

Zero Protection

How U.S. Border Enforcement Harms Migrant Safety and Health

Executive Summary

January 2019





A 10-year-old girl with cerebral palsy, in an ambulance on her way to the hospital for emergency surgery, is arrested by Border Patrol agents. As soon as she is discharged, agents immediately detain her in a juvenile facility – ignoring medical advice.

A critically ill HIV-positive patient is arrested in the desert and brought to the hospital in shackles. But the doctor trying to administer lifesaving care can't properly examine him, because Border Patrol agents refuse to remove the shackles.

An ambulance carrying a patient in critical condition and on an EKG monitor is stopped at a checkpoint by Border Patrol as it races, sirens blazing and lights flashing, toward the hospital. Agents detain the ambulance for seven minutes – increasing the patient's risk of a heart attack.

"Border Patrol presence is so pervasive. They're profiling in the waiting rooms, they're roaming the halls, they're swarming all over," says a human rights attorney in Arizona.

Border Patrol agents are present in labor and delivery rooms. Border Patrol agents keep nursing mothers under surveillance. Border Patrol agents watch as patients with severe gastrointestinal problems use bedpans while shackled.

Cover: Central American migrants surrender to U.S. Border Patrol agents after jumping over the metal barrier near Tijuana, Mexico.

Photo: Guillermo Arias / AFP / Getty Images

This is life at the U.S.-Mexico border.

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Over the past three decades, U.S. administrations from both parties have introduced border enforcement strategies that have resulted in rising numbers of migrants being killed or injured at the U.S.-Mexico border. Public health research has documented widening racial and ethnic health disparities as a result of punitive and discriminatory immigration enforcement practices within the militarized border zone. This policy brief analyzes how U.S. border enforcement policy is harming the safety and health – and sometimes threatening the lives – of migrants and immigrant communities at the U.S.-Mexico border, including interfering in migrants' right to access medical care and lifesaving humanitarian aid.

Starting in the mid-1990s, U.S. Border Patrol initiated a policy of “prevention through deterrence,” militarizing border areas in order to funnel unauthorized migrants into more remote and impassable areas. According to both U.S. government experts¹ and academic analyses of medical examiners' records,² this policy is connected with a 100 percent increase in the annual number of migrant deaths on the border. The Consequence Delivery System was introduced in 2011, also aiming to deter migration, this time through mass criminalization and incarceration of border crossers. The “zero tolerance” policy of 2018 has continued to expand the scope and scale of punitive measures deployed against migrants as a deterrent to future migration, including increased family separation and criminal prosecution.

The fundamental premise underlying these policies of deterrence is that “weak” border control is a key pull factor for migration, and that meting out harsh consequences will deter future crossing. However, this strategy fails to recognize the humanitarian crises driving migration, particularly for children and families from Central America, and the strength of push factors such as violence and persecution in the country of origin.³ There is strong evidence that the border control measures seeking to deter unauthorized migration have not reduced migration, but have instead resulted in harmful unintended consequences for migrant safety, health, and well-being.⁴ In many instances, they also violate U.S. and international law with respect to the rights of migrants to seek asylum in safety.

Physicians for Human Rights (PHR) investigators travelled to the border area between June and October 2018 and spoke with immigration attorneys, medical professionals, human rights activists, immigration detention facility staff, detained immigrants, asylum seekers waiting at ports of entry, U.S. Customs and Border Protection (CBP) agents at ports of entry, and local border community members. Through these interviews, reports from a range of civil society organizations and open media sources, and a review of forensic, medical, and

public health research related to border enforcement, health, and human rights, PHR concludes that CBP officials regularly misinterpret or even disregard the limits of their legal authority while conducting border enforcement activities, constituting human rights violations and resulting in often serious harms to health. Specifically, CBP agents engage in:

Excessive use of force

CBP's *Use of Force Policy, Guidelines and Procedures Handbook* provides clear guidance about limiting the use of force, but migrants are still being killed in the course of enforcement activities, and data about deaths is not released publicly despite requests through the Freedom of Information Act. Border Patrol's regular apprehension methods also increase the risk of injury and death.

Compromised search and rescue

Despite a Department of Homeland Security (DHS) mandate to support and coordinate search and rescue activities, Border Patrol – CBP's law enforcement arm – has impeded and criminalized volunteer first responders who are providing lifesaving assistance to migrants in the field. Border Patrol search and rescue operations compromise delivery of medical care by prioritizing enforcement activities over rescue efforts.



*An immigrant rights activist stocks water stations along remote migrant trails near Falfurrias, Brooks County, Texas.
Photo: John Moore / AFP / Getty Images*

“Border Patrol presence is so pervasive – they’re profiling in the waiting rooms, they’re roaming the halls, they’re swarming all over.”

