

The Legacy of Racism within the U.S. Border Patrol

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Executive Summary

Since its creation in 1924, the U.S. Border Patrol has been steeped in institutional racism and has committed violent acts with near impunity. The racial animus of U.S. immigration policy in the late nineteenth and early twentieth century formed the foundation for the agency. Federal laws banning Asian immigration were followed by the national origins quota system, which prioritized northern and western Europeans over the rest of the world. While not included in the original quotas, Mexicans, who previously could travel freely across the U.S.-Mexico border, began to experience increasing restrictions in the 1920s.

Congress created the Border Patrol in 1924 to patrol the northern and southern borders between ports of entry. Many officers came from organizations with a history of racial violence and brutality, including the Ku Klux Klan and the Texas Rangers, carrying over the culture of a racist “brotherhood” into the new agency. In the Border Patrol’s early days, it focused on the unlawful entry of Asian and European immigrants. However, in the 1930s enforcement began to shift to Mexican citizens entering along the southern border.

A culture of racism within the Border Patrol has persisted throughout its history. Repeated reports have surfaced of agents using racial slurs, sexual comments, and other offensive language. Various lawsuits and studies have demonstrated the Border Patrol’s use of racial profiling in stops within the interior of the United States. Agents have maintained connections to the white supremacist movement and the paramilitary SWAT-style Border Patrol Tactical Unit has been deployed to crack down on protests of police brutality against Black people.

The Border Patrol began as a small agency, but its budget and deportations quickly skyrocketed. Over time, the agency targeted Mexican immigrants more aggressively, using a strategy of intensive enforcement directed at high-traffic areas. Beginning in the 1980s, the Border Patrol began a profound process of militarization and increased collaboration with other law enforcement agencies. The government began an official “prevention through deterrence” strategy in 1994, with the goal of making unlawful entry to the United States so dangerous as to discourage people from trying. The September 11, 2001 terrorist attacks led to the restructuring of immigration agencies, putting the Border Patrol under the newly created Department of Homeland Security, further increasing the growth and militarization of the agency.

The Border Patrol continues to perpetuate violence in the form of killing, sexual assault, excessive force, and verbal degradation—all with impunity. Despite these problems, the Border Patrol has lowered hiring standards to pursue rapid staff expansion. The Border Patrol often perpetrates violence through less direct means, including medical abuse and neglect, inhumane custody conditions, and family separation.

Since its founding nearly 100 years ago, the Border Patrol has become a sprawling and immensely powerful law enforcement agency with a deeply entrenched culture of racism and abuse. Nevertheless, the agency has received ample funding from Congress and enjoys an extraordinary degree of independence. Revamping the agency will involve fundamentally reshaping how Border Patrol agents view themselves in relation to the different communities and groups of people they encounter along the border.



Introduction

Since its creation roughly a century ago, the U.S. Border Patrol has been steeped in institutional racism and committed violent acts with near impunity. The agency was tasked from the very beginning with rounding up immigrants deemed “racially undesirable,” namely migrants from China, other Asian countries, and nations in southern and eastern Europe. As time went on, migrants from Mexico and elsewhere in Latin America, the Caribbean Basin, and eventually Africa became the primary targets. Throughout its history, the Border Patrol has stereotyped and dehumanized the targets of its enforcement actions, often committing violence against them while suffering little or no legal consequences for this violence. The agency reveals little to the public or Congress about how it operates and largely gives its officers autonomy in the field. Border Patrol agents are rarely disciplined for misconduct, even when it results in death. Despite this lack of transparency and accountability, the budget, workforce, and arsenal of the agency have grown exponentially over the decades. The time is long overdue for vigorous oversight and strict adherence to the rule of law to rein in the Border Patrol’s excesses. Just as importantly, the Biden administration and Congress must work to change the culture of the Border Patrol so that its agents no longer perceive of themselves as being in a purely adversarial relationship with the people they encounter along the border.

Foundation in Racial Animus

U.S. immigration policy has been based on racial expulsion from its very foundations. Beginning in the latter half of the nineteenth century and lasting into the 1940s, nativism directed against non-white immigrants swept across the nation. More precisely, nativist ire was directed against any immigrants who were not from northern and western Europe. The Chinese were the first to bear the brunt of the nativist backlash with the passage of the Chinese Exclusion Act in 1882¹. But eventually all Asians, as well as immigrants from southern and eastern Europe, were defined as racially inferior to U.S.-born Anglos to help justify subjecting them to stringent restrictions on their entry into the United States. As the decades wore on, similar prejudice was directed against Mexicans and other immigrants from Latin America and the Caribbean Basin who were deemed threatening to the cultural and economic interests of native-born people of western European descent. Eventually, once most Europeans began to be considered white, enforcement shifted to primarily target Mexican immigrants.

Chinese workers were aggressively recruited to come to the United States in the mid-1800s and were especially fundamental in the construction of the railroads. Once these projects were complete, racism and economic recession combined and reached a national tipping point in the 1880s.² The U.S. government justified the Chinese Exclusion Act by arguing that Chinese immigrants were taking jobs from native-born Americans and that they were inherently “savage, depraved, and lustful”—and therefore incapable of assimilation into U.S. society.³ Chinese exclusion remained the official policy of the U.S. government until 1943.⁴



The first concerted federal attempt at border control began in the wake of the Chinese Exclusion Act, as the Mounted Guard of Chinese Inspectors were placed along the northern and southern borders to ensure that ineligible Chinese immigrants did not enter the country without inspection.⁵ However, the outright exclusion of Chinese immigrants was just the beginning of a restrictionist immigration policy toward Asia.⁶ While other Asian laborers temporarily replaced the Chinese, they too were soon excluded through a diplomatic agreement with Japan in 1907 and the “Asiatic Barred Zone” from Afghanistan to the Pacific established in the Immigration Act of 1917.⁷

