

## **Pushback Practices at the US/Mexico Border**

Observations from the Kino Border Initiative (KBI)<sup>1</sup> in Collaboration with the Red Jesuita con Migrantes – Centro América y Norte América

The accounts from migrants we accompany illustrate that U.S. government officials systematically disregard legal obligations to provide due process to migrants and to protect from *refoulement* those fleeing persecution and torture. Moreover, the Mexican government exacerbates their situation by failing to provide adequate information, security, and documentation.

### **U.S. Policy and Practice**

U.S. government data reflect over 400,000 migrant pushbacks on the southern U.S. border from February through December 2020 pursuant to two government policies.<sup>2</sup> The following examples of 17 pushbacks involving at least 38 individuals illustrate violations of law and policy and entail abuse of power, including physical cruelty, verbal harassment, and misrepresentation. This misconduct goes beyond policy, reflecting structural deficiencies in the agencies charged with implementing humanitarian protections guaranteed by domestic law and U.S. treaty obligations.

#### **“Migrant Protection Protocols”**

The U.S. government introduced the Migrant Protection Protocols (MPP) in December 2018, returning migrants arriving at the southern border back to Mexico to await U.S. immigration court proceedings. MPP guidelines exempted, among others, unaccompanied children, Mexican citizens, and individuals for whom an asylum officer determined would more likely than not face

---

<sup>1</sup> Kino Border Initiative (KBI) is a binational nongovernmental organization that provides humanitarian aid to migrants in Nogales, Sonora, Mexico and advocates for just and humane immigration policies. The KBI's advocacy efforts are rooted in Catholic teaching and are a response to the human realities that we encounter at the border. We partner with other organizations to advocate in the U.S. and Mexico for policies that advance humane, just and workable migration in the region. We are grateful to KBI staff attorney, Rafael Cheé, and the Border Justice Institute at Gonzaga University School of Law for legal assistance with this submission.

<sup>2</sup> Government data indicate that 403,384 migrants were expelled from February through December 2020 under the Title 42 order and Migrant Protection Protocols. Title 42 data from March through September 2020 are reported at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics-fy2020>. Title 42 data from October through December 2020 are reported at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>. Migrant Protection Protocol data from February through September are reported at <https://www.cbp.gov/newsroom/stats/migrant-protection-protocols-fy-2020>. Migrant Protection Protocol data from October through December are reported at <https://www.cbp.gov/newsroom/stats/migrant-protection-protocols>.

persecution or torture in Mexico.<sup>3</sup> The Biden administration suspended new MPP enrollments but has not addressed the status of migrants already expelled to Mexico.

The instances below illustrate that the agency operationalizing MPP – U.S. Customs and Border Patrol (CBP) – failed to adhere to the program’s minimal procedural protections. Not only have migrants been expelled to face danger in Mexico, but many also experienced additional abuses of power, reflecting systemic rights violations documented elsewhere.<sup>4</sup>

- CBP detained for six days a family fleeing political persecution in Venezuela, then placed two children into U.S. protective custody while expelling their legal guardian grandparents and other family to Mexico. The children’s mother had been kidnapped in Mexico and remained disappeared when the rest of the family requested asylum. Despite the family’s persecution in Mexico, their fear was found not credible.
- CBP turned back a brother and sister from Nicaragua who had been kidnapped in Mexico, pursued by their kidnappers after they escaped, then presented themselves at a port of entry requesting a credible fear assessment. The agent threatened them with detention, then claimed to have requested the help of a supervisor who never appeared.
- CBP ignored the expressions of fear of a Cuban couple that had been detained for months in Mexico by kidnappers the Mexican government suggested they contact. Even though the kidnappers continued to send threats after the couple escaped, two CBP agents verbally harassed the couple, misinformed them that they had no options but to return, and expelled them to Mexico.
- CBP demeaned a Cuban woman before returning her to Mexico without a fear assessment. She had been kidnapped in Nicaragua, trafficked through Mexico, and assaulted in Mexico. A CBP agent responded to her statement of fear by telling her to “be quiet, Cubans are always asking for things.”
- CBP refused to consider a Cuban couple’s evidence of a crime against them in Mexico and instead expelled them without assessing their fear.

