

Appendix of Unresolved Complaints

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Appendix 1

March 27, 2019

VIA ELECTONIC MAIL

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Re: U.S. Customs and Border Protection (CBP) Illegally Denies Family Access to Ports of Entry to Lawfully Seek Asylum, Leading to Kidnapping, and Mistreatment in Mexico.

Dear Mr. Kelly, Mr. Quinn, and Mr. Klein,

The American Civil Liberties Union (ACLU) Border Rights Center files this complaint on behalf of C.A.R (DOB: July 28, 1978) and D.G.G. (DOB: July 3, 1987) and their three children, D.N.G. (DOB: July 26, 2006), C.A.G. (DOB: June 7, 2012) and B.A.A.G. (DOB: January 4, 2016). U. S. Customs and Border Protection (CBP) turned away the A.G. family at the Eagle Pass port of entry (Bridge 2) on July 26, 2018, and again at the Paseo del Norte port of entry on January 12, 2019.

From May 2018 onward, the federal government has denied access to the U.S. asylum system by adopting a practice of turning away asylum seekers attempting to enter U.S. ports of entry after indicating to CBP officers their intention to seek asylum.¹ CBP officials have turned away asylum seekers at ports of entry, claiming they are at capacity.² Those asylum seekers who have not set foot on U.S. soil have been blocked from doing so.³ This policy has left many asylum seekers sleeping on bridges at the U.S.-Mexico border or stranded in Mexico where they face ongoing threats to their security.⁴

¹ See, e.g., Robert Moore, *At the U.S. Border, Asylum Seekers Fleeing Violence Are Told to Come Back Later*, WASH. POST (June 13, 2018), https://www.washingtonpost.com/world/national-security/at-the-us-border-asylum-seekers-fleeing-violence-are-told-to-come-back-later/2018/06/12/79a12718-6e4d-11e8-afd5-778aca903bbe_story.html?utm_term=.c17d3d1d9df4

² *Id.*

³ See, e.g., Dara Lind, *Trump Keeps Making It Harder for People to Seek Asylum Legally*, Vox (June 5, 2018), <https://www.vox.com/policy-and-politics/2018/6/5/17428640/border-families-asylum-illegal>.


⁴ See, USA: "You Don't Have Any Rights Here" Illegal Pushbacks, Arbitrary Detention & Ill-Treatment of Asylum-Seekers in the United States, Amnesty International (October 11, 2018),

Background

The United States government is required by statute to allow noncitizens presenting themselves at U.S. borders and ports of entry to apply for asylum or other forms of humanitarian protection.⁵ When inspecting a noncitizen who arrives at a port of entry, CBP officials must follow the procedures mandated by Congress in 8 U.S.C. § 1225.⁶ Where Congress has granted statutory rights and has directed an agency to establish a procedure for providing such rights, the U.S. Constitution requires the government establish a fair procedure and to abide by that procedure.⁷

The A.G. family

The A.G. family fled El Salvador following imminent and credible threats to their lives and the lives of their children.



D.N.G. (age 12) suffers from heart arrhythmia. He experiences semi-regular anxiety attacks that result in his heart rate increasing from 90 to 140 bpm, severe pain in his chest, and difficulty breathing. His last such attack occurred while in Mexico. A Mexican hospital reportedly denied him medical care for the condition because he was a migrant. His condition requires regular medication and medical supervision.

CBP Illegal Turn Back of the A.G family at the Eagle Pass International Bridge

On or about July 26, 2018, the family arrived in Piedras Negras, Coah. opposite Eagle Pass, TX, and attempted to seek asylum at the Eagle Pass International Bridge. The family took two steps past a yellow line on the international bridge, on the U.S. side, when two Customs and Border Protection agents approached the family and physically pushed them back across the line. The CBP agents told the family

<https://www.amnesty.org/en/documents/amr51/9101/2018/en/>; see also, e.g., *Watch the U.S. Turn Away Asylum Seekers at the Border*, THE ATLANTIC (June 18, 2018), <https://www.theatlantic.com/video/index/563084/us-border-asylum/>.

⁵ The Immigration and Nationality Act provides that “[a]ny alien who is physically present in the United States or who arrives in the United States. . . irrespective of such alien’s status, may apply for asylum in accordance with this section or, where applicable, section 235(b).” 8 U.S.C. § 1158(a)(1); see also 8 U.S.C. § 1225(b)(1)(A)(ii).

⁶ 8 U.S.C. § 1225(b) (Refer any noncitizen placed in expedited removal proceedings who expresses either an intent to apply for asylum or a fear of persecution if returned to his or her home country to an asylum officer for a credible fear interview pursuant to 8 U.S.C. §§ 1225(b)(1)(A)(ii), 1225(b)(1)(B)).

⁷ The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” See generally, U.S. Const. Amend. V

they could not seek asylum legally at the port and that they needed to go to the migrant shelter in Piedras Negras in order to seek asylum in the U.S. The family explained to the CBP agents their intention to seek asylum in the United States and that their child's heart condition requiring medical attention. A CBP agent told the family that he was not a doctor and repeated his instruction that they must return to Mexico. Fearing CBP would call Mexican immigration agents, the family left the bridge and went to the migrant shelter in Piedras Negras.

Following CBP's unlawful refusal to process the family as arriving asylum seekers, the family experienced the following in Mexico:

Threats, Kidnapping, and Instituto Nacional de Migracion Extortion

Once at the migrant shelter in Piedras Negras, the family was put on a waiting list to re-present at the port of entry and sought out a doctor in Piedras Negras to review D.N.G.'s heart condition. There was no medicine for the condition available in Piedras Negras. After two days, the family began receiving phone calls from the coyotes that brought them to the border from El Salvador. The coyotes demanded the family pay them \$2,000 USD or they would infiltrate the migrant shelter and kill the family. Ms. A.G.'s family sent \$2,000 USD to the coyotes in response to the threat.

Three days later, on or around July 29, 2018, the family walked to a convenience store in Piedras Negras, approximately one and a half blocks from the migrant shelter and was kidnapped. A truck with three armed men approached the family and forced Ms. A.G. and the three children into the vehicle. The father forced his way into the vehicle to stay with his family. Ms. A.G. asked the kidnappers what they wanted and was told "shut up, this is an order from the coyotes." The kidnappers took the family to a house near the train tracks and demanded payments from relatives in El Salvador in exchange for their release. Family members sent four separate payments for their release, totaling around \$2,000 USD.

The family spent two days trapped in the kidnappers' house, until members of the State police force, "La Fuerza Coahuila," entered the house. The family witnessed the police receive money from one of the kidnappers. The police proceeded to speak with the family and called Instituto Nacional de Migracion (INM) agents, due to the family's lack of legal status in Mexico. Approximately one and a half hours later the INM agents arrived and asked the family to pay them \$1,000 for their release. Unable to pay, the INM agents took the family to a migrant detention center. At the detention center the INM agents attempted to force the family to sign documents for their deportation to El Salvador. The family refused and explained their need to seek asylum from El Salvador. INM agents held the family in a migrant detention facility in Coahuila for two weeks before transferring the family to an immigration detention center in Mexico City. Mr. A.R. faced threats from Barrio 18 gang members while in Mexican immigration detention, and Mexican officials would not take action to ensure his safety.

Ongoing Threats and Inability to Remain in Mexico

In August 2018, the family submitted an application for asylum in Mexico and were released from detention. Upon release, the family's cell phone was returned and contained numerous texts from their kidnappers. Approximately two days following their release from immigration detention, on or around September 22, 2018, outside a Mexico City migrant center, men attempted to abduct B.A.A.G. from her mother, prompting the family to leave the migrant shelter that same day. Calls from their kidnappers continued and the family sought the U.N. High Commissioner on Refugee's support in transferring out of

Mexico City. Once transferred to Guadalajara the threats did not stop and the family feared that members of the Barrio 18 would find the family.

On or about January 11, 2018, the family transited from Guadalajara to Ciudad Juárez to again attempt to seek asylum in the United States, given their ongoing fear of remaining in Mexico.

The family could not remain in Mexico without fear of ongoing violence at the hands of their kidnapers.

Turn Back at El Paso Paseo del Norte Port of Entry

On January 12, 2018, at approximately 4:00 pm, the family presented themselves to CBP agents stationed at the middle of the Paso del Norte International Bridge. The family explained to the officers their need to seek asylum in the United States, their child's heart condition, and their fear of returning to Mexico. The CBP officers instructed the family that there was no room and that they need to go see Mexican immigration agents to get on a list. Following the rejection by CBP agents, members of Congresswoman Veronica Escobar's office, who were present on the bridge, called CBP leadership to alert them to the agency's turn back of the family. The ACLU also sent an email notification to Office of Inspector General Agent Javy Pedroza, who later confirmed he forwarded the complaint to CBP leadership. After approximately one hour on the international bridge, CBP allowed the family to proceed into the port of entry, where they were processed and released 1.5 days later.

Conclusion

We request an immediate investigation into CBP's unlawful turn back of the A.G. family at both the Eagle Pass and Paso del Norte ports of entry following their legal attempt to seek protection in the United States. CBP's initial illegal turn back of the family resulted in their kidnapping and ongoing persecution in Mexico for six months. Thousands of families experiencing similar restrictions at ports of entry across the border are likely to experience similar dangers in Mexico, further necessitating investigation and changes into the current policy of turning away asylum seekers mid-bridge across Texas.

Sincerely,



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Appendix 2



March 30, 2019

VIA ELECTONIC MAIL

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Re: Abusive Conditions in Makeshift Border Patrol Holding Facilities at Paso del Norte Port of Entry in El Paso, Texas.

Dear Mr. Kelly, Ms. Quinn, and Mr. Klein,

The American Civil Liberties Union (ACLU) Border Rights Center and the ACLU of Texas write to demand an immediate and permanent end to Custom and Border Protection's (CBP) detention of migrants, including families with small children, outside in caged detention areas and an investigation into the conditions and treatment of those detained under such circumstances.¹

¹ See Adolfo Flores, "It's Hell There": This Is What It's Like For Immigrants Being Held In A Pen Underneath An El Paso Bridge," BuzzFeed News, March 29, 2019, available at <https://www.buzzfeednews.com/article/adolfoflores/border-bridge-migrants-detained-camp-el-paso-texas?fbclid=IwAR2FLXFHNI6CtNRXdOWjoi6dCZNwYrcjTnKmtGzagbB98mld6gVjIkiE-iU>.

Detaining migrant families outdoors, where they face severe exposure to the elements and lack adequate basic care, is an extreme and unprecedented assault on their basic human rights and a failure of CBP to meet its basic duties as a government agency. This practice must stop immediately, and the Office of Inspector General should conduct an investigation to ensure that such unconscionable acts are never authorized again.

In early March 2019, ACLU staff first observed migrants sleeping on the ground below the Paso del Norte international bridge, inside Customs and Border Protection (CBP) controlled areas. Interviews with asylum seeking families detained there reveal dangerous and abusive conditions, including prolonged exposure to low temperatures, sleep deprivation, inadequate food, no medical screening or care, and verbal and physical abuse at the hands of Border Patrol agents. CBP has an obligation, under its own standards, to ensure that migrants are treated humanely, with dignity, and consistent with U.S. and international laws.

The detention of migrants for multiple nights in outdoor detention pens is an unprecedented and extreme violation. Although CBP has long violated the rights of migrants in its custody, the agency's decision to detain migrants, including children, in caged dirt filled outdoor areas is an escalation of this administration's cruelty. Without immediate attention and oversight, we will continue to risk the lives of those seeking refuge in our country.

CBP leadership, which oversees both CBP Office of Field Operations and Border Patrol, claims that an increase in apprehensions has overwhelmed indoor detention facilities and has led to the current overflow of detained migrants.² While the number of arriving asylum seekers, particularly families and children, has increased from the prior year's monthly averages, the numbers remain well below historic levels. Further, the agency has more resources including officers than ever before. The number of Border Patrol agents grew from 9,212 agents in 2000 to 19,555 in 2018. CBP's budget has also more than doubled since 2006, growing from \$7.1 billion in 2006 to \$16.69 billion this year.³ It is inconceivable that the agency does not have the resources, if appropriately allocated, to ensure humane treatment of migrants in their custody.

CBP's disastrous response to the recent increase in arrivals seriously endangers the lives of migrants. As detailed below, migrants, including young children, are being held in extreme conditions, increasing the risk of serious illness and harm. Further, these conditions reinforce Border Patrol's inability to ensure the care of individuals in their custody. These concerns have been most seriously brought to light through the deaths of three individuals in the past four months in the custody of the El Paso sector of CBP.⁴ All migrants are entitled to assurances of safety and well-being, but CBP's current response further

² See Michelle Mark, "Hundreds of migrants are being detained under a bridge in El Paso amid a surge of families crossing the border. Border Patrol agents say there's nowhere else to put them," Insider, March 29, 2019, available at <https://www.thisisinsider.com/migrants-detained-under-el-paso-bridge-border-patrol-surge-2019-3>.

