

n a t i o n a l
IMMIGRATION
p r o j e c t
of the National Lawyers Guild

COMPLAINTS IGNORED, ABUSES EXCUSED

Why the Department of Homeland Security's Internal
Accountability Mechanisms Must Be Reformed

APRIL 2021

AURORA ICE
PROCESSING CENTER
3130

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Cover photo by Jim Lambert.

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INTRODUCTION

In the weeks before the Biden-Harris administration took office, the National Immigration Project put out a call to its membership and allied organizations for Department of Homeland Security (DHS) complaints of harm caused by ICE and CBP personnel, including those that went unaddressed or were improperly closed by the last administration. **We were inundated with responses representing hundreds of cases of abusive conduct.**

This report presents summaries intended to capture common themes in those complaints and to elevate the trends of abuse and suffering they reveal. In asking DHS to carefully review and act upon each individual claim, as well as reform its complaints system as a whole, our goal is to honor the experiences of every immigrant who has been mistreated.



Hackensack, New Jersey, USA - November 27th, 2020: ICE Protest outside Bergen County Jail - "Free Them All" Banner on the fence outside Bergen County Jail. (Photo by Julian Leshay)

SYSTEMATIC MISCONDUCT AT ICE AND CBP

The first category of individual responses we received relates to systemic problems within ICE and CBP that resulted in the denial of medical care, interference with access to counsel, extended detention, retaliation, and expressions of racism and anti-transgender bias. The complaints were diverse as far as location, role, and rank of personnel.

Denial of medical care in ICE detention

First, the American Immigration Council (AIC) and the American Immigration Lawyers Association (AILA) relayed to us a [complaint](#) that was filed on June 4, 2018 with ICE, the Office for Civil Rights and Civil Liberties (CRCL), and the Office of Inspector General (OIG) documenting accounts of “dangerously inadequate medical and mental health care” at the Denver Contract Detention Facility in Aurora, Colorado (the “Aurora Facility”). The Aurora Facility was and continues to be run by GEO Group, Inc. (“GEO”), the largest private prison company in the United States. The complaint detailed 9 instances of faulty medical care, including insufficient treatment

for hemophilia, skin conditions, seizures, testicular pain, co-occurring pregnancy and tuberculosis, loss of eyesight, untreated PTSD, and two deaths from cardiac arrest. It also discussed systemic problems at the facility and with ICE’s governing medical standards for immigrants in detention, and the dangerous incentives associated with the denial of medical care by for-profit detention healthcare providers. The report made 8 recommendations, including for an independent review of healthcare provision at the Aurora Facility, and the promulgation of enforceable standards and a private right of action relating to the conditions of detention facilities and treatment of detained immigrants. On June 11, 2019, AIC and AILA supplemented their complaint to document worsening conditions at the Aurora Facility, including a mumps and chickenpox outbreak. The supplement included additional complaints of 5 men and women, including one transgender woman, who experienced multiple mental and physical health conditions that were insufficiently treated. In March 2020, they received a communication that an investigation was being conducted.

Second, the Immigrant Justice Campaign relayed to us a [complaint](#) filed on May 7, 2020, along with the American Friends Service Committee, the Southern Poverty Law Center, the El Paso Immigration Collaborative, and additional signatories, to CRCL and OIG on behalf of persons detained by ICE at detention centers located in Southern California, Arizona, New Mexico, Texas, Georgia, and Louisiana during the COVID pandemic. The complaint alleged that ICE failed to honor the directive of the



Denver Contract Detention Facility in Aurora, Colorado, which continues to be run by GEO Group, Inc. (“GEO”), the largest private prison company in the United States. (Photo by Joseph Rouse)

Fraihat court to expeditiously release a larger number of immigrants detained, and make use of alternatives to detention. The complaint contained 17 individual cases, many from asylum seekers, alleging failures of ICE to provide sufficient protection against COVID infection and treatment for those affected. The complaints reveal tremendous fear and concern by immigrants with serious immunodeficiency issues related to prior and existing medical conditions.