A human rights lawyer in Tucson, Arizona



Central American migrants – mostly Hondurans – run along the Tijuana River near the El Chaparral border crossing in Tijuana, Mexico after U.S. Border Patrol agents threw tear gas to disperse them on November 25, 2018. Photo: Guillermo Arias / AFP / Getty Images

Illegal body cavity searches

U.S. customs officers have violated CBP search guidelines and used medical personnel to conduct invasive body searches without warrants or patient consent. Those officers were not sanctioned and CBP has failed to keep records of body cavity searches as required in the guidelines.

Compromised access to asylum and safe repatriation at ports of entry

In accordance with U.S. asylum law, CBP should ensure safe conditions for people presenting at ports of entry and those repatriated after due process, especially those with medical conditions. Instead, Border Patrol has been documented blocking asylum seekers crossing legally at ports of entry and deporting individuals with medical conditions without having secured safe medical release.

“You think of a hospital as a place of healing ... and there are Border Patrol officers interfering with that place of healing.”

Claire Lamneck, medical student at the University of Arizona and border activist

Violations of the sensitive locations policy

Border Patrol agents do not consistently apply the CBP sensitive locations policy – which recognizes that hospitals should be safe places, free from immigration enforcement – and conduct enforcement actions in and around hospitals. This results in discriminatory denial of emergency health care, despite provisions of the Emergency Medical Treatment and Labor Act. This act requires that anyone coming to an emergency department be stabilized and treated. Border Patrol agents also use hospitals as de facto detention centers, where patients are denied access to legal counsel and contact with family members.

PHR calls on the CBP to improve staff compliance with existing border enforcement guidelines by clarifying guidelines and improving training, as well as investigating and sanctioning all violations committed by personnel. CBP must also work with civil society groups operating at the border in order to prevent fatalities and decrease health risks. The U.S. Congress should support rights-respecting border management by codifying existing CBP operational guidelines into law, and exercising oversight over the DHS and its agencies in regard to compliance with legal obligations.

Recommendations

To the U.S. Congress:

- Ensure non-discriminatory access to emergency medical services through adoption of legislation that codifies the sensitive locations policy into the Immigration and Nationality Act;
- Ensure that access to lifesaving medical and other humanitarian assistance is safeguarded by explicitly protecting from prosecution those who offer medical or humanitarian services to migrants;
- Separate search and rescue from law enforcement by clarifying the respective mandates of Border Patrol and local search and rescue efforts, to ensure that medical personnel and activities are protected from pressures to prioritize immigration policy enforcement over medical care, and to ensure that those who are rescued have access to medical care;
- Review U.S. Customs and Border Protection (CBP) authority in order to determine how constitutional protections can be preserved in and around medical facilities during implementation of border enforcement activities.

To the Department of Homeland Security and U.S. Customs and Border Protection:

- Rigorously evaluate border enforcement practices for negative impact on the right to life, including through ongoing consultations with independent medical professionals to evaluate health consequences of existing policies and practices and during development of new policies and guidelines;
- Publicly clarify CBP's existing sensitive locations policy, which prohibits enforcement actions that impede first responders from delivering lifesaving treatment;
- Train agents to effectively avoid any excessive use of force and to respect medical ethics and medical professional opinions regarding the medical needs of patients impacted by enforcement actions at all times, including updating the CBP *Use of Force Policy, Guidelines and Procedures Handbook* and improving training for agents;
- Fully investigate allegations of harm perpetrated by agents, sanction agents who violate guidelines, and make the results of those investigations public;
- Abide by the standards in the CBP *National Standards on Transport, Escort, Detention, and Search* handbook which stipulate that strip searches, X-ray searches, body cavity searches, and monitored bowel movements must be recorded in an electronic system of record, including the reason for the search and who authorized the search;⁵
- Enforce the standards in the CBP *National Standards on Transport, Escort, Detention, and Search* handbook that body cavity searches are conducted "only under the most exceptional circumstances,"⁶ by medical practitioners in a medical facility, with either the individual's consent or a search warrant from a judge;
- Foster closer collaboration with community groups, including those providing medical assistance to migrants.

When U.S. Agents Sabotage Saving Lives

The terrain along the U.S.-Mexico border is harsh; much of it is desert, where wildly variable temperatures reach as high as 118 degrees Fahrenheit. For migrants trying to cross the border, it is physically impossible to carry enough water to survive the journey, and natural clean water sources are scarce. Every year, between 250 and 500 people die trying to cross the border due to dehydration and exposure to the elements.

Community groups identify points in the terrain where border crossers are likely to perish without food and water – in many cases, places where bodies have been found in the past – and they leave water jugs and canned foods to try to save lives.

Much of that lifesaving sustenance is destroyed by U.S. Border Patrol agents.

From 2012 to 2015, humanitarians recorded 3,586 vandalized gallon jugs of water – slashed with knives and emptied – and captured Border Patrol agents on video destroying water jugs and pouring water onto the ground. Border Patrol agents have threatened humanitarians with physical violence and arrest, subjected them to aggressive interrogation, forced volunteers' vehicles off the road, and brandished firearms against them. In a 2017 tactical raid, Border Patrol used 30 agents, 15 trucks, and a helicopter to arrest four migrants receiving medical care from volunteers during a record heat wave.