## Expulsions

The U.S. Department of Health and Human Services (HHS) issued an order in March 2020 authorizing the summary expulsion of certain noncitizens arriving at the border because of “the existence of a communicable disease in a foreign country.”<sup>5</sup> The order is based on HHS’s

---

<sup>3</sup> U.S. Customs and Border Protection, *MPP Guiding Principles*, January 28, 2019. These guidelines instruct that an arriving noncitizen who “affirmatively states that he or she has a fear of persecution or torture in Mexico, or a fear of return to Mexico, whether before or after they are processed for MPP or other disposition, that [noncitizen] will be referred to a USCIS asylum officer for screening . . . .”

<sup>4</sup> U.S. Commission on International Religious Freedom, *Barriers to Protection: The Treatment of Asylum Seekers in Expedited Removal* (2016); Allen Keller, et al., *Evaluation of Credible Fear Referral in Expedited Removal at Ports of Entry in the United States* (2005); Kino Border Initiative, *Border Patrol Increasingly Removing Mexican Asylum Seekers Without a Hearing*, October 4, 2019. <https://www.kinoborderinitiative.org/border-patrol-increasingly-removing-mexican-asylum-seekers-without-a-hearing/>.

<sup>5</sup> U.S. Dept. of Health and Human Services Centers for Disease Control and Prevention, *Order Under Sections 362 & 365 of the Public Health Service Act (42 U.S.C. §§ 265, 268): Order Suspending Introduction of Certain Persons from*

disputed interpretation of law and applies to individuals lacking valid documentation. It includes an exception based on considerations of “law enforcement, officer and public safety, humanitarian and public health interests.”<sup>6</sup> Courts are currently considering the legality of “Title 42 expulsions,” particularly as applied to unaccompanied minors.<sup>7</sup>

The expulsions nominally justified as public health measures involve abuses of power including physical harm and misrepresentations:<sup>8</sup>

- A Guatemalan woman, 5 months pregnant, turned herself into CBP and requested a credible fear interview, to which agents agreed to refer her. When she overheard their plans to remove her, she pleaded with them to not be expelled. Agents who knew of her pregnancy forcefully pulled on her, putting her into a vehicle, then expelled her.
- Three unaccompanied minors were three times refused protection. Because the children had been abused by relatives in Mexico, they sought asylum and reunification with their mother in the U.S. After their first removal, a U.S. attorney accompanied the children to a port of entry on two different occasions, advocating first for asylum, then for humanitarian parole. CBP erroneously represented that “no one without papers is allowed to enter at the southern border.”
- CBP apprehended a woman and her two children fleeing violence in El Salvador and Mexico. She succeeded in convincing an agent to record her declaration of fear of return, but the agent wrongly claimed she had no recourse, then expelled her to Mexico.
- CBP apprehended a young man who fled attackers in Honduras, then failed to inquire about his fear of return to Mexico or Honduras, expelling him to Mexico.
- CBP detained a man who had crossed into Texas after fleeing death threats in Honduras. They did not inquire about his past persecution but rather expelled him to Mexico.
- CBP summarily expelled a mother and her asthmatic daughter after yelling at them and representing that there “are no options in the U.S. for you” and to “tell others that you would never triumph in the U.S.” They were not provided a fear evaluation despite recounting persecution in El Salvador.

---

*Countries Where a Communicable Disease Exists* (March 20, 2020), [https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons\\_Final\\_3-20-20\\_3-p.pdf](https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf), and *Amendment and Extension of Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists* (19 May 2020) at [https://www.cdc.gov/quarantine/pdf/CDC-265-Order-Renewal\\_5-19-20-p.pdf](https://www.cdc.gov/quarantine/pdf/CDC-265-Order-Renewal_5-19-20-p.pdf).

