

SPECIAL REPORT

# Deportations in the Dark

## Lack of Process and Information in the Removal of Mexican Migrants

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485

U.S. immigration officials have a long and checkered history of mistreating migrants at the Southern border. Allegations of abuse throughout the apprehension, detention, and deportation process are not new; migrants have voiced complaints for years, with litigation dating back several decades.

A more dismal future for migrants looms today, as the U.S. government promises to institute a new level of immigration enforcement. Within its first year, the Trump administration issued directives to intensify and scale up border enforcement, detention, and deportations, as well as expand expedited deportation procedures to unprecedented levels. Moreover, the administration's tacit—if not explicit—approval of harsh treatment toward migrants also risks emboldening immigration agents to act improperly. Indeed, evidence of mistreatment and abuse has already surfaced.

This report explains the stark findings of an empirical investigation into the behavioral patterns of U.S. immigration authorities during the apprehension, custody, and removal of Mexican migrants from the United States. The analysis is based on new survey data and testimonies collected by the Binational Defense and Advocacy Program (in Spanish, *Programa de Defensa e Incidencia Binacional*, or PDIB). Between August 2016 and April 2017, PDIB interviewed 600 migrants who were deported from the United States to Mexico at one of the following repatriation points: Nogales, Sonora; Nuevo Laredo, Tamaulipas; Ciudad Juárez, Chihuahua; and Reynosa, Tamaulipas. (See Appendix I for survey methodology).

Among other issues, the survey sought to examine whether U.S. immigration agents properly informed migrants of their rights, actively interfered with migrants' rights, coerced or intimidated migrants in their custody, or failed to provide removal documents to migrants at the time of repatriation. The results are unnerving. In each of the areas examined, U.S. officials failed to deliver basic rights under U.S. laws and policies:

- 43.5 percent of the respondents surveyed were not advised of their right to contact their consulate;
- More than half of the respondents surveyed (55.7 percent) were not asked if they feared returning home;
- Almost a quarter of the respondents (23.5 percent) reported being victims of some type of abuse or aggression by immigration authorities during their apprehension;
- Half of the respondents (50.7 percent) who signed repatriation documents reported that they were not allowed to read the documents before they signed them;
- 57.6 percent of the respondents did not receive their repatriation documents.

What emerges from the survey data and testimonies is an alarming portrait of the way Mexican migrants are treated while in U.S. custody and through the deportation process. Often, migrants do not receive copies of deportation documents and have little understanding of the processes they have undergone and the related legal ramifications. When U.S. officials prevent migrants from accessing critical information and processes, they further deprive individuals of their possible legal opportunities to present immigration claims.

While in U.S. custody and control, many migrants are deprived of legally required information, thwarted from contacting their consulates, compelled to sign documents they cannot read or understand, threatened with protracted detention, and blocked from applying for asylum and other legal claims—even in the face of serious danger. In short, these migrants are left in the dark during their deportations.

Given the escalation of immigration enforcement, the problems identified in this report are only likely to multiply. If not addressed, the behavioral patterns leading to abuses could spawn mass constitutional rights violations.

## **Failure to Inform Migrants of Their Rights**

### **Consular Notification**

When U.S. Customs and Border Protections (CBP) encounters migrants and takes them into government custody, the agency is obligated to inform foreign nationals of specific rights to which they are entitled. For example, the right to receive assistance from one's consulate abroad is a basic right afforded to all travelers across the globe. This right is reciprocal and not only exists for nationals from other countries in the United States, but also benefits U.S. travelers abroad. Yet many migrants have been unable to exercise this right.

The study revealed a widespread failure of immigration agents to inform migrants of their right to contact their country's consulate. Since migrants are often held in remote detention facilities pending their removal, they are likely to be separated from families, loved ones, and legal counsel. Their consulates may be the only sources of assistance with their cases. Some Mexican consulates have lawyers who can assist their nationals in determining whether they may be eligible to remain in the United States. Additionally, consulates may also assist migrants in contacting family members and retrieving belongings kept in government custody.