³ Chris Rickerd and Shaw Drake, "DHS's Own Statistics Show That It Is Lying About a Border-Security Crisis," American Civil Liberties Union, March 14, 2019, available at <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/dhss-own-statistics-show-it-lying-about-border>.

⁴ See "Mexican immigrant dies in U.S. custody, the fourth such death in recent months," El Paso Times, March 19, 2019, available at <https://www.elpasotimes.com/story/news/nation/2019/03/19/mexican-immigrant-dies-united-states-custody/3214356002/>.

underscores the agency's failure to allocate appropriate resources and adjust procedures to account for recent changes to the demographics and needs of asylum seekers.⁵

The conditions and treatment of migrants in the outdoor holding areas of the Paso del Norte port of entry require its immediate closure, a full investigation, and assurances such detention practices are not repeated.

Border Patrol Abuses in Paso del Norte Outdoor Holding Areas

Asylum seekers, including families and children, report a range of abusive and inhumane conditions while detained outdoors at the main El Paso port of entry. These abuses run afoul of CBP's own rules, the National Standards on Transport, Escort, Detention, and Search ("TEDS") which were promulgated in 2015. The TEDS set the minimal nationwide standards governing CBP's treatment of detained individuals.⁶ Generally, the safety of detainees is paramount during all aspects of CBP operations and every effort must be made to promptly transfer, transport, process, release, or repatriate detainees.⁷

Exposure to elements and sleep deprivation:

Families are being detained up to four days in an outdoor CBP parking lot underneath the Paso del Norte international bridge.⁸ Several thousand people are being held in a confined area underneath the bridge where they barely have enough space to stand.⁹ Families, including those with infant children, are not provided with any bedding, mats, or chairs. They are told to sleep on the ground, on nights in which temperatures have dropped to 37 degrees Fahrenheit, and are only given Mylar sheets, which are paper-thin and look like tin foil, as their sole protection from the elements.¹⁰ In these conditions, families are exposed to extremely low temperatures throughout the night.

Families report that Border Patrol agents wake them every three hours and force them to stand for prolonged periods, preventing migrants, including children, from sleeping for more than short periods of time for multiple nights.

Verbal and Physical Abuse:

⁵ See Adolfo Flores, "A Record Number Of Migrant Families Are Showing Up At The US–Mexico Border," BuzzFeed News, March 5, 2019, available at <https://www.buzzfeednews.com/article/adolfoflores/record-migrant-families-border-immigration-increase>; see also Dara Lind, "Why border crossings are at an 11-year high, explained in 500 words," Vox, March 6, 2019, available at <https://www.vox.com/2019/3/6/18253444/border-statistics-illegal-immigration-trump>.

⁶ *National Standards on Transport, Escort, Detention, and Search*, U.S. Customs and Border Protection, (October 2015), <https://www.cbp.gov/sites/default/files/assets/documents/2017-Sep/CBP%20TEDS%20Policy%20Oct2015.pdf>.

⁷ *Id.* at 14.

⁸ Detainees should generally not be held for longer than 72 hours in CBP holding facilities and every effort must be made to hold detainees for the least amount of time required for their processing, transfer, release, or repatriation as appropriate and as operationally feasible. *Id.* at 14.

⁹ Capacity of holding areas may only exceed those prescribed by the operational office's policies and procedures with supervisory approval. "However, under no circumstances should the maximum occupancy rate, as set by the fire marshal, be exceeded. *Id.* at 16.

¹⁰ Clean bedding must be provided to juveniles and when available, clean blankets must be provided to adult detainees upon request. *Id.* at 17.

Generally, the families we spoke with reported feeling unsafe, scared, and depressed while detained by Border Patrol agents. For example, in the middle of the night on March 13, 2019, asylum seekers reported being sprayed with water from water bottles by one Border Patrol agent. When families asked why the agent was spraying them the agent responded, "Because I can."

Migrants reported that people cry over the conditions they and their children face in the outdoor holding areas. As one person interviewed by ACLU staff stated, "I felt like a cockroach." Families report verbal abuse by Border Patrol agents including the use of slurs such as "pendeja" and "burra" meaning "asshole" and "dumbass." Mothers were also verbally abused when they asked for more food or clean clothing for their children. They were told that they were responsible for their children's suffering because they decided to come to the United States.

One agent told a pregnant migrant, "Porque no pariste tu pinche hijo en tu país, me cuesta \$25,000 al año mantener a tu pinchi hijo," meaning "why didn't you have your fucking child in your own country? It costs me \$25,000 a year to support your fucking child."

Medical Concerns:

Families report that they did not receive medical examinations when they are detained in this outdoor holding area.¹¹ This is a serious issue that can lead to the development of infectious disease such as measles and chicken pox, which can spread rapidly through an overcrowded detained population. Lack of medical attention can also cause existing medical conditions to worsen. In fact, one person interviewed by ACLU staff stated that Border Patrol agents threw out the medication she carried for her four-month-old child and did not provide her with any treatment for her child's fever. Migrants reported developing fever, nausea, and coughing while being held in this outside area. Yet, these migrants, including infants and children, are also denied medical treatment by Border Patrol agents.

Several thousand people are forced to share four to six temporary restrooms that are often filthy and foul smelling.¹² They are denied soap to wash their hands after using the restroom and have no access to showers or other hygiene products.¹³ People we spoke with reported being reprimanded by Border

¹¹ "Officers/Agents have a responsibility to safeguard detainees during a search. If there is any observed or reported indication that the detainee is injured or in any way may require medical treatment, appropriate medical care must be provided or sought in a timely manner." *Id.* at 9.

Upon a persons detention, Border Patrol agents must detainees about, and visually inspect for any sign of injury, illness, or physical or mental health concerns and question the detainee about any prescription medications. *Id.* at 14.

¹² If restrooms are not available in the secure area, supervisors must ensure that an officer/agent is within visible or audible range of the secure area to allow detainees to access restrooms upon request." *Id.* at 16.

"All facilities or hold rooms used to hold detainees must be regularly and professionally cleaned and sanitized. *Id.* at 16.

¹³ "Detainees must be provided with basic personal hygiene items, consistent with short term detention and safety and security needs." *Id.* at 17.

Families with small children will also have access to diapers and baby wipes. If a detainee is approaching 72 hours in detention, Border Patrol agents will make reasonable efforts to provide showers, soap, and a clean towel to detainees. *Id.*

Patrol agents for asking for basic necessities, such as toilet paper. Due to the large number of people placed in such a small area, families were forced to sleep on the ground right next to the restrooms, where there is toilet paper littered on the ground. These unsanitary conditions may lead to serious health issues for migrants detained by CBP.

Food and Water:

All of the families interviewed by the ACLU reported being fed the same low-quality and inadequate amount of food. They reported receiving only one ham-and-cheese sandwich per person, three times a day, regardless of age¹⁴ or any dietary/religious restrictions.¹⁵ The only dietary accommodation children received was a packet of juice with their sandwich.¹⁶ Water access is reportedly limited to sinks near temporary restroom facilities.¹⁷ Several people we interviewed stated they were always hungry and would be admonished by Border Patrol agents when they requested more food.¹⁸ Parents reported Border Patrol agents taking and throwing away food they attempted to ration for their children in-between meal times.

CBP is violating its own standards in placing migrants in El Paso in atrocious conditions that violate standards of treatment and our fundamental values. Further, these conditions do not reflect the fundamental values the United States aspires to. Every day that this continues, CBP is putting people's lives at serious risk of harm. We request an immediate end to this practice and a full investigation into this practice.

Sincerely,

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"Reasonable efforts will be made to provide showers, soap, and a clean towel to juveniles who are approaching 48 hours in detention." *Id.* at 22.

¹⁴ "Officers/Agents will consider the best interest of the juvenile at all decision points beginning at the first encounter and continuing through processing, detention, transfer, or repatriation." *Id.* at 4.

¹⁵ "Officers/Agents should remain cognizant of a detainee's religious or other dietary restrictions." *Id.* at 18.

¹⁶ "Juveniles and pregnant detainees will be offered a snack upon arrival and a meal at least every six hours thereafter, at regularly scheduled meal times. At least two of those meals will be hot. Juveniles and pregnant or nursing detainees must have regular access to snacks, milk, and juice." *Id.* at 22.

¹⁷ "Functioning drinking fountains or clean drinking water along with clean drinking cups must always be available to detainees." *Id.* at 18.

¹⁸ Adult detainees will be provided with snacks between regularly scheduled meals and border patrol agents may grant additional requests for snack or food before the next food service. *Id.* at 18.

Appendix 3



May 17, 2019

VIA ELECTONIC MAIL

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Re: Abusive Conditions in Border Patrol Detention Facilities in the Rio Grande Border Patrol Sector

Dear Mr. Kelly, Ms. Quinn, and Mr. Klein,

The American Civil Liberties Union (ACLU) Border Rights Center and the ACLU of Texas write to demand an immediate and permanent end to Custom and Border Protection's (CBP) detention of migrants in the Rio Grande Valley sector, including families with small children, in deplorable conditions unsheltered and outdoors, and an investigation into the conditions and treatment of those detained by Border Patrol in this sector.¹

¹ See Vanessa Yurkevich and Priscilla Alvarez, "Exclusive photos reveal children sleeping on the ground at Border Patrol station," CNN, May 14, 2019, available at <https://www.cnn.com/2019/05/14/politics/border-patrol-mcallen-texas-pictures/index.html>; Noman Merchant, "Border Patrol plans 2nd Donna tent," Associated Press, May 11, 2019, available at <https://www.themonitor.com/2019/05/11/border-patrol-plans-2nd-donna-tent/>.

In early March 2019, ACLU staff began to hear accounts from migrants regarding the further deterioration of conditions in Border Patrol detention facilities across the sector. Over 120 interviews conducted by ACLU staff in the Rio Grande Valley sector with asylum seeking families reveal dangerous and abusive conditions, including the detention of thousands of migrant families outdoors, without protection from rain, heat, or the sun and zero access to showers, beds, or medical attention. This is an extreme assault on their basic human rights and a failure of CBP to meet its basic duties as a government agency.

CBP has an obligation, under its own standards, to ensure that migrants are treated humanely, with dignity, and consistent with U.S. and international laws. CBP must immediately take steps to ensure all detention facilities meet standard humane conditions and timely process all arriving migrants to limit the time they spend in CBP custody. The Office of Inspector General should conduct an investigation to ensure that such unconscionable acts are never authorized again. CBP should also ensure the on-site presence of child-welfare and medical professionals at all facilities and promptly respond to all medical concerns of those in their custody.

On March 31, 2019, we filed a similar complaint demanding immediate investigation into the detention of migrants for multiple nights in outdoor detention pens at the Paso del Norte Border Patrol detention facility in El Paso, Texas.² The conditions now documented in the Rio Grande Valley mirror many of the abuses found at that facility and demonstrate the agency's ongoing violation of detention standards, without consequence.

Without immediate attention and oversight, CBP's practices will continue to endanger the lives of those arriving at our border. The agency has the resources, if appropriately allocated, to ensure humane treatment of migrants in their custody.³

As detailed below, migrants, including young children, are being held in extreme conditions outdoors, increasing the risk of serious illness and harm. The conditions and treatment of migrants in Border Patrol custody in the Rio Grande Valley require immediate action, a full investigation, and accountability for the agency's ongoing use of abusive detention conditions.

Abuses in Border Patrol Detention Facilities in the Rio Grande Valley

Asylum seekers, including families and children, report a range of abusive and inhumane conditions while detained by Border Patrol in the Rio Grande Valley. Overall, conditions and abuses in the region, including the recent detentions in outdoor detention pens, run afoul of CBP's own rules, the National Standards on Transport, Escort, Detention, and Search (TEDS), which were promulgated in 2015. The

² ACLU Border Rights Center and ACLU of Texas, Complaint Re: Abusive Conditions in Makeshift Border Patrol Holding Facilities at Paso del Norte Port of Entry in El Paso, Texas, March 30, 2019, available at https://www.aclutx.org/sites/default/files/pdn_border_patrol_abuse_oig_complaint.pdf.

³ CBP claims that an increase in apprehensions has overwhelmed detention facilities and has led to the current increase of detained migrants held in such conditions. While the number of arriving asylum seekers, particularly families and children, has increased, the number of total arrivals remain well below historic highs. Further, the agency has more resources, including officers, than ever before. The number of Border Patrol agents grew from 9,212 agents in 2000 to 19,555 in 2018. CBP's budget has also more than doubled since 2006, growing from \$7.1 billion in 2006 to \$16.69 billion this year.

TEDS set the minimal nationwide standards governing CBP's treatment of detained individuals.⁴ Citations to the relevant TED standard or other authority for each violation are provided below.

Prolonged detention, exposure to elements, and sleep deprivation:

Generally, the safety of detainees is paramount during all aspects of CBP operations and every effort must be made to promptly transfer, transport, process, release, or repatriate detainees.⁵ Many of the individuals interviewed in the Rio Grande Valley were held much longer than 72 hours,⁶ with a large number being detained for upwards of 9 days in CBP facilities throughout the region. Families reported being transferred multiple times to various facilities throughout the region before being released into the community at local shelters and bus stations.