<sup>6</sup> *Id.*

<sup>7</sup> P.J.E.S. v. Wolf, No. 20-5357 (D.C. Cir., Jan. 29, 2021) (lifting the lower court’s November 18th temporary suspension and ordering an expedited hearing); P.J.E.S. v. Wolf, Civ. Action No. 20-2245(EGS), 2020 WL 6770508 (D.D.C., Nov. 18, 2020) (blocking Title 42 expulsions as applied to unaccompanied minors, determining that the law on which DHHS based its order likely does not authorize expulsions).

<sup>8</sup> A regulation set to begin January 22, 2021 and temporarily suspended by the Biden administration, allows public health concerns to bar asylum claims based on danger to the security of the United States. The regulation bars entire classes of asylum seekers who have been exposed to a disease that has triggered a declaration of a public health emergency under U.S. law or who have passed through countries in which that disease is prevalent. Should the regulation become effective, certain noncitizens at the border could be summarily expelled regardless of their fear of persecution, based on a determination that a health emergency represents a danger to the security of the United States.

- CBP expelled three unaccompanied siblings from Guatemala whose limited Spanish language abilities exposed them to risk.
- CBP denied a Honduran woman's request for medical attention during her contractions, then expelled her to Mexico with her children without a credible fear assessment. The woman was eight months pregnant after being raped in Mexico and told agents of her fear of return. Other agents misrepresented legal process by asserting "you can't come to the U.S. without permission."
- CBP removed a Nicaraguan man from a hospital before his medical release, wearing only his hospital gown with no shoes, and without assessing the fear he expressed in returning to Mexico. He had to walk into Mexico barefoot and weak after 9 days of hospital treatment for dehydration-related kidney damage.
- CBP apprehended a Guatemalan man who had been kidnapped and threatened for one month in Mexico. He articulated his fear of returning to Mexico to multiple CBP agents. He communicated this fear to the agent who transported him at 2 a.m. for expulsion and requested to be deported to Guatemala instead. The agent beat him with his baton, injuring him before forcing his return.
- When two Honduran transgender women tried to cross the border, CBP agents threatened them with guns, ridiculed them, and told them to return to Mexico, where they had already suffered assaults.
- After CBP apprehended a mother and her four children, agents refused to view the evidence of persecution in Guatemala she offered, and instead interrogated her about smugglers, threatening her for noncompliance. Before expelling her, agents told her to tell others "Don't come here. You aren't going to get anything."

## **Expedited Removal**

Separate expedited removal laws established prior to the two policies detailed above allow CBP officers to swiftly remove a person at or near the border unless that individual expresses fear of persecution.<sup>9</sup> These laws require a CBP agent to ask an individual about fear of return and to refer the individual to the asylum process if the person expresses that fear.

---

<sup>9</sup> Federal law governing expedited removals allows a CBP officer to order the removal of foreign nationals who arrive at the border or are apprehended near the border without proper admission documents. (8 U.S.C. § 1225). But if an individual "indicates an intention to apply for asylum or expresses a fear of persecution or torture, or a fear of return to his or her country, the inspecting officer shall not proceed further with removal" until the individual is referred to an asylum officer. (8 C.F.R. § 235.3(b)(4)). Federal regulations require an agent to ask about a person's fear and record the individual's responses prior to subjecting that person to expedited removal. (8 C.F.R. 235.3(b)(2)(i)). "In every case in which the expedited removal provisions will be applied and before removing an alien from the United States pursuant to this section, the examining immigration officer shall create a record of the facts of the case and statements made by the alien. This shall be accomplished by means of a sworn statement using Form I-867AB, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act. The examining immigration officer shall read (or have read) to the alien all information contained on Form I-867A. Following questioning and recording of the alien's statement regarding identity, alienage, and inadmissibility, the examining immigration officer shall record the alien's response to the questions contained on Form I-867B, and

During most of 2020, immigration authorities expelled migrants under the two polices addressed above rather than through expedited removals. But KBI has gathered accounts since 2015 of asylum seekers wrongfully removed through this expedited process, reflecting a pattern of violations that even government authorities acknowledge.<sup>10</sup> Below are examples of wrongful removals from September 2019.<sup>11</sup> These illustrate abusive behavior and unlawful national origin discrimination.