Over the past 10 years, more than a dozen humanitarians have been prosecuted for trying to save lives. In January 2019, four humanitarians were convicted of violating federal littering and access permit laws because they left water and food in the southern Arizona desert for migrants who could have died without it. They face up to six months in prison. Five others await trial; one, who provided food and a bed to migrants, faces a possible 20-year sentence.

Providing lifesaving humanitarian aid, including medical treatment, is not a crime. Protecting human life should not be punished with prison.

From 2012 to 2015, humanitarians recorded 3,586 vandalized gallon jugs of water – slashed with knives and emptied – and captured Border Patrol agents on video destroying water jugs and pouring water onto the ground.

Recommendations

continued

What Can Health Professionals Do?

- Academic institutions can support research on the overall impact of immigration enforcement actions on health, and on the health care system, individual health, and population health in border regions;
- U.S. health professional associations can publish policy and position statements as well as medical ethics standards related to immigration enforcement activities and their impact on migrant populations and the health care workforce;
- Hospitals can develop internal policies and protocols to protect patient rights regardless of immigration status and to uphold U.S. law, including by protecting confidential patient information and patients' right to informed consent, and by consistently opposing arbitrary interference in patient care;
- Hospitals and other health facilities can educate staff on immigration issues, applicable laws, and the Immigration and Customs Enforcement (ICE) and CBP sensitive locations policy as well as prepare staff for interaction with border and immigration enforcement;
- Health professional organizations and institutional ethics boards should enact policies protecting doctors from reprisal in cases where they act in accordance with medical ethics and U.S. law to protect patient privacy and bodily integrity and to prioritize patient health during border enforcement activities;
- Health professionals can inform themselves about patients' rights in order to actively ensure protection of human rights in their clinical setting, including by reporting suspected violations by ICE or CBP officials to ICE Enforcement and Removal Operations, and speaking out through op-eds and social media to advocate for border and immigration management practices that respect health and human rights.

Endnotes

1. U.S. Government Accountability Office, "Illegal Immigration: Border-Crossing Deaths Have Doubled Since 1995; Border Patrol's Efforts to Prevent Deaths Have Not Been Fully Evaluated," August 2006, accessed January 8, 2019, <https://www.gao.gov/products/GAO-06-770>.
2. Raquel Rubio-Goldsmith, M. Melissa McCormick, Daniel Martinez, and Inez Magdalena Duarte, "The 'Funnel Effect' and Recovered Bodies of Unauthorized Migrants Processed by the Pima County Office of the Medical Examiner, 1990-2005," *Binational Migration Institute*, October 2006, accessed January 8, 2019, https://www.researchgate.net/publication/280134474_The_Funnel_Effect_Recovered_Bodies_of_Unauthorized_Migrants_Processed_by_the_Pima_County_of_the_Medical_Examiner_1990-2005.
3. Karen Musalo and Eunice Lee, "Seeking a Rational Approach to a Regional Refugee Crisis: Lessons from the Summer 2014 Surge of Central American Women and Children at the US-Mexico Border," *JMHS* 5, no. 1 (2017): 137-179, 137.
4. For example, see Michael Corradini, Jonathan Allen Kringen, Laura Simich, Karen Berberich, and Meredith Emigh, "Operation Streamline: No Evidence that Criminal Prosecution Deters Migration," *Vera Institute of Justice*, June 2018, accessed January 24, 2019, https://storage.googleapis.com/vera-web-assets/downloads/Publications/operation-streamline/legacy_downloads/operation_streamline-report.pdf; Jeremy Slack, Daniel E. Martinez, Scott Whiteford, and Emily Peiffer, "In Harm's Way: Family Separation, Immigration Enforcement Programs and Security on the US-Mexico Border," *JMHS* 3, no. 2 (2015): 109-128, 109.
5. U.S. Customs and Border Protection, "National Standards on Transport, Escort, Detention, and Search," October 2015, 9, accessed January 8, 2019, <https://www.cbp.gov/sites/default/files/assets/documents/2017-Sep/CBP%20TEDS%20Policy%20Oct2015.pdf>.
6. Ibid.



The U.S. policy of "metering" applications for asylum in the United States has forced thousands of Central American migrants to wait in difficult conditions – often for weeks and months – in Tijuana, Mexico for their turn to apply for asylum.



Physicians for
Human Rights

For more than 30 years, Physicians for Human Rights (PHR) has used science and the uniquely credible voices of medical professionals to document and call attention to severe human rights violations around the world. PHR, which shared in the 1997 Nobel Peace Prize, uses its investigations and expertise to advocate for persecuted health workers and facilities under attack, prevent torture, document mass atrocities, and hold those who violate human rights accountable.



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