While only immigrants from Asia were subject to blanket exclusion from the United States, nativists also targeted southern and eastern Europeans for severe immigration restrictions.⁸ At the national level, this culminated in the Immigration Act of 1924, which created not only the Border Patrol, but also the discriminatory “national origins quota system.” Under this system, the number of immigrants from any nation who could be admitted each year was limited to 2% of the number of foreign-born individuals of that nationality who lived in the United States at the time of the 1890 census (not counting most Asians who were entirely barred from entry).⁹ The 1890 census was chosen because that was before millions of immigrants from Italy, Russia, Hungary, Greece, and other “undesirable” countries in southern and eastern Europe had started to arrive in the United States.¹⁰

As in the case of Chinese immigrants, European newcomers were commonly accused of being less intelligent and more prone to criminality, immorality, and disease than native-born Americans of northern and western European descent. Many Americans joined anti-immigrant associations and spoke out against the “degraded races”¹¹ of Europe. A 1920 U.S. House of Representatives report accompanying a bill that would temporarily suspend immigration described Italian immigrants as “small in stature and of a low order of intelligence,” Dutch immigrants as “filthy un-American and often dangerous in their habits,” [and] Polish immigrants as “physically deficient...exist[ing] in squalor and filth, mentally deficient, [and] socially undesirable.”¹² This rhetoric was disguised in the pseudo-science of eugenics, which purports to prove scientifically that whites are inherently superior to other races and “race betterment” can be achieved through selective breeding.¹³ While eugenic theories were widely discredited in scientific circles over the ensuing decades, the national origins quota system remained the bedrock of U.S. immigration policy until 1965.

The Demonization of Mexican Immigrants

In the early 1900s, Mexicans were subjected to the same racist stereotypes as all other “non-white” people. Yet Mexican immigrants were not subject to numerical restriction or outright exclusion from the United States because they met the labor needs of the agricultural sector in the southwest United States and the foreign policy interests of the federal government.¹⁴ As a result, at the beginning of the twentieth century, Mexicans traveled freely between the United States and Mexico, allowing for socially unified binational border communities. But that began to change with passage of the Immigration Act of 1917, which doubled the head tax and imposed a visa fee, literacy test, and health examination on all foreigners seeking entry into the United States. Mexican nationals were exempt from these requirements until 1919, after which many began to enter without inspection to avoid them.¹⁵ Even after these legal restrictions came into force,



federal officials often ignored them in the case of Mexican migrant workers, who were pivotal to the southwestern economy of the United States.¹⁶

The list of restrictions on Mexican immigration began to grow during the 1920s. The Immigration Act of 1924 did not restrict Mexican immigration directly but removed the statute of limitations on deportation as a penalty for unauthorized entry into the country without a visa or inspection.¹⁷ The 1924 Act also required that all immigrants pass through a port of entry, thereby creating—for the first time—the possibility that Mexicans could “illegally” enter the United States. This rapidly fueled a nativist discourse of Mexican immigrants as criminals, with the Commissioner General of Immigration stating in 1925 that their “first act upon reaching our shores was to break our laws by entering in a clandestine manner.”¹⁸ Another immigration official stated, “It is easier and sometimes appears even more necessary for [a wetback] to break other laws since he considers himself to be an outcast, even an outlaw.”¹⁹ Over time, the concept of the “illegal alien” melded with racist stereotypes about Mexicans in general.²⁰ Supporters of eugenics pushed for an end to Mexico’s quota exemption, arguing that Mexicans were “mongrels” and “inassimilable racial inferiors.”²¹

The Creation of the Border Patrol and Its Racist Origins

It was against this backdrop that Congress created the Border Patrol in 1924 for the purpose of patrolling the border between inspection stations.²² The agency was within the Department of Commerce and Labor, as part of the Bureau of Immigration, which was later combined with the Bureau of Naturalization to form the Immigration and Naturalization Service (INS).²³ Approximately one-quarter of new Border Patrol recruits were transferred from the Mounted Guard.²⁴ Many of the other new Border Patrol officers came from organizations with a history of racial violence and brutality, including the Ku Klux Klan and the Texas Rangers.²⁵

While the racial violence of the Ku Klux Klan is notorious, the Texas Rangers also had a penchant for violence. The Rangers had abused their power through their repeated restructurings in the nineteenth century, as informal security for white settlers against Indigenous nations in Mexican Texas, citizen soldiers defending the succeeded Republic of Texas against Mexico, and then as state police after the Civil War.²⁶ During the 1918 Porvenir massacre, a group of Rangers killed 15 Mexican men alleged to have participated in the raid of Brite Ranch.²⁷ A 1919 investigation by Texas legislator José Tomás Canales concluded that anywhere from 300 to 5,000 people—mostly of Mexican descent—had been killed by the Texas Rangers between 1910 and 1919.²⁸

The Rangers carried their “masculine and highly racialized...tradition of violence” into the culture of the Border Patrol.²⁹ This included a brutal practice known as “revenge by proxy,” in which agents killed anyone they believed to be of Mexican descent as revenge for crimes committed by perpetrators believed to be Mexican.³⁰ Nevertheless, Clifford Perkins—the first Border Patrol inspector in charge in El Paso, Texas—called the methods employed by the Rangers “rough but effective,” contributing to a culture of impunity



that exists within the agency to this day.³¹

In the Border Patrol's early days, the agency focused on the unlawful entry of Asian and European immigrants from the northern border, since most illegal migration took place through Canada—not Mexico. However, in the 1930s and 1940s enforcement began to shift to the growing number of Mexican citizens entering the United States without inspection along the southern border.