Since early March 2019, ACLU of Texas interviews have revealed that families are being detained in CBP custody in the Rio Grande Valley for as long as nine days. As of last week, these prolonged detentions now include being held in outdoor detention pens at the McAllen Border Patrol Station for upwards of three days before being placed indoors.⁷ Over two thousand people, including families with infants and toddlers, are being held for multiple days and nights in a crowded outdoor area with very little shade from the harsh south Texas elements.⁸ One asylum seeker reported counting some 2,300 people sleeping outside.

Many reported being forced to sleep on the muddy, rocky ground, and in puddles of water during thunderstorms, which were quickly followed by extreme heat, humidity and sun exposure. Families, including those with infant children, are not provided with any bedding, mats, or chairs. They are forced to sleep on the ground outdoors, even while raining, and are only given Mylar sheets, which are paper-thin and look like tin foil, and many of which were fashioned into tarps for protection from the elements.⁹ Some families reported not even being provided with the Mylar sheets.

Families detained by Border Patrol, both in the outdoor detention pen and indoor facilities, report consistent sleep deprivation during multiple days in custody. One father with a three-year-old child reported sleeping just one hour a night for three nights while held in the outdoor detention pen due to being forced to sleep on dirt and gravel without any protection against the heavy rains that hit the region over Mother's Day weekend. Others reported Border Patrol agents calling migrants' names for processing every 15-20 minutes throughout the night, preventing prolonged sleep. Border Patrol agents would conduct checks every three hours and everyone was forced to stand and be counted. One family was held in a cell with 60 to 100 other migrants for 4 days and reported agents kicking anyone who fell asleep.

⁴ *National Standards on Transport, Escort, Detention, and Search*, U.S. Customs and Border Protection, (October 2015), <https://www.cbp.gov/sites/default/files/assets/documents/2017-Sep/CBP%20TEDS%20Policy%20Oct2015.pdf>.

⁵ *Id.* at 14.

⁶ "Detainees should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities." *Id.*

⁷ *Supra* note 1.

⁸ Capacity of holding areas may only exceed those prescribed by the operational office's policies and procedures with supervisory approval. "However, under no circumstances should the maximum occupancy rate, as set by the fire marshal, be exceeded. *Supra* note 4 at 16.

⁹ Clean bedding must be provided to juveniles and when available, clean blankets must be provided to adult detainees upon request. *Id.* at 17.

Families held in the outdoor detention pen reported that the conditions inside the “hielera” were not any better, as overcrowding was also severe. It was reported that agents “screamed at them as if they were animals,” and kicked people laying on the floor to move so more people could be placed inside the cells. Many individuals were forced to find space where they could, sleeping on and next to toilets and having their young children sleep on their chests or legs if they were able to find enough space to spread their legs. Several people reported being in severe physical pain from being forced to stand for several days due to crowding. Overall, families felt like they were being treated like animals and were terrified that there would be no end to the treatment.

Medical Concerns:

Families report that they did not receive medical examinations or treatment while being held in the outdoor detention pen.¹⁰ This is a serious issue that can lead to the development of infectious diseases, which can spread rapidly through an overcrowded detained population. Lack of medical attention can also cause existing medical conditions to worsen. In fact, several parents stated that they or their children either suffered from or developed headaches, coughs, fever, body aches, and flu-like symptoms while detained.

Migrants, including infants and children, were either ignored or denied medical attention when they requested help from Border Patrol agents. One migrant was told by a Border Patrol agent that “this is my country and I make the rules” when he denied him medical care. One father, who had already been held for three days, was told he had the option of remaining in detention and having his seven-year-old daughter taken to the hospital or being released more quickly when he asked for medical treatment for her. One mother told us that when she asked for medicine for a headache, the Border Patrol officer responded, “I have a headache too.” Another was told, “You’re not going to die from that,” when her request for cough medicine was denied.

A father was held outside for three days with his two-year-old son, who became listless with fever and chills following heaving rains. The father’s multiple requests for a doctor went unanswered for several days, he explained, “They [Border Patrol agents] wouldn’t even give us water when we asked for it. I stopped asking because they’d just ignore me.” Finally, after his son became increasingly ill and his numerous requests for medical care, they were moved into the “hielera,” where it was severely crowded and unbearably cold, further worsening his son’s condition. Only upon his insistence on receiving medical attention was his son provided with flu medication; the father was told that his insistence was the reason for the delay in his release from custody.

Further, hygienic necessities were ignored.¹¹ Families were not allowed to shower or provided with clean, dry clothing throughout their detention; one father, who was detained for a total of seven days,

¹⁰ “Officers/Agents have a responsibility to safeguard detainees during a search. If there is any observed or reported indication that the detainee is injured or in any way may require medical treatment, appropriate medical care must be provided or sought in a timely manner.” *Id.* at 9. Upon a person’s detention, Border Patrol agents must ask detainees about, and visually inspect for any sign of injury, illness, or physical or mental health concerns and question the detainee about any prescription medications. *Id.* at 14.

¹¹ “If restrooms are not available in the secure area, supervisors must ensure that an officer/agent is within visible or audible range of the secure area to allow detainees to access restrooms upon request.” *Id.* at 16. “All facilities or hold rooms used to hold detainees must be regularly and professionally cleaned and sanitized. *Id.* at 16.

told us, "I'm embarrassed to say it, but they didn't let us shower the whole time we were there, not even the women and children."¹²

Food and Water:

Persons interviewed by the ACLU reported being fed insufficient quantities and low-quality food in both the outdoor detention pen and the indoor facilities. In the outdoor detention pen, several persons reported being fed a single cheese sandwich three times a day at 8:00 a.m., 12:00 p.m., and 12:00 a.m. regardless of their age¹³ or any dietary/religious restrictions.¹⁴ Parents reported that Border Patrol agents forced them to wake their sleeping children when food was served at 12:00 a.m., otherwise the child would not receive any food. None of the parents interviewed stated their children were offered a snack or other food accommodation.¹⁵ More troubling, access to water access was limited in the outdoor detention pen. Migrants reported requesting water for themselves and their sick children, with their requests being either denied or ignored.¹⁶ Several people we interviewed stated they suffered from hunger due to insufficient food, as well as nausea from being forced to eat the same low-quality food for as many as nine days. Further, requests for more food were ignored by Border Patrol agents.¹⁷

Verbal Abuse and Threats:

Since early March 2019, families, including adults and children we spoke to, reported feeling fearful, humiliated, and dehumanized while detained by Border Patrol agents. For example, one family held in the "hielera" reported Border Patrol agents sitting outside their detention cell eating pizza and taunting them, saying "Don't you wish you could have some?" Another mother, with her six-year-old child, reported guards banging their batons aggressively on the floor next to where they were laying down to scare and intimidate them. Several migrants, including a ten-year-old girl, identified one specific agent that would throw items at them, including blankets at their faces and bottles of water to the floor, forcing them to pick it up. Agents reportedly made fun of one man's speech impediment and held him with his ten-year-old son for seven days.

Agents also threaten people with deportation or family separation. One mother reported agents forcing her to recite the national anthem of her country to prove her citizenship, threatening to separate her

¹² "Detainees must be provided with basic personal hygiene items, consistent with short term detention and safety and security needs. Families with small children will also have access to diapers and baby wipes." *Id.* at 17. If a detainee is approaching 72 hours in detention, Border Patrol agents will make reasonable efforts to provide showers, soap, and a clean towel to detainees. *Id.*

"Reasonable efforts will be made to provide showers, soap, and a clean towel to juveniles who are approaching 48 hours in detention." *Id.* at 22.

¹³ "Officers/Agents will consider the best interest of the juvenile at all decision points beginning at the first encounter and continuing through processing, detention, transfer, or repatriation." *Id.* at 4.

¹⁴ "Officers/Agents should remain cognizant of a detainee's religious or other dietary restrictions." *Id.* at 18.

¹⁵ "Juveniles and pregnant detainees will be offered a snack upon arrival and a meal at least every six hours thereafter, at regularly scheduled meal times. At least two of those meals will be hot. Juveniles and pregnant or nursing detainees must have regular access to snacks, milk, and juice." *Id.* at 22.

¹⁶ "Functioning drinking fountains or clean drinking water along with clean drinking cups must always be available to detainees." *Id.* at 18.

¹⁷ Adult detainees will be provided with snacks between regularly scheduled meals and border patrol agents may grant additional requests for snack or food before the next food service. *Id.* at 18.

from her daughter, claiming her identity documents were false, and that she would be deported to her country where the gangs would kill her.

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CBP is violating its own standards in placing migrants in the Rio Grande Valley in atrocious conditions that violate standards of treatment. Further, these conditions do not reflect the fundamental values to which the United States aspires. Every day that this continues, CBP is putting people's lives at serious risk of harm.

We request an immediate end to these practices and demand a full investigation.

Sincerely,

Shaw Drake
Policy Counsel
Border Rights Center
American Civil Liberties Union of Texas

Rochelle Garza
Staff Attorney
American Civil Liberties Union of Texas

Appendix 4

August 08, 2019

VIA ELECTONIC MAIL

Paul Del Rincon
Port Director for Eagle Pass Port of Entry
U.S. Customs and Border Protection
160 Garrison St.
Eagle Pass, TX 78852

Matthew Klein
Assistant Commissioner for Office of Professional Responsibility
U.S Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20229

Re: U.S. Customs and Border Protection (CBP) Illegally Denying Entry of United States Citizens as Mexican Authorities Threatened Them with Arrest.

Dear Mr. Del Rincon and Mr. Klein,

The American Civil Liberties Union (ACLU) Border Rights Center files this complaint on behalf of Stephanie Leutert, Catherine Ezzell, and Jake Dizard. On August 2, 2019, Customs and Border Protection (CBP) officers denied Ms. Leutert, Ms. Ezzell, and Mr. Dizard (all United States citizens) entry into the country, exposing them to potential harassment by Mexican authorities simply for presenting an unaccompanied child who had been previously turned away at a port of entry to CBP officials for processing.

CBP's disallowing U.S. citizens entry into the country raises serious concerns. Not only is it a violation of the Fifth Amendment to deny a citizen's entry to the United States,¹ it also represents a continued escalation of CBP's unlawful actions to intimidate those who advocate for the rights of arriving asylum seekers.

We ask for an immediate investigation into this incident. The agents involved should be removed from their positions pending investigation into their unlawful denial of entry of three United States citizens, exposing them to the known possibility of harm in Mexico. CBP should further clarify, in writing, their

¹ *Worthy v. United States*, 328 F.2d 386, 392 (5th Cir. 1964) ("The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment . . . We think it is inherent in the concept of citizenship that the citizen, when absent from the country to which he owes allegiance, has a right to return, again to set foot on its soil."); *See also Nguyen v. INS*, 533 U.S. 53, 67 (2001); *Balzac v. Porto Rico*, 258 U.S. 298, 308-09 (1922); *Newton v. INS*, 736 F.2d 336, 342 (6th Cir. 1984) ("It is the fundamental right of an American citizen to reside wherever he wishes, whether in the United States or abroad, and to engage in the consequent travel.").

policy regarding the presenting of unaccompanied children seeking asylum at ports of entry.² CBP should also explain, in writing, their policy and practices regarding collaboration with Mexican authorities to remove asylum seekers and advocates from international bridges.

CBP Officers Illegally Turned Away Three United States Citizens

Ms. Leutert is a migration researcher and director of the Central America & Mexico Policy Initiative at the University of Texas at Austin. She teaches a MA class on Mexico's migratory policy at the LBJ School of Public Affairs at the University of Texas at Austin and travels to the south Texas border region roughly every two months. She has published frequently on border issues. Ms. Leutert was in the border area on Friday, August 2, 2018 to conduct research for the August update of an asylum processing and waitlist report. Ms. Ezzell is a Masters student at the LBJ School of Public Affairs, where she focused on issues related to migration policy and has traveled frequently to the border region. Mr. Dizard is a postdoctoral fellow at the University of Texas at Austin, where he researches and teaches on issues of security and democracy in Mexico and Latin America.

At, or around 4:05 pm, the three approached CBP agents stationed at the middle of the Eagle Pass International Bridge II opposite Piedras Negras, Mexico along with an unaccompanied minor. CBP agents had previously unlawfully turned away the child when seeking asylum days earlier. The child immediately stepped forward to tell the CBP officers he was there to seek asylum. Ms. Leutert and her colleagues made it clear to agents they were not seeking to accompany the child into the United States but were rather there to ensure CBP processed the child as an asylum seeker, as required by law. After CBP officers mid-bridge made unknown calls on their radio, Mexican authorities approached the group and threatened them with arrest for having accompanied the child to the bridge.

