imperialist policies.

As migration scholars have noted, the U.S. has open borders for capital but closed borders (and criminalization) for asylum seekers, refugees, and displaced people. Despite growing awareness that this system is flawed, we have not been able to disempower and undermine this white supremacist deportation regime in part because we have struggled to build power and meaningful coalitions to do this



## Combating Transnational Efforts to Detain and Deport Black Migrants Traveling to the U.S.-Mexico Border

work. One of the biggest failures of the larger immigrant rights movement was not creating an inclusive, truly multi-racial, multinational movement for change. We still have an opportunity to make these connections and create change

Black immigrant communities continue to suffer the pain and trauma of a decimated asylum system and externalized U.S. immigration enforcement that specifically impacts Black asylum seekers from Caribbean and Sub-Saharan African countries. So, it's important that we look closely at these racial disparities as human rights violations and find space in our respective work to take action to protect Black immigrants and asylum seekers from exclusion, expulsion, deportation, and family separation. ✚



Art by María Blanco



# RECOMMENDATIONS

## We urge U.S. policymakers to:

- To investigate and address the persistent and profound anti-Black racism inherent in immigration enforcement and border control, including hate violence, racial profiling, xenophobia and racist policies, measures, practices, and laws that undermine the lives and rights of Black, Asian, Indigenous, gender non-conforming and non-white people in the U.S. border and non-border regions.
- To immediately end the practice of closing off ports of entry to asylum seekers. Closing off ports of entry to asylum seekers, including families, single adults, and unaccompanied children, is a violation of domestic and international refugee protection laws. Furthermore, turning them away forces asylum seekers to remain stranded in life-threatening conditions while facing bias-motivated violence with lack of access to housing, medical care, and employment. Closing ports of entry also does not stop migrants from crossing, but rather pushes people to cross irregularly, often exacerbating exploitation by criminal organizations that prey on migrants.
- To stop externalizing U.S. immigration enforcement into foreign territory. Congress must investigate U.S. collaboration with the Mexican government that has led to the systematic expulsion of asylum seekers to southern Mexico, Central America, and other countries; and to create structural improvements to ensure DHS does not continue to violate U.S. law and treaty obligations.
- To investigate and to stop the practice of pressuring migrants to accept any particular immigration outcome that violates due process rights.
- To ensure that all actions undertaken by immigration officials regarding a migrant's case must be taken only with the migrant's informed consent. This includes an explanation in a language they understand and, where applicable, access to their own legal representative.
- The international community must investigate the potential adverse consequences of Black migrants journeying through the Americas.
  - ☹ Specifically, the actions taken by the Mexican government, likely with U.S. coercion, to force U.S. asylum claims as "stateless," which violate consent and due process rights.
  - ☹ Dismantle coordinated policies between the United States and Mexico that deny rights and access to safety of extra-continental asylum seekers.
- Migrants play a key role in generating the solutions that directly affect them. Government agencies and civil society organizations must engage migrants and directly impacted communities in developing the strategies and solutions that allow for collective liberation from the illegal and inhuman migration policies that control the movement of all people, and especially the movement of Black migrants.





Photograph by Isabel García

# Smart Technology in Border Communities and its Implications on Human Rights



By Pedro Ríos

Smart technologies are now omnipresent, dangerous enforcement tools that take US militarization of border communities to a deeper level. While Democratic and Republican presidential administrations have openly pushed for constructing physical border barriers and increasing “boots on the ground” to stop migrating peoples, they also have embraced smart technologies that represent a more ominous enforcement toolbox with serious implications for the human rights of migrants and border residents.

High-tech surveillance devices have been a part of the Border Patrol’s hardware since the 1970s when it adopted heat and seismic sensors —military surplus— from the Vietnam War. In the following decades but especially with Border Patrol’s “prevention-through-deterrence” strategy in the mid-1990s, the Border Patrol substantially increased its arsenal of smart technologies to stop the arrival of migrants in urban centers. In militaristic parlance, “territorial denial” was a key component of that strategy, which had the intention of preventing migrants from crossing into the United States by saturating border communities with Border Patrol agents supplemented with border walls and technology. The strategy purposely pushed migrants into rugged terrain where the natural elements worked against migrants traversing through harsh mountainous and desert landscapes. A conservative estimate is that as many as **10,000** migrants have perished since 1994 in the Southwestern United States border region when Border Patrol implemented various enforcement operations. (Border Patrol figures, which begin in 1998, historically show an undercount of migrant deaths when compared to other data sources, such as the figures from similar years derived from the Missing Migrant Project of the United Nations’ International Organization for Migration. For the years from 1995-1997, those figures are derived from an archived Stopgatekeeper.org collected data set).

U.S. deterrence strategies continue to cause migrant deaths at record numbers. During the last several decades, smart technologies have been incorporated as an integral part of border militarization practices, and opportunistic companies profiting from them have turned them into a prosperous industry.

Though politicians often argue that promoting virtual walls or smart technologies are safer and humane alternatives to physical barriers, this reasoning is misguided. Migrants attempting to avoid detection by any number of surveillance apparatus will travel through much more desolate areas, further exposing themselves to potential injury or even death. What is marketed as innocuous technology is just as lethal. Smart technology “funnels” migrants deeper into desolate regions of the border to prevent unregulated entry into the United States, with the same deadly consequences.

## **Military surveillance technology, an extension of deadly deterrence strategy**

At any given moment, an array of surveillance technologies augment Border Patrol’s enforcement footprint along the U.S.-Mexico border. These have included mobile surveillance technologies such as radar-equipped aerostat blimps operating from **15,000** feet in the air (these have since been abandoned), integrated fixed towers with thermal imaging sensors, other fixed and mobile sensors, some of which are hidden underground



## Smart Technology in Border Communities and its Implications on Human Rights

that send alerts to Border Patrol agents when they detect motion, sensors used in maritime environments, Predator B drones enabled with video and radar sensors, small unmanned aerial systems, night-vision and infrared scopes, facial recognition cameras at pedestrian border crossings, and license plate readers at U.S.-Mexico ports of entry and internal checkpoints.

More absurd smart technology has already been proposed. The Department of Homeland Security wants to deploy mechanical robot patrol dogs for field operations, to be used in both rugged terrain and in urban settings. Agent Brett Becker of the CBP Innovation Team explained, “You have your standard criminal behavior, but along the border you can also have human smuggling, drug smuggling, as well as smuggling of other contraband—including firearms or even potentially, WMD.” All scenarios contemplated for the mechanical beasts prioritize their use to enhance enforcement. There is little to no regard for attending to the humanitarian needs of migrants on the move, except to suggest they should be crudely hunted by sophisticated robot dogs straight out of a dystopian movie scene.

In a 2019 study by Geoffrey Alan Boyce, the academic director of the Earlham College Border Studies Program in Tucson, Arizona, and geographers Samuel N. Chambers and Sarah Launius found a “meaningful and measurable shift in the location of human remains” associated with migration routes located outside the range of surveillance towers that were a part of the Department of Homeland Security’s SBInet (Secure Border Initiative) system. The shift was a “643 percent increase in the rate of mortality between 2006 and 2020.” Under former President George Bush, SBInet was supposed to incorporate a force-multiplier approach at detecting migrants by combining surveillance technology, such as towers, with the on-the-ground presence of Border Patrol agents. The funnel effect the authors described was that migrants take more dangerous and remote crossing routes in an effort to circumvent surveillance towers, thereby increasing the likelihood of migrants facing physical harm and even death in their attempts to cross into the United States.

### Experimental Use of Surveillance Technology Moves Beyond the Border

For decades the borderlands has been an experimental landscape for Border Patrol’s enforcement tactics and efforts to militarize local communities. Those tactics then are used in interior enforcement strategies. This also includes the Border Patrol’s deployment of its surveillance technology into interior communities, which disproportionately target Black, Indigenous and people of color.

Customs and Border Protection (CBP) deployed a Predator drone over a march demanding justice in the killing of George Floyd in Minneapolis, Minnesota in May 2020. The New York Times reported that CBP had used its drones to fly over 15 cities in the United States. Indigenous activities protesting the expansion of oil pipelines through their territories and over their sacred lands also noted that CBP surveilled them with drones 20,000 feet overhead.





Surveillance of Indigenous people is not new. For years the Tohono O'odham people have complained of Border Patrol surveillance along the Arizona border with Mexico. A 2019 \$26 million contract with CBP and the Israeli company, Elbit Systems, ensured the installation of 10 towers equipped with "high-definition cameras with night vision, thermal sensors, and ground-sweeping radar." Elbit Systems proudly touts its "persistent surveillance" on its website, stating it covers 7458 square miles, has deployed 55 integrated fixed towers, which cover 200 miles across the borderlands.