Analysis of the PDIB survey data, as well as testimonies from repatriated migrants, reveal that almost half of the migrants surveyed are not informed of their right to contact their consulate while detained. Specifically, 261 of the 600 individuals interviewed (43.5 percent) reported that border authorities had not informed them about their right to communicate with the Mexican consulate.

Many Mexican migrants reported a lack of information and instruction from border agents regarding their right to contact their consulate during the deportation process. The following testimonies detail this experience:

"I didn't call the consulate because I didn't know that I could. They told me of the right a few minutes before they deported me to Mexico. Well there was no point then..."

- Male deportee, age 52, Ciudad Juárez

"Border agents arrested me on October 6, 2016 at about 11:00 a.m. in Topawa, Arizona. I felt pressured to sign documents before leaving the United States. The agents did not explain the contents of the documents I signed and did not allow me to read them. Nor did they inform me that I had a right to communicate with the Mexican Consulate."

- Male deportee, age 20, Nogales

“One man had lived in the United States for 21 years, the last 10 with work authorization. When he went to renew it, he was told that under the new president’s policies he would be deported. Government agents did not allow him to leave the office and ICE agents took him to the Florence Detention Center. Once in detention, no one told him about the right to call the Mexican Consulate. They gave him forms to fill out, but did not give him an opportunity to sign them. Nor did he receive a copy of his documents upon repatriation.”

- PDIB Interview with male deportee, age 42, Nogales

## **Asylum Rights**

U.S. agents are legally obligated to advise migrants of their right to seek asylum in the United States. Yet the survey found that U.S. officials fail to do so in troubling ways. While many migrants apprehended at the border are placed in expedited removal—a fast-track deportation process that allows agents to carry out the removal of certain noncitizens who arrive in the United States without authorization—border officials are legally obligated to ask foreign nationals in this process whether they are afraid of being harmed if they are returned to their home country.

To begin the process of identifying potential asylum seekers, border agents must follow a specific procedure for providing and collecting information. Agents are required to read a script provided in Form I-867A and ask four questions listed in Form I-867B, which address reasons for leaving one’s home country and fear of return. The script and questions on Form I-867B are not discretionary. If a migrant expresses a fear of return, CBP must refer the person to an asylum officer who in turn conducts an interview to determine whether the individual has a credible fear of persecution or torture.

Despite the fact that border agents are mandated by law to ask questions about fear, the majority of Mexican nationals interviewed in this survey were not asked about fear of return. According to findings in the PDIB survey, 55.7 percent of Mexican nationals were not asked about their fears (334 out of 600 respondents who answered the question).

The failure of U.S. officials to inform on asylum rights is particularly troubling because Mexican nationals—the population surveyed—constitute a large proportion of the deported population. In recent years, the number of asylum seekers from Mexico has increased dramatically, rising 408 percent from 2005 to 2016. Asylum grant rates for Mexicans remain somewhat low at 10.4 percent, though there is reason to believe that high denial rates are tied to a lack of legal representation.

Agents neglecting to ask asylum seekers if they are afraid to return home is a chronic problem. The United States Commission of International Religious Freedom, as well as other scholars and groups, have documented the issue in multiple reports. The Commission’s most recent report (2016) found that numerous problems previously identified had not been adequately addressed. Despite repeated reports documenting these deficiencies, this survey indicates that CBP has not improved its practices.

## **Intentional Interference of Migrants Exercising Rights**

Migrants who clearly express fear or a desire to seek protection in the United States—even if agents fail to inform them of their right to do so—may experience even greater obstruction from U.S. officials. Disturbingly, the investigation found evidence of U.S. immigration agents actively dissuading, misleading, or otherwise preventing migrants from contacting their consulates or from pursuing asylum and other claims for protection. For example, the following female detainees described how agents prevented them from contacting the Mexican consulate:

“The agent who detained me informed me of my right to speak with the consulate, but the agent that processed me, did not permit it. He said it was a privilege. I had seen a poster that said I had a right to call them and when I told the agent he became very upset and asked, ‘Where? Where does it say you have a right? I don’t see anything.’ He then placed me in detention and shut the door.”