- A Mexican mother travelling with her 3-year-old child expressed fear of return and a CBP agent replied “what do you want me to do about it?” and asserted that she was “invading my country.” The agent failed to refer her for a fear assessment.
- After apprehension, CBP separated a mother from her three children to question her. When she expressed fear and intent to seek asylum, the agent stated that “illegals and Mexicans don’t have a right to anything” and threatened her with jail and separation from her children if she returned.
- CBP removed a woman and her son after she refused to sign removal paperwork because she wanted to express why she fled Mexico. While in CBP custody, she overheard agents crudely disparaging Mexicans and stating that “asylum is not for Mexicans.”

### **Retos enfrentados al ser retornados a México**

#### **Falta de información**

Por el horario y el lugar en que son expulsadas las personas, no acceden a los servicios o apoyos que pueden tener por ser repatriados, y/o por ser extranjeros expulsados a México bajo el Título 42.

El programa de repatriación del Instituto Nacional de Migración (INM) señala tres etapas en el proceso de repatriación: salida, recepción y reintegración; en la etapa de recepción señala que a través de los módulos de repatriación ofrecerán los siguientes servicios básicos de forma gratuita: Alimentación, salud, expedición de constancia de repatriación, información y orientación sobre apoyos gubernamentales, traslados locales a albergues temporales, información a opciones laborales, descuento para autobuses. Además se señalan a lo largo de los 5 estados colindantes con EUA solo 11 módulos de repatriación, y en el estado de Sonora indica a San Luis Rio Colorado colindante con Yuma, y a Nogales colindante con Nogales, así; no señala el

---

have the alien read (or have read to him or her) the statement, and the alien shall sign and initial each page of the statement and each correction.” *Id.*

<sup>10</sup> Office of Inspector General, Department of Homeland Security, *CBP Has Taken Steps to Limit Processing of Undocumented Aliens at Ports of Entry* (October 27, 2020) pgs. 15-16 (finding that “CBP did not process asylum seekers who had entered the United States, returning them to Mexico instead”).

<sup>11</sup> Kino Border Initiative, *Border Patrol Increasingly Removing Mexican Asylum Seekers Without a Hearing*, October 4, 2019 (<https://www.kinoborderinitiative.org/border-patrol-increasingly-removing-mexican-asylum-seekers-without-a-hearing/>).

área de Sásabe Sonora por donde se han expulsado personas de EUA sin acceder a ningún servicio básico de los antes mencionados.<sup>12</sup>

Hombre de Isabal, Guatemala.

53 años de edad

“Me expulsaron de Estados Unidos por Nogales a las 12 de media noche, pero como soy de Guatemala no me entregaron ninguna hoja y le pedí a los oficiales de migración de México que me dejaran dormir allí donde nos atendieron pero no me dejaron, así que tuve que dormir en la calle y como me quede bien dormido, alguien robó mi mochila...”

### **Seguridad, protección y resguardo**

Existen casos en que las personas expulsadas son víctimas de delitos graves por parte de autoridades, grupos de la delincuencia organizada y particulares:

Hombre de Guadalajara, México

40 años de edad

“Después de ser deportado, me golpearon para robar mis pertenencias...”

Hombre de Puebla, México.

27 años de edad

“He intentado cruzar tres veces, las dos primeras veces me deportaron por Sásabe...” “En Sásabe la mafia nos cobró piso para estar allí, mi familia tuvo que pagar”... “También los soldados de México entran a las casas de los migrantes y los golpean para quitarles su dinero, yo y otros migrantes tuvimos que escondernos en el monte cuando llegaron soldados...”

### **Hoja de repatriación y descuentos para transporte**

Desde el momento en que EUA comenzó a aplicar el título 42, no solo inició expulsiones de personas mexicanas que entraban irregularmente a ese país, sino que comenzó a expulsar extranjeros, estos últimos sin que el INM tenga un proceso de documentación de tales personas y por lo tanto carecen de un documento que acredite que han pasado por tal situación de expulsión y al carecer de la documentación debida, como la hoja de repatriación que se expide a los mexicanos, los extranjeros no pueden acceder a un medio de identificación y a los descuentos en transporte a los que se accede al mostrar la hoja de repatriación; además en algunos casos el INM genera para los extranjeros un documento denominado: Oficio de salida, el cual no les da acceso a ningún apoyo, sino que impone el término de 20 días a dichos extranjeros para que abandonen México por sus propios medios.