Ms. Leutert then turned to CBP Supervisor Fuller, who had joined agents mid-bridge, to say "Are you going to let them arrest us?" Supervisor Fuller replied they were still on Mexican soil. Ms. Leutert, U.S. passport in hand, stepped across the international boundary mid-bridge and asked again for them to be allowed to enter the United States. Supervisor Fuller replied, "I'm not going to let you in, they are taking you back to Mexico." Supervisor Fuller then motioned to Mexican authorities that they could take the group away into Mexico.

Local Piedras Negras municipal authorities, Mexican private security guards, and eventually officials from Mexico's National Migration Institute (Instituto Nacional de Migración) held the group in Mexico for one hour. Following calls from the ACLU to local CBP leadership and inquiries by at least one member of Congress, CBP Port Director Paul del Rincon called Mexican municipal government authorities to have them release the group. Mexican authorities then returned the group to CBP officials in the middle of the international bridge. Port Director del Rincon later confirmed that they have a close relationship with Mexican authorities and were able to call to get them released. CBP agents again stopped the group and forced them to wait before crossing into the United States.

When Ms. Leutert began noting the CBP officer's names at the midpoint of the bridge, the two officers both reached up and removed their nametags from their uniforms. Nevertheless, the group had

² The United States District Court for the Southern District of California recently found that those seeking asylum at a port of entry are "arriving aliens," thereby triggering CBP's duty to inspect and refer asylum seekers into set procedures for processing asylum claims of those arriving at ports of entry. *Al Otro Lado, Inc. v. McAleenan*, 2019 WL 3413406, (S.D. Cal. July 29, 2019)

previously noted CBP officers Fravel and Chapa's last names. The group was eventually allowed to enter the port of entry, the unaccompanied minor was taken to be processed as an asylum seeker. The group of U.S. citizens were released after approximately one additional hour in CBP offices where officers attempted to clarify and justify their unlawful actions.

Retaliation

This incident is only the latest in a string of CBP actions aimed at threatening and intimidating advocates seeking to hold CBP accountable for violating the rights of asylum seekers.

Journalists, lawyers, and human rights advocates who traverse the border to advocate for migrants seeking asylum in the United States have been subject to interrogation, harassment, and detention at the hands of CBP officers.³ CBP has seized and searched their personal belongings, like phones and cameras.⁴ Officials have threatened to prosecute and investigate advocates to intimidate and discourage their cross-border advocacy.⁵

Members of Congress, lawyers, human rights advocates and religious leaders have accompanied asylum seekers to present at ports of entry, including unaccompanied children, most without CBP officers denying U.S. citizens entry or being subjected to fabricated allegations of criminal activity.⁶

CBP's unlawful actions on August 2, 2019, both intimidated and discouraged Ms. Leutert, Ms. Ezzell, and Mr. Dizard, from conducting such lawful advocacy at the Eagle Pass port of entry. CBP's actions also denied them their rights, as U.S. citizens, to re-enter the United States.

³ See Amnesty International, *USA: Authorities are misusing justice system to harass migrant human rights defenders*, (July 2, 2019), <https://www.amnesty.org/en/latest/news/2019/07/usa-authorities-misusing-justice-system-harass-migrant-human-rights-defenders/>; Human Rights Watch, *US Harassing Journalists, Lawyers, Activists at Border*, (March 8, 2019), <https://www.hrw.org/news/2019/03/08/us-harassing-journalists-lawyers-activists-border> ("At least 23 people, including at least 15 US citizens, have been interrogated, detained, or blocked at the border. At least one journalist and two lawyers were denied entry to Mexico. Those affected were working among a group of migrants who reached the border in late 2018 and early 2019.").

⁴ Ryan Devereaux, *Border Official Admits Targeting Journalists and Human Rights Advocates With Smuggling Investigations*, The Intercept, (May 17, 2019), <https://theintercept.com/2019/05/17/border-smuggling-journalists-activists/> ("In a number of cases, the phones or cameras of those being questioned were seized or examined by U.S. authorities.").

⁵ Amnesty International, *supra* note 3.

⁶ See, Representative Jimmy Gomez, *Reps. Jimmy Gomez and Nanette Barragán Travel to Southern Border to Investigate Conditions of Asylum Seekers*, December 18, 2018, <https://gomez.house.gov/news/documentsingle.aspx?DocumentID=431> ; Julián Aguilar, *Meet the man going head-to-head with federal agents to help asylum-seeking immigrants cross the border*, The Texas Tribune, June 20, 2018, <https://www.texastribune.org/2018/06/20/immigrant-families-asylum-seeking-border-aclu-el-paso/>; Victoria Gagliardo-Silver, *Bishop walks migrants across US border bridge to protest Trump policy*, Independent, June 28, 2019, <https://www.independent.co.uk/news/world/americas/us-politics/bishop-migrants-border-trump-us-texas-protest-a8979881.html> ("A Texas bishop walked with Central American migrants across and US-Mexico border bridge in protest of conditions asylum seekers face under the Trump Administration."); Lauren Villagran, *Democratic presidential candidate Cory Booker escorts migrants in Juárez to El Paso*, El Paso Times, July 3, 2019, <https://www.elpasotimes.com/story/news/2019/07/03/cory-booker-texas-border-democrat-presidential-candidate-migrants-immigration/1641513001/>.

CBP must immediately investigate this incident and the agents involved should be removed from their positions pending investigation. CBP should further clarify, in writing, their policy regarding the presenting of asylum seekers at ports of entry. The agency should also explain, in writing, their policy and practices regarding collaboration with Mexican authorities.

Ms. Leutert, Ms. Ezzell, and Mr. Dizard are available to provide additional information in furtherance of your investigation into this incident.

Sincerely,



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CC:

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Appendix 5

September 17, 2019

VIA ELECTRONIC MAIL

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RE: U.S. Customs & Border Protection's Routine Failure to Provide Necessary Medical Care and Treatment to Individuals in Substance Withdrawal at Ports of Entry

I. Introduction

Over the past few months, multiple reported instances indicate that U.S. Customs and Border Protection ("CBP") is knowingly denying access to medical care to persons in CBP custody at the San Ysidro port of entry while these individuals detoxify from a variety of controlled substances, including prescribed medications. CBP's failure to provide detained individuals with medical supervision during this process puts these individuals at risk of serious injury or death. This letter calls upon CBP to:

- 1) Adhere, at a minimum, to its own National Standards on Transport, Escort, Detention and Search (“TEDS standards”) and ensure timely and appropriate medical care is provided to people detained at POEs; and
- 2) Update the TEDS standards to confirm and clarify CBP’s understanding of its legal and humanitarian obligations to those in its custody, and to ensure detained individuals are protected.¹

The undersigned organizations engage in advocacy related to civil rights and public health concerns along the U.S.-Mexico border. Through this work, we have identified CBP practices that restrict or impede emergency medical treatment at San Ysidro and other ports of entry (“POEs”), endangering the lives of many people who pass through the border.²

Although affected communities and advocates have documented inadequate medical care for people in CBP custody for years, the agency has failed to meaningfully respond.³ While the cases highlighted below focus on detoxification and withdrawal related complications, the reforms proposed herein will also benefit individuals with chronic medical conditions, like diabetes, hypertension, and asthma, who likewise are endangered by CBP’s current practices. Throughout the United States, law enforcement organizations acknowledge detainees’ specific and pressing health needs and are banding together to address this issue.⁴ CBP must follow suit.

II. At-Risk Detainees in CBP Custody

There have been several reported instances of individuals undergoing forced detoxification in CBP custody at the San Ysidro POE without any medical supervision or treatment. In all cases, these individuals were rejected for transfer to the Metropolitan Correctional Facility (“MCC”) in San Diego for being medically unfit for confinement. Following that determination, CBP continued to detain them at the POE without treatment.

¹ For more detailed recommendations, see p. 8–11, *infra*.

² The ACLU and other organizations have written separately to address similar problems in other CBP facilities, primarily those operated by CBP’s subcomponent agency, the U.S. Border Patrol. This letter, by contrast, focuses on CBP’s Office of Field Operations (“OFO”), the subcomponent agency responsible for detention facilities at ports of entry. See, e.g., Shaw Drake & Bernardo Rafael Cruz, *Abusive Conditions in Makeshift Border Patrol Holding Facilities at Paso del Norte Port of Entry in El Paso, Texas*, ACLU BORDER RIGHTS CTR (Mar. 30, 2019), <https://bit.ly/2FIehMC>; Kathryn Hampton, MSt, *Zero Protection: How U.S. Border Enforcement Harms Migrant Safety and Health*, Physicians for Human Rights (Jan. 10, 2019), <https://bit.ly/2RB23ep>; Letter from Academic Pediatric Ass’n, et al., to Kirstjen M. Nielsen, U.S. Secretary of Homeland Sec. & Kevin K. McAleenan, Commissioner of U.S. Customs and Border Protection (Dec. 18, 2018), <https://bit.ly/2IQz8jH>; Press Release, ACLU Border Rights Center, Statement on Child’s Death in Border Patrol Custody (Dec. 13, 2018), <https://bit.ly/2KBHHAU>.

³ See, e.g., Sheri Fink & Caitlin Dickerson, *Border Patrol Facilities Put Detainees with Medical Conditions at Risk*, N.Y. TIMES (Mar. 5, 2019), <https://nyti.ms/2UhjNMs>; Suzanne Gamboa & Daniella Silva, *From Accountability to Medical Care, Critics Cry for Serious Reform of Border Agency*, NBC NEWS (Dec. 23, 2018, 12:52 AM PST), <https://nbcnews.to/2X5gecy>.

⁴ See, e.g., NAT’L SHERIFFS’ ASS’N & NAT’L COMM. ON CORRECTIONAL HEALTH CARE, JAIL-BASED MEDICATION-ASSISTED TREATMENT: PROMISING PRACTICES, GUIDELINES, AND RESOURCES FOR THE FIELD (Oct. 2018), <https://bit.ly/2IQcoAj>.

U.S. citizen and Gulf War combat veteran Marc-Oliver Lewis was detained for four days in February 2019.⁵ Mr. Lewis repeatedly informed CBP officers that he had previously been using high doses of alcohol and heroin and he began experiencing severe withdrawal symptoms shortly after he was taken into custody. CBP, however, never provided Mr. Lewis with any medical care. While in CBP custody, Mr. Lewis experienced headaches, dizziness, difficulty breathing, chest tightness, racing heart, palpitations, nausea, vomiting, diarrhea, stomach aches, muscle pain, joint and bone pain, anxiety, restlessness, fatigue, insomnia, and depression. He was in so much pain that he was unable to get off the ground to drink water, which exacerbated his symptoms. Mr. Lewis's documents reveal that he had more than 24 hours of tachycardia (fast heart rate), which is often among the initial vital signs associated with dehydration and acute withdrawal. He endured this suffering for three days without access to any doctor, nurse, or other medical provider, and consequently to medications that could mitigate the complications of acute withdrawal and prevent potential severe or permanent injuries that can result from alcohol and opiate withdrawal.

Amanda Grae Sams, also a U.S. citizen, had a similar experience during her five-day detention at the San Ysidro POE in January 2019.⁶ Upon her arrest, Ms. Sams informed CBP officers that she had been addicted to alcohol and methamphetamine. Soon thereafter, she began experiencing dramatic symptoms of withdrawal from these substances, including: severe headaches, dizziness, difficulty breathing, chest tightness, racing heart, palpitations, nausea, stomach aches, muscle pain, joint and bone pain, anxiety, restlessness, fatigue, insomnia, and depression. CBP officers did not take Ms. Sams to a hospital or provide her with any medical care for over four days. Instead, CBP closed Ms. Sams' cell window to silence her continued pleas for medical attention.

A third case is Antonio Perez Tejada's, a Tijuana resident who arrived at San Ysidro under the influence of alcohol and methamphetamine in November 2018 and was subsequently detained at the POE for five days.⁷ During this period, he experienced a grueling headache, violent shakes, and recurrent vomiting and diarrhea. During this time, CBP officers did not allow him to change his clothing nor did they provide him soap or the opportunity to bathe. He begged for pain medication and for more food every chance he could, multiple times per day. Every 24 hours he spent in CBP custody, Mr. Perez Tejada was given only a small burrito, juice, and cookies. Mr. Perez Tejada did not see a medical provider until his fifth day in CBP custody, at which point he was already post-withdrawal (according to medical expert review of his records).

As disturbing as each of these instances is in isolation, San Diego legal service providers indicate that these stories in fact exemplify a CBP pattern of neglecting detainees' serious medical needs.

⁵ See *United States v. Lewis*, No. 3:19-CR-797-MSB (S.D. Cal. Mar. 7, 2019). Mr. Lewis' case is also the subject of a publicly filed damages lawsuit: *Lewis v. Unknown Agents of the U.S. Dep't of Homeland Sec.*, No. 3:19-cv-00600-CAB-NLS (S.D. Cal. Apr. 1, 2019); Adam Racusin, *Claim: Government is Not Providing Adequate Medical Care to People in Its Custody*, ABC 10 NEWS: SAN DIEGO (updated May 30, 2019, 5:25 PM PST), <https://bit.ly/2REfB8N>.