U.S. implementation of surveillance technologies tracks migrants beyond the border and deepens the criminalization of migrant status. CBP conducts much more sweeping surveillance beyond the borderlands, where it ascertains risk assessments based on personal and location data available through thousands of commercial and government websites, using a tool known as Automated Targeting System (ATS). According to CBP, "ATS is a decision support tool that compares traveler, cargo, and conveyance information against law enforcement, intelligence, and other enforcement data using risk-based scenarios and assessments." Similarly, CBP also operates Tactical Terrorism Response Teams which have interrogated hundreds of thousands of people, including U.S. citizens, according to an ACLU FOIA lawsuit. These programs that began in 2015, with dubious algorithms, are disturbing in how vast their reach is, how secretive they operate, and where there are no apparent guardrails to ensure they are not infringing on Constitutionally protected activity and on civil liberties.

Border Patrol's track record on this is dismal. With the arrival of migrant caravans in 2018 and 2019, the Border Patrol created a secret database that included dozens of reporters, attorneys, and activists that resulted in them being questioned and harassed when they tried to cross through a port of entry into the United States. The database listed the individuals, most of whom were U.S. citizens, as "organizers" or "instigators" alongside passport photos and notes about whether they had been arrested. This practice, of deliberately targeting people and creating dossiers on them, could have a chilling effect on First Amendment activity everywhere. The secret database was accessed by five agencies—CBP, including Border Patrol officials, Immigration and Customs Enforcement, Homeland Security Investigations, and the San Diego branch of the FBI.

CBP has already obligated non-governmental organizations supporting in the processing of migrants seeking asylum to use a biometric mobile application known as CBP-One. Though the press release neglected to mention how it would be used on asylum seekers, CBP-One requires that those organizations enter a photo of the asylum seekers into a database to be used for facial recognition when that person presents themselves to CBP. Some groups have raised several concerns about the long-term implications of this practice, including that CBP formalizes CBP-One as a tool to externalize asylum processing.

### **Border Surveillance, a For-Profit Driven Industry**

Smart technology is also a code word for a private-public partnership in border enforcement and surveillance. For 15 years, a Border Security Expo, organized by



## Smart Technology in Border Communities and its Implications on Human Rights

former border security officials now in the private sector, has been held in San Antonio, Texas, and features over **100** exhibitors displaying the latest border security equipment, technology, and services. Exhibitors at the Expo include Elbit America, Anduril Industries, and **160** other companies and organizations hawking their products seeking government contracts. The Border Security Expo is a window into how for-profit corporations are receiving a windfall in lucrative government contracts while selling their war products that militarize border communities. The journalist Todd Miller has reported that the “main beneficiaries of border contracts are also the same companies making the most campaign contributions, doing the most lobbying, meeting most often with government officials, and entering government as advisors and staff in strategic positions of influence.”

It’s not surprising, then, to know that President Joe Biden received three times more campaign contributions than Donald Trump from border security contractors leading up to the 2020 presidential election. The Transnational Institute found that the “top border contractors through individual donations and their Political Action Committees (PACs) gave more than **\$40** million during the 2020 electoral cycle to the two parties (**\$40,333,427**).”

The trade-off is apparent in how Congress responds. Between FY 2017 and FY 2020, Congress appropriated more than **\$743** million to CBP to acquire and develop border security technology. For FY 2022, the House Appropriations Committee has continued the same trend, recommending **\$170** million more for border technology in the FY 2022 Homeland Security appropriations bill.

### Conclusion and Recommendations

The increasing dependence on surveillance technologies as a panacea for “managing migration” accelerates a profit driving response where protecting the rights and the physical, emotional, and psychological integrity of migrating people is an afterthought, if present at all. The trend of relying on this type of enforcement mimics problems from past strategies, which frame tactics from a neoliberal context, and which influences how policies are drafted and how private companies benefit from relationships with their government counterparts. At the expense of civil liberties and human rights, without proper oversight and accountability measures, surveillance technologies used at the U.S.-Mexico border represent slippery-slope that exacerbate hazards for migrants and border community members alike. +



Photo by Isabel García

# RECOMMENDATIONS

## **We urge U.S. policymakers and the Administration to:**

- Defund CBP budgets allocating millions of dollars to “smart” and “virtual” surveillance technologies that violate human rights and exacerbate the loss of migrant lives by pushing people into inhospitable and dangerous terrain to avoid detection and unlawful expulsions.
- Create a civilian oversight mechanism aimed at assessing and remedying the harmful effects of “smart” technologies on migrants, asylum-seekers, and border communities.
- Fund an ombudsman’s office to address and remediate human and civil rights concerns, ensuring meaningful engagement and consultation with civil society organizations and border communities.
- Finance initiatives aimed at remedying the harmful effects of immigration deterrence policies, including those created by “smart” technologies, including funding social, economic and health supports for relatives of missing and deceased migrants.
- Invest in border communities, including migrants and refugees, allocate funding to create welcoming cities, counties, states, and regions, with infrastructure that provides living wage jobs, social security, affordable housing, community safety and access to clean air, water, and soil.
- Ensure that the U.S. Border Patrol is prohibited from obtaining a national police force designation.



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Joseling, left, and Estefany stand in front of the border fence, before walking to the DeConcini Port of Entry in Nogales, on August 10, 2017.  
Maria Inés Taracena

# Transfronterizas: Trans Women Border Crossers Defending Rights, Building Futures.



By Susana Coreas

**W**e were twenty-one trans women who left our home country; fleeing violence, the discrimination of not being seen, stereotyped and countless more reasons. In January, 2020, each of us had our own motives for undertaking this journey.

I never thought that this would become a story of baby steps; of progress; of improvements and help for our community. When we left our country behind, 21 people left with the illusion of coming to the United States.

We made it to Mexico at the end of January. We came through Tapachula and presented our humanitarian request to the Mexican Government and were told that we might have to wait 4 to 12 months for some type of legal status or stability. Meanwhile, we were left with no way to work or to procure resources or medicines. We were essentially “illegal” in a Latin American country. With this in mind, we chose to move to Ciudad Juárez because we had learned through friends that there was a shelter specifically for the trans community and that there we might have a place to stay, food, and support while we figured out how to request asylum in the United States. However, none of us imagined the nightmare we were getting into.

Upon arriving in Ciudad Juárez, we learned that the shelter had no heating; and it was the middle of winter. There were broken windows and, instead of beds, we each were provided with a mattress pad 23 inches long by two inches thick with two woolen blankets. There was no hot water. And as soon as we entered, we were told that we had to pay rent, food, and a portion of the gas and other household expenses. We tried to explain that given our current economic conditions, we couldn’t do that. It was suggested, very subtly, that we hit the streets as prostitutes to earn our way at the shelter.

After four months in this situation, two of our compañeras couldn’t take it anymore and went to request help at Ciudad Juárez’s Women’s Institute (IDLM). They learned there that if it was an emergency, they could move to the hotel Filtro, (previously known as the Hotel Flamingo). So without much thought, many of us decided to leave the so-called “shelter.”

## Solidarity

Looking back, it was one of the best decisions we made. When we arrived at IDLM, we received help from several institutions and organizations. We were finally at peace. But because the IDLM was under quarantine due to the pandemic, we had to decide which shelter to choose. We heard that the federal shelter in Ciudad Juárez was a good place to go, despite a few odd rules such as having to give them our cell phones and not being able to communicate at nighttime. But the biggest problem we foresaw was that all outside visitors were restricted. This included the associations that had heard our case and offered to help us. For this reason, we later chose to move to a religious shelter on the outskirts of Ciudad Juárez.

Initially we were treated very well. Different groups came and fixed up the shelter. They brought food and many things that benefited the shelter. However, because the shelter was religious in nature, they spoke to

us using our legal names. They didn't like using the names we identified by. The use of makeup or female clothing offended their religious beliefs and they didn't like it when we did that.

### **The Casa de Colores Emerges**

In the meantime, I was working at a gay bar in the center of Ciudad Juárez. I worked during the day overseeing cleaning and getting everything ready for the next day. Then there was an incident at the shelter. One of the girls broke a rule and we were thrown out by the police onto the street. I was working when this happened, and I had to ask my bosses for permission to leave early to see if I could find us a place to stay while we figured out how to resolve the issue. I am not sure if what happened next was luck, coincidence, or destiny, but when I spoke to one of my bosses about our situation, they told me that they could loan us a building they had just purchased. The only thing we needed to do was to help clean up the building while we stayed there. And that is how La Casa de Colores, the House of Colors, began.