From the beginning, the Border Patrol “brotherhood” has consistently perpetuated an internal culture of racism. To maintain whiteness within its ranks, the Border Patrol pushed out many officers who had close ties to the surrounding Mexican communities. In 1927 in the El Paso district, only one patrol inspector out of 34 was Mexican American.³² Meanwhile, half of the Border Patrol officers in Laredo, Texas were of Mexican descent. The Border Patrol subsequently forced out all Mexican American officers in the Laredo district and replaced them with former Texas Rangers, thereby cutting ties with the local Mexican American elite.³³ While the agency later improved its hiring diversity, it has failed to meaningfully address the role of racism in its history.

Since the agency's inception, the Border Patrol has targeted people in border communities for enforcement on the basis of their physical appearance—what one officer described as “Mexican male; about 5’5” to 5’8”; dark brown hair; brown eyes; dark complexion”—or what immigration historian Kelly Lytle Hernández calls “Mexican Brown.”³⁴ Since 1925, Congress has allowed the Border Patrol to arrest without a warrant any unauthorized immigrant who “enters [the United States] in the presence or view... of the officer.”³⁵ The agency quickly defined this description of its jurisdiction as allowing arrests as far as 100 miles “back of the line,” a surprising authority given its primary role enforcing civil law—not criminal law.³⁶ That same year, Border Patrol officers from the Del Rio, Texas station stopped 32,516 people for the purpose of screening them for immigration status within the interior of the United States. Stops overwhelmingly targeted males of Mexican descent over the age of 15, of which there were approximately only 3,750 living in the area.³⁷

Racial profiling has long been used in the southwest United States despite the large percentage of U.S. citizens of Latino heritage who live in the region. Some families of Mexican descent have lived in the southwest United States since it was a part of Mexico. Under the 1848 Treaty of Guadalupe Hidalgo, land that now includes but is not limited to the southern border states became part of the United States, and residents were given the option to relocate or become U.S. citizens.³⁸ This history makes profiling of people assumed to be of Mexican descent as “foreigners” within this geographical area particularly egregious.

The Evolution of the Border Patrol

Early Growth

The Border Patrol began as a small agency with relatively few resources but rapidly developed into a paramilitary federal law enforcement agency. Deportations soon began to skyrocket, with the Department of Labor requesting \$10 million for its 1928 deportation budget—more than 10 times the amount used the



previous year.³⁹ A key development in the growth of the agency came in 1929, when Congress made unlawful entry a criminal misdemeanor instead of just a civil violation.⁴⁰ This significantly increased the risk of deportation for Mexicans who had been coming to the United States without authorization in order to avoid prohibitive requirements for lawful entry.⁴¹

In 1940, Congress moved the INS from the Department of Labor to the Department of Justice. In a two-year period, between 1939 and 1941, the Border Patrol's budget and staffing more than doubled from \$1,735,000 to \$3,883,400.⁴² In order to fill these positions, the agency lowered its hiring requirements—a staffing practice that afflicts the agency to this day.⁴³ Between 1940 and 1943, Border Patrol stops skyrocketed from 473,720 to 9,389,551 for the overall U.S.-Mexico border region.⁴⁴ The agency's attempts to deport unauthorized immigrants of Mexican descent expanded into surveillance of all people of Mexican descent, including U.S. citizens and authorized immigrants.⁴⁵ Only .009% of the stops in 1943 resulted in apprehensions.⁴⁶

Prioritization of Enforcement Against Mexicans

In another echo of things to come, the Border Patrol increased its enforcement activities in populated areas, thereby diverting border-crossers into more dangerous terrain. While this strategy allowed the Border Patrol to avoid detaining people in public view,⁴⁷ it also significantly increased the risk of injury and death for immigrants. It is estimated that, in the late 1940s, approximately one person died each day trying to cross the Rio Grande, including children.⁴⁸ This change was the beginning of a strategy that would continue throughout the history of the Border Patrol.

In 1943, the Border Patrol began assigning agents and resources disproportionately to the southern border, a strategy that continues to this day.⁴⁹ The following year, the agency deployed Special Mexican Deportation Parties throughout the country.⁵⁰ Around 43,000 Mexicans were deported from California alone in 1944.⁵¹ Ranchers, attempting to maintain their labor source, asked why Mexicans were being targeted. The *El Paso Times* wrote that it “resent[ed] the singling out of Mexican aliens” when “hundreds of thousands of Europeans” were also in the country without immigration status.⁵²

Alongside its new focus on Mexican immigrants, the Border Patrol remained involved in enforcement against Asian immigrants and Americans of Asian descent. During World War II, from 1942 to 1945, Border Patrol agents transported Japanese immigrants and Japanese Americans to internment camps.⁵³ Agents also served as guards in the eight camps run by the DOJ that housed Japanese immigrants considered to be potentially dangerous before being transferred to the more permanent U.S. Army camps.⁵⁴

After World War II, the Border Patrol began a strategy of intensive enforcement directed at unauthorized Mexican migrants in high-traffic areas, under the blatantly racist name “Operation Wetback.” In one raid in the Rio Grande Valley, 5,000 immigrants were apprehended in a single morning.⁵⁵

To prevent repeated border crossing attempts, the Border Patrol cooperated with Mexican officials to arrange bus, train, air, and boat “lifts” into the interior of Mexico immediately after deportation from the