- Female deportee, age 41, Ciudad Juárez

“They said that because they were going to deport me rapidly, perhaps the consulate would not listen to me, that it was better for me not to call.”

- Female deportee, age 35, Ciudad Juárez

There are also numerous instances of border agents interfering with Mexican migrants who try to apply for asylum in the United States, as described in the following testimonials:

“After eight hours of being detained, they took me out to interview me. They asked me personal information, if I had family in the United States, what I did, about my life in the United States. The official explained a little about the contents of the document and later asked me if I would sign it. I told him no, that I wanted someone to explain the details of the document and, if possible, get a lawyer. The official got angry, crumpled the document, and threw it in the garbage.

On April 28th, a young man in the detention facility helped me fill out an asylum application. I asked for the head of the detention center and was told I would have a credible fear interview at 4:00 p.m. the next day. The next day, [the day I would have had my credible fear interview], the [agents] took me out at 3:00 a.m. and deported me. They had allowed me to file an application, but never gave me an opportunity to explain what happened. If you file one of these applications it’s because you are in danger.”

- Male deportee, age 39, Nuevo Laredo

One woman feared returning home because she had problems with the “80,” an organized crime group in Coyame, Chihuahua, but the border agents did not give her information about how to apply for asylum. Even after she told the agent of risks she faced at home, he told her she had to sign her paperwork—whether she wanted to or not. She recalled:

“I told [the agent] that I did not want to sign, that I wanted to fight my case, that I wanted a list of lawyers, but he said that I had to sign—there was no other way.”

- Female deportee, age 51, Ciudad Juárez

Another woman asked for asylum because she feared harm from a smuggler. Her experience was documented in the interview with PDIB:

“She originally journeyed to the United States to find work, and was pressured to give information on video about her smuggler after they were apprehended. Fearing retribution for her declaration, she asked for asylum but was told by border agents to return to Mexico and apply there. Before being deported, she asked again to apply for asylum and the agents denied her request. They said she should have applied earlier.”

- PDIB interview with a female deportee, age 20, Nogales

### **Coercive Tactics to Obtain Signed Documents**

Too many migrants report that they are forced to sign papers they cannot read, understand, or both. Coercion takes many forms, from false and misleading information about the process to requiring migrants to sign documents when they are unable to focus clearly on the paperwork or are incapacitated—such as when they are in physical pain. Often Spanish-speaking migrants are presented with forms in English, which they cannot comprehend well enough to make an informed decision about signing them.

The survey revealed that border agents coerced some migrants into signing deportation documents; some individuals cited intimidating tactics, such as border officials threatening migrants with long periods of imprisonment if they did not sign the forms they were given. The survey found that 27 percent of respondents (150 individuals) felt obligated or forced to sign documents before being repatriated.

According to the PDIB survey, 556 of 598 migrants interviewed during the investigation reported that they signed documents for their deportation from the United States. Of those, half (50.7 percent, or 282 of 556 individuals) said they were not allowed to read the documents before signing them. When migrants were asked if officials explained the contents of the documents to them, 64.9 percent of the respondents (361 migrants) responded yes. Of those who recalled the language of the forms, 58.1 percent (158 cases) said that the forms provided them were only in English, 29 percent reported that the forms were in Spanish, 11.8 percent said that they were in both languages, and 1.1 percent did not know.

The following case examples demonstrate some of the ways in which migrants experienced coercion and intimidation:

"Yes, they pressured me to sign. I wanted to fight my case, but they wouldn't let me. They said whether I signed or not, they'd send me back here, so I had no choice but to sign."

- Female deportee, age 32, Ciudad Juárez

"They just about put a gun to my head. They said I had gotten five years [penalty] and if I didn't sign I'd get another five."