I decided then to formalize my leadership role. I began to ask for assistance, calling contacts we had, and knocking on doors. Gradually and quite incredibly, several people answered the call. Help was coming in quickly, and effectively and, after sleeping on the ground, just at the right time. Together, we began to renovate the building.

After this, activists in the United States reached out and invited us to a meeting on Transgender Day of Remembrance. It was our first Zoom meeting. None of us knew how zoom worked but we managed to install the app on all our telephones. At the end of the meeting, they offered us their help. That was our biggest achievement since we had formed the shelter. With that we were able to pay for water, electricity and some building repairs, as well as furniture that we needed. We put in hot water for the winter and filled the pantry with everything folks at the shelter might need.

The shelter grew, more people came, and at one point, there were 50 trans women living together in this two-story building. Growth has consequences. We started to get attention from the press in Mexico and the United States; this was the first shelter created and administered by migrants, and we were all trans women. The media attention, together with the work of many U.S.-based organizations and lawyers, opened up a special exception for people at the Casa de Colores.

### **Making history on the other side**

In just six weeks, every single person living at the shelter was allowed to enter the United States. Many thought that was the end of our story. However, we now realize that it was just the beginning and there are many changes that we need to make. Our eyes have been opened and we have seen what happens on this side of the border. In my case, when I arrived at Customs and Border Protection (CBP), I realized that I didn't have a sponsor—or anyone who could receive me. The first thing they asked me was “Who will take you in?” Finally, I did get a phone number and an address, but I thought to myself “What’s going to happen with all of the other folks who don’t have a phone number or an address of someone to claim responsibility for them?”





Once we arrived at Casa Carmelita home where they offered us shelter, our work began. We learned that contrary to what we thought, we did not have permission to work to earn an income, even though that is one of the main reasons many of us left our homes to begin with. We also learned that because we are immigrants, even though we are on humanitarian parole, we could not access health care. For example, I needed a dentist to fix a molar, but since I was considered homeless by the clinic, they told me that all they could do was pull the tooth out. They said the cost of repair was way over my budget—or that of anyone else in my situation. Then I started to review the other chronic illnesses such as diabetes and blood pressure issues and found the same issues: the only way to access healthcare at all was to say I was homeless, but then I would just get basic care from some religious institution and only after I was able to prove that I was, in fact, totally homeless.

### **Lessons learned from our struggle**

Talking this over with my compañeras, we realized that we really weren't welcome; they let us in because of the media attention; and that the system is designed in such a way that people who enter the U.S. like we did will make mistakes that will be used as the basis for legally denying asylum. Seeing this, a sociology professor at the University of Texas at El Paso (UTEP), a friend of ours, suggested that we participate in a "Photo-Voice" project so that we could tell our stories, our experiences, and feelings about our current living situation through photographs. This work grew and it was a way for we migrants to express our feelings: those I had seen personally, and the feelings and ideas that others had. After this project, many of us really understood what was happening and all the work still to be done.

There is a saying that nothing changes if you don't change it yourself. Now we find ourselves trying to share our experiences with anyone we are in contact with. Particularly, with migrants so they don't find themselves in the same difficult spot we were in. When we communicate with them, we explain that things are not always as one imagines: that they will need a sponsor, a responsible person or organization to receive them; that arriving in the US doesn't solve their medical and financial problems. Arriving here is just the beginning of a constant struggle to build stability, to become a person with a social security number, a license, a tax ID number, etc.

It is sad that we fled from our countries because our rights weren't respected and, now, in this new place, we still must fight to have our rights recognized—rights that should be inherent for any human being.

### **Recommendations and Changes**

Analyzing the circumstances of our situation, we would like to make some recommendations and changes to the legislative policies so that they help people who need it, including healthcare, legality, work permission or all of this at the same time. Despite popular belief, many of us did not want to leave our homes and our families. We had to leave them behind, the people and the things we love, so that we could find safety.

## Las transfronterizas: Trans Women Border Crossers Defending Rights, Building Futures.

The laws are designed for us to make mistakes. We arrived ready to join this society, ready to be productive and valuable, and ready to take care of ourselves and be useful. However, we are treated as though we are uneducated, problematic or abusive and that we come to steal your tax dollars. Yet perhaps you don't realize that if we were allowed to work, we could pay for our own resources and take care of our own well-being. I don't see why it's a problem to give us work permission and a tax ID—then we wouldn't depend on anyone else. We could work, pay our taxes and our own health care costs. We don't need charity. We need to be allowed to grow, to study, to work, and to collaborate with this society. All we want is well-being for our families; yet we are mostly treated like criminals and people who are just taking advantage of this country's resources.

We would like to propose a law that gives migrants permission to work, a social security number and a tax ID while we are working towards a legal status. This would let us collaborate and contribute to the stability of this society and help ourselves.

We ask for nothing less than dignity. ✚



Photo by David Maung

# RECOMMENDATIONS

## We urge U.S. policy-makers to:

- Prioritize the needs of lesbian, gay bisexual, transgender, queer and intersex (LGBTQI+) migrants and asylum-seekers to ensure their safety, health and wellbeing and that protects their rights.
- Repeal all policies, practices, measures, and laws that uphold and institutionalize homophobic and transphobic injustice and create social, economic, political, and cultural systems to eliminate gender inequities faced by women, girls, and gender non-conforming people in migration.
- Provide access to healthcare during the immigration process, including preventative services, medical care, medications, as well as medical and mental health services.
- Ensure accessible and affordable education free of discrimination.
- Provide work authorization and dignified employment opportunities upon entering the United States. Guarantee the right to a profession, occupation, or job of one's choosing.
- Allow us LGBTQI+ migrants and asylum seekers the opportunity to demonstrate that we are not a public burden. On the contrary, we are valuable people who build and contribute.
- Take action to end stigmatizing and stereotyping labels and all forms of discrimination against LGBTQI+ communities.
- Stop the criminalization of migrants.
- Promote education in gender diversity (LGBTQI+) early on and throughout life.
- Prohibit all discrimination on the basis of transgender status and to legally recognize trans identities.
- Protect the right of LGBTQI+ individuals to decide freely, autonomously, and knowingly about their bodies, identities, and sexualities.
- Uphold and protect the right to live free of violence.
- Create mechanisms and platforms that allow trans people in migration opportunities for cultural orientation, linguistic accessibility, and transborderland services.

*These recommendations were developed by Casa de Colores with the support of the Photovoice (Voices and Images) of Transgender Migrant Women Project participants, an initiative of the University of Texas at El Paso Department of Social Work.*



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# Death by Policy: Migrant Deaths and Disappearances along the U.S.–Mexico Border

By Christine Kovic and Eduardo Canales

**U.S.** immigration enforcement and border control have caused the deaths of thousands of migrants on the U.S.–Mexico border region in the past two decades. According to U.S. Border Patrol figures, **8,050** migrants perished from **1998–2020** – an average of **365** deaths a year, or one death each day. Preliminary figures reveal **557** deaths for 2021. From a human rights perspective, these deaths are especially egregious because they are a known and expected outcome of U.S. immigration law and enforcement policies and have continued – and in some years have increased – throughout the past **20** years.

Migrants are perishing from heat, drownings, car accidents, and other causes as they attempt to circumvent border checkpoints as well as checkpoints dozens of miles away from the borderline. This chapter describes the lethal consequences of U.S. immigration policy and enforcement, addresses the U.S. failure to accurately count and take accountability for migrant deaths, and describes the crisis of disappeared and unidentified migrants.

## **U.S. Immigration Enforcement Causes Migrant Deaths**

A series of U.S. immigration and enforcement policies have directly caused migrant deaths, making them “deaths by policy.” The “Prevention through Deterrence” strategy, outlined in the Border Patrol’s 1994 Strategic Plan, increased enforcement in urban areas where undocumented migrants were more likely to cross safely. The 1994 Plan deliberately pushed migrants into “more hostile terrain, less suited for crossing and more suited for enforcement.”

Under this plan, U.S. Border Patrol increased enforcement in the urban areas through Operation Hold the Line, implemented in El Paso, Texas in 1993; Operation Gatekeeper in San Diego, California in 1994; and Operation Safeguard in the Tucson, Arizona region in 1999. The number of Border Patrol agents grew by nearly five-fold from 1993 to 2019, and the budget for the U.S. Border Patrol increased by ten-times from 1993–2001 (American Immigration Council, *The Cost of Immigration Enforcement and Border Security*). The strategy funneled migrants into dangerous areas such as the Arizona desert, Texas brush, rivers, and other bodies of water as they sought to cross the border without detection.