United States. In 1956, Joseph Swing, commissioner of INS, testified to a Senate subcommittee that boatlifts served as a deterrent because “These interior Mexicans don’t like sea water. I understand they get a little seasick.”⁵⁶ An investigating committee of the U.S. House of Representatives called the boats a “penal hellship.”⁵⁷ In one case, those forced onto the boatlift rioted because of these conditions, with 36 jumping from the ship, five of whom drowned.⁵⁸ An editorial in the *El Paso Herald* in 1953 defended American farmers’ right to hire Mexican workers and stated that “[The buslift policy] is an inhuman, outrageous, unMexican, and unAmerican procedure. It is trading in human misery.”⁵⁹

The Establishment of the Modern Quota System

The Immigration Act of 1965,⁶⁰ which eliminated the nationality-based quota system, created a 20,000-person limit for every Eastern Hemisphere country and a single immigration limit of 120,000 for all countries in the Western Hemisphere.⁶¹ This amounted to the first numerical limit imposed on Mexican immigration and was the equivalent of a 40% reduction from the overall Western Hemisphere immigration rate at the time. This newly created limit ignored the powerful forces driving immigration from Mexico to the United States due to the geographical proximity and growing economic interdependence of the two countries.⁶² In 1976, the overall Western Hemisphere quota was eliminated, and each country was limited to the same 20,000-person quota used for Eastern Hemisphere countries, further limiting legal immigration from Mexico.⁶³

The Border Patrol continued to use racial profiling to determine who to stop for questioning. In 1975, the Supreme Court ruled in *United States v. Brignoni-Ponce* that while “apparent Mexican ancestry” could not be used as the sole reason a roving officer of the Border Patrol decided to make a stop, it was a relevant factor.⁶⁴ In later cases, the decision was expanded to pedestrian stops and “apparent Mexican ancestry” was expanded to “Hispanic appearance.”⁶⁵ The Court also recognized the Border Patrol’s ability to distinguish Mexican residents because they “commonly appear thin, their hands are rough and work-worn, their hair is cut in a characteristic fashion, and they are frequently dressed in full-cut and coarsely-woven material.”⁶⁶ As Pablo Chapablanco points out, this is a description of “a poor rural laborer,” regardless of ancestry. He further explains that while the description does not mention skin color, it is implied, as a person with “light skin color and blue eyes” who fit that description would be assumed to be “a white farmer” and would not be stopped.⁶⁷

The next year, the Supreme Court allowed the Border Patrol to continue directing vehicles to secondary inspection at interior checkpoints without articulable suspicion of a violation of immigration law, despite the fact that the agency was basing these decisions on race. In his dissent, Justice William Brennan warned that “Every American citizen of Mexican ancestry and every Mexican alien lawfully in this country must know after today’s decision that he travels the fixed checkpoint highways at risk.”⁶⁸

The Militarization of the Border Patrol

Beginning in the 1980s, the Border Patrol’s institutional racism became more heavily weaponized as the agency began a profound process of militarization. The impetus for this change was a shift in the agency’s



mission to include the interception of illegal drugs as well as the apprehension of undocumented immigrants. The agency was issued high-powered military rifles such as M-14s and M-16s, under the rationale that drug enforcement was a high-risk undertaking.⁶⁹ The border was equipped with electronic sensors, infrared radar, and closed-circuit television monitoring.⁷⁰ Between 1980 and 1988, the Border Patrol grew its fleet of helicopters from two to 22, most of which had been formerly used by the Army.⁷¹ In 1984, the paramilitary SWAT-style Border Patrol Tactical Unit (BORTAC) was created to handle emergency situations and riots.⁷² By 1990, each Border Patrol sector had an “Emergency Response Team” similar to BORTAC.⁷³

The Border Patrol also increased collaboration with other law enforcement agencies and the military through INS participation in INTERPOL, the El Paso Intelligence Center, and the Southwest Border Drug Task Force.⁷⁴ Border Patrol agents were cross-designated to enforce drug and contraband laws, significantly broadening the agency’s jurisdiction.⁷⁵ The Border Patrol even started to conduct joint operations with border state National Guard units and the U.S. Marines.⁷⁶ In 1989, a secretive Border Patrol-U.S. Marines joint operation was made public following a shootout with drug smugglers that started a fire that burned 300 acres of federal forest land.⁷⁷ And in 1990, the Border Patrol participated in the largest antidrug operation in Arizona’s history with other federal agencies and the U.S. Marines.⁷⁸

Lines between the Border Patrol and other law enforcement agencies were further blurred when the Immigration Act of 1990 granted INS officers general arrest authority under federal law.⁷⁹ New Mexico and Arizona granted Border Patrol state-level arrest authority as well, allowing for further racial discrimination in policing.⁸⁰ For example, 400 Border Patrol agents participated in the crackdown on the 1992 Los Angeles riots that occurred as a response to the brutal and racist police beating of Rodney King.⁸¹ The agency’s enforcement activities occurred in primarily Latino neighborhoods, leading to the deportation of 700 people, most of whom were never formally charged with riot-related offenses.⁸²

Prevention Through Deterrence

In 1993, the Border Patrol had tested a strategy of concentrating agents along high-traffic areas of the border to prevent unauthorized immigrants from entering without inspection, instead of apprehending them after they had entered the country. The initiative, Operation Hold the Line, took place in El Paso.⁸³ The Border Patrol replicated this strategy with Operation Gatekeeper in 1994 in San Diego.⁸⁴ Operation Rio Grande in Brownsville, Texas and Operation Safeguard in Nogales, Arizona followed.⁸⁵

Since fiscal year 1993—when the current strategy of concentrated border enforcement was first rolled out along the U.S.-Mexico border—the annual budget of the Border Patrol has increased more than ten-fold, from \$363 million to nearly \$4.9 billion as of FY 2020.⁸⁶ At the same time, the number of Border Patrol agents has skyrocketed from 4,139 in FY 2003 to 19,648 as of FY 2019.⁸⁷

Rising anti-immigrant sentiment in the early 1990s led the Clinton administration to implement changes to Border Patrol strategy, such as instructing the Border Patrol to shift from apprehending people who had already entered the country to preventing unauthorized crossings in the first place. Building on the decades-



old strategy of increased enforcement in populated areas, the government began an official “prevention through deterrence” strategy in 1994 with the goal of making unlawful entry to the United States so dangerous as to discourage people from trying.⁸⁸

These operations worked to funnel undocumented immigrants through ever-more-dangerous terrain, leading to a dramatic increase in fatalities among border crossers. The remains of almost 8,000 people who died trying to cross the U.S.-Mexico border were found between 1998 and 2019.⁸⁹ The total death toll is likely much higher.