⁶ See *United States v. Sams*, No. 3:19-CR-422-AJB (S.D. Cal. Feb. 6, 2019). Ms. Sams' case is also the subject of a publicly filed damages lawsuit: *Sams v. Unknown Agents of the U.S. Dep't of Homeland Sec.*, No. 3:19-cv-00612-BAS-BGS (S.D. Cal. Apr. 2, 2019).

⁷ See *United States v. Perez-Tejada*, No. 3:18-CR-5229-CAB (S.D. Cal. Dec. 18, 2018).

III. Proper Standard of Care

People undergoing any kind of substance detoxification need access to specialized care, which is essential to prevent potentially fatal complications. The proper care protocol varies depending on the substance and patient characteristics, but alcohol withdrawal and benzodiazepine withdrawal, in particular, may lead to multiple serious complications including seizures and death if left untreated. Complications of withdrawal from opiates, methamphetamines, and other street drugs can also cause severe disabilities and injuries. Yet death and injuries from substance withdrawal are entirely preventable. For example, dehydration, which can cause significant kidney injury and death, can be treated with oral or intravenous fluids in various types of clinical environments.

The federal government's own publications highlight the necessity of adequate treatment during substance detoxification. The Substance Abuse and Mental Health Services Administration ("SAMHSA"), a branch of the U.S. Department of Health and Human Services ("HHS"), publishes a series of detailed, continually updated protocols and recommendations for treating individuals experiencing different types of substance withdrawal.⁸ SAMHSA recommends that "no intoxicated patient should ever be allowed to leave a hospital setting," emphasizing that "inpatient detoxification provides 24-hour supervision, observation, and support for patients who are intoxicated or experiencing withdrawal."⁹ SAMHSA contemplates escalating levels of care depending on the severity of detoxification symptoms, but at minimum recommends that there be a physician, nurse, and psychologist or addiction counselor available to the person detoxifying.¹⁰ SAMHSA also flags some common symptoms in detoxification patients that "require immediate medical attention," such as: increasing anxiety and panic, hallucinations, seizures, fevers, increases/decreases in blood pressure and heart rate, insomnia, abdominal pain, gastrointestinal bleeding, changes in responsiveness of pupils, and nervous system agitations.¹¹ Furthermore, SAMHSA acknowledges that medical experts recommend different treatment plans depending on the substance(s) from which an individual is withdrawing.¹²

The Federal Bureau of Prisons ("BOP") and other federal correctional agencies operating both long- and short-term facilities rely on SAMHSA's recommendations in formulating specialized policies governing detainee detoxification. The BOP classifies certain symptoms and signs commonly associated with detoxification as "requiring immediate medical attention" and develops treatment protocols accordingly for people in BOP custody.¹³ BOP acknowledges that when withdrawal symptoms are observed or suspected, "[f]requent clinical assessments, along with indicated treatment adjustments (in both dose and frequency) are imperative," and further that "every effort should be made to ameliorate the inmate's signs and symptoms of alcohol or drug

⁸ See, e.g., SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, MEDICATIONS FOR OPIOID USE DISORDER (TREATMENT IMPROVEMENT PROTOCOL 63) (2018) [hereinafter SAMHSA TIP 63], <https://bit.ly/2LnjrSS>.

⁹ SAMHSA, DETOXIFICATION AND SUBSTANCE ABUSE TREATMENT (TREATMENT IMPROVEMENT PROTOCOL 45) 16 (rev. 2015), <https://bit.ly/2J6C8HD>.

¹⁰ *Id.* at 12–20.

¹¹ *Id.* at 26.

¹² *Id.* at 47–105.

¹³ FEDERAL BUREAU OF PRISONS, CLINICAL GUIDANCE: DETOXIFICATION OF CHEMICALLY DEPENDENT INMATES 3 (rev. Jan. 2018), <https://bit.ly/2YgYQmz> (emphasis in original).

withdrawal.”¹⁴ Recent litigation has reaffirmed the BOP’s obligation to provide such treatment to detainees with opioid use disorder.¹⁵ CBP should be held to the same standards.

Local and state government agencies likewise emphasize treatment resources and are actively working to reduce detention for people struggling with substance-related medical issues. Past instances of detainee deaths following substance withdrawal in San Diego jails¹⁶ have propelled the County of San Diego to implement better medical procedures, and consider alternatives to detention, to provide better care for individuals struggling with addiction.¹⁷ This pressing public health need in San Diego mirrors the larger national trend of working to combat substance abuse.

Despite these widely acknowledged and available best practices, advocates have documented CBP’s repeated failure to provide appropriate medical care to detainees experiencing life-threatening substance withdrawal symptoms at the San Ysidro POE—or to transfer such individuals to medical care facilities. San Ysidro is the busiest land POE in the Western Hemisphere, with approximately 70,000 vehicles and 20,000 pedestrians crossing northbound each day.¹⁸ Given the volume of people crossing through San Ysidro on a daily basis, and the national and regional public health crises of substance abuse and addiction, CBP officers working at the POE must be prepared to provide the necessary medical care to people in their custody.

IV. TEDS Violations

When CBP deprives detainees of emergency and other necessary medical care, the agency transgresses its own policies and violates the United States Constitution.¹⁹ Below, we highlight how CBP’s aforementioned practices violate the agency’s own policies and provide recommendations for agency reforms.

The controlling policy document, the TEDS standards, governs CBP’s interactions with detained individuals.²⁰ The TEDS standards operate against the backdrop of federal statutes and

¹⁴ *Id.* at 2.

¹⁵ Settlement Agreement, *DiPierro v. Hurwitz et al.*, No. 1:19-cv-10495-WGY (D. Mass. filed Mar. 15, 2019), <https://bit.ly/2YeXhFN>.

¹⁶ Kelly Davis, *Addiction Can Be Fatal in San Diego County Jails*, SAN DIEGO CITY BEAT (Apr. 17, 2013), <https://bit.ly/2LgctyW>.

¹⁷ Kelly Davis, *Outgoing Law Enforcement Watchdog Hopes Group Opens Up About Its Processes*, VOICE OF SAN DIEGO (Sept. 18, 2018), <https://bit.ly/2Xwwdot>; Gary Warth, *Homeless People with Drug Addiction to be Offered Rehab over Jail in New Program*, SAN DIEGO UNION-TRIBUNE (Dec. 27, 2018), <https://bit.ly/2Sr0Sxy>; see also Eric Westervelt, *County Jails Struggle With a New Role As America’s Prime Centers for Opioid Detox*, KPBS (Apr. 24, 2019), <https://bit.ly/2FASC9R>.

¹⁸ GEN. SERVS. ASS’N, SAN YSIDRO LAND PORT OF ENTRY, <https://bit.ly/2VOEaFi> (last visited August 30, 2019).

¹⁹ *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124 (9th Cir. 2018), cert. denied sub nom. *Cty. of Orange, Cal. v. Gordon*, 139 S. Ct. 794 (2019) (due process right to challenge inadequate medical care for pretrial detainees).

²⁰ U.S. CUSTOMS AND BORDER PROTECTION, NAT’L STANDARDS ON TRANSPORT, ESCORT, DETENTION, AND SEARCH (Oct. 2015), <https://bit.ly/2CyHJnu>.

regulations that bind CBP to certain standards of care.²¹ They are short and general statements; as such, the TEDS standards establish a bare *minimum* for agency conduct.²²

Despite the minimal protections set out in the TEDS standards, CBP violated the following provisions of these standards while detaining Mr. Lewis, Ms. Sams, and Mr. Perez Tejada. The relevant TEDS standards are listed on the left:

1.0, General Standards	
1.7, <i>Reasonable Accommodations and Language Acces</i> : “Reasonable accommodations must be made for a detainee’s known or reported mental, physical and/or other special needs consistent with safety, and security requirements.”	CBP failed to provide Mr. Lewis, Ms. Sams, and Mr. Perez Tejada any “reasonable accommodations” for each individual’s known substance withdrawal during prolonged detention at the San Ysidro POE.
4.0, Secure Detention Standards	
4.1, <i>Duration of Detention</i> : “Detainees should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities. Every effort must be made to hold detainees for the least amount of time required for their processing, transfer, release, or repatriation as appropriate and as operationally feasible.”	CBP held Mr. Lewis, Ms. Sams, and Mr. Perez Tejada for longer than 72 hours at the San Ysidro POE. About a day into each individual’s confinement, CBP attempted to transfer them to MCC. MCC, however, rejected each patient, finding them medically unfit for continued confinement due to their serious medical conditions. Rather than releasing the individuals to a hospital or other qualified medical facility, however, CBP then returned each individual to the POE for further detention.
4.2, <i>At-Risk Detainee Determination Process</i> : “Before placing any detainees together in a hold room or holding facility, officers[] shall assess the information before them to determine if the detainee may be considered an at-risk detainee. .	CBP officers were on notice that Mr. Lewis, Ms. Sams, and Mr. Perez Tejada suffered from Substance Use Disorder and were at risk of acute withdrawal. Each individual explicitly told multiple CBP officers, on multiple occasions

²¹ Per the TEDS document itself, the additional relevant authorities are: 19 U.S.C. §§ 482, 1461, 1581, 1582, 1589a; 8 C.F.R. §§ 232, 235, 236, & 287; 6 C.F.R. § 115; 79 F.R. 13100 (Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities); Immigration and Nationality Act (INA); Personal Search Handbook, CIS HB 3300-04B revised July 2004; Use of Force Policy, Guidelines and Procedures Handbook, HB 4500-01C, revised May 2014; Motor Vehicle Management Handbook, HB 5200-14B, revised June 2014; Occupational Safety and Health Handbook, HB 5200-08B, revised September 2012; Secure Detention, Transport and Escort Procedures at Ports of Entry, 3340-030B, August 8, 2008; The Law of Arrest, Search, and Seizure Manual, M-69; Enforcement Standards – Body Searches, May 28, 1997; Hold Rooms and Short Term Custody, OBP 50/10.2-P; CBP Policy on Nondiscrimination in Law Enforcement Activities and all other Administered Programs, February 6, 2014; CBP Zero-Tolerance Policy, March 11, 2015.

²² According to a 2016 Government Accountability Office report, “[t]he TEDS policy is intended as a foundational document” to be supplemented with more detailed policies developed by CBP subcomponents. CBP has not, however, made these more detailed policies available to the public. *See* U.S. GOV’T ACCOUNTABILITY OFF., GAO-16-514, IMMIGRATION DETENTION: ADDITIONAL ACTIONS NEEDED TO STRENGTHEN DHS MANAGEMENT OF SHORT-TERM HOLDING FACILITIES 9 n.14 (MAY 2016), <https://bit.ly/2xhYBMc>.

<p>. . This assessment will include: Whether the detainee has or demonstrates a mental, physical, or developmental disability [and] [w]hether the detainee has an observed or reported serious physical/mental injury or illness. . . .”²³</p>	<p>throughout their detention, that they had a history of dependence on substances and would need medical help to address acute withdrawal symptoms. Yet CBP did not assess any of these individuals to be “at risk,” and the agency did not provide any type of medical screening or “fit for confinement exam” for these individuals.</p>
<p>4.3, <i>General Detention Procedures</i>: “Upon a detainee’s entry into any CBP hold room, officers/agents must ask detainees about, and visually inspect for any sign of injury, illness, or physical or mental health concerns and question the detainee about any prescription medications.”</p>	<p>CBP failed to assess or evaluate Mr. Lewis, Ms. Sams, or Mr. Perez Tejada regarding any necessary medications. And, as noted in § 4.2 above, although each individual informed multiple CBP officers on multiple occasions of their substance dependence, officers took no action to protect them.</p>
<p>4.10, <i>Medical</i>: “Emergency medical services will be called immediately in the event of a medical emergency (e.g., heart attack, difficulty breathing) and the call will be documented in the appropriate electronic system(s) of record. Officers/Agents must notify the shift supervisor of all medical emergencies as soon as possible after contacting emergency services. . . Except for assistance with lifesaving emergency medical care which they feel comfortable rendering and are trained to render, officers/agents will not administer medical techniques, medications, or preparations unless they are qualified emergency medical technicians or paramedics rendering care.”</p>	<p>CBP did not call emergency medical services or any other type of medical service provider for Mr. Lewis, Ms. Sams, or Mr. Perez Tejada after they each presented with severe symptoms of substance withdrawal. Despite experiencing agonizing and severe withdrawal symptoms, none of these detainees received any medications or medical care until several days had passed in CBP custody.</p>
<p>5.0, <i>At-Risk Populations</i></p>	
<p>5.1, <i>General</i>: “Individuals in the custody of CBP who may require additional care or oversight, who may include: . . . [T]hose who have identified mental, physical or developmental disabilities. . . . CBP staff will treat all at-risk populations with dignity, respect and special concern for their particular vulnerability. . . . [A]ccommodations must be made for at-risk detainees with known or reported mental and/or</p>	<p>CBP appears to have not designated Mr. Lewis, Ms. Sams, or Mr. Perez Tejada as “at-risk” detainees, despite the fact that these individuals self-reported their medical conditions and exhibited serious physical symptoms of substance withdrawal. All three detainees were ignored, and sometimes even belittled, rather than being treated with “dignity,” “respect,” or “special concern.” No accommodations were</p>

²³ The TEDS do not provide a specific definition of “at-risk detainee,” but § 5.1 provides examples of at-risk populations: “juveniles; UAC; pregnant individuals; those known to be on life-sustaining or life-saving medical treatment; those at higher risk of sexual abuse (including but not limited to gender nonconforming, intersex, and transgender); reported victims of sexual abuse; those who have identified mental, physical or developmental disabilities; those of advanced age; or family units.” Section 4.1 provides an additional list of factors that CBP officers are to use to evaluate if someone fits into the category of “at-risk detainee.”

physical disabilities, in accordance with security and safety needs and all applicable laws and regulations. . . . Officers/Agents will physically check hold rooms on a regular and frequent manner, according to each operational office’s policies and procedures.”	made for them and each of them was left alone for long periods of time, without meaningful checks.
5.6, <i>Access to Medical Care</i> : “Any physical or mental injury or illness observed by or reported to an officer/agent should be reported to a supervisor and appropriate medical care should be provided or sought. Emergency services will be called immediately in the event of a medical emergency.”	CBP failed to obtain necessary medical care for Mr. Lewis, Ms. Sams, and Mr. Perez Tejada, even as each individual demonstrated easily-recognizable, acute withdrawal symptoms and reported their distress to multiple CBP officers. After MCC rejected each detainee, CBP should have transferred them to a hospital or qualified medical facility, rather than returning them to detention at the POE.