Data from the Pima County Office of the Medical Examiner (PCOME) documented a dramatic increase in deaths of undocumented border crossers from 2000 to 2020, including the finding of migrant remains in more remote regions of the desert. These deaths have taken place even as the number of migrants crossing the region decreased, showing that deterrence policies have become even more deadly (Migrant Deaths in Southern Arizona).

In Texas, deaths have been concentrated in Brooks County, located sixty miles north of the border, due to the Falfurrias’ migration checkpoint, and have been documented and denounced for years. As migrants travel



## Death by Policy: Migrant Deaths and Disappearances along the U.S.-Mexico Border.

miles in isolated brush to bypass this checkpoint, they may get lost, ill, separated from their group, and die in the “hostile terrain” as predicted by the Border Patrol’s strategic plan. Remains of 942 migrant border crossers have been recovered in Brooks County from 2004-2021 (see Table 1), just one of over a dozen south Texas counties where migrants perish.

### **Deterrence for workers and asylum-seekers, Visas for Investors**

The U.S. deterrence policies of death exist alongside a lack of options for large categories of migrants to enter the United States through regular channels. Investors with large sums of money can get visas to enter the U.S. and even be fast-tracked for permanent residency through the EB-5 visa program from 1990-2021 (U.S. Citizen and Immigration Services). However, it is all but impossible for low wage workers and Black, Asian, Indigenous, and Latinx peoples to enter the U.S. through “regular” channels that provide long term, permanent visas—and not just through temporary worker programs known for their exploitative and abusive practices. Even as U.S. political and economic policies fuel and contribute to the root causes of migration, the U.S. criminalizes immigration and excludes the very people who are impacted (Harsha Walia 2021).

Most recently, asylum-seekers at the border have been turned away or sent to Mexico to await their hearings under the Migrant Protection Protocols (MPP) implemented in 2019. Contrary to offering any protection to migrants, MPP puts them at great risk, as they await on the border far from their communities of support, with limited or non-existent legal services, and at risk of kidnappings, extortion, and other forms of violence. A 2021 Human Rights First report found **1,544** publicly-reported cases of violent assaults against asylum seekers forced by MPP to remain in Mexico.

Migrants have been increasingly criminalized through growing collaboration between law enforcement, immigration officials, and a growing multi billion dollar industry that tracks and imprisons migrants for profit (from *Data Criminalization to Prison Abolition*). Just as migrants and asylum seekers encounter more dangerous conditions to enter the United States, those who have been deported risk their lives to return to their work and families.

Border Patrol practices add to the risk of migrant deaths. Human rights organizations have documented how Border Patrol agents conduct raids in remote regions where they chase migrants, day and night, on foot, via helicopters, or in ATVs. When migrants scatter and hide, they can lose contact with their group and their guides, become disoriented, and in some cases, perish (*Left to Die*, a report by No More Deaths and Coalición de Derechos Humanos; and South Texas Human Rights Center). When migrants are in danger, even in cases when enforcement practices create this danger, the Border Patrol is charged with responding—but often fails to respond to distress calls.

### **U.S. Death-by-Policy**

Left to Die critiques the negligence of Border Patrol in reacting to distress calls from migrants, their families, and advocates. Analyzing calls to the Coalición crisis line;





911 calls; Border Patrol press statements; and other sources, the report found that in **63%** of cases, no confirmed search or mobilization was conducted in response to distress calls. In the remaining **37%**, efforts to rescue migrants were limited, especially when compared to similar efforts involving people known to be U.S. citizens.

In addition, one in five emergencies documented in crisis line calls resulted from migrants being chased and scattered by Border Patrol agents. The Weather Channel film *The Real Death Valley* (2014) shows the inadequate response to 911 calls in South Texas and the resulting migrant deaths. Due to this negligence, non-governmental organizations such as the South Texas Human Rights Center and La Coalición de Derechos Humanos have set up crisis lines to assist families and channel distress calls.

Migrants are also killed and die in accidents throughout Mexico due to increased enforcement; the U.S. has pressured Mexico to stop the northward movement of Central American and other migrants, in programs such as Mexico's Plan Frontera Sur, created in 1994. This program increased migrant apprehensions and deportations at Mexico's southern border, notably with a lack of due process and other human rights abuses against migrants (Council on Hemispheric Affairs, Programa Frontera Sur). Mexico has become a vertical border of over a thousand miles, extending from its border with Guatemala to its northern border with the U.S., where migrants travel at great risk.

As migrants are pushed into isolated and clandestine routes – to avoid checkpoints, police, and immigration officials – cartels target them for kidnapping and extortion, and force them to travel in increasingly dangerous ways. In December of 2021, **55** migrants were killed and over a hundred more injured when a tractor-trailer with over **150** migrants inside crashed in Chiapas, one of many cases of migrant deaths in vehicle accidents. Pushing enforcement even further south, in April 2021, President Biden negotiated agreements with government officials in Mexico, Guatemala, and Honduras to deploy their national security forces at their borders to stop migration.

## **U.S. Undercounts Migrant Deaths and Lacks Accountability**

The lack of an accurate or complete count of migrant deaths is a product of the U.S. government's strategy to avoid accountability for these deaths. Beginning in 1998, the U.S. Customs and Border Patrol began releasing statistics on the number of deaths, classified by fiscal year and BP Sector. (*See Table 2.*) Yet these numbers represent only a partial counting of deaths of migrants in the borderlands. Human rights organizations in Texas (South Texas Human Rights Center) and Arizona (Left to Die) estimate that the true count may be three to ten times higher than that of the Border Patrol. Many remains are never recovered in the isolated and sparsely populated regions that migrants cross, as well as the rapid disintegration of remains due to high temperatures. While groups in Arizona have organized searches for the missing and the dead, in South Texas, more than **95%** of land is private, and people need to obtain permission from landowners to carry out searches.

"Migrant Deaths in South Texas," a report from the Strauss Center of the University of Texas, documents the significant gaps in counting deaths through data from sheriff's incident reports and justice of the peace inquests, among other sources. The report found **12** more migrant deaths in Texas than Border Patrol figures for 2018, and **30** more for 2019. It points out that Border Patrol figures do not include any of the remains of those who drowned in the Rio Grande and whose bodies were recovered in Mexico. Using data from Mexican state and municipal governments and from the International Organization for Migration's Missing Migrant Project, the Strauss Center reports **378** such deaths from 2012-2019.

## **Crisis of Disappeared and Unidentified Migrants**

Alongside the crisis of migrant deaths is the crisis of disappeared migrants. Families in the U.S., Mexico, Central America, and elsewhere navigate multiple government bureaucracies trying to find their loved ones. With no centralized site or agency addressing missing migrants, families may contact



## Death by Policy: Migrant Deaths and Disappearances along the U.S.-Mexico Border.

consulates, sheriff's departments, medical examiners, non-governmental organizations, and others in multiple counties, states, and countries. Additional barriers include a failure to consistently enter relevant information in missing and unidentified databases, refusal to take missing persons reports on migrants, and failure to share information across counties, states, and countries. Left to Die found that in **27%** of Border Patrol search operations the person was never found, and their remains were never located. BP negligence is directly connected to the crisis of the disappeared.

In Arizona, the Pima County Office of the Medical Examiner (PCOME) has worked to document and identify the remains of undocumented border crossers in a centralized and coordinated manner for more than 20 years. The PCOME has created missing persons reports from families outside the U.S., shared data with multiple organizations and agencies, partnered with NGOs such as Humane Borders and the Colibri Center, engaged with families, and entered relevant data into the National Missing and Unidentified Persons System (NamUs) (Anderson and Spradley 2016). Through its efforts, the PCOME identified 64% of remains categorized as migrant border crossers from 1990 to 2020, leaving **36%** — more than one thousand individuals — unidentified (Migrant Deaths in Southern Arizona).

In contrast to Arizona, few South Texas counties have Medical Examiners Offices to process remains of unidentified border crossers. Local officials, with limited funding and training, are left to do so. Although Texas state law requires that DNA samples be taken on all unidentified remains, this is not consistently practiced. The Forensic Border Coalition points out that the majority of unidentified remains in Texas are buried without any DNA and in unmarked graves, making it almost impossible to identify them. A lack

of case documentation and recordkeeping, lack of data sharing between counties, and inconsistent procedures also prevent identification.

The burial practices of unidentified remains in some South Texas counties are inconsistent, decentralized, and “haphazard” as documented in Molly Kaplan’s 2020 MA Thesis, *The Human Rights Impacts of Burial Practices on Forensic Investigations of Unidentified Migrant Deaths in South Texas*. Kaplan reports that some remains have been treated as “waste disposal,” with remains in biohazard trash bags or buried with medical waste.