Department of Homeland Security

The September 11, 2001 terrorist attacks led to significant changes in the way the United States manages immigration enforcement. In 2003, Congress dismantled the INS and created the Department of Homeland Security (DHS), with three separate component immigration agencies. The Border Patrol was combined with the United States Customs Service to form U.S. Customs and Border Protection (CBP), while interior enforcement was assigned to U.S. Immigration and Customs Enforcement and immigration benefits to U.S. Citizenship and Immigration Services.⁹⁰ At that time, the Border Patrol’s mission expanded from apprehending undocumented immigrants and disrupting drug smuggling to protecting the nation from terrorism.⁹¹

Since the creation of DHS, the budget of CBP has nearly tripled, rising from \$5.9 billion in FY 2003 to a high of \$17.1 billion in FY 2019.⁹² Much of this budget has been used for further border militarization, including border fencing, surveillance technology, and unmanned aerial vehicles.⁹³

Border militarization has been particularly harmful for Indigenous groups. For example, the Tohono O’odham Nation is bisected by a 62-mile section of the border. O’odham people face frequent harassment and interrogations, inability to travel to parts of their own territory, disrespect to their sacred landmarks and cemeteries, and militarized construction on their land without consent.⁹⁴

The environmental consequences of border enforcement also disproportionately affect people of color. The Tohono O’odham Tribal Council has allowed for vehicle barriers along the border, but a full wall would prevent wildlife migration, destroy culturally significant plants including the saguaro cactus, prevent water access, and cause flooding.⁹⁵

To begin the construction of such a wall, DHS contractors have erected steel bollards approximately 200 feet from Quitobaquito Springs, a sacred site for the Indigenous O’odham people. On two separate dates in September 2020, Border Patrol agents responded to O’odham women protesting wall construction in this location by yanking them apart from each other as they held hands, knocking them over, pointing stun guns at them, and arresting two of them.⁹⁶

A Persistent Culture of Racism

Sociologist Daniel Martínez has described Border Patrol culture as one of “cruelty ... that dehumanizes and demeans border crossers.”⁹⁷ Former Border Patrol agent Jenn Budd has said that “In the academy they mandate and they teach the agents to use racist terms for migrants so that they see these people as ‘others’ and that they are not like them,” and that “[a]s a trainee, if you aren’t willing to use these terms, if you aren’t willing to be harsh towards the migrants that you encounter, then you are judged by that, and that reflects on whether or not they’ll retain you.”⁹⁸

Language that dehumanizes migrants is common in internal Border Patrol culture. Some agents have reported that the internal culture results in “pseudospeciation,” in which a different cultural group is thought of as another species.⁹⁹ The Migrant Border Crossing Study surveyed over 1,000 recently deported Mexicans between 2010 and 2012.¹⁰⁰ Participants reported various “statements demonstrating prejudice against Latin Americans” made by CBP agents, most from the Border Patrol.¹⁰¹ The statements included “wetback,” “beaner,” “filthy Indian,” “dirty little Mexican woman,” “Mexican pieces of shit,” and “you just come over to pop your baby out.”¹⁰²

In 2012, a CBP use-of-force instructor reported to ICE’s Office of Professional Responsibility that one of his colleagues had told a room of supervisors, “you tell all the guys that if they feel threatened, they can beat that tonk like a piñata until candy comes out,” in contradiction with the agency’s use of force policy.¹⁰³ A Border Patrol agent defined the word “tonk” in federal court as “the sound made when a ‘wetback’ is hit over the head with a flashlight.”¹⁰⁴ Border Patrol agents have explained that agency policy requires paperwork to be completed after the use of weapons such as pepper spray, Tasers, or batons, so the use of a flashlight as a weapon is therefore favorable because it does not require paperwork. “Tonk water” is used to refer to water left in the desert for migrants by humanitarian volunteers, who themselves are called “tonk lovers.”¹⁰⁵

In 2014, a group of advocacy organizations filed a complaint with DHS oversight agencies on behalf of 116 unaccompanied immigrant children who had experienced abuse and mistreatment in CBP custody, including with the Border Patrol. In addition to physical and sexual abuse,¹⁰⁶ the accounts include “racially- and sexually-charged comments and death threats,” including referring to children as “dog” and “piece of crap” and telling them they “contaminate this country.”¹⁰⁷

In early 2018, federal investigators found racist text messages sent by Matthew Bowen, a Border Patrol agent charged with running down a migrant with a pickup truck. The texts described migrants in racist terms including “tonks,” “guats,” “beaners,” “savages,” and “subhuman shit.”¹⁰⁸ Bowen’s attorney argued that this language was “commonplace throughout the Border Patrol’s Tucson Sector” and “part of the agency’s culture.”