Third, we received a report that a transgender woman, detained at the Bergen County Jail, was denied treatment for syphilis and breast lumps before being deported in December 2020. Her attorney filed a confidential complaint with CRCL in October 2020. CRCL subsequently requested the client's contact information, which was provided, and inquired with her as to the medical care issues. The complaint is pending.

Hostility towards detained immigrants

Multiple responses addressed hostile and abusive behavior towards both counsel and immigrants detained across the country. Together, they reflect misconduct that is pervasive, and that advocates and immigrants seek recourse for at all levels of the immigration enforcement system.¹

First, a response presented several incidents of hostility and obstructionism in relation to a client held at the River Correctional Center in Ferriday, Louisiana. The attorney submitted a request for release under *Fraihat*, based on medical conditions that place her client at high risk of COVID-19 infection.² She reports that the supervisory ICE officer Brett Danielson responded to her inquiries about the request with hostility, laughed at her, raised his voice, and mocked the request. Later, she obtained a DNA kit to be sent to her client in connection with a request for evidence on his pending I-730 petition. Weeks after arranging for the DNA lab to send it directly to the detention center, she learned that it was not being delivered to the client for use. After she threatened to file a federal lawsuit, they complied, and she was able to meet the deadline. Thereafter, when her client was granted status as a derivative asylee, the

1 Responses to our call for complaints are maintained internally by NIPNLG, and identities kept confidential, unless the respondents filed public complaints or gave permission to share identifying information.

2 *Fraihat v. ICE*, 5:19-cv-01546-JGB-SHK (C.D. Cal) (Preliminary injunction granted April 20, 2020).

detention center delayed his release for three days, during which he remained in the dangerous health environment of the detention facility. The attorney is currently investigating her client's right to file complaints based on this series of mistreatment.

Second, another response also presented multiple incidents of hostility and abuse resulting in trauma. MD, an immigrant from Guinea, complained to us that he encountered anti-Black racism during his initial detention after crossing the border in California, and was later placed in solitary confinement in Louisiana after alerting his deportation officer that he was a minor wrongfully detained in an adult facility. After arriving at the San Ysidro port of entry in California, MD was placed into CBP custody pending a determination of his age. A few days later, MD developed a stomach ache and was brought to a hospital by two white female CBP officers. While he was sitting on a hospital bed, one of the officers ordered him to lie down. She then said "fucking Black people." Although the other officer admonished her, MD felt angry and disempowered. He concluded that he had no rights. MD is planning to file a CRCL complaint.

Third, on December 14, 2020, a group of advocates³ filed a CRCL [complaint](#) raising concerns about the mistreatment of two detained immigrants from Cameroon and Somalia at Butler County Jail in Ohio. The complaint alleges retaliatory violence in violation of state and federal law, international treaty obligations under the Convention Against Torture, and ICE's own 2019 Performance Based National Detention Standards, which the Butler County Jail is contracted to uphold. The abuses detailed in the complaint include incidents of physical abuse, retaliatory isolation, and racial and religious discrimination. Specifically, the complaint alleges that one of the detained immigrants, Bayong Brown Bayong was pushed down the stairs, that he and Ahmed Adem received severe beatings, and that a Muslim prayer rug was nearly stuffed into a toilet. They also alleged rampant verbal abuse, including insults based on race and African national origin. They were placed in isolation following physical abuses, where they continued to be beaten, and medical attention was withheld. The extensive

“ Specifically, the complaint alleges that one of the detained immigrants, Bayong Brown Bayong was pushed down the stairs, that he and Ahmed Adem received severe beatings, and that a Muslim prayer rug was nearly stuffed into a toilet.

³ Signatories to the complaint include the Ohio Immigrant Alliance, LULAC-Cincinnati, LULAC-Ohio, CAIR-Ohio, Catholic Charities of Southwestern Ohio, Heartfelt Tidbits, and attorneys Zachary Sanders, Ericka Curran, and Nazly Mamedova.

brutality at the Butler County Jail was [chronicled](#) in several news reports, and formed the basis of a [lawsuit](#), filed on December 8, 2020, in the Southern District of Ohio, alleging federal civil rights violations. A key witness to these abuses, Mory Keita, [was deported](#) to Guinea on December 14, 2020, despite a court order staying his removal that was issued after the flight had already taken off.