The U.S. Prevention through Deterrence Strategy funnels hundreds of migrants to their deaths each year along the U.S.-Mexico border; many more die or are targets of violence along Mexico’s vertical border. The root causes of migration including extreme poverty, environmental degradation, and violence are part and parcel of U.S. political and economic policy, forcing people to migrate in dangerous conditions. While there is growing investment in data surveillance and technologies to criminalize undocumented migrants and people of color, when migrants disappear or die, there is little interest and insufficient investment in locating or identifying them. Migrant families are left not knowing what happened and in many cases are unable to identify and bury their loved ones, prolonging and deepening their suffering.

Community-based organizers, human rights activists, and migrant families have been exposing the humanitarian crisis of U.S. immigration policy for decades. Multigenerational movements continue rising to demand justice and accountability for the lost lives and an end to systemic rights violations and abusive homophobic, racial, ethnic/nationality and religious profiling of migrants, refugees and border communities. ✚



Migrant Deaths in Brooks County, Texas

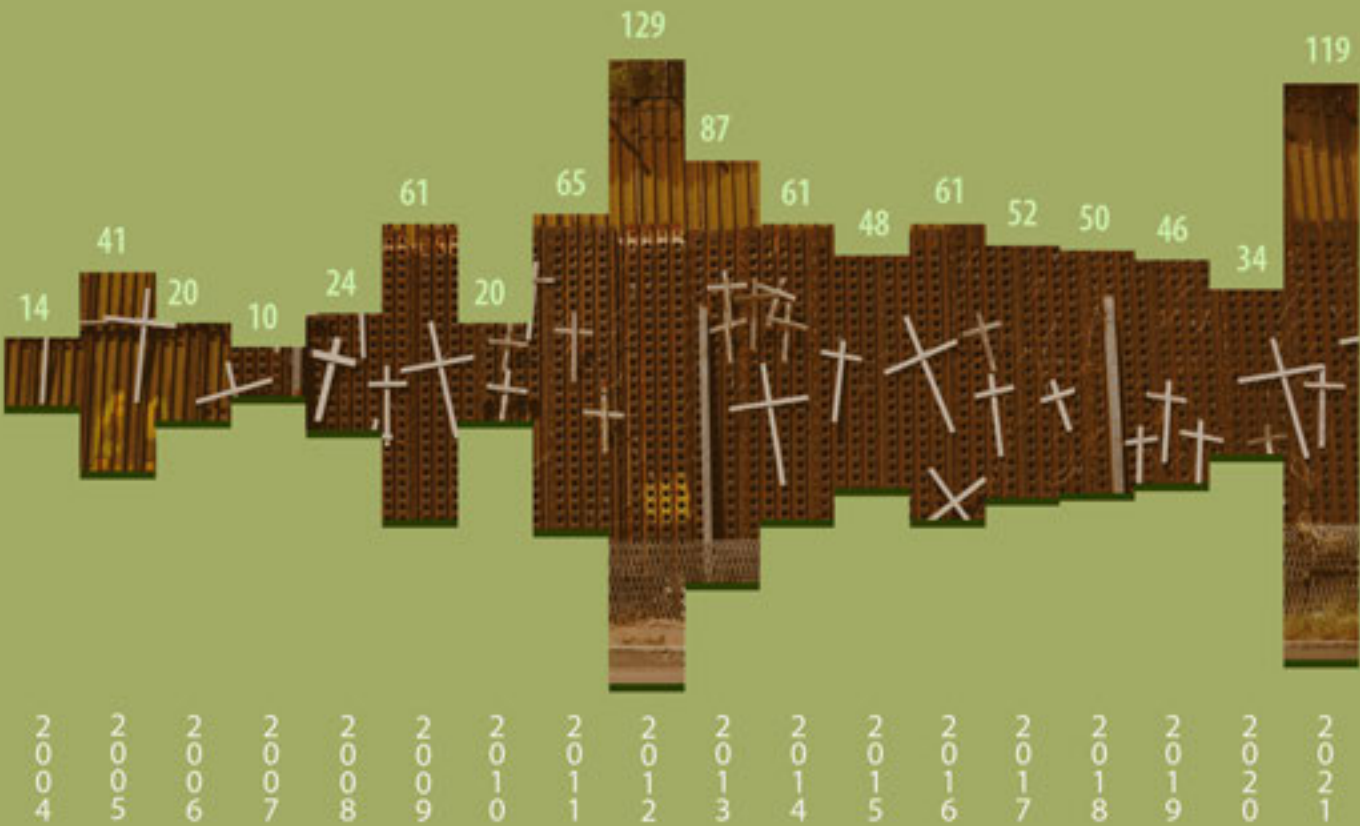


Table 1: Data from the South Texas Human Rights Center, based on calendar year.



Table 2: Data from the U.S. Border Patrol for 1998-2020. Based on Fiscal Year.



# RECOMMENDATIONS

## **We urge U.S. policymakers:**

### **Immigration:**

- End U.S. immigration policy based on immigration deterrence and terminate those policies, laws and practices stemming from this framework.
- Create long-term rights-centered channels for regular immigration; implement the Global Compact for Migration to allow for safe and dignified migration.
- Respect the international right to asylum law and due process for all migrants; allow asylum seekers to await hearings within the United States.
- Reframe the border as a human security issue to protect the rights of all people rather than a national security issue that targets low-wage workers and Black, Indigenous, and Latinx immigrants.

### **Humanitarian Aid & Rescue**

- Decriminalize all humanitarian efforts and aid given by community groups, labor, civil and human rights organizations, and advocates at the border, including rescuing migrants in the desert or mountains, providing water, food, shelter, medical aid and transportation to safety and treatment inland.
- Create emergency response systems independent of immigration enforcement and border control; remove Border Patrol from search and rescue and hold Border Patrol accountable for negligence.
- Create a mechanism that ensures effective response to migrant's emergency 911 calls.
- Fund the installation and expansion of beacons and water stations in areas with migrant deaths monitored by a group independent of immigration enforcement.
- Promote the collaboration of Border Counties to establish standardized methods of search and rescue efforts and of identification and reporting of human remains.



## Missing and Unidentified

- End all deterrence strategies, practices, and measures, including wall-building, lack of access to visas, asylum and regularization of status, militarized policing and surveillance and checkpoints, which force migrants to cross the border through the most inhospitable, isolated and dangerous areas where thousands have perished or disappeared.
- Follow the Global Compact for Migration in supporting International Collaboration to prevent migrant deaths, identify the dead, and locate the missing.
- Develop standardized protocols to ensure DNA is taken from all unidentified remains. Coordinate training of local officials in DNA sample collection for unidentified remains.
- Standardize reporting system for missing and unidentified remains and sharing of information with consular offices.
- Encourage all genetic laboratories receiving federal funding to process DNA from unidentified remains within 200 miles of the U.S.- Mexico border and compare genetic profiles against samples from relatives of any missing individual.
- Reimburse U.S. counties within 200 miles of the U.S.-Mexico border for costs associated with transportation and processing of unidentified remains.
- Establish a regional medical examiner system in South Texas (including facilities and salaries positions) serving Starr, Hidalgo, Cameron, Brooks, Kenedy, Nueces, and other counties.
- Include relevant information from unidentified human remains into the National Missing and Unidentified Persons System (NamUs) database and state databases.
- Create a humanitarian DNA database that allows for inclusion of family reference samples from Mexico, Central America, and other countries with clear prohibition to use this information for criminalization.
- Allow emergency humanitarian permits for families to travel to the U.S. and repatriate remains, and for witnesses who know where remains are located to assist in searches.
- Designate respectful burial sites in South Texas exclusively for the unidentified.





Art by Talavera-Ballón



# The Prison Industrial Complex: How the U.S. Punishes Immigrants



By Margaret Brown Vega

*"We denounce in this center the constant threat by the officials of the center to punish us in individual cells of punishment with the goal of repressing us and psychologically torturing us with the objective of making us have fear and making us deport ourselves to our country of origin from which we fled for the danger our lives were in..."*

– protest letter written by Cuban asylum seekers detained at the Otero County Processing Center in Chaparral, New Mexico

## Detention is Punishment

Prevention through deterrence is an intentional policy implemented by the Border Patrol in 1994 to raise the risk of apprehension for those crossing the southern border. It was explicitly designed to force people into more hostile areas to make seeking to gain entry into the U.S. less desirable. The philosophy of that policy extends beyond Border Patrol activities at our southern border to a suite of tactics used to make the experiences of migrants hostile enough to deter them from entering the U.S. This includes an inhumane, cruel, and deadly detention system designed to strip away freedoms and punish immigrants.