In 2019, *ProPublica* exposed a secret Facebook group for current and former Border Patrol agents, including Carla Provost, then the highest-ranking official within the agency. The three-year-old group was called “I’m



10-15,” referencing the Border Patrol code for “aliens in custody.” The agents joked about the deaths of migrants, throwing burritos at Latino members of Congress visiting a detention facility, and U.S. Congresswoman Alexandria Ocasio-Cortez engaging in sexual activity with a detained migrant. While four agents were ultimately fired for their involvement, CBP has done little to address the systemic nature of these issues.¹⁰⁹ Members of Congress have accused CBP of obstructing a congressional investigation of the Facebook group.¹¹⁰

The endemic racism within the Border Patrol is of particular concern given the agency’s extraordinary powers not only along the physical border, but in a much larger border zone. The government continues to define the Border Patrol’s jurisdiction as anywhere within 100 miles of the external boundaries of the United States, including the northern and southern borders and all coastlines. The Border Patrol operates roving patrols and temporary and permanent checkpoints inside this zone.¹¹¹ Two-thirds of the U.S. population and nine of its 10 largest cities are located within this area of surveillance.¹¹²

Much of the enforcement in the expansive “border zone” is unrelated to the agency’s original mission. A dataset of all CBP arrests in Rochester Station in New York between 2006 and 2009 showed that over 93% of those arrested were not on their initial journey into the country. Furthermore, 84% of those arrested had been categorized as having black or medium complexion, raising concerns of racial profiling.¹¹³

The American Civil Liberties Union has filed repeated complaints of racial profiling against Latino, Indigenous, and Black residents of the border region at internal Border Patrol checkpoints.¹¹⁴ A 2012 lawsuit argued that Border Patrol agents in the state of Washington stopped and questioned people based on the color of their skin and hair. The plaintiffs included Ernest Grimes, a Black U.S. citizen who a Border Patrol agent selected for a traffic stop in 2011. The agent approached the car, yelling, with his hand on his weapon and interrogated Grimes regarding his immigration status without ever providing a reason for the stop.¹¹⁵

In a survey conducted between 2006 and 2008, 22% of U.S. citizens and lawful permanent residents of Mexican descent in the Arizona border region reported having experienced or witnessed mistreatment by immigration officials. Participants reported incidents including immigration officials apprehending them without asking their immigration status, ordering them to lie down at gunpoint while they were out running for exercise, and shaking a ladder to throw them off while demanding identity documents. Participants also reported being detained and accused of smuggling while traveling with a minor relative of a lighter skin complexion.¹¹⁶ In 2014, residents of Arivaca, Arizona conducted observations of the Border Patrol checkpoint at the entrance to their community. Latino-occupied vehicles were more than 26 times more likely to be required to show identification while passing through the checkpoint.¹¹⁷

Over the past few decades, the Border Patrol’s long-standing focus on profiling Mexican citizens has grown to include people from Central America, and in smaller but growing numbers, the Caribbean and Africa.¹¹⁸ Many of the Central Americans are Indigenous, including Afro-Indigenous.¹¹⁹ In one week in 2019, agents from the Border Patrol’s Del Rio sector encountered more than 500 African migrants, more than double the total of 211 encountered across the entire Southwest border in 2018.¹²⁰ Most of these asylum seekers transit through Mexico on their way to the U.S. border. The focus on profiling brown and Black immigrants remains



unchanged, however. In 2014, DOJ guidance prohibited federal law enforcement agencies from discriminating based on race or ethnicity.¹²¹ However, the guidance excludes “screening and inspection for border and transportation security” and “U.S. Border Patrol interdiction activities in the vicinity of the border.”¹²²

It appears the DOJ guidance has not changed much within the agency. In September 2020, the Border Patrol released a fictionalized 3-minute video of a Spanish-speaking man escaping from Border Patrol agents, then stabbing another man on its YouTube channel. The video ends with an ominous warning: “Every apprehension matters. Do you know who got away?”¹²³ The video associates Latino immigrants with violent crime and implies that each person who the Border Patrol pursues is a societal danger.

Border Patrol agents have also maintained connections to the white supremacist movement. In recent years, Border Patrol agents have expressed gratitude toward or interest in collaborating with modern white supremacist vigilante groups such as the Three Percent United Patriots, American Patriot III%, and the United Constitutional Patriots.¹²⁴

The Border Patrol also played a prominent role in the Trump administration’s response to racial justice protests across the United States. The protests were part of the Black Lives Matter movement and were largely initiated in response to police brutality targeting Black people in the United States, including the killing of George Floyd. In July 2020, BORTAC deployed to the streets of Portland, Oregon in the midst of these protests. Many Americans criticized the move, arguing that the protests did not qualify as the “emergent and high-risk incidents requiring specialized skills and tactics” for which BORTAC is intended.¹²⁵ Furthermore, state and local officials had not requested the support of federal agents. In some cases, BORTAC agents forced protestors into unmarked vans without identifying themselves or providing the reason for the arrest.¹²⁶ Sixty-six BORTAC agents were deployed to George Floyd’s burial service in Pearland, Texas, and authorized to use deadly force.¹²⁷

A Cycle of Violence and Impunity

Violence and impunity within the Border Patrol have long been systemic problems. This abuse comes in many forms, from killing to sexual assault to use of excessive force to verbal degradation. It includes the denial of medical care and the forced separation of families. These issues go unaddressed because disciplinary mechanisms within the agency are weak and outside oversight of the agency is grossly inadequate.