Fourth, reflecting a massive effort, Freedom for Immigrants submitted a compendium of [51 complaints](#) filed with CRCL and/or ICE from September 2018 thru January 2021. **None** of these complaints, some filed on behalf of multiple individuals, has been resolved. They range from sexual harassment through physical abuse, medical neglect, visitation restrictions, and exposure to toxic chemicals. **It is unconscionable that two-and-a-half years after the first of these complaints was filed, no remedies of any kind have resulted.**

Fifth, more than two years ago the American Immigration Council, the American Immigration Lawyers Association, and the Catholic Legal Immigration Network, Inc., submitted a [complaint](#) about ICE's family jail at Dilley, Texas, where at least nine infants under one year of age were being detained, citing child welfare organizations' recommendations against the detention of children and summarizing specific deficiencies in ICE care of infants. One year ago, CRCL confirmed receipt of the complaint and provided general information on how complaints are processed. The organizations have not received further communication or any engagement on detailed case summaries that were provided.

Sixth, 18 months ago the American Immigration Council, the American Immigration Lawyers Association, and the Catholic Legal Immigration Network, Inc., submitted a comprehensive [complaint](#) about CBP's failure to meet standards on detention conditions. It summarized the results of a survey of 200 mothers regarding medical care for their children in CBP custody. Nine egregious cases of medical neglect of children, as described by their mothers, form the gravamen of this complaint. For example, one mother reported that when her child vomited twice, she was told that CBP "only took children to a medical provider if they had fever or had vomited three times." Despite multiple

“ ... one mother reported that when her child vomited twice, she was told that CBP “only took children to a medical provider if they had fever or had vomited three times.” Despite multiple requests to officials and a medical provider, her daughter went five days without a shower or a change of underwear.

requests to officials and a medical provider, her daughter went five days without a shower or a change of underwear. A second mother reported that her 6-year-old son “had to sleep on the cold cement floor. He was naked and trembling, crying, and couldn’t sleep from the cold. I asked for diapers so he could have something to wear but the officials said he was too old to wear them.” Six months after submission, CRCL confirmed receipt of the complaint and provided general information on how complaints are processed. The organizations have not received further communication.

Use of solitary confinement for minors wrongly classified as adults

In a second complaint, MD reported that he was erroneously placed in ICE detention with adults, during which he was placed in solitary confinement. MD alleges that although he was only 16 years old at the time of his entry to the US to seek asylum, he was deemed an adult following a dental examination.⁴ MD maintained that he was a minor from the time he was first taken into custody, until he was released from detention into the custody of Child Protective Services. From November 2019 until February 2020, when he won asylum from the immigration court, MD was detained at the ICE facility in Jackson Parish, Louisiana. In January 2020, MD was assigned a new deportation officer, to whom he renewed his complaint that he was misclassified as an adult. She responded that he would need to be placed in isolation. MD was then moved to a booking cell, which was the only available isolation cell in the facility.

4 The use of dental scans to establish the age of minors entering the immigration system has been criticized as biased, inaccurate, and unethical. See, e.g., Diaz, et al., Bioethics Forum Essay: It’s Unethical to Use Dental X-Rays to Send Migrant Children to Adult Detention Facilities, The Hastings Center, July 2, 2019, <https://www.thehastingscenter.org/its-unethical-to-use-dental-x-rays-to-send-immigrant-children-to-adult-detention-facilities/>; see also Teo Armus, “ICE put a 17-year-old asylum seeker in an adult jail. His lawyers blame a ‘junk-science’ dental exam,” Washington Post, October 4, 2019, <https://www.washingtonpost.com/nation/2019/10/04/ice-asylum-seeker-dental-exam-adult-jail/>; Brittney Mejia and Kate Morrissey, “U.S. is using unreliable dental exams to hold teen migrants in adult detention.” Los Angeles Times, June 2, 2019, <https://www.latimes.com/local/lanow/la-me-ln-immigrant-age-migrants-ice-dental-teeth-bangladesh-20190602-story.html>; Mimi Dwyer, et al., “The U.S. is checking immigrant kids’ teeth to see if they actually belong in adult detention: ICE and ORR are using controversial dental science and race studies to figure out how old kids are,” Vice News, October 11, 2018, <https://www.vice.com/en/article/qv9mbx/the-us-is-checking-immigrant-kids-teeth-to-see-if-they-actually-belong-in-adult-detention>; Aura Bogado, “Here’s how ICE sent children seeking asylum to adult detention centers,” Reveal News, May 3, 2018, <https://revealnews.org/blog/heres-how-ice-sent-children-seeking-asylum-to-adult-detention-centers>.

He remained there for 11 days, until he was transferred back into the general population. MD's mental health was severely impacted by his time in isolation. The cell was very cold, and had no window. He attempted suicide by drinking shampoo, which made him ill. MD was taken to a suicide room for one day, and spoke with a psychiatrist via Zoom, through a translator. He was unable to prepare for his asylum hearing while isolated, and had no legal representation. MD was transferred back to the general population for a few weeks until his individual hearing took place and he was released. MD reports that he continues to struggle with trauma and is still haunted by his time in detention. MD is planning to file a CRCL complaint.

Use of solitary or quarantine confinement to retaliate for engaging in peaceful protest, and the use of force by detention personnel in quelling protests

First, a CRCL complaint was filed in November 2020 by Al Otro Lado on behalf of their client who experienced abuse and denial of medical care at the Adelanto Detention Facility in connection with his participation in a [peaceful protest](#) of an extended lockdown at the facility in June 2020. Although he was known by ICE officials to have severe asthma, their client and other protesters were [pepper sprayed, tazed, and shot at with rubber bullets](#). He was knocked unconscious and awoke in the hospital. The facility did not provide him with an interpreter so that he could understand what had happened or communicate his medical history to the doctor treating him. Following this incident, their client was placed in solitary confinement, where the dirt and poor air circulation caused him to suffer additional trauma to his respiratory system. What treatment he did receive was piecemeal and inadequate. ICE officers repeatedly denied his prescribed inhaler and also failed to follow COVID guidelines for the use of gloves and PPE when providing medical care. Al Otro Lado received acknowledgment of their complaint, but no further communication, although it is one of [several well-known incidents](#) of ICE retaliation within detention centers nationwide.

Second, in August 2020, the Southern Poverty Law Center, along with the Cameroonian American Council, Freedom for Immigrants, and Immigration Services and Legal Advocacy, filed a CRCL [complaint](#) calling for a halt to the use of solitary confinement in retaliation for peaceful hunger strikes by mostly Cameroonian and other Black immigrants in opposition to their indefinite detention at the Pine Prairie Detention Center in Louisiana. Two weeks after starting their hunger strike, protesters were

rounded up by officials in military gear and taken to a unit used for solitary confinement and, at that time, COVID quarantine. Immigrants who had not yet completed their quarantines were expelled to make room for the protesters, without a thorough cleaning of their cells. Those held in that unit were unable to access regular showers and other hygiene needs, yard time, use the law library, or contact their legal counsel to prepare their cases. The complaint notes that the use of solitary confinement by officials at Pine Prairie to quell protest was not unique to this incident. In March 2020, the same group of asylum-seekers engaged in a hunger strike and were placed into solitary confinement as a result. Several of the protestors reported that they were not given potable water, and had to drink out of their toilets.

“ Two weeks after starting their hunger strike, protesters were rounded up by officials in military gear and taken to a unit used for solitary confinement and, at that time, COVID quarantine.

Third, on August 29, 2019, 18 organizations concerned about the mistreatment of people in detention at Bossier Medium Security Facility and Pine Prairie Detention Center in Louisiana filed a complaint about use of force and solitary confinement as retaliation to the Office of Inspector General.⁵ At [Bossier](#), guards beat and pepper sprayed 30 hunger strikers, causing one of them to be hospitalized. At [Pine Prairie](#), guards shot tear gas and rubber bullets at 115 hunger strikers sitting in peaceful protest in the prison yard. At both facilities, a significant number of protesters were placed in solitary confinement, and others were transferred to a different facility. As noted in a subsequent [letter](#) from the Southern Poverty Law Center dated August 26, 2020, OIG had not yet responded to the allegations.