Immigration detention in the U.S. is not new. It is one of the most prominent in the U.S. arsenal of criminalization and deterrence strategies. The incarceration of migrants began with the establishment of immigrant processing centers such as Angel Island in California and the iconic Ellis Island in New York. The U.S. immigration police processed people who had means and were not deemed to be lower class through Ellis Island. But poor and working class immigrants were detained there. Given this, Ellis Island is not a model to be used to frame migration through the U.S. southern border. The U.S.'s long history of relying on detaining "less desirable" migrants has merged with intentional and, increasingly, abusive strategies, practices, measures and laws that continually deepen "prevention through deterrence." U.S. immigration detention, enforcement and border control enhance a cruel system that causes tremendous pain and suffering to those who cannot afford to move in this world without being subjected to state violence. The U.S. government, by design, punishes people who migrate. And the U.S. punishes primarily poor and working class people and especially those who are racially profiled as Indigenous, Black and Brown.

## U.S. Migrant Detention: Cruel and Usual Punishment

The systems for detaining and punishing migrants in the U.S. are the largest on the planet. The U.S. uses an increasing array of forms of detention. There are supposedly temporary detention facilities, euphemistically referred to as "processing centers" by Customs and Border Protection (CBP) – known as the Border Patrol, the largest law enforcement agency in the U.S. There are family detention centers, recently rebranded as "residential" centers. And, yet more recently, we saw the creation of emergency intake sites, established at places like Fort Bliss Army Base in El Paso, Texas, to detain minors. Each new version of immigration detention becomes permanent



## The Prison Industrial Complex: How the U.S. Punishes Immigrants

over time, adding to the various ways that the U.S. government punishes migrants, be they children, families, or single adults.

The U.S. maintains more than 200 jails and detention centers used by Immigration and Customs Enforcement (ICE) to detain and imprison adult migrants and their families. During the Trump Administration, ICE detention reached its peak, with over 55,000 people detained on any one day prior to the onset of the COVID-19 pandemic. And while hopes were high that the Biden Administration would reduce immigrant detentions, they effectively have not done so. Currently there are fewer than 20,000 people detained in ICE prisons. However, this administration continues to keep the vast infrastructure of detention running, paying guaranteed minimums to keep facilities operational in the event of a large influx of migrants. The Otero County Processing Center in Chaparral, New Mexico continues to generate guaranteed revenue for Otero County as a result of their agreement with ICE – despite being half empty. The intent is clear: The U.S. government will continue to rely on the detention of migrants and maintains the prison and bed space to do so.

In ICE facilities migrants are held in cruel and punishing conditions designed to make them give up on their immigration cases. The U.S. denies and violates the due process rights of migrants without adequate access to legal representation or resources. U.S. immigration policing forces migrants to navigate their immigration cases under the worst possible conditions. Stripped of their freedom, U.S. immigration agencies deprive migrants of their basic needs. U.S. jails and detention centers do not provide enough food; and what is served is often of poor quality. Healthy individuals become unhealthy in detention. In ICE detention, migrants lack adequate medical and mental health care. And during a global pandemic, in ICE detention, individuals are forced to live in close quarters without adequate protections, a recipe for rapid and intense outbreaks.

*“...they are hiding it” “...it is like double punishment”*

– **phone call from migrant detained in Otero County Processing Center in Chaparral, New Mexico. He was placed in solitary confinement for 14 days after testing positive for COVID-19.**

In instances where migrants in jails and detention centers denounced and protested their conditions of incarceration through peaceful protests such as sit-ins, through desperate suicide attempts and prolonged hunger strikes, ICE subjects them to severe retaliation. From being pepper-sprayed, to being thrown into solitary confinement for a month, to being force-fed in an intentionally painful manner – when migrants stand up for their human rights in ICE detention, ICE subjects them to greater and more severe punishment.

Punishing retaliation is the norm in ICE detention. When ICE inflicts solitary confinement and force-feeding they violate the migrant’s human rights. The use of these forms of punishment is consistent with definitions of torture. And yet ICE uses solitary confinement frequently, while force-feeding migrants is frighteningly more common



than we realize. The U.S. government goes to great lengths to torture migrants in its custody rather than release them to the supportive networks and communities who will step up to welcome them.

### **A carceral archipelago of ICE detention centers, jails and prisons**

In addition, there is a network of shadow prisons used by the U.S. Marshals to hold people in pre-trial detention charged with federal immigration “crimes.” These shadow prisons also incarcerate people once they are sentenced. Migrants charged with illegal entry and illegal re-entry, as well as other federal immigration violations, languish for years in facilities such as the West Texas Detention Facility in Sierra Blanca, Texas. This facility, long plagued by poor conditions and with a history of abuse, used to hold people in ICE custody until 2019 when problems with the water supply got so bad that ICE transferred people in their custody to other prison facilities. But those in federal criminal custody, including many migrants, were left behind and continue to be imprisoned there.

U.S. oversight of the U.S. Marshals vast detention system is meager to almost non-existent. Punishment is more overt at these facilities as there is no guise of civil detention. People held in the system of jails, prisons and detention centers are fully criminalized. And migrants will have permanent criminal records that will make any immigration relief nearly impossible. Since the mid-1990s more laws have been enacted to criminalize migrants. And while the intention is to deter, U.S. laws are not deterring migration and make immigrants and migrants more vulnerable to rights abuses and exploitation. But they are very effective at ensuring there is no possible way for migrants to pursue humanitarian relief or a pathway to be documented in the U.S.

### **U.S. Government ATDs are Detention**

Recently the Biden Administration has seemingly shifted away from ICE detention toward supposed “Alternative to Detention” or ATDs. The use of ankle monitors and phone check-ins to track migrants released into the U.S. have been in use for years. And now ICE expanded ATDs to include invasive methods using issued phones with face recognition for daily check-ins as the the norm. In fact, the Biden administration has invested heavily in this particular type of ATD, touting it as being more humane. On the contrary, whether ICE uses an ankle monitor, commonly referred to as shackles, or phone applications that amount to 24/7 surveillance of migrants, ATDs are inhumane and simply an extension of detention.

Migrants are gathered inside the fence of a makeshift detention center in El Paso, Texas on Wed. March 27, 2019. Sergio Flores for The Washington Post via Getty Images





## The Prison Industrial Complex: How the U.S. Punishes Immigrants

Rather than experiencing the punishing conditions of detention, migrants subjected to ATD experience psychological harm due to a constant fear of breaking rules, and physical harm when ankle monitors injure them. It is a different kind of punishment. The consequences they face for non-functioning devices, which is a common problem, are grave. And yet they are expected to trust that nothing would happen when this over-priced equipment fails due to no fault of their own. The reality is that the U.S. immigration police binds them to the language of their release documents with some variation of:

“Your release is contingent upon your enrollment and successful participation in an Alternatives to Detention (ATD) program as designated by the U.S. Department of Homeland Security. As part of the ATD program, you will be subject to electronic monitoring and may be subject to a curfew. Failure to comply with the requirements of the ATD program will result in a redetermination of your release conditions or your arrest and detention.”

DHS compels individuals to “enroll” in ATD to avoid being jailed, and threatens them with arrest and detention if they do not comply with the terms of these programs. When these programs or the equipment do not work, it is impossible to comply. ATDs are simply punitive methods for controlling the bodies of migrants.

### **What the U.S. Should be Doing Instead: Facilitating Migration**

The U.S. government continues to invest money into fixing the problems of an inhumane system – detention. But every reform created to “improve” immigration detention has backfired, further masking the abusive conditions of immigration detention and further punishing migrants. U.S. detention of migrants is fundamentally an inhumane and punitive system that cannot be reformed because the deprivation of freedom is always punishment. In the case of U.S. immigration detention, the punishment is for simply migrating – moving across an international border to build a different life.