- Female deportee, age 40, Ciudad Juárez

"They kept me in a small room in the Sheriff's station without a bathroom. After that, I was taken to a 'hielera' for two days and then they told me that I was going—that all I needed to do was sign some papers. I asked the official if they were deportation papers, but he didn't say anything. All he said was to sign. I tried to read them, but the official said that I wouldn't be able to read them and that he wanted me to sign because if I didn't, I would be there longer.

I didn't want to be there [any longer] because I had a toothache; they took out my tooth in the hielera and they told me they'd give me penicillin, but they didn't give me anything. When I told the agents [about the toothache], they told me to do some exercise, that that would ease the pain. That's how they sent me back, with pain."

- Male deportee, age 22, Nogales

One woman had lived in the U.S. for six years when she was picked up by immigration agents and compelled to sign her paperwork. "The agent told me to sign where my photo was and to put my fingerprint." When asked if she was threatened, she said:

"No, but he said it in an angry way suggesting I had no choice. I got scared because I had already asked if I could place a call to my lawyer and he said no. I had a private lawyer, but when I returned to El Paso, they didn't let me make calls and I couldn't communicate with her. She had told me that I could file something because of the [way] my husband was [treating] me."

- Female deportee, age 30, Ciudad Juárez

Another man was transferred to a facility in Santa Teresa, New Mexico, and felt pressured to sign documents he was not permitted to read. PDIB interviewers documented his experience:

"He had to sign three forms that were folded in half so that he could not see the contents, even though he asked that they be explained to him. The agent told him not to worry about the papers, that they were for his file. Later that day, he was removed from the United States without being asked to sign another form. He was not informed about the type of removal that was applied or the consequences of his deportation. He also was not allowed to use the telephone, even though he asked to speak with the Mexican Consulate."

- PDIB interview of male deportee, age 21, Ciudad Juárez

Lack of information and coercive tactics by U.S. officials compound the confusion migrants often experience as they undergo a complicated removal process. If they are subject to expedited removal, regulations require agents to inform migrants of the charges against them and provide them with the opportunity to review the sworn statement prepared in their name. Yet, as noted in some of the testimonies, immigration authorities often ignore these significant requirements. The Ninth Circuit Court of Appeals has found that these regulatory violations implicate the United States Constitution.

Immigration agents are executing removals in accelerated ways that have significant ramifications for migrants. Some migrants have lived in the United States for years; they have family and business ties as well as other equities tethering them to the United States. Legal remedies for remaining in the United States also may be available to some migrants. The woman discussed above, for example—who had resided in the country for six years and had a lawyer—may have been able to pursue protection due to domestic violence. Yet migrants are often unable to access these legal avenues once deported and may then experience irreparable harm. In some cases, the removal documents they sign bar them from re-entering the United States for extended periods of time, or make it impossible for them to return legally altogether.

### **Intimidation Obstructs Access to Legal Remedies**

Mistreatment by border agents often compel migrants to return home—even if they face dangers there and may be eligible for asylum or other forms of immigration relief in the United States. Indeed, testimonies and data from the PDIB survey indicate that from the moment many Mexican nationals are apprehended, they endure mistreatment, abuse, and intimidation.

Once inside detention facilities, migrants suffer a host of indignities, such as indifference to medical conditions that require immediate attention. According to the PDIB survey, nearly one out of every four individuals interviewed—or 141 of the 600 individuals who answered the question—reported they were victims of some type of abuse or aggression during their apprehension. The following testimonies include examples of such mistreatment:

“They called us fucking wetbacks.”

- Male deportee, age 40, Reynosa

One man recounted his experience in the desert when border agents spotted the group he was with:

"Many of the men began running. I lay down on the ground. Soon, they had handcuffed the others about five meters away. The border agents went to the jeep where they used the telephone and took out a leashed dog. I was still on the ground when they let go of the dog and ordered it to attack me. I know it was an order because one of the migrants spoke English. He later told me that he'd asked the agent why they ordered the dog to attack. While I was screaming and trying to defend myself, I saw they had a gun. They fired in the air and ordered me to lift my hands. I did so and they continued to allow the dog to destroy my leg. After about five minutes, they took the dog away. They took me to a station and that's when they cut my pants and saw the wound. Many agents came and started taking photos while laughing and laughing, saying this one's for Facebook." The man was taken to a doctor many hours after his apprehension.