Since 2010, over 100 people have been killed by the Border Patrol,¹²⁸ yet no Border Patrol agent has been held accountable in a meaningful way for these killings. In contrast, murders of on-duty Border Patrol agents are relatively rare, with five occurring between 2003 and 2019.¹²⁹ Six people in Mexico have been killed by agents firing across the border from the U.S. side, including a minor shot 10 times in the back. In 2015, the Supreme Court ruled against extending the right to seek monetary damages from a federal official under certain circumstances to the context of a cross-border shooting.¹³⁰



The DHS Office of the Inspector General (OIG) has documented 1,896 possible incidents of excessive force from FY 2007 to FY 2012, while acknowledging that they were unable to identify the total number of excessive force allegations due to data limitations.¹³¹ A study found that Border Patrol agents were more likely to incur misconduct and disciplinary infractions than all other federal law enforcement; for example, six times more likely than FBI agents.¹³² However, the study stated that it was “virtually impossible to assess the extent of corruption or misconduct in U.S. Customs and Border Protection...because most publicly available information is incomplete or inconsistent.”¹³³ In 2012, top agency officials estimated that as much as 20% of CBP’s agents and officers needed to be removed from the force.¹³⁴

Between January 2012 and October 2015, data analyzed by the American Immigration Council found that 2,178 complaints of misconduct were filed against the Border Patrol.¹³⁵ It is likely that in many cases of abuse, the victim did not file a complaint, because of lack of knowledge on how to do so, language barriers, or fear of retaliation. Out of the 1,255 cases in which an outcome was reported, 95.9% resulted in “no action” against the officer or agent accused of misconduct.¹³⁶

In 2019, an OIG investigation found that DHS did “not have sufficient policies and procedures to address employee misconduct.”¹³⁷ The OIG report stated that DHS did not have “procedures for reporting allegations of misconduct, clear and specific supervisor roles and expectations, or clearly defined key discipline terms.”¹³⁸

Referencing the green color of Border Patrol uniforms, former CBP head of internal affairs James Tomscheck has stated that “The Green Line of silence is higher and wider than it’s ever been before...[There is] a clear understanding on the part of the rank and file in the Border Patrol that if they should engage in whistleblower activities, or do anything to promote transparency, that they would be retaliated against in a way that would likely end their career.”¹³⁹ In describing the Border Patrol’s culture around misconduct, former agent Jenn Budd has said, “It’s condoned. When it happens and somebody complains...everybody groups together...they protect each other, and they push everything out and they stay quiet.”¹⁴⁰

Despite these internal challenges, Congress approved a Border Patrol growth plan that resulted in an increase from 12,349 agents to 20,119 agents between 2006 and 2009.¹⁴¹ To expand quickly, the Border Patrol lowered its hiring standards, which had already been the lowest among top federal law enforcement agencies, putting agents in the field before even completing their background checks. Then-CBP Commissioner W. Ralph Basham said, “I was very concerned when I was asked to grow the Border Patrol over that period of time. Normally you’d want a chance to make a careful plan. You want to choose very carefully people who are put into a tough environment like that we had on the southwest border.”¹⁴²

The Border Patrol’s hiring practices have raised concerns that the agency is not properly screening out applicants who are likely to engage in misconduct. A 2012 Government Accountability Office report pointed out flaws in the agency’s background checks and delays in the development of an Integrity Strategy.¹⁴³ The agency has admitted that they hired cartel members during the hiring surge.¹⁴⁴ Between 2005 and 2012, on average one CBP officer or agent was arrested per day. Arrests for job-related misconduct are extremely rare; 99% of arrests were for behavior unrelated to work, such as domestic violence or driving under the

influence.¹⁴⁵

In 2014, CBP separated employee corruption into “mission-compromising” and “non-mission-compromising,” so that they would no longer have to report to Congress on the latter, which includes sexual assault of detained individuals.¹⁴⁶

Perpetuation of Violence Through Systems

The Border Patrol often perpetrates violence through less direct means. These include the denial of necessary medical care and inhumane detention conditions. Another—which was made policy under the Trump administration—is the forcible separation of children from their families.

Medical Neglect and Abuse

Medical neglect and abuse have long been a part of the violence the Border Patrol inflicts on immigrants. In a 2019 survey, 67% of mothers reported that their child was not seen by a medical provider while in CBP custody.¹⁴⁷ Fifty-eight percent of mothers who reported asking for medical care for their child while in CBP custody said that they did not receive it.¹⁴⁸ One mother reported that her daughter, who had been instructed by her doctor to bathe daily due to the high risk of infection associated with her kidney condition, was not allowed to change her clothing or shower for five days, resulting in a urinary tract infection.¹⁴⁹

In December 2018, two children died in Border Patrol custody. Seven-year-old Jakelin died after contracting sepsis, which led to multiple organ failure due to lack of treatment over many hours. Eight-year-old Felipe died from untreated influenza.¹⁵⁰ Jakelin and Felipe were both from Indigenous Maya communities in Guatemala¹⁵¹ and spoke the Indigenous languages of Q’eqchi’ and Chuj, respectively.¹⁵² The children were traveling with their fathers, who signed waivers stating that their children did not need medical care, in English with verbal Spanish translation, which they likely did not understand.¹⁵³

Noncitizens who are Black and Indigenous often experience a language barrier when interacting with the Border Patrol. The Supreme Court has confirmed that proving meaningful access to government programs for people with limited English proficiency is a necessary part of avoiding discrimination based on national origin, which is prohibited by the Civil Rights Act of 1964.¹⁵⁴ Language access is also protected by the Department of Homeland Security’s Language Access Plan.¹⁵⁵ However, Border Patrol agents frequently address Indigenous Central Americans in Spanish, do not understand which Indigenous language they speak, or are unable to obtain an interpreter.¹⁵⁶

In 2019, an additional three children died in or shortly after release from the agency’s custody.¹⁵⁷ Two of the children died of the flu and hundreds of people became ill in flu outbreaks in 2018 and 2019 after CBP rejected a Centers for Disease Control and Prevention recommendation to administer flu vaccinations.¹⁵⁸