Hombre de Yoro, Honduras.

35 años de edad.

---

<sup>12</sup> <https://www.gob.mx/inm/acciones-y-programas/programa-de-repatriacion-12469>

“Me sacaron por Tecate en menos de una hora, no me entregaron con migración de México; tuve que ir hasta Guaymas para que me dieran un oficio de salida...”

Hombre de San Marcos, Guatemala

17 años de edad

“Quiero regresar a mi país y no traigo nada de dinero”

### **Falta de capacidad del Gobierno Mexicano**

Los retos anteriores que enfrentan las personas expulsadas, retornadas y repatriadas desde EUA, se agravan aún más debido a que una de las políticas de la administración actual de México es el compromiso con la austeridad republicana para lo cual el gobierno de México expidió (Diario Oficial de la Federación, Secretaría de la Función Pública) la Ley Federal de Austeridad Republicana<sup>13</sup>, con la que se pretende “reducir en al menos 50% el gasto asignado a servicios generales y de operación como fue instruido por el Presidente de la República, Andrés Manuel López Obrador...”<sup>14</sup>

Por lo anterior y debido a que el INM depende de la Secretaría de Gobernación, se vio afectado en su presupuesto de operación y en el caso de Sonora, ha tenido que operar con menos personal y en el caso específico de los módulos de repatriación (Nogales, San Luis Rio Colorado), ha tenido que operar en horario limitado (hasta las 20:00 horas); así cuando las autoridades migratorias norteamericanas transgreden los acuerdos locales de repatriación<sup>15</sup> y expulsan, retornan y repatrian a personas migrantes después de las 20:00 horas, estas personas no son recibidas (etapa dos de las acciones del INM) por las autoridades migratorias mexicanas y pierden toda información y apoyo y son expuestas al crimen y conductas delictivas.

### **Traslado a la frontera sur mexicana**

Se documentó que el gobierno mexicano trasladó, desde diversas ciudades en el norte del país hasta la frontera con Guatemala, a solicitantes de asilo en Estados Unidos bajo en MPP. A estas personas no se les brindó información sobre las implicaciones de abandonar sus trámites en Estados Unidos, las posibles repercusiones en caso de querer solicitar documentos en un futuro, incluso ni siquiera, se les informó hacia dónde se les trasladaba.

En ocasiones, el argumento utilizado por las autoridades mexicanas, fue que en las ciudades fronterizas del norte del México, no se les podía garantizar seguridad pues el control del narcotráfico superaba las capacidades del gobierno mexicano en la zona. Otras personas accedieron al traslado después de que en México no se les dieran documentos temporales, lo que les impedía acceder a empleos para poder solventar su sobrevivencia diaria, mucho menos a

---

<sup>13</sup> [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5579141&fecha=19/11/2019](https://www.dof.gob.mx/nota_detalle.php?codigo=5579141&fecha=19/11/2019)

<sup>14</sup> <https://www.gob.mx/sfp/prensa/llama-funcion-publica-a-aplicar-austeridad-republicana-con-reduccion-en-el-gasto-operativo-de-la-apf#:~:text=Como%20establece%20la%20Ley%20Federal,los%20que%20M%C3%A9xico%20sea%20parte.>

<sup>15</sup> <https://www.dhs.gov/publication/updated-us-mexico-local-repatriation-arrangements>

vivienda y salud. Las personas fueron abandonadas en las ciudades fronterizas del sur del país, incluso en la línea fronteriza con Guatemala, sin documentos para poder permanecer en México o transitar de regreso a la frontera norte para poder dar seguimiento a sus trámites en Estados Unidos. Lo anterior, también sucedió con personas expulsadas por el Título 42 no mexicanas en el contexto de la emergencia sanitaria por COVID-19.

De esta manera, el gobierno mexicano violó activamente el principio de no devolución, regresándoles, aún con un proceso de asilo en curso, al lugar del que las personas estaban huyendo.