- Male deportee, age 30, Nogales

"They didn't do anything to me, but I saw how the agents played a joke on a Salvadoran. They told him he could make a call, but they just told him that so that he could stain his ear with ink. They had placed ink on the upper part of the telephone and when the young man picked it up, all of it poured down and stained his ear. The worst of it was that he couldn't make the call. The agents laughed and laughed. I don't think that was right."

- Male deportee, age 29, Ciudad Juárez

One woman recalled for PDIB interviewers being detained in the early morning: "The Border Patrol car was very cold and inside it were two other women, one of them with a three-year-old girl. All of them were trembling because they had on wet clothes. The woman with the child asked the agent if they could turn down the air conditioning. The agent responded, 'Oh? You're cold?' He started laughing and raised the air conditioning."

- PDIB Interview with female deportee, age 51, Ciudad Juárez

Another woman recounted, "I had back pain because of a fall. I told the official and he told me that no one ordered me to cross, that that was the reason no one would help me, because no one holds you at gunpoint and orders you to cross. I told him that was true, but that a person has needs..."

"There were women there with babies trembling with cold. There were about 15 blankets and there were about 25 of us in one room, so we gave them to the children. All night, we slept sitting because there was no space, [and] the little there was, we gave to the children so they could stretch out..." After the woman complained of the bad conditions an official said to her, "This treatment isn't anything compared with what you're going to get under the new president."

- Female deportee, age 35, Ciudad Juárez

One young man had legal status under the Deferred Action for Childhood Arrivals (DACA) program. He had lived in the United States for 17 years and had difficulty speaking Spanish. He did not have money to renew his DACA when it expired and ended up in removal proceedings. When asked if agents permitted him to read the documents they gave him before signing, he said no. "All they said was sign here. All I wanted to do was get out of there."



- Male deportee, age 23, Ciudad Juárez

The testimonies above demonstrate the atmosphere of intimidation many migrants experience while in U.S. custody. As a result, they are driven to take any opportunity to be released, often agreeing to deportation and giving up their rights. For example, individuals in removal proceedings have the right to apply for legal relief available to them as well as to pursue appeals. Individuals who are not subject to summary removal proceedings –such as expedited removal or reinstatement of removal—are entitled to removal hearings before immigration courts.

At times, immigration agents have attempted to circumvent this right by misleading migrants into waiving their right to a removal hearing by signing for voluntary return, disregarding the requirement that waivers of such hearings must be “voluntary, knowing, and intelligent.” In *Lopez Venegas v. Johnson*, eleven Mexican nationals and three immigration advocacy organizations challenged the Border Patrol’s coercive “voluntary return” tactics.

### **Failure to Provide Removal Documents**

Migrants also often report that they do not receive copies of the repatriation documents they sign. These documents are part of the official record detailing when, where, and for what reason a person was deported—all of which impacts a person’s ability to apply for admission to the United States in the future.

According to data from the PDIB survey, deportation papers were withheld from migrants in 57.6 percent of the cases (320 out of 556 individuals interviewed who answered the question). By removing migrants without providing repatriation documents, border agents are also violating the agency’s own policies. Under CBP’s National Standards on Transport, Escort, Detention and Search Transport (TEDS), copies of any legal papers signed by the detainee must be provided to the detainee. Yet, migrants often return to Mexico empty-handed, as was the case for two men interviewed by PDIB:

“The official who gave me the form to sign didn’t explain the contents of the document, so I insisted on getting a copy of the document that I signed.” He said that they don’t give copies and that the document I signed wouldn’t affect me in the future.”

- Male deportee, age 33, Nuevo Laredo

PDIB reported that another man went to court to pay a fine and ICE apprehended him. Once in detention, immigration authorities did not allow him to read the repatriation documents and he did not want to sign them. Even though they did not threaten him, he felt he had no option but to sign them. Agents did not provide him with a copy of his documents. He had lived in the U.S. for five years.