DHS has not cooperated with the House Committee on Homeland Security’s investigations of child deaths



in CBP custody, providing incomplete and overly redacted documents even after the committee issued a subpoena.¹⁵⁹ The DHS Inspector General originally refused to testify to the committee on the issue.¹⁶⁰ A July 2020 Government Accountability Office report found that “CBP ha[d] not consistently implemented enhanced medical care policies and procedures” that had been issued in response to child deaths.¹⁶¹ The report also found that even though CBP had been directed to report all deaths in custody, the agency only did so in 20 of 31 cases in fiscal years 2014 through 2019.¹⁶²

Inhumane Custody Conditions

The brutal conditions in which the Border Patrol detains noncitizens, including children, are another type of violence inflicted by the agency. Conditions at Border Patrol stations and processing centers are known to be so inhumane that they are commonly referred to as “hieleras” (iceboxes) and “perreras” (dog pounds) by noncitizens and advocates.

A 2015 class-action lawsuit argued that the Tucson Sector Border Patrol was holding people in detention conditions that violated the Constitution.¹⁶³ The lawsuit described how detained individuals are: stripped of outer layers of clothing and forced to suffer in brutally cold temperatures; deprived of beds, bedding, and sleep; denied adequate food, water, medicine and medical care, and basic sanitation and hygiene items such as soap, sufficient toilet paper, sanitary napkins, diapers, and showers; and held virtually incommunicado in these conditions for days.¹⁶⁴

In February 2020, a federal judge ruled that the facilities were “not designed to meet a [detained individual’s] basic human needs, including sleeping, warmth, food, water, personal hygiene, and medical care for extended periods of time.”¹⁶⁵

Family Separation

Another violent aspect of Border Patrol policy concerns the separation of minor children from their parents. On April 6, 2018, Attorney General Jeff Sessions announced the Trump administration’s “zero-tolerance policy.”¹⁶⁶ The policy aimed to prosecute all adults who entered the United States without inspection. When Border Patrol sent parents to U.S. Marshals Service custody for prosecution, the agency separated their minor children and transferred them to Office of Refugee Resettlement (ORR) custody, where they were treated as unaccompanied minors.

The administration claimed that these separations were not the primary intent of the policy, but rather a necessary consequence of enforcing the law.¹⁶⁷ However, this argument failed to account for the fact that prosecutorial discretion is a necessary and long-standing part of law enforcement, including for illegal entry.¹⁶⁸

Previously, the Border Patrol separated some children from their caregivers on the bases of doubting the safety of the child or the legitimacy of the parent-child relationship, frequently including cases in which a child was traveling with a close relative who was not their legal or biological parent. However, true cases of fraudulent families are extremely rare. Between April and October 2019, more than 310,000 family units were



encountered by CBP at the U.S.-Mexico border, only 238 of which—or 0.08%—were found to be fraudulent.¹⁶⁹

Mass separations did not take place until the Trump administration launched a pilot program in El Paso between July and November 2017.¹⁷⁰ Although ORR was not informed of the pilot, the agency noticed an increase in children sent to its custody, especially very young children.

In many cases, the Border Patrol forcibly removed children from their parents' arms or took them with no warning while the parent and children were temporarily separated to be processed by the Border Patrol, receive medical attention, or shower.¹⁷¹ Parents were given little or no information on why they were being separated from their children and whether or when they would see their children again. One asylum seeker committed suicide after being separated from his wife and 3-year-old son at the border.¹⁷²

The government ignored warnings from mental health experts about the severe psychological damage the separations would cause. In June, the American Psychological Association urged the Trump administration to end family separation because of “multiple harmful effects of parent-child separation on children’s emotional and psychological development and well-being.”¹⁷³ Physicians for Human Rights has found that the policy “constitutes cruel, inhuman, and degrading treatment,” and that at least in the 20 families that they evaluated, “rises to the level of torture.”¹⁷⁴

Although the Trump administration officially ended the zero-tolerance policy on June 20, 2018, and courts ordered the families reunited, family separation continues. DHS did not have the capability to track parents and children and reunify them—a limitation the agency was aware of at the time of the mass separations.¹⁷⁵ Out of approximately 5,500 separated children, many have still not been reunified, and the parents of 628 have not even been contacted.¹⁷⁶ Furthermore, children continue to be separated. The Texas Civil Rights Project has identified 939 children who were separated from an adult family member for zero-tolerance prosecutions since the official end of the program.¹⁷⁷ In 2020, parents detained at ICE’s three family detention centers were threatened with separation. At Karnes County Family Residential, nearly half of the families threatened were Black, originating from Haiti, Angola, the Democratic Republic of the Congo, Sierra Leone, and Afro-Latino communities in Latin America.¹⁷⁸

Conclusion

Since its founding nearly 100 years ago, the Border Patrol has become a sprawling and immensely powerful law enforcement agency with a deeply entrenched culture of racism and abuse. Despite the opaque nature of its operations and a well-documented history of human rights violations, the agency has received ample funding from Congress and enjoys an extraordinary degree of independence in how it conducts itself. Particularly since 9/11, the agency has been able to shield itself from outside scrutiny in the name of “national security.” But at its core, the Border Patrol’s mission is and always has been to keep “undesirable” foreigners out of the United States. To this end, all foreigners can be viewed as potential threats, especially if they have dark skin and don’t speak English as their first language.



It will take a great deal of effort for lawmakers and the Biden administration to assert control over an agency that has enjoyed unchecked power for so long. Revamping the agency will involve much more than simply changing the law; it will involve fundamentally reshaping how Border Patrol agents view themselves in relation to the different communities and groups of people they encounter along the border.

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