Abolishing immigration detention means radically re-envisioning how the U.S., and the world, treat humans in migration. Rather than criminalizing migration through prosecutions, or punishing migrants with abusive and deadly detention, the U.S. can facilitate it. We already do this for travelers. Systems already exist to receive international arrivals, but they remain restricted to certain classes of people – those with privilege who often have the least urgent reasons to move across borders. Open borders already exist for those with the means. The U.S. must extend those open borders to everyone, and shift from exclusion to inclusion in migration policies. The U.S. can start by removing punishment, ending the detention and incarceration of migrants, from the equation. ✚



# RECOMMENDATIONS

## **We urge U.S. policy-makers to:**

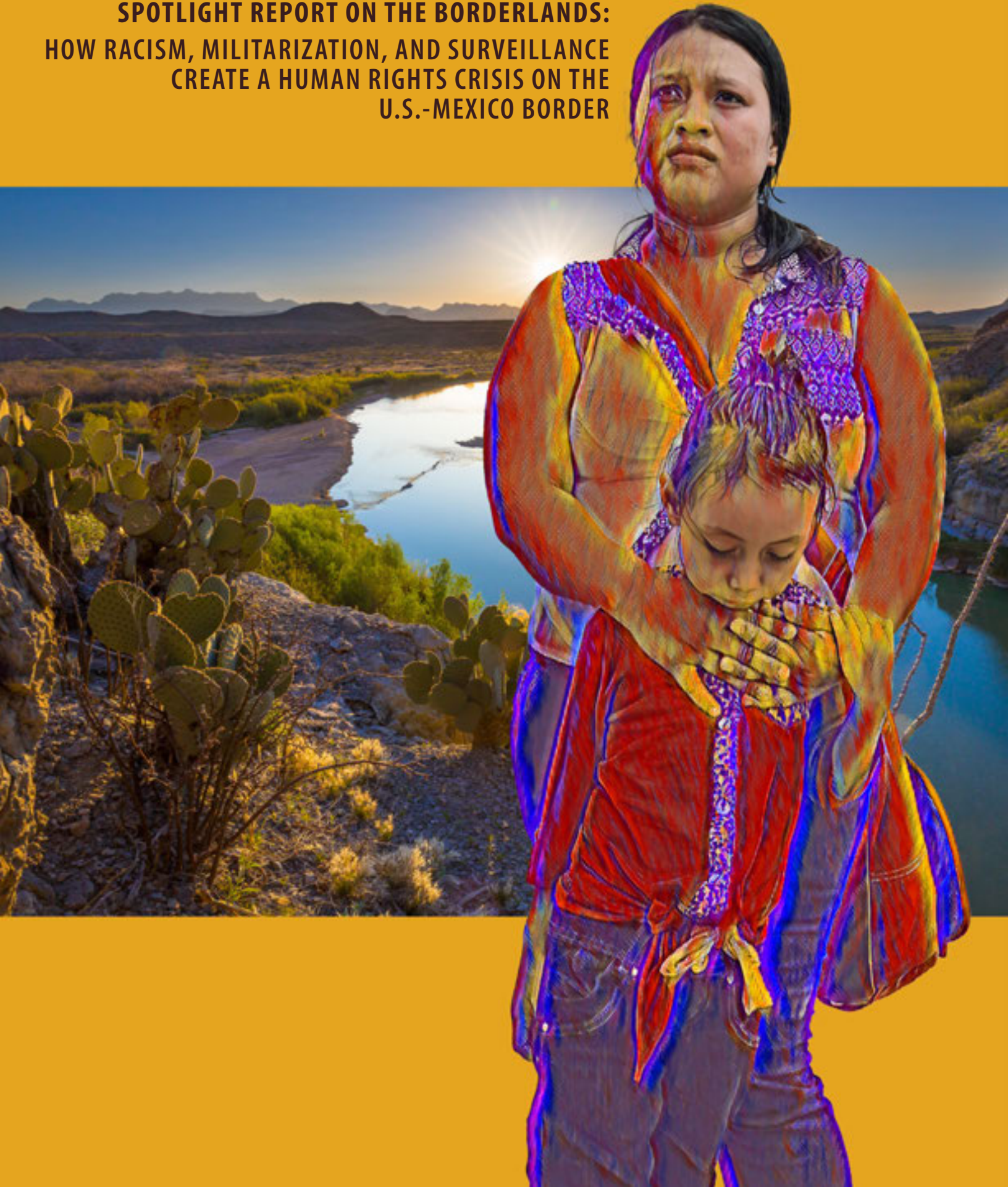
- Abolish U.S. immigration detention in all of its forms, including by local, county and state agencies, CBP, ICE and the U.S. Marshals.
- Terminate all contracts and collaboration with private, corporate-run immigrant prisons and detention centers to jail migrants, and shutter their own government-run immigration detention facilities,
- End the prosecution of migrants for “illegal entry” and “illegal re-entry” and other sections of the INA.
- End the use of “Alternatives to Detention” that surveil and punish migrants, including all use of smart technology, ankle monitors and phone tracking applications.
- Admit all migrants to the U.S. in a timely manner through processes more akin to those used for travelers, with no reliance on deprivation of freedom or violation of human and civil rights.



**NNIRR**

# CONCLUSIONS

## **SPOTLIGHT REPORT ON THE BORDERLANDS: HOW RACISM, MILITARIZATION, AND SURVEILLANCE CREATE A HUMAN RIGHTS CRISIS ON THE U.S.-MEXICO BORDER**





## CONCLUSIONS AND RECOMMENDATIONS

*Spotlight Report on the Borderlands* documents how the United States immigration deterrence model has fueled a human rights crisis of catastrophic proportions in the U.S.-Mexico borderlands. The report highlights how militarized border management has transformed the borderlands into territories of national security, where racial policing, surveillance, and mobility restrictions cause multiple forms of rights violations. This approach to border management further intensifies racial and gender discrimination; creates barriers to essential services, including access to healthcare, safety, decent work, and other essential services.

Deadly interception practices are central to U.S. immigration and border control and force migrants to cross through the borderlands' most dangerous and desolate regions. Instead of protecting, as required by U.S. and international law, the U.S. government is endangering the lives of migrant workers and their families, people seeking asylum, people of color, Indigenous Peoples, and communities residing on the U.S.-Mexico border. The immigration deterrence project has caused the deaths and disappearances of thousands of migrants since 1994—when “prevention through deterrence” was first implemented.

*Our report builds upon NNIRR's trajectory of uplifting the centrality of human rights in migration and border management. The Spotlight on the Borderlands calls for human rights-centered migration governance at the regional, national, and international levels. Our work uplifts and centers the experiences and voices of grassroots communities who endure the differentiated impacts of these policies based on race, ethnicity, national origin, skin color, and other factors which have become permissible and even codified under U.S. immigration law.*

NNIRR worked in partnership with grassroots leaders and organizations along the U.S.-Mexico border to bring an intersectional lens to the impacts of immigration deterrence. During the course of this process, the emergence of Covid-19 exacerbated an already hyper-militarized environment and escalated human rights abuses. Lockdowns, border closures, and restrictions on migration created a ripple effect on border residents. Migrant workers performing essential work under historic exploitative conditions were faced to even more precarious circumstances with little to no access to health, housing, or labor protections.

*Spotlight Report on the Borderlands* calls on U.S. policymakers, allies, and policy advocates to champion bold policy changes to end pervasive human rights abuses, racial discrimination, and the humanitarian crisis at the U.S.-Mexico border. We further urge the U.S. government to uphold its national and international commitments and legal obligations to human rights.

# We urge U.S. policymakers to:

- 1 **Assess all border laws, policies, and procedures to ensure the centrality of human rights.**
  - Ensure migrants and asylum seekers have immediate access to protections, shelter, and safety at the border, including access to services, asylum, and due process.
  - Guarantee access to healthcare for migrants, refugees, and other displaced persons. Extend access to essential medicines and provide treatment in a non-discriminatory manner.
  - End the militarization of immigration enforcement, which is fueling the crisis of migrant deaths and disappearances at the U.S.-Mexico border and the destruction of Indigenous People's lands and culture.
  - End push-backs at the border. This practice pushes migrants into vulnerable situations and subjects them to exploitation, discrimination, and violence in transit countries.
  
- 2 **Save lives and establish coordinated international efforts on the crisis of missing migrants by supporting and implementing Objective 8 of the Global Compact for Migration. We urge enhanced international cooperation to prevent migrant deaths, identify the dead, and locate the missing.**
  - Provide emergency humanitarian visas to the families of missing and deceased migrants to travel to the U.S. to find their missing loved ones or repatriate remains. Extend visas to witnesses of these disappearances to assist in official investigations and searches.
  - Designate respectful burial sites along the U.S.-Mexico border exclusively for the unidentified.
  - Develop standardized protocols to take D.N.A. from all unidentified remains; coordinate training of local officials, consular offices, and genetic laboratories in D.N.A. sample collection to compare genetic profiles of unidentified remains and relatives of missing individuals.
  - Create a humanitarian D.N.A. database that includes family reference samples from Mexico, Central America, and other countries; place firewalls regarding the use of this information for criminalization.
  - Establish a border-wide medical examiner system, including relevant information from unidentified human remains in the National Missing and Unidentified Persons System (NamUs) database and state databases.

### 3 Address the impacts of racism and xenophobia by creating regulatory frameworks that strengthen human rights, racial equality, and non-discrimination in immigration law and border enforcement.