- PDIB interview with male deportee, age 39, Ciudad Juárez

Without receipt of deportation documents, migrants remain unaware of the processes they have been through as well as the related legal consequences. Many do not understand the process and sometimes mistakenly believe they have been granted “voluntary departure,” which allows an individual to apply to return to the United States without triggering bars to admission that may otherwise apply.

A significant number of migrants have established ties in the United States, including U.S. citizen family members, businesses, and other equities. Without copies of their repatriation papers, it is extremely challenging for those who have been deported to determine whether and when they may be able to legally return to the United States in the future.

### **Conclusion**

Review of the PDIB data, both survey responses and testimonies, reveals that from apprehension to expulsion, Mexican migrants suffer a host of violations, abuses, and ill treatment while in the custody of U.S. immigration authorities. Without being fully advised of their rights or having the opportunity to freely exercise them, migrants may face unjust deportation and lose the ability to ever seek legal admission or apply for asylum in the future.

Despite the serious implications of illegal border enforcement actions and inactions, few—if any—avenues exist for migrants to complain, obtain compensation for violations suffered, or seek systemic reforms. As other reports have noted, the government's complaint system lacks accountability, transparency, and accessibility. While CBP has a website where individuals can lodge complaints, for example, all of the forms and information for the complaint process were in English until 2016.

Even if an individual manages to navigate the CBP website to file a complaint, it is unlikely that the complaint will result in any sanctions or reprimand against the officer who committed the violation. A recent report based on review of over 2,000 government documents indicates that while some reforms have been implemented, little progress has been made to improve accountability. Of the 1,255 complaints in which CBP reported an outcome, 95 percent of the cases resulted in “no action” against the officer or agent accused of misconduct.

As the administration scales up enforcement and deports even more people, the infringement on migrant rights is likely to amplify. In particular, the Trump administration's intention to expand expedited removal and other fast-track deportation processes presents a serious threat to migrants and their rights. Such policy changes place greater importance on the proper enforcement of immigration authorities' legal obligations, ensuring that mistreatment does not go unaddressed. When U.S. officials violate a migrant's rights, it can lead to a range of injustices—such as unfairly separating a U.S.-based family or putting an asylum seeker in a life-or-death situation. Heightened enforcement and increasingly hostile environments for migrants risk high levels of human tragedy that are likely to affect individuals and families on both sides of the border for years to come.

## **Appendix 1**

### **PDIB survey data**

The survey's study population was Mexican national migrants aged 18 and above who had been removed from the United States within ten calendar days prior to the date on which the survey was conducted.

Between August 2016 and April 2017, 680 individuals were interviewed. However, because of certain filters in the questionnaire design, nearly 80 individuals did not respond to most of the questions that constitute the focus of this report—namely, individuals who did not want to continue participating in the survey, those who did not speak Spanish, those who stated that the reason for crossing was related to crime, and those who were apprehended over a year before the interview—were excluded from the final count.

Interviewers were instructed to interview all individuals they encountered. When large numbers of individuals arrived at once, interviewers were instructed to select every third person from the individuals they encountered. In addition, interviewers were trained to ensure that women were represented among those interviewed.

The survey instrument contained questions on the following main themes:

1. General and biographical information
2. The individual's history in the United States
3. Apprehension
4. Personal belongings
5. Short-term detention
6. Long-term detention
7. Removal process
8. Repatriation (reception in Mexico)

Survey participants gave explicit consent for their information to be analyzed and shared in reports like this one.

### **Testimonies from detainees**

The testimonies analyzed in this report were part of declarations from migrants who were interviewed by PDIB staff upon repatriation to Mexico between August 2016 and May 2017. PDIB collected 189 observations and testimonies of migrants who reported on the following topics:

1. Denial of consular notification;
2. Forced signature on documents they did not understand;
3. Prevention of the asylum process;
4. Mistreatment;
5. No receipt of deportation documents.