V. Recommendations

CBP’s failure to care for Mr. Lewis, Ms. Sams, and Mr. Perez Tejada put their lives in imminent danger. These individuals’ experiences are not outliers, but part of a long list of recent cases that show that many similarly situated individuals detained at the San Ysidro POE face similar risks. The ACLU and undersigned organizations urge CBP to reform their deficient practices and adopt the following improved policies to safeguard detainees. It is essential for the public health of our community to ensure that CBP employees with control over vulnerable individuals in their custody have sufficient instruction, training, and resources to be able to prevent the serious complications that accompany substance withdrawal and other chronic conditions. Based on recent public references to an agency-wide protocol on medical treatment currently in development,²⁴ we implore CBP to revise and strengthen *at least* the following provisions of the TEDS as it devises its new policies.

Recommendation #1: Reasonable Accommodations

Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA), and various federal regulations prohibit CBP from discriminating against people with disabilities.²⁵ Substance Use Disorder (SUD) is a disability under the Rehabilitation Act when the condition “substantially limits a major life activity” such as seeing, hearing, eating, sleeping, concentrating, communicating, and other basic bodily functions.²⁶ CBP’s failure to provide such accommodations to people undergoing detox at the POE may, therefore, constitute a violation of federal law.

²⁴ U.S. Customs and Border Protection, CBP Directive No. 2210-003 (Jan. 28, 2019), <https://bit.ly/2ZK75YK>.

²⁵ 29 U.S.C. § 794; 6 C.F.R. § 15.1 *et seq.*; DHS Directive No. 65-01 (Sept. 25, 2013), <https://bit.ly/2NeLjLq>; DHS Instruction No. 65-01-001 (Mar. 13, 2015), <https://bit.ly/2Nql3h0>.

²⁶ *See* DHS OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES, GUIDE 065-01-001-01: COMPONENT SELF-EVALUATION AND PLANNING REFERENCE GUIDE (June 16, 2016), <https://bit.ly/2XBmcq0>; U.S. DEP’T OF HEALTH AND HUMAN SERV’S, OFF. FOR CIVIL RIGHTS, FACT SHEET; DRUG ADDICTION AND FEDERAL DISABILITY RIGHTS LAWS (Oct. 25, 2018), <https://bit.ly/2GF1P4e>.

- CBP should revise its definition of “at-risk detainee” to expressly include people facing addiction and/or substance withdrawal and other serious medical needs. CBP must commit to complying with TEDS § 1.7 to provide reasonable accommodations to such at-risk detainees.
- CBP must devise policies with more specific criteria for an individual evaluation and assessment of the reasonable accommodations necessary for people at risk for or experiencing acute withdrawal in CBP custody. At a minimum, these accommodations must guarantee detainees have adequate food, fluids, pain medication and access to a trained medical professional while in custody.

Recommendation #2: Medical Staff & Facilities at the POE

San Ysidro POE has been under construction for more than a decade. As the port has changed, however, CBP has disclosed little information about its facilities. The public does not know, for example, answers to such questions as: how many beds there are for those detained in the port; what type of sleeping arrangements are typical for port holding cells; what level of access detainees have to bathrooms, showers, and potable drinking water; and what medical facilities or staff exist to accommodate the needs of detainees. CBP must make this information available to the public. In addition:

- CBP must have an onsite medical professional (at least RN-level) available at all times at the San Ysidro POE.
- All CBP staff at the San Ysidro POE should receive training, by independent experts, about substance use disorders so that they are able to identify acute withdrawal symptoms when they occur. CBP staff must also be trained to report such symptoms immediately and ensure immediate assistance from medical professionals, either on-site, via telehealth, or after transfer to a medical facility.
- Any on-site medical facilities at the San Ysidro POE must have sufficient equipment and medications to manage patients in CBP custody who are undergoing acute withdrawal symptoms until transfer to the hospital or other medical facility.

Recommendation #3: Intake and medical screening procedures

Medical experts agree that appropriate medical intake screening is necessary to ensure that an individual receives medication for a chronic condition or appropriate medical treatment for withdrawal and detoxification.

- CBP must have qualified medical staff perform initial intake assessments and “fit for confinement” exams on individuals within six hours of their arrival at the San Ysidro port holding facilities and respond according to widely-accepted standards of care if any individuals are deemed not fit for confinement.
- CBP must record detainee self-reported medical conditions, including substance use disorder, during intake.

- CBP should transfer detainees in need of medical treatment to a hospital or qualified medical facility immediately, rather than detaining such individuals at the port. There are multiple facilities in San Diego that have capacity to treat people undergoing withdrawal and detoxification and CBP must ensure it can find a place for any individual in its custody requiring such help, even if there is a shortage of space at one facility.

Recommendation #4: Length of Detention

- CBP must set an absolute maximum 12-hour limit on detention of people with serious medical conditions, including substance dependence, even those who are not noticeably exhibiting acute symptoms of withdrawal or other conditions.
- When CBP attempts to transfer an individual to MCC or ICE custody and MCC or ICE rejects the individual for being medically unfit for confinement, CBP must immediately transfer that person to a hospital or qualified medical facility. CBP must not return that individual to the port and continue to detain them.
- When CBP is unable to transfer someone to MCC, ICE custody, or a hospital, CBP must parole or otherwise release that individual so they can facilitate their own access to medical care.

Recommendation #5: Written Policies

CBP must improve its written policies to conform to the substantial body of medical literature on caring for vulnerable populations, and specifically people undergoing substance use withdrawal and detoxification. CBP's written policies must be more detailed and specifically address the wide-ranging needs of different individuals and populations, since the course of these symptoms is extremely variable from individual to individual.

For example, age, general health, nutritional factors, and possible co-occurring medical or psychiatric conditions all play a role in the onset and severity of the symptoms of alcohol withdrawal. Different substances require different types of care: for example, alcohol and benzodiazepine withdrawal requires constant supervision and medication to prevent seizures and manage autonomic dysfunction, while opiate withdrawal commonly requires medications to relieve debilitating symptoms and prevent dehydration.

CBP's written policies must reflect its commitment to and preparation for providing proper care for people in its custody who are detoxifying from alcohol, heroin, and all other common substances (such as benzodiazepines, methamphetamines, and cocaine).

- CBP must implement policies requiring that medical screenings and other medical treatment should be documented along with detainee complaints and concerns. These policies will require meaningful, well-documented, and frequent checks of holding cells. Dedicated staff resources should be in place to audit those records and ensure accountability.
- CBP must implement policies describing how and when people in need of medication can get that medication prescribed and administered to them while in CBP custody.

- CBP must implement policies clarifying the level of health provider who will treat different types of conditions. At minimum, there should be an RN available to see all people detained at the port who request medical care or demonstrate signs of medical distress. When a full evaluation is needed, detainees should have prompt access to a licensed and board-certified healthcare provider.
- CBP must implement policies that clearly define the term “emergency” such that there will be clear instruction as to when additional medical services must be called in. CBP must also adopt clear guidelines about when transfer to a hospital is necessary, which should have both subjective and objective referrals criteria.
- CBP must implement policies requiring that CBP facilities have specific, written protocols for (at least) alcohol, opioid, and benzodiazepine detoxification, and for continued treatment for prescribed medications that may cause withdrawal symptoms if stopped abruptly. Substance use disorders must be specifically referenced in its policies regarding at-risk detainees.

We appreciate CBP’s attention to the life-and-death matters raised in this letter. Given the urgency of these problems, the undersigned respectfully request that CBP provide a written response on or before October 17, 2019. This response should explain CBP’s plans for addressing the pressing public health issues described herein.

Sincerely,

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Appendix 6



September 26, 2019

VIA ELECTRONIC MAIL

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Re: *Pregnant women returned to Mexico under the “Migration Protection Protocols” (MPP)*

Dear Mr. Cuffari, Ms. Quinn, and Mr. Klein,

The American Civil Liberties Union (ACLU) Border Rights Center and the ACLU of Texas write to demand an immediate stop to the placement of pregnant women and other vulnerable populations in the “Migration Protection Protocols” (MPP) policy and the return of pregnant women who have been held in Mexico under the policy to the United States. While the MPP policy violates the rights of all subjected to it, the adverse effects of this policy is particularly acute among vulnerable populations, such as pregnant women. While we await action by Congress or the courts to end MPP, we seek in the interim an unequivocal commitment from the Department of Homeland Security (DHS) to cease subjecting vulnerable populations, including pregnant women, to the MPP policy, and an immediate investigation by the Inspector General into the treatment of pregnant women in MPP.

The MPP policy unlawfully denies adequate access to the United States asylum system and forcibly returns asylum seekers to Mexico, where they face immediate and ongoing threats

to their security.¹ Asylum seekers, including pregnant women, subjected to the policy have faced rape, kidnapping, assault, extortion, and death after being forced to return to Mexico.² The United States asylum system is in place to ensure our values as a nation of immigrants are reflected in the way we treat those arriving to our country. Returning asylum seekers to such danger is the antithesis of these values and against the law.

Vulnerable Populations in MPP

Since the policy's inception, the DHS has maintained that "individuals from vulnerable populations may be excluded on a case-by-case basis."³ DHS's own "MPP Guiding Principles," maintain that persons with "known physical/mental health issues" are "not amenable to MPP."⁴ Nevertheless, DHS has consistently returned vulnerable populations to Mexico under the policy, including pregnant women.⁵ While each pregnancy requires different forms of medical intervention and monitoring, a pregnant women has heightened physical care and medical needs from those of the general population.

Notwithstanding these needs, DHS officials maintain that "consistent with the policy, migrants with known physical or mental health conditions are not subject to the Migrant Protection Protocols. Pregnancy may not be observable or disclosed and may not in and of itself disqualify an individual from participating in the program."⁶ However, Customs and Border Protection (CBP) does not appear to conduct adequate medical assessment of a person's pregnancy to determine whether they should be disqualified from MPP or provide any guidance

¹ See "Groups File Lawsuit Against Trump Policy that Forces The Return of Asylum Seekers to Mexico," American Civil Liberties Union, Feb. 14, 2019, available at, <https://www.aclu.org/press-releases/groups-file-lawsuit-against-trump-policy-forces-return-asylum-seekers-mexico>

² See "Trump Administration Delivers Asylum Seekers to Grave Danger in Mexico: 200+ Publicly Reported Cases of Rape, Kidnapping, and Assault Just the Tip of the Iceberg," Human Rights First, Sept. 17, 2019, available at <https://www.humanrightsfirst.org/resource/trump-administration-delivers-asylum-seekers-grave-danger-mexico-200-publicly-reported>

³ See *Migrant Protection Protocols*, U.S. Homeland Security, Jan. 24, 2019, available at <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>

⁴ See *MPP Guiding Principles*, U.S. Customs and Border Protection, Jan. 28, 2019, available at <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf>

⁵ See *Delivered to Danger: Illegal Remain in Mexico Policy Imperils Asylum Seekers' Lives and Denies Due Process*, at pgs. 9-10, Human Rights First, Aug. 2019, available at <https://www.humanrightsfirst.org/sites/default/files/Delivered-to-Danger-August-2019%20.pdf>

⁶ Robert Moore, "Fate of pregnant women at border sparks congresswoman's outrage," June 19, 2019, available at <http://borderzine.com/2019/06/fate-of-pregnant-women-at-border-sparks-congresswomans-outrage/>

regarding what may disqualify a pregnant woman from the program.⁷ The presumption must be that pregnant women should be excluded from the program. CBP officials are simply letting pregnant women—regardless of their physical health or medical needs—languish in Mexico.

DHS has returned a significant number of pregnant women to Mexico under MPP, exposing them to further harm in a particularly dangerous regions.⁸ DHS is returning pregnant women to places that are considered extremely dangerous -- Baja California, Tamaulipas, and Chihuahua, among others.⁹ Tamaulipas has been labeled “the disappearance capital of Mexico,”¹⁰ and a currently effective State Department travel warning puts the state in the same category as Syria.¹¹ Yet time and again, the U.S. government subjects pregnant women to such dangers with limited access to food and healthcare while being forced to survive on the streets, in migrant encampments, such as the makeshift tent community at the foot of the Gateway International Bridge in Matamoros, Tamaulipas, Mexico, or at unsecure shelters across the northern region of Mexico.

United States senators, among others, have raised serious concerns about the return of pregnant women under MPP. “Policies and practices targeting pregnant women at the border are horrific,” wrote Sen. Merkley in an August 2019 letter to the DHS Office of Inspector General. “Forcing pregnant women to wait alone in Mexico for their asylum hearings put them in extreme risk of abuse and extortion [and] creates significant health risks.”¹² Senator Menendez and a group of 23 U.S. senators, said in a letter to DHS and the Department of State, that they were

⁷ Based on interviews conducted by ACLU of Texas and other organizations. Authors’ notes maintained at ACLU offices.

⁸ See Robert Moore, “Fate of pregnant women at border sparks congresswoman’s outrage,” *Borderzine*, June 19, 2019, available at <http://borderzine.com/2019/06/fate-of-pregnant-women-at-border-sparks-congresswomans-outrage/>; See Reynaldo Leños Jr., “Migrant mother and her lawyer refused to take ‘no’ for an answer from U.S. border agents,” *The Texas Tribune*, Sept. 9, 2019, available at <https://www.texastribune.org/2019/09/09/pregnant-migrant-lawyer-border/>; See Robert Moore, “‘I’m in Danger’: Migrant Parents Face Violence in Mexico under New Trump Policy,” *Texas Monthly*, April 25, 2019, available at <https://www.texasmonthly.com/politics/im-in-danger-migrant-parents-face-violence-in-mexico-under-new-trump-policy/>

⁹ Parker Asmann, “Migrants Easy Prey Under US ‘Remain in Mexico’ Program,” *InSight Crime*, July 10, 2019, available at <https://www.insightcrime.org/news/analysis/migrants-prey-us-remain-mexico-program/>

¹⁰ Parker Asmann, “Migrants Easy Prey Under US ‘Remain in Mexico’ Program,” *InSight Crime*, July 10, 2019, available at <https://www.insightcrime.org/news/analysis/migrants-prey-us-remain-mexico-program/>.

¹¹ David Agren, “US ‘do not travel’ advisory puts five Mexican states on same level as Syria,” *The Guardian*, Jan. 10, 2018, available at <https://www.theguardian.com/world/2018/jan/10/us-travel-advisory-mexico-do-not-travel-crime-drug-cartel>

¹² See Letter from Representative Jeff Merkley to Inspector Joseph V. Cuffari (Aug. 16, 2019), available at <https://www.merkley.senate.gov/imo/media/doc/DHS-OIG%20Letter%20re%20Pregnant%20Migrants.pdf>

“deeply disturbed by reports that pregnant women are also being returned to these precarious conditions in Mexico.”¹³

Medical professionals have also raised concerns about pregnant women in the program. During a recent trip to the migrant encampment in Matamoros, Dr. Sondra Crosby, a physician with Physicians for Human Rights, noted conditions that would “greatly increase the risk for largely preventable adverse maternal and newborn outcomes.” These conditions include: insufficient nutrition that could result in anemia and malnutrition; inadequate access to clean, potable water placing pregnant women at increased risk of dehydration and diarrheal diseases; unhygienic living conditions; cramped living conditions in the open air that increase the risk of infectious and mosquito borne diseases; and a “lack of prenatal care and monitoring” that increases the risk of “preterm birth, low birth-weight infants, stillbirths and maternal mortality.” Dr. Crosby emphasized that such “adverse birth outcomes can have long-lasting repercussions on the health and development of the newborn well into adulthood.”¹⁴

Individual Accounts of Pregnant Women in MPP

On September 6, 2019, the Associated Press reported that an eight-and-a-half months pregnant Salvadoran woman experiencing contractions had her labor stopped by medical professionals at a hospital in the United States and was returned by CBP to Mexico under MPP.¹⁵ Since learning of this situation, the ACLU interviewed the woman at the center of this story, as well as 17 other women that were pregnant when returned to Mexico through the MPP program. These interviews referenced in this complaint took place between September 17, 2019 and September 25, 2019. In order to protect the health and safety of these very vulnerable women, we have withheld their names and A-numbers, but can provide those confidentially to officials investigating this matter.

On September 18, 2019, ACLU attorneys met with, G.C.M.G. (A# XXX-XXX-XXX), the 28-year-old subject of the Associated Press article in Matamoros, Tamaulipas, Mexico. ACLU attorneys learned that G.C.M.G. had given birth in Mexico on September 6, 2019—the same day the AP published its article on her ordeal. We learned that G.C.M.G. was initially returned to Mexico on August 25, and that following this return, she had presented herself two more times at the Brownsville port of entry to seek medical attention, as she had preeclampsia in her prior pregnancy. On the first attempt, she was allowed entry at the bridge, held in CBP custody for two days, then returned again to Mexico. On her second attempt, she was denied

¹³ See *Menendez, Colleagues Demand Trump Administration End Remain in Mexico Policy*, U.S. Senate Committee on Foreign Relations, Aug. 28, 2019, available at <https://www.foreign.senate.gov/press/ranking/release/menendez-colleagues-demand-trump-administration-end-remain-in-mexico-policy->

¹⁴ See “Unsafe, Unsanitary, Inhumane”: PHR Medical Expert’s Observations at the Matamoros Migrant Encampment, Physicians for Human Rights, Sept. 26, 2019, available at <https://phr.org/news/phr-statement-on-migrant-protection-protocols/>

¹⁵ See Norman Merchant, “A Heavily Pregnant Migrant Crossed the U.S. Border Experiencing Contractions. American Doctors Stopped Her Labor, then Sent Her Back to Mexico,” *TIME*, Sept. 7, 2019, available at <https://time.com/5671108/us-pregnant-migrants-labor-mexico/>

entry altogether. Following these failed attempts, G.C.M.G. went into labor the evening of September 5 in a tent at the makeshift migrant encampment at the foot of Gateway International Bridge in Matamoros. Women sleeping in the encampment assisted during her labor until Mexican officials finally took her to a hospital the next morning to deliver her baby.

Pregnant migrants like G.C.M.G. live in unsafe and unsanitary conditions upon their return to Mexico after having also endured mistreatment and inadequate medical care during their detention in CBP custody. The ACLU documented conditions that include:

- **Mistreatment and lack of medical care in CBP custody:** pregnant women in CBP custody are denied adequate medical attention, verbally abused by U.S. officials, forced to sleep on the floor, and provided inadequate food and water while in custody.
- **Lack of access to medical care in Mexico:** even when pregnant women report their medical needs to Mexican officials, unless they are in active labor, their needs go unmet. As many of the women interviewed attested, they have little to no access to medical care in Mexico.
- **Inadequate access to food and water:** pregnant women rely almost exclusively on humanitarian aid provided by non-governmental organizations (NGOs) from both sides of the border or on shelters created to house MPP returnees in dangerous border cities like Juarez and Tijuana. In Matamoros alone, there are approximately 700 people living in a migrant encampment, the majority of whom rely on food and water provided twice daily by U.S. based NGOs as their sole source of sustenance.
- **Unsafe living conditions:** most pregnant women report fear of leaving encampments or shelters because of the dangers Matamoros, Ciudad Juarez and Tijuana present. Many sleep on the streets without any protection. In Matamoros, there is no fresh water in the migrant encampment so people wash clothing and bathe in the Rio Grande River/Rio Bravo, which is polluted and dangerous. In fact, drownings have been well documented, especially in recent weeks,¹⁶ and individuals have reported skin infections as a result of bathing in polluted water.¹⁷

¹⁶ See Adolfo Flores, “A Teen Girl Forced to Wait in Mexico Under Trump’s Asylum Policies Nearly Drowned While Waiting to Cross,” BuzzFeed News, Sept. 16, 2019, available at <https://www.buzzfeednews.com/article/adolfoflores/trump-asylum-policy-mexico-mpp-remain-rio-grande-dangers>; See “Migrante hondureña muere ahogada junto con su hijo de 2 años al intentar cruzar el río entre Mexico y EE.UU.,” Actualidad, Sept. 18, 2019, available at <https://actualidad.rt.com/actualidad/327473-migrante-hondurena-muere-ahogada-hijo-mexico-eeuu>; See Reis Thebault, Luis Velarde and Abigail Hauslohner, “The father and daughter who drowned at the border were desperate for a better life, family says,” Washington Post, June 26, 2019, available at <https://www.washingtonpost.com/world/2019/06/26/father-daughter-who-drowned-border-dove-into-river-desperation/>

¹⁷ Based on interviews conducted by ACLU of Texas and other organizations. Authors’ notes maintained at ACLU offices.

Case Examples:¹⁸

G.C.M.G.'s experience and those detailed below represent just a hand full of struggles faced by the over 48,000 migrants subjected to the inhumane MPP policy:

- **Y.C.F.F.** (A# XXX-XXX-XXX) of Honduras is 8 months pregnant and was returned to Matamoros, Tamaulipas, Mexico on or about August 18, 2019. In April 2019, prior to entering the United States, she and her five-year-old daughter were kidnapped in Mexico but managed to escape. While detained in CBP custody, a “white, tall, blue-eyed woman,” wearing a green uniform told her that she should abort her baby because “Trump didn’t want there to be any more pregnant people here.” She was held in overcrowded conditions for three days. She has had no prenatal care in Matamoros.
- **M.E.L.D.D.** (A# XXX-XXX-XXX) of El Salvador is 2.5 months pregnant and was returned to Matamoros, Tamaulipas, Mexico on August 4, 2019. She entered the U.S. through Reynosa on July 30, 2019 and was detained for six days in CBP custody. She was kept in a crowded cell with so many people that she could not lie down. Officials never asked her if she was afraid of being returned to Mexico, “[t]hey didn’t ask us at all if we wanted to be here.” “I became sick, I had fever, a headache...they asked us if we were sick, but if we said we were sick that we would be left there [in CBP custody] even longer.” She has been having trouble finding food and living in the migrant encampment in Matamoros: “It has been very hard to find food because it is dangerous to leave [the encampment] and you can’t eat well. I mean, you sleep on the floor, it is very uncomfortable. That’s how mothers suffer with their children...It’s very hard for us, I mean, we’re all human beings and I believe we have the right to be ok.”
- **C.J.T.** (A#: XXX-XXX-XXX) of Guatemala, age 22, is 5 months pregnant and was returned to Ciudad Juarez, Chihuahua, Mexico on August 6, 2019. After crossing into the United States on August 5, 2019 and expressing fear of return to Mexico to U.S. Border Patrol agents, she was issued MPP paperwork and returned to Juarez the following day. Three days later she was taken to the hospital in Juarez with stomach pains. She was diagnosed and treated for an infection and dehydration. She is now stuck in a shelter in Juarez awaiting her first court date in the United States scheduled for December 4, 2019, with limited access to medical care. She is waiting with her 4-year-old son.
- **G.O.M.P.** (A#: XXX-XXX-XXX) of Honduras, age 22, is 7.5 months pregnant and was returned to Matamoros, Tamaulipas, Mexico on September 6, 2019. She reports that she is RH negative, a condition which requires testing to determine whether the fetus’s blood has RH protein in order to prevent damage to the fetus’s red blood cells should RH protein be present in the fetal blood. G.O.M.P. states she needs to receive an injection but reports that no medical care has been provided to her in Mexico.

¹⁸ All referenced stage of pregnancy is at the time of interview, which were conducted from September 17, 2019 to September 25, 2019.

- **F.Y.C.H.** (A#: XXX-XXX-XXX) of Honduras, age 28, is 2.5 months pregnant and was returned to Tijuana, Baja California, Mexico on May 25, 2019, along with her husband and two small children. Upon return to Mexico, F.Y.C.H. and her family suffered threats and extortion from smugglers in Tijuana. The family fled to Mexicali, where she experienced bleeding due to her pregnancy and received limited emergency medical care. In her past two pregnancies, F.Y.C.H. endured medical difficulties, including preeclampsia and a hernia that required surgery. She has lost weight during this pregnancy as she cannot eat regularly and suffers from high blood pressure. In early September 2019, when in CBP custody during her initial immigration court hearing, F.Y.C.H. informed CBP officers of her pregnancy but was ignored. She also requested diapers for her three-year-old child. CBP agents told her she should potty train her son and did not provide diapers. Due to ongoing threats against the family in Baja California, F.Y.C.H. and her family have fled south to another state in Mexico.
- **M.C.C.M.** (A# XXX-XXX-XXX) of El Salvador is 6 months pregnant and was returned to Matamoros, Tamaulipas, Mexico on August 25, 2019. She was held in overcrowded conditions for four days while in CBP custody. It was so overcrowded that they could not lie down on the floor and when she asked for medical treatment, she was told she had to put up with it because there was no doctor. As in other cases documented, when M.C.C.M. was being transported to Matamoros, along with five other pregnant women, a CBP official told them “it was a shame they were pregnant because Trump had passed a law that pregnant women, that we no longer had any possibility of staying [in the U.S.] because they no longer wanted to give papers [citizenship] to children born there [in the U.S.] and that the best option was to abort.” After her return to Mexico, she attempted to re-enter the U.S. out of desperation born of fear of living in Mexico and of being kidnapped but was returned to Mexico again.
- **I.M.H.** (A# XXX-XXX-XXX) of Honduras, age 25, is 6 months pregnant and was returned to Ciudad Juarez, Chihuahua, Mexico on August 14, 2019, along with her husband and 4-year-old daughter. After crossing into the United States and seeking out Border Patrol agents to seek asylum, she and her family were held in a CBP holding facility for one night and provided no medical screening. When informed they would be returned to Juarez, her husband expressed concern for the safety of his pregnant wife. The officers took no action and returned her anyway. They now live in a migrant shelter in Juarez. I.M.H. is afraid to go outside because shootings have occurred outside the shelter and other migrants have been followed by feared kidnappers. She has been warned to not leave her child alone or she risks abduction. She has no access to medical care in Mexico. Her first court hearing in the United States is December 10, 2019. She is due on December 22, 2019.
- **K.R.G.** (A#: XXX-XXX-XXX) of Honduras, age 32, is 3 months pregnant and was returned to Matamoros, Tamaulipas, Mexico on September 2, 2019, along with her husband and 8-year-old daughter. She informed Mexican officials that she needs an ultrasound, but they responded that she needs to go to a private clinic for one. K.R.G. has no money for a private clinic: she has been sleeping on the floor since her arrival in

Matamoros and only obtained a tent, as a gift, the day before ACLU staff interviewed her to protect her from the elements. She is due March 30, 2020.

- **M.M.R.** (A#: XXX-XXX-XXX) of Honduras, age 24, was nearly full term when returned to Matamoros, Tamaulipas, Mexico on September 6, 2019. She was held in CBP custody for seven days in a crowded cell with other pregnant women and recently born children. Her water broke and labor pains began the same day CBP returned her to Matamoros. M.M.R. did not report her pains for fear her child would be taken from her because another woman in her cell told M.M.R. that she hadn't seen her baby in the two months following the birth of her child by cesarean section while in CBP custody. M.M.R. continued labor in Mexico until Mexican officials took her to a hospital to deliver.
- **Y.G.T.A.** (A#: XXX-XXX-XXX) of Peru, age 20, is 8 months pregnant and was returned to Matamoros, Tamaulipas, Mexico on July 22, 2019. She fled her country due to death threats by her child's father and is afraid to be in Matamoros because he knows she is there. She has not been able to receive medical care while in Matamoros to even determine how her pregnancy is developing, "Right now, I don't even know if my baby is okay."
- **A.B.E.X.X.** (A#: XXX-XXX-XXX) of Guatemala, age 25, is currently 6 months pregnant and was returned to Matamoros, Tamaulipas, Mexico on August 16, 2019. She was detained in CBP custody for nearly five days, during which she was held with three other pregnant women in a cell with more than 20 people. She slept on the floor with the others, absorbing the cold from the floor. Agents told her that the President didn't want them in the country and is why they were being sent to Mexico. After CBP returned her to Matamoros, with no money or support, she was forced to live at the migrant encampment on the street. She had been sleeping in the open air until being gifted a tent two weeks prior to ACLU staff interviewing her, however, she had already developed backpain and a cough. She fears living in the encampment, "I don't know the people here...I sometimes don't sleep until three [am] because I'm watching out for myself...I don't want anything to happen to me."
- **A.G.G.V.** (A# XXX-XXX-XXX) of El Salvador, age 31, is 7 months pregnant, and was returned to Matamoros, Tamaulipas, Mexico on September 1, 2019. Entering the U.S., she spent a total of seven days in Border Patrol custody, during which Border Patrol held her in an over-crowded cell for three days, fed her frozen sandwiches and only a single bottle of water with each meal. Border Patrol agents marked her with a red bracelet indicating she was pregnant when she was first placed into custody but at no point after being designated did she receive any care or attention concerning her pregnancy. She had been told that if she asked for asylum, she would be sent to Matamoros to wait and expressed fear of being returned to Mexico. Since being forced to Matamoros, she had been living and sleeping outside in the open air in the migrant encampment in Matamoros until a tent was gifted to her. She is afraid and does not leave the camp because a woman she knew from the camp was being followed. She relies on humanitarian groups that

bring food to the encampment twice a day for nourishment. She hasn't been able to receive any further medical care for her pregnancy.

- **T.Y.P.G.** (A# XXX-XXX-XXX) of Honduras, age 28, is approximately 2 months pregnant and was returned to Matamoros, Tamaulipas, Mexico on August 28, 2019, with her 8-year-old daughter. They were in Border Patrol custody for a total of eleven days. After CBP returned them to Matamoros, her daughter was diagnosed with dengue fever by a medical aid worker that visited the migrant encampment. Her daughter was not given any medication to help her recover and has been sleeping under a tree near the migrant encampment in Matamoros.
- **G.M.H.M.** (A# XXX-XXX-XXX) of Honduras, age 25, is 5.5 months pregnant and was returned to Matamoros, Tamaulipas, Mexico on September 3, 2019. She along with her two young daughters, ages 5 and 2, were victims of an attempted kidnapping in Mexico prior to their entering the United States at the end of August 2019. She and her children were held in CBP custody for a total of four days. CBP officials were aware of her pregnancy--CBP officers asked who was pregnant and how far along they were when they turned themselves in—but as with other cases, knowledge of her pregnancy failed to trigger any appropriate medical care in the U.S. or in Mexico. She was not told by CBP officials about the decision to return her to Mexico: “They gave us papers, and when I asked where we were going, they told me ‘Don’t worry, you’re going somewhere close, to a safe place.’ I thought we were being sent to another *perrera* [CBP holding facility] until I saw that we were being left in Mexico.”
- **C.J.G.E.** (A#: XXX-XXX-XXX) of Honduras, age 16, is 6 months pregnant and was returned to Tijuana, Baja California on May 22, 2019, along with her mother **M.E.E.P.D.A.** (A# XXX-XXX-XXX). After crossing into the United States on May 18, 2019, C.J.G.E. and her mother were detained for five days, not provided adequate medical care and returned to Mexico despite informing officers that C.J.G.E. was pregnant. In Mexico, C.J.G.E. became very ill and sought medical assistance. Doctors in Mexico determined that she has very low blood pressure and sugar levels but only suggested that she consume sweets. C.J.G.E. and her mother currently rent a room in Tijuana with two other families returned under MPP. Approximately two weeks ago, armed men forced their way into their home to hide from the police. C.J.G.E. and her mother fear remaining in Mexico due to threat of kidnapping, discrimination against migrants, and their lack of family to provide support.
- **L.E.L.P.** (A# XXX-XXX-XXX) of Ecuador, age 18, is 4 months pregnant and was returned to Nuevo Laredo, Mexico on September 23, 2019 for a second time under MPP. Despite repeated attempts by U.S. advocates to intervene, Border Patrol sent her back to Mexico. Previously returned to Nuevo Laredo under MPP, the young woman was subsequently kidnapped, and her family extorted for her release. Upon re-entering the United States, she expressed her fear of return to Mexico to Border Patrol officers, who failed to refer her for a screening interview. Once back in Mexico, her and other returned women could not leave the Mexican side of the port of entry due to known cartel scouts waiting to identify returning migrants for kidnapping. After extensive efforts by U.S.

advocates, a local contact was able to transport the women to a local church. Despite not sharing their location with anyone, unknown individuals identifying themselves as local journalists appeared at the church the following day demanding to speak with the women. L.E.L.P. feels fleeing into the Mexican interior is her only option to find temporary safety.

- **B.Y.C.A.** (A# XXX-XXX-XXX) of Honduras, age 35, is 8 months pregnant and was returned to Tijuana, Baja California, Mexico on July 2, 2019. B.Y.C.A. crossed into the United State near Hidalgo, Texas with her husband and 10-year-old son. The family was flown from the Rio Grande Valley to California and returned to Mexico via MPP. When apprehended Border Patrol officers forced B.Y.C.A. to throw away medication that she was taking for her pregnancy. Her pregnancy is high risk and she cannot access needed medication in Mexico. B.Y.C.A. and her family are currently living in an abandoned home in Tijuana, which she describes as rat and cockroach infested and simply uninhabitable. Her next hearing date in the United States is not until January 31, 2020.

CBP is violating the rights of thousands of asylum seekers through MPP. The harms of this program are felt even more acutely by vulnerable populations like pregnant women. This program places them directly in harm's way and denies their right to seek protection in the United States. The brutalization of asylum seekers must end. At a minimum, DHS must cease the forced return of pregnant women and other vulnerable populations to Mexico under the MPP policy.

We request an immediate end to these practices and demand a full investigation.

Sincerely,

Adriana Piñon

Policy Counsel & Senior Staff Attorney
American Civil Liberties Union of Texas

Rochelle Garza

Staff Attorney
American Civil Liberties Union of Texas

Shaw Drake

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American Civil Liberties Union of Texas

Appendix 7



November 14, 2019

VIA ELECTRONIC MAIL

Joseph Cuffari
Inspector General
U.S. Department of Homeland Security
254 Murray Lane SW
Washington, D.C. 20528

Matthew Klein
Assistant Commissioner
Office of Professional Responsibility
U.S. Customs and Border Protection
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Washington, D.C. 20229

Cameron Quinn
Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
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Re: CBP's unlawful turn back of Mexican asylum seekers at ports of entry

Dear Mr. Cuffari, Ms. Quinn and Mr. Klein,

The American Civil Liberties Union (“ACLU”) of Texas and the ACLU Border Rights Center write to demand accountability for Customs and Border Protection’s (“CBP”) unlawful policy of turning back asylum-seeking Mexican nationals at ports of entry. CBP is systematically violating U.S. and international law by turning Mexican nationals back into the very country and dangers from which they have attempted to flee. The Department of Homeland Security (“DHS”) has confirmed that it has severely limited the rate of processing of asylum seekers at ports of entry in order to deter migration, flouting U.S. law.¹ A recent study found that 11,000 Mexican nationals are currently impacted by CBP’s turn back policy and resulting metering systems border wide, amounting to 52 percent of all those subjected to the policy.²

CBP’s policies are further exacerbating a humanitarian crisis of the agency’s own creation across northern Mexico, with thousands of asylum seekers stuck in encampments in areas where migrants commonly face kidnappings, rape, and disappearances. The crisis will only

¹ See, Sophie Weiner, *The Trump Administration is Allegedly Slowing the Asylum Process to Discourage Applicants*, SPLINTER NEWS (Dec. 18, 2018), available at <https://splinternews.com/the-trump-administration-is-allegedly-slowing-the-asylum-1831168211>

² See, “Metering Update”, The University of Texas at Austin Strauss Center for International Security and Law (Nov. 2019), available at https://www.strausscenter.org/images/strauss/18-19/MSI/MeteringUpdate_191107.pdf

worsen as winter months approach, yet CBP continues to reject thousands of Mexican asylum seekers arriving at ports of entry.

Most Mexican nationals rejected by CBP in El Paso and Brownsville live in precarious, insecure, and unsanitary conditions in encampments near the U.S. ports. Most individuals in the encampments are children, lacking access to school, adequate medical care, or basic security. At times, illness has spread through the camps—on one occasion the portable toilets overflowed with feces in a camp in Juarez. Pregnant women, children with disabilities and chronic medical conditions, and other particularly vulnerable groups have also been rejected by CBP officers and forced to sleep in the streets of Juarez and Matamoros.

We found CBP officers consistently deny Mexican nationals' access to ports of entry to seek asylum in El Paso and Brownsville. CBP officers have, for example, told Mexican asylum seekers that there is no more asylum in the United States. Some officers directed Mexican nationals to seek out Mexican government officials in order to access protection in the United States—the same government from which Mexican asylum seekers are fleeing. Many CBP officers claim that since the ports are at capacity, they cannot process arriving Mexican nationals seeking protection—a claim which, as described below, is demonstrably false. Another officer simply stated he would not let in any Mexican asylum seekers while he was posted on the international bridge.

CBP's consistent and widespread rejection of asylum seekers at ports of entry have left thousands waiting near ports for their opportunity to seek asylum in the United States. CBP's actions, including direct threats to migrants that they will shut down the ports, have led Mexican asylum seekers to form lists to organize those waiting in Juarez and Matamoros. These lists now include thousands of Mexican