- Investigate and address the persistent and profound anti-Black racism inherent in immigration enforcement and border control.
- Investigate the impacts of immigration policies on Indigenous Peoples and people of Indigenous descent forcibly displaced by unsustainable and exploitative development policies, representing the majority of those perishing at the border.
- Ensure access to refugee protections and visas to migrants to people of color in vulnerable situations. The current system disproportionately discriminates on the basis of race, color, ethnicity, or national origin.
- Incorporate meaningful opportunities for representatives of racially or ethnically marginalized groups, including refugees, migrants, and border communities, in the design, implementation, and monitoring of the human impact of these surveillance technologies.

### 4 Respect and honor Indigenous Sovereignty, autonomy, self-determination, and the right to mobility across the border; enforce the rights of Indigenous People who have lived in the borderlands for time immemorial.

- Recognize and respect the First Nations along the border, including their rights to their lands and culture.
- Recognize the United Nations Declaration on the Rights of Indigenous Peoples and the American Declaration on the Rights of Indigenous Peoples as the minimum standard to address the rights of Indigenous peoples who face conflict, violence, and forced displacement in their ancestral lands.
- Respect Indigenous Peoples' rights as outlined in the International Labor Convention 169 and the United Nations Declaration of the Rights of Indigenous Peoples, which recognize their distinct social, economic, cultural, and political rights.

### 5 End the criminalization and prosecution of people in situations of vulnerability, especially migrants and asylum-seekers.

- End en masse prosecutions, including Operation Streamline that facilitate that undermines due process rights and other constitutional protections.
- End the costly criminal prosecution of unlawful entry into the U.S. by repealing criminal penalties for unauthorized entry and reentry: Amend the Immigration and Nationality Act (I.N.A.) to repeal 8 U.S.C. § 1325 and 8 U.S.C. § 1326.





## **6 Create gender-responsive legislation to address the specific challenges and vulnerable situations that women, girls, and gender non-conforming people face at all migration stages, particularly at the border.**

- Affirm and protect the rights of LGBTQ+ migrants and refugees, understanding that many flee persecution as LGBTQ+ persons in their home countries.
- Eliminate barriers and discrimination that fuel gender-based violence against LGBTQ+ migrants and refugees, including policies that limit access to due process and critical services such as legal representation, healthcare, mental health, housing, and other services.
- Investigate and hold accountable all border control agents responsible for engaging in gender-based violence, sexual exploitation, sexual harassment, and other forms of abuse against women, girls, and gender non-conforming peoples in situations of vulnerability.

## **7 End all forms of immigrant incarceration and ensure rights-centered, community-based, non-custodial alternatives to detention.**

- Abolish U.S. immigration detention in all of its forms, including by local, county state and federal agencies, CBP, ICE and the U.S. Marshals. End all contracts and collaboration with private, corporate-run immigrant prisons and detention centers to jail migrants, and shutter their own government-run immigration detention facilities.
- Among other critical changes, amend the Immigration and Nationality Act to end the prosecution of migrants for “illegal entry” and change the definition of what constitutes an “aggravated felony” and remove the statutory penalty for people convicted for unauthorized reentry.

## **8 Create real mechanisms to hold immigration enforcement agents directly accountable for human rights violations against migrants, refugees, and border communities.**

- Hold Border Patrol agents accountable for human rights violations, including negligence in search and rescue, use of force, abuse of authority, and sexual and gender violence.
- Hold Border Patrol agents accountable for willfully engaging in obstruction of justice, including unlawful activities of the Critical Incident Teams.
- Immediately dismantle Border Patrol’s secret cover-up units, including the Critical Incident Teams, and reopen and prosecute cases of abuse and obstruction of justice.
- Enact civil liability legislation to hold U.S. Border Patrol accountable for shootings, including cross-border incidents; provide reparations to the families whose loved ones are harmed or killed by Border Patrol.

## 9 Create and expand rights-respecting regular pathways for orderly and regular migration.

- Increase access to visas and rights-based pathways for people in migration who are moving across borders in search of jobs, family reunification, or escaping political, social, economic, or climate devastation.
- Enact legislation to provide support, protection, and assistance to climate-displaced people who are forced to migrate across borders.

## 10 Demilitarize all U.S. immigration and border governance. Rescind all collaboration between the military and U.S. Customs and Border Protection, U.S. Border Patrol, and other agencies engaged in asylum and migration-related procedures.

- Prohibit U.S. Border Patrol from obtaining a national police force designation.
- Create a civilian oversight mechanism to assess and remedy the harmful effects of immigration deterrence; this includes the impacts of “smart” technologies on vulnerable groups.
- Fund an ombudsman’s office to address and remediate human and civil rights concerns to ensure meaningful engagement and consultation with civil society organizations and border communities.
- Ensure transparency and accountability for private and public sector use of digital border surveillance technologies, and enable independent analysis and oversight.
- Create social and economic infrastructure in border communities that result in dignified jobs, living wages, access to affordable housing, clean air, water, and soil.

## 11 Pass inclusive and rights-affirming legislation to regularize the status of undocumented migrants and refugees that includes direct pathways to naturalization.

- Officially recognize the rights of migrants, asylum-seekers, and those with temporary protected status, such as Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS) recipients, by passing broad, inclusive, and rights-affirming legislation to regularize the status of migrants residing in the U.S.
- Any regularization program must recognize full worker protections, including the flexibility to remain, leave and return, settle and be joined by family members, and meaningful participation in civic life.



# Acknowledgements

## Spotlight Report on the Borderlands

### How Racism, Militarization, and Surveillance Create a Human Rights Crisis on the U.S.-Mexico Border

The National Network for Immigrant and Refugee Rights is dedicating Spotlight on the Borderlands, its report on human rights at the U.S.-Mexico border, to María Jiménez (1950-2020), a NNIRR board member and founder. María was a precursor to the contemporary human rights and documentation movement at the U.S.-Mexico border. She was a visionary, and a dedicated community-based organizer who worked to build the movement for human rights in the U.S. Our work stands on the shoulders of María and many other forerunners who gave us a legacy of dignity and an example of tireless work for deep justice and human rights for communities without borders. **María Jiménez, Rest in Power!**

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##### Spotlight on the Borderlands designed

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## SOY DEL OTRO LADO

Soy del otro lado  
del lado bravo  
del lado tuyo  
del lado izquierdo  
donde tengo el nido  
para tus abrazos  
Soy del otro lado  
donde los muros  
son las sombras  
que persiguen  
a los policías  
que defienden  
a los tiranos del mercado  
Y el sol está  
a nuestro lado  
el lado de la tierra  
el lado de las lágrimas con sus sonrisas  
el lado de la luna llena y vacía  
el lado que es combustible para las estrellas  
el lado donde somos íntegros  
el lado que divide a las bestias  
adomándolas con nuestra luz  
el lado que nos abraza  
contra la rabia del dinero  
Soy de ese lado  
con sus seis direcciones y sus siete espacios  
donde los abrazos abren cielos y puertas  
donde los llantos espantan a las fronteras  
y las mujeres nos dan su espalda  
para cargarnos y sobrevivir  
Del lado donde nuestros desaparecidos  
reaparecen  
Soy del otro lado  
del lado tuyo...

## I AM FROM THE OTHER SIDE

by Arnaldo García

I am from the other side  
from the side of the Bravo  
from your side  
from the left side  
where I have a nest  
for your arms  
I am from the other side  
where the walls  
are shadows  
that chase down  
the police  
that defend  
the tyrants of the markets  
And the sun is  
on our side  
on the side of the earth  
on the side of sorrow with hope  
on the side of the of the full and empty moon  
on the side that is sustenance for the stars  
on the side where we are whole  
on the side that divides the beasts  
taming them with our light  
on the side that sustains us  
against the rage of money  
I am from that side  
with its six directions and seven spaces  
where our embraces open up skies and doors  
where our cries threaten borders  
and the women give us their backs  
to carry us and to survive  
From the side where our disappeared  
reappear  
I am from the other side  
from your side ...

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**NNIRR**

The **National Network for Immigrant and Refugee Rights** (NNIRR) is a center for human rights education working to defend and expand the rights of all immigrants and refugees, regardless of immigration status. NNIRR is grounded in the theories of human rights, popular education, and intersectional work. As such, we work with grassroots leaders and organizations to support grassroots organizing and advocacy through human rights education, progressive policy advocacy, and capacity building with communities across the country, particularly on the border.

**nnirr.org**



Memorial coffins on the US-Mexico barrier for those killed crossing the border fence in Tijuana, México, 2006.





**NNiRR**

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and Refugee Rights (NNiRR)**

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