Complaints about the detention of unaccompanied minors

On October 20, 2020, the U.S. Committee for Refugees and Immigrants submitted a [request for investigation](#) to CRCL and OIG on behalf of 55 other organizations, complaining of illegal detention by DHS of unaccompanied minors in hotels prior

⁵ Signatories to the August 26, 2019 letter included Southern Poverty Law Center, ACLU of Louisiana, Al Otro Lado, Americans for Immigrant Justice, Asian Americans Advancing Justice-Atlanta, Detention Watch Network, Freedom for Immigrants, Innovation Law Lab, ISLA, Just Detention International, Kentucky Coalition for Immigrants and Refugees, New Orleans Workers' Center for Racial Justice, Project Ishmael- First Grace Community Alliance, Project South, RAICES, Taos Immigrant Allies, Tennessee Immigrant and Refugee Rights, and the Unitarian Universalist Service Committee.

to expelling them without due process under Title 42. The letter contained a dozen separate allegations. It requested action on alleged misconduct including the treatment of unaccompanied minors confined within unlicensed hotel facilities; active attempts to conceal the existence of the hotelling program from legal advocates for children and from relevant court proceedings; inadequate training and certification by DHS contractors in the area of child welfare; and “civil rights violations, misconduct, and abuses against UCs and others.” On January 21, 2021, CRCL responded to the request to say that investigations were underway in response to parallel complaints. As of the date of this report, OIG has not responded.

Mistreatment and falsehoods that shock the conscience

We received a pending 219-page complaint with CRCL and OIG filed almost two years ago on behalf of Dr. Abdelhaleem Ashqar, a Palestinian activist whom ICE attempted to remove to the Occupied Palestinian Territories by way of Israel. ICE’s tactics—including repeated lying to Dr. Ashqar, his family, and his counsel—were egregiously abusive, and memorialized by a federal district court. ICE elected to deport Dr. Ashqar shortly after total left knee replacement surgery, “which made his attempted removal, during which he was shackled for many hours and deprived of strong painkillers, excruciating.” Dr. Ashqar asked for a review of his agreement with ICE and his lengthy detention, as well as accountability for his unlawful deportation.

Dr. Ashqar never received a response to his complaint, not even an acknowledgement letter. His attorney believes Dr. Ashqar’s painstakingly-documented allegations were never investigated. Although nothing could rival the pain caused to Dr. Ashqar and his family by ICE’s actions and deceit, the oversight components’ failure to accord his filing basic courtesy and respect compounded the injuries DHS must now properly redress.

GENDER-BASED HARASSMENT: Fears of Confidentiality and Retaliation

The second category of responses we received related to gender-based harassment, including sexual harassment, other discrimination against women, and transphobia. The responses we received that requested confidentiality all involved gender-based harassment. The complaints were again diverse as far as location, role, and rank of personnel.

Concerns about confidentiality and retaliation prevented some with meritorious complaints from coming forward. DHS should review its confidentiality policies to examine whether they impose obstacles to reporting misconduct. For example, two of the confidentiality options provided by the OIG have enormous exceptions. First, the “remain anonymous” option states that “the information that is provided anonymously may be referred to another agency if DHS OIG determines that action by another agency is warranted under the circumstances,” without acknowledging that some sharing of anonymous information can identify a complainant. Second, the “disclose identity to DHS OIG, but request that DHS OIG keep the identity confidential with respect to individuals outside DHS OIG” option contains a sweeping exception: “[D]espite the request for confidentiality, it may be necessary for DHS OIG to disclose the identity to individuals outside DHS OIG if DHS OIG deems such disclosure . . . necessary during the course of DHS OIG’s investigation of the allegations in the complaint.” The agency should develop, and transparently share, mechanisms to protect complainants who wish to remain anonymous when reporting complaints, and protect their identifying information from being used to retaliate against complainants.

First, we were contacted by a woman (a non-attorney), who experienced intrusive personal questions unrelated to her immigration status or admission to the United States while entering the Tijuana port of entry after renewing her O-1 visa in Mexico. She reported that a CBP officer who was directing foot traffic called her over and asked about her ethnic background, noting that they were both of South Asian descent. She surmised that he was “flirting” with her, and experienced his attention as intrusive and predatory. The officer asked to see her passport and took notes of her personal information before telling her that he would “see her soon.” This interaction left her feeling vulnerable and worried for her personal safety upon her return to the United States, as she understood the officer to have recorded her identifying information, including her address and contact information. In the course of our discussion with her, she expressed fear that reporting this incident could result in retaliation from the officer and for any future immigration benefit applications to be scrutinized and delayed or denied. Despite knowing of the anti-retaliation assurances in the complaint form made available by CRCL, she expressed discomfort with sharing her personal information with the agency.

Second, another report, received from an immigration attorney, alleged misconduct related to gender and reproductive health that was requested to be kept confidential. The incident involved a client who was detained by ICE, and who was about to be released with an ankle monitor, when she was asked if she had been intimate with her boyfriend in the previous two weeks. When she answered yes, the client was told that she would not be released. The reason given was because the ankle monitor could endanger her “unborn child.” She remained in custody for an additional month until ICE apparently determined she was not pregnant. This occurred during a time of increased health concerns because of the COVID-19 outbreak, particularly within institutional detention settings.

Third, an immigration attorney relayed to us offensive and retaliatory conduct by Jim Stolley, the Chief Counsel of the ICE Office of the Principal Legal Advisor covering the Fort Snelling, Minnesota immigration court, but declined to submit a formal complaint out of fear of retaliation. The attorney advised that Mr. Stolley is known to “blacklist and refuse to engage with immigration attorneys” from various firms, disproportionately those run by women.

Fourth, two responses reflected harm to transgender people. One response reflected harm to two gender non-conforming people and transphobic hostility at an ICE Field Office in Chicago. An ICE officer “aggressively misgendered” both the client and their counsel, calling the client at one point an “it,” and repeatedly calling the attorney “ma’am” although they present as non-binary and wore a menswear suit to accompany their client. The attorney described “the light” going out of their client’s eyes when these things occurred. Despite this harm, the attorney explained that filing a complaint to the supervisor of the field office in October 2020 was empowering for the client. Even so, neither the attorney nor the client have received any follow up communications. They last inquired on December 3, 2020, after learning that it was transferred to the Joint Intake Center, and were encouraged to file a FOIA request for more information, which is now pending.



Immigration Court entrance on Greens Rd in Houston, TX
(Photo by Patrick Feller)

MEDIA AND COURT-REPORTED ABUSES: Request for status updates or opening of investigations

In addition to the complaints NIPNLG received in response to our call for submissions, NIPNLG identified numerous media and court-reported abuses.

It is unclear to us what criteria, if any, exist for DHS oversight components to initiate investigations based on such reports without the active submission of complaints. Such investigations are vital and necessary for achieving meaningful accountability and culture change within the agency, particularly in light of the mistrust and fear of oversight components among advocates and impacted people. In this section, we highlight a few of the most egregious publicly-available recent reports.

(1) [“US militia group draws members from military and police, website leak shows.”](#) *The Guardian* (Mar. 3, 2021).

“A *Guardian* investigation of a website leak from the American Patriots Three Percent shows the anti-government militia group has recruited a network across the US that includes current and former military members, police and border patrol agents.”

(2) [*Al Otro Lado v. Wolf*](#), No. 17-cv-02366-BAS-KSC (S.D. Cal.) (Feb. 18, 2021) (granting Plaintiff sanctions).

“Both [CBP leadership officials] Mr. Howe and Mr. Owen . . . knew or should have known that their meeting notes were potentially relevant to the litigation, and of their preservation obligations. Therefore, the Court finds the destruction of their meeting notes despite clear instructions from their attorneys to preserve them was negligent.”

(3) [“Injured migrants say Border Patrol sent them back to Mexico after they fell off Trump’s wall.”](#) *Dallas Morning News* (Feb. 13, 2021).

“It’s not clear why these injured migrants were deported to Mexico, even after both said they told agents they couldn’t walk.”

(4) [“Family of U.S. man who died after Border Patrol arrest says government has been tight lipped for a year.”](#) *CBS News* (Feb. 4, 2021).

“[Retired Border Patrol agent says] the agency hasn’t communicated with his family at all in the year since the 32-year-old’s death. An attorney hired by Croy said he has also received no responses to requests for information about the case.”

(5) [“US Officials Admitted They Violated A Court Order When They Expelled 32 Immigrant Children To Guatemala.”](#) *Buzz Feed News* (Jan. 19, 2021).

(6) “[Birth on a riverbank: Woman’s ordeal shows risks at border.](#)” *AP* (Dec. 15, 2020).

“Agents Chris Croy and Raul Hernandez were called to help by another agent who found her. Merín said the first agent told her to get up and keep walking, but she couldn’t. She says he accused her of lying.”

(7) “[U.S. Expels Migrant Children From Other Countries to Mexico.](#)” *New York Times* (Oct. 30, 2020).

“Children from Central America are being sent across the border to Mexico, where they may not have any family. An internal email said the transfers violated the government’s own policies. . . . Brian Hastings, chief of the Border Patrol’s Rio Grande Valley sector, acknowledged in an interview that non-Mexican children had been sent back into Mexico. . . . He said border agents were directed to contact the Mexican consular office each time an unaccompanied child was expelled. And Mark Morgan, the acting commissioner of the Customs and Border Protection agency, acknowledged in a separate interview this week that such expulsions would violate an agreement between Mexico and the United States. ‘That’s not part of their policy,’ Mr. Morgan said of Mexico.”

(8) “[ICE Admits Wrongful Deportation of Guatemalan Man.](#)” *The Intercept* (Oct. 7, 2020).

(9) “[Border Patrol Agent Speaks Out About a High-Speed Chase that Ended in an Immigrant’s Death.](#)” *The Intercept* (Feb. 28, 2020).

(10) *United States v. Aguilar-Garza*, No. 5:18-CR-368 (S.D. Tex. Oct. 17, 2018).

“[T]here are real questions as to whether [Border Patrol] Agent [Jose Luis] Martinez acted with subjective bad faith or had an unsavory purpose in his dealings with Defendant. At multiple times on the stand, Agent Martinez admitted that he had ‘nothing on’ Defendant, but he held him until he did. . . . Border Patrol’s motto is ‘Honor First,’ but Defendant’s treatment in this case falls short of that aspiration.”

If DHS has not yet initiated an investigation into any or all of these reports, we recommend that it do so immediately and provide information to advocates and stakeholders about the progress of such investigations.

CONCLUSION AND RECOMMENDATIONS

The sampling of DHS complaints in this report reveals an unchecked culture of abuse that frequently goes uninvestigated. DHS must significantly and comprehensively rethink the way its oversight components work. In order for accountability to be effective, those components must at minimum: (1) center the complainant by communicating clearly, transparently, and promptly about investigations' progress; (2) have quality-control mechanisms to flag and prioritize delayed investigations, with accountability to the DHS Secretary's Office and Congress; (3) reform disciplinary consequences to be as transparent and independent as possible, subject to review only by headquarters, not field personnel.

Seven years ago, a coalition of NGOs submitted a series of [recommendations](#) about DHS's complaints process, including first and foremost that DHS “[p]rovide all complainants with a written confirmation of receipt of their complaint within 90 days and a summary regarding the outcome of their complaint within one year, including findings of fact, findings of law, action taken, and available redress.” Many complaints, including several described here, should take far less than a year to address thoroughly. In 2016, CBP received an independent report on its complaints system and [committed](#) to “actively implementing and addressing the recommendations through improved policies, procedures, training, processes and reporting requirements.” Yet complainants have not perceived meaningful changes in how their reports of abuse by either CBP or ICE are investigated and resolved.

The Biden-Harris administration has both the opportunity and the imperative to address DHS's fragmented and ineffectual complaints system. While many oversight personnel undoubtedly carry out their duties professionally, these complaints cast doubt on OIG, CRCL, and the OPRs' collective and individual abilities to be effective in achieving accountability. They are constrained by institutional design flaws, jurisdictional haziness, and a departmental pattern of failing to redress policy violations directly traceable to DHS officers and agents. We look forward to beginning meetings with the Administration on an ongoing basis to tackle these serious, unacceptable concerns.