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Border Enforcement and Civil Rights Along the Texas-Mexico Border

Esther Reyes
January 2018

Introduction and Summary

Among the core values of the U.S. Border Patrol are service and integrity, which are intended to guide the organizational processes of the agency as well as Border Patrol agents in upholding the Constitution of the United States as they perform their work.¹ These values are materialized, among other places, in training for Border Patrol agents and in organizational mechanisms aimed at ensuring agents adhere to the standards of conduct of U.S. Customs and Border Protection (i.e. the agency under which the Border Patrol operates). Yet recent reports² suggest a pattern of recurring misconduct by enforcement agents along the southwestern border of the United States, specifically as agents exceed the limits of their authority by violating the rights of migrants and border residents in the name of drug and immigration enforcement. These investigations also suggest that, despite efforts to increase accountability, the Border Patrol and its oversight agencies fail to take action against the perpetrators or disclose these violations to Congress.

This project aims to understand the discrepancy between the Border Patrol's core values, concretized in organizational structures and processes, and organizational outcomes, specifically rights violations. As a preliminary effort to understand this problem, this report describes the surge in spending along the southwestern border of the United States over the past decade, compiles recent reports on rights violations by Border Patrol agents, and examines U.S. Border Patrol authority and accountability. Through analysis of participant observation in a public eight-week Citizens' Academy offered in Laredo, TX, this report examines the factors characterizing the work of the Laredo sector, a sector in south Texas with one of the highest rates of complaints filed against it.

Background: Enforcement Spending and Apprehensions

Over the past two decades, spending on enforcement along the southwestern border of the United States has expanded dramatically. The annual budget of the U.S. Border Patrol, the primary federal law enforcement agency charged with "border management and

control,” increased from \$400 million in fiscal year 1994 to \$3.8 billion in fiscal year 2017.³ During this period, the number of Border Patrol agents stationed along the U.S.-Mexico border grew by nearly 450 percent, from 3,747 to over 16,605 agents.⁴ Meanwhile, apprehensions of unauthorized migrants along the U.S.-Mexico border declined from 979,101 in 1994 to 303,916 in 2017.⁵

This decline coincided with the Great Recession and has continued since. One factor potentially affecting the decline in emigration from Mexico to the United States, which is now lower than the return of Mexican immigrants to Mexico, is the jobs available to Mexican immigrants.⁶ This has created a negative net flow of migrants from Mexico to the United States. Another potential factor contributing to the decline in the unauthorized immigrant population in the United States is tougher enforcement measures, as these measures are thought to reduce recidivism among repeat crossers.⁷ Others, however, suggest that in spite of stricter border enforcement, immigrants with families in and ties to the United States are still two to three times more likely than those without to attempt re-entry.⁸

These expansions and the accompanying declines in immigrant populations and apprehensions have raised concerns about the strategies of enforcement being employed and their impact on the human and civil rights of migrants and communities living along the southwestern border of the United States. Among other things, enforcement agents have been accused of physically and verbally mistreating unauthorized migrants on a routine basis.⁹ Additionally, border residents living through this “border surge,” most of whom are Mexican and Mexican American, have been victims of alleged recurring misconduct by enforcement agents and have been denied their rights in the name of drug and immigration enforcement.¹⁰

U.S. Border Patrol Authority and Accountability

In order to begin to understand Border Patrol agent behavior and rights violations, it is useful to consider 1) the general work of the Border Patrol, 2) the limits of Border Patrol

agent authority and when Border Patrol agents learn about these limits, and 3) the mechanisms through which the agency investigates abuse of authority. The U.S. Border Patrol is an agency within U.S. Customs and Border Protection (CBP), a component of the U.S. Department of Homeland Security. The “priority mission” of the Border Patrol is to prevent “terrorists and terrorists weapons, including weapons of mass destruction, from entering the United States.”¹¹ This agency patrols approximately 6,000 miles of land border along the Mexican and Canadian borders, in addition to 2,000 miles of coastal waters. Their patrolling activities take place between ports of entry and include line watch operations, signcutting, traffic checkpoints, transportation checks, marine patrol, and horse and bike patrol. Linewatch operations consist of on-the-ground patrolling to prevent illegal border crossings. Signcutting is “the detection and interpretation of any disturbances in natural terrain conditions that indicate the presence or passage of people, animals, or vehicles.” Traffic checkpoints are located on major highways leading away from borders to detect illegal border activity. Marine patrol consists of border control activities along the coastal borders of the United States. Finally, horse and bike patrol unites patrol areas that are inaccessible to standard terrain vehicles.¹²

New Border Patrol agents attend an initial 19-week training that covers basic law enforcement skills, including a course on statutory authority. This course teaches “the primary statutes, implementing regulations and court decisions from which a Border Patrol agent derives his or her authority to act in any given situation.”¹³ During this course, agents learn about the extra-Constitutional powers granted to them within 100 miles of a U.S. land or coastal border, such as the authority to conduct vehicle searches at ports of entry without a warrant or probable cause and the power to enter or search private property, with the exception of homes, within 25 miles of any external boundary of the United States.¹⁴ To do otherwise is a violation of the Fourth Amendment, which prohibits federal law enforcement agencies from conducting random and arbitrary stops and searches. Among other things, agents are also instructed in the use of firearms, after which they are expected to follow the highest law enforcement standards relating to use of force.

Although U.S. Customs and Border Protection (CBP) directs training for Border Patrol agents, the complaint process is largely overseen by offices of the U.S. Department of Homeland Security (DHS), the umbrella organization for CBP and a number of other federal law enforcement agencies. Complaints of misconduct or violations can be submitted through various channels, including the DHS's Office of Inspector General, Joint Intake Center, Office for Civil Rights and Civil Liberties, and the CBP's Office of Internal Affairs or local CBP offices.¹⁵ According to investigations, however, the complaint process is disjointed and ineffective, and complaints go largely unresolved, despite the vast number of allegations of misconduct and rights violations.

Rights Violations Along the U.S.-Mexico Border – A Preliminary Review

A recent report¹⁶ analyzed complaints filed against CBP between January 2009 and January 2012, 809 of which were filed against Border Patrol personnel. The most common reasons for complaints included physical abuse and excessive use of force, which occurred in nearly 80 percent of cases. The other 20 percent of cases involved misconduct, racial profiling, and improper searches. Further, more complaints were filed against Border Patrol agents in sectors with higher levels of unauthorized immigration, measured as the number of apprehensions in a particular sector. Overall, four of the five sectors with the highest rates of complaints were in Texas, including the Del Rio, Rio Grande Valley, El Paso, and Laredo sectors. Finally, of the 485 complaints analyzed and in which a formal decision was made, 97 percent of complaints were designated as “no action taken.”

Another report by the American Civil Liberties Union¹⁷ analyzed more recent data in Arizona and suggests similar trends in the Tucson and Yuma sectors. The report looked at records for fiscal years 2012 and 2013 (in addition to incomplete data from 2011 and 2014), including approximately 142 civil rights complaints, 134 of which involved allegations of Fourth Amendment violations, such as legally unfounded stops and searches undertaken by agents. The report also found a striking disparity between the number of civil rights complaints disclosed by the DHS and CBP to Congress during the

same time period. DHS oversight agencies reported only three complaints nationwide involving Fourth Amendment violations during fiscal years 2012 and 2013, compared to 81 such complaints found by ACLU in the Tucson and Yuma sectors only (two of twenty Border Patrol sectors) during the same time period. As noted in the report, “these accounts are consistent with a growing number of complaints submitted to the ACLU by border residents reporting racial profiling, unwarranted stops and searches, false canine alerts, and other abuses.”¹⁸

As this preliminary review suggests, organizational processes and structures to ensure organizational accountability, curb Border Patrol agent misconduct, and control agent discretionary behavior already exist. Yet these mechanisms often appear to be unsuccessful, posing a public policy problem in which stricter enforcement strategies seem to be at odds with the protection of fundamental liberties of border residents and migrants that the United States, as a liberal democracy, is supposed to ensure.

Border Enforcement in the Laredo Sector – Preliminary Findings

As part of a larger research endeavor to examine three major border enforcement sectors along the Texas-Mexico border, including the Laredo, El Paso and Rio Grande Valley sectors, the investigation and preliminary findings presented here include a summary and analysis of participant observation in a public, 8-week Citizens’ Academy organized by the Laredo Sector Public Affairs Office and Border Community Liaison Team in the summer of 2017. Upon completion of this project, these findings will be supplemented with additional research, such as interviews and analysis of relevant U.S. Customs and Border Protection policies and organizational structures.

The Laredo sector of the United States Border Patrol comprises nine stations and covers over 101,000 square miles of southwest and northeast Texas, including 171 miles of riverfront.¹⁹ In 2017, this sector employed 1,666 agents.²⁰ In order to provide area residents with “a better understanding of the Border Patrol mission and how agents carry out their duties,”²¹ the Laredo sector offers an eight-week Citizens’ academy with

presentations on agent training and responsibilities, legal authority, equipment, and different units within the Border Patrol, such as riverine operations and horse patrol units.²² From a methodological standpoint, participant observation allows a researcher to understand a case of interest as completely as possible from the perspective of the observed. In this case, the citizens' academy allowed for participation in and documentation of presentations and hand-on activities useful for identifying important relationships and gaining insight into the challenges agents face on a daily basis and how they use their knowledge to make decisions in their day-to-day operations.

As stated earlier, the primary purpose of the citizens' academy is to provide local residents with a better understanding of the work and mission of the Border Patrol and the day-to-day challenges agents face. As a public affairs representative of the Laredo sector stated, "We must be the ones telling our story." The story told by agents and presenters throughout the course of the eight-week program was one focused on protecting the United States of America, thereby enforcing the mission of U.S. Customs and Border Protection, and protecting Border Patrol agents. On the contrary, issues scarcely mentioned included accountability and challenges arising during the course of apprehensions.

The first session of the program framed purpose of the Citizens' academy, with presentations by Acting Chief Patrol Agent and an Assistant Chief Counsel, among others. The mission of the Border Patrol was described as "daunting" and one involving protecting "the country, the people and the way of life." To do so, the Border Patrol derives its power from the law, which, as stated by one of the presenters, provides Border Patrol "unfettered authority" within 25 miles of the border. The Border Patrol also counts on advanced equipment, technology and support to perform their duties. For example, in a brief presentation by a shift supervisor in the Laredo Sector Headquarters Dispatch Center, where border surveillance footage is sent, the supervisor repeated that the primary goals of the center were to bring agents home safe and to keep the city safe by not "letting anything dangerous come into the city." Their task demanded such constant surveillance that workers regularly ate lunch at their desks rather than taking breaks. This

center contained more than 60 screens capturing live footage in all areas of the Laredo sector, and the technology available to workers in the dispatch center is the “most advanced technology out there,” according to the shift supervisor.

A second issue prevalent throughout the citizens’ academy sessions was the safety and protection of Border Patrol agents, particularly protection from the harsh environment in which they work and from people attempting to cross the border. As stated by the Laredo Sector Acting Chief Patrol Agent, the environment Border Patrol agents face is a non-forgiving, harsh terrain, which is compounded by threats posed by people attempting to circumvent the Border Patrol in their attempt to enter the country. In a presentation on riverine operations, Border Patrol agent presenters discussed the constant counter surveillance that takes place on the Mexican side of the border in efforts to bypass agents, as well as experiences of being shot at as agents performed their jobs. In a line tour²³ in the Laredo South Station, agents in bulletproof vests expressed the threat of heat exhaustion, changes in the physical environment, and armed individuals as daily challenges. To face these challenges, agents take precautionary measures, such as ensuring they stay within areas where cell phones and radio devices don’t lose signal, as well as ensuring enough support from other agents when tracking a large group of individuals crossing the border. Agents also have the opportunity to become certified in the use of equipment and vehicles, such as ATVs and bikes, and all agents are required to undergo annual re-certification in certain areas, such as use of firearms.

Largely absent in presentations throughout the eight-week citizens academy were discussions related to accountability and issues arising emergency situations. Accountability was touched on briefly in only two presentations. When discussing the constitutional rights of border residents and individuals being apprehended, the Assistant Chief Counsel stated, “Constitutional rights? Put them in your back pocket!” and added that the Border Patrol can do “whatever it wants on the border by law.” Later in the presentation the Assistant Chief Counsel stated that Border Patrol welcomes complaints, but that they should be done “civilly.” In a session on the processing of apprehended individuals at the processing center, the presenting agent stated that the detention facility

was not a jail, and that Border Patrol agents had 72 hours to process apprehended individuals. If individuals were there more than 72 hours, they would get a “custody break” and be allowed to go to a jail to “take a shower and relax a bit.” He further stated that the processing center receives emails “from higher up” if a detainee gets close to or has exceeded the 72 hour mark.

Furthermore, in a couple of instances, agent presenters discussed the priority of saving lives. During an presentation by an agent certified as an emergency medical technician (EMT), the agent stated that while his first responsibility is to fulfill his border patrol duties, if someone is found or apprehended and is in need of medical attention, his priority immediately shifts to saving the individual’s lives. Similarly, a non-EMT certified agent discussed that if someone attempting to cross the border is found in need of help, the agent’s priority is to rescue that individual, even at the expense of letting others escape. Entirely absent in presentations throughout the citizens academy were discussions related to the act of apprehending individuals, the rights these individuals are entitled to, and the limits within which agents can exert their power.

Conclusion

Reports of alleged violations by Border Patrol agents pose a significant public policy problem in which stricter enforcement strategies seem to be at odds with the protection of fundamental liberties of border residents and migrants. As part of a larger research endeavor to examine three major border enforcement sectors along the Texas-Mexico border, including the Laredo, El Paso and Rio Grande Valley sectors, the investigation and findings presented here include a preliminary review of rights violations along the southwestern border of the United States, with a focus on the Texas-Mexico border, and summary and a preliminary analysis of participant observation in a public, eight-week Citizens’ Academy organized by the Laredo Sector Public Affairs Office and Border Community Liaison Team in the summer of 2017. Ultimately, this project aims to inform ways in which the U.S. government can carry out its enforcement policies while ensuring the protection of civil rights, which is essential to the stability of a liberal democracy.

As discussed earlier, the story told by agents and presenters throughout the course of the citizens academy was one overwhelmingly focused on protecting the United States of American, thereby enforcing the mission of U.S. Customs and Border Protection, and protecting Border Patrol agents. On the contrary, issues scarcely mentioned included agent accountability, the rights of individuals being apprehended, and the limits within which agents can exert their power. The absence of these discussions and the focus on enforcing the mission of U.S. Customs and Border Protection and protecting Border Patrol agents raises concerns about the way in which agents think about their responsibilities in the field, particularly given reports of alleged recurring misconduct by agents along the Texas-Mexico border and the Laredo Sector specifically. While this review and the findings are preliminary, they suggest the need for a stronger focus by the U.S. Border Patrol to instill the importance in agents to respect legal rights and understand the limits of their authority, while fostering a system of accountability. Further research from this project will include interviews and an analysis of relevant policies and structures that will inform specific ways in which the U.S. Border Patrol can prepare agents to carry out their responsibilities while ensuring the protection of civil and human rights of migrants and border residents.

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- ² For example: ACLU Record of Abuse: Lawlessness and Impunity in Border Patrol’s Interior Enforcement Operations (2015, October). <http://www.acluaz.org/node/5415>; No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse | Immigration Policy Center. (2014, May 6). <http://www.immigrationpolicy.org/special-reports/no-action-taken-lack-cbp-accountability-responding-complaints-abuse>; Bordering on Criminal: The Routine Abuse of Migrants in the Removal System | Immigration Policy Center. (2013, December 10). <http://www.immigrationpolicy.org/special-reports/bordering-criminal-routine-abuse-migrants-removal-system>
- ³ USBP Budget History (n.d.). <https://www.cbp.gov/newsroom/media-resources/stats> (last accessed January 2018).
- ⁴ USBP Staffing FY1992 - FY2017 (n.d.). <https://www.cbp.gov/newsroom/media-resources/stats> (last accessed January 2018).
- ⁵ USBP Apps FY1960 - FY2017 (n.d.). <https://www.cbp.gov/newsroom/media-resources/stats> (last accessed January 2018).
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- ⁷ Ibid.
- ⁸ Rosenblum, M. R. & Meissner, D. (2014). The Deportation Dilemma: Reconciling Tough and Human Enforcement. <http://www.migrationpolicy.org/research/deportation-dilemma-reconciling-tough-humane-enforcement>
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- ¹⁰ ACLU Record of Abuse: Lawlessness and Impunity in Border Patrol’s Interior Enforcement Operations (2015, October). <http://www.acluaz.org/node/5415>
- ¹¹ U.S. Customs and Border Protection. (n.d.). Border Patrol Overview. <https://www.cbp.gov/border-security/along-us-borders/overview> (last accessed January 2018).
- ¹² Ibid.
- ¹³ CBP Border Patrol Academy (2015). What information is there about the Border Patrol Agent Academy? https://help.cbp.gov/app/answers/detail/a_id/1017/~/~cbp-border-patrol-academy
- ¹⁴ ACLU Factsheet on Customs and Border Protection’s 100-Mile Zone. (n.d.). <https://www.aclu.org/aclu-factsheet-customs-and-border-protections-100-mile-zone>

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- ¹⁵ Department of Homeland Security (2012). How to File a Complaint with the Department of Homeland Security. https://www.dhs.gov/sites/default/files/publications/dhs-complaint-avenues-guide_10-03-12_0.pdf
- ¹⁶ No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse | Immigration Policy Center. (2014, May 6). <http://www.immigrationpolicy.org/special-reports/no-action-taken-lack-cbp-accountability-responding-complaints-abuse>
- ¹⁷ ACLU Record of Abuse: Lawlessness and Impunity in Border Patrol's Interior Enforcement Operations (2015, October). <http://www.acluaz.org/node/5415>
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- ¹⁹ Laredo Sector Texas. (n.d). <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/laredo-sector-texas> (last accessed January 2018).
- ²⁰ USBP FY 2017 Sector Profile. (n.d.). <https://www.cbp.gov/newsroom/media-resources/stats> (last accessed January 2018).
- ²¹ Laredo Sector Border Patrol Commenced Citizens Academy (2017, June 12). <https://www.cbp.gov/newsroom/local-media-release/laredo-sector-border-patrol-commenced-citizens-academy>
- ²² Topics covered in the June 2017 Laredo Sector Citizens' Academy, as listed in June 2017 Academy Syllabus: Agent's Typical Work Day; Legal Authority; Riverine Operations; Special Operations (Scope Truck/ATVs/Bikes); LRS Overview; Peer Support and Veterans Support Programs; AOR Line Tour; K-9 Department Presentation; LRTfit; Processing/Prosecutions; Laredo Sector Headquarters Dispatch; KAK 940 Tour; Horse Patrol Presentation; AMO Airport (Base Hanger); Explorer Program; Laredo North Border Patrol Checkpoint; Firing Range; Use of Force; Firearms; Special Operations Detachment.
- ²³ A line tour is a guided walking experience through areas where Border Patrol agents are stationed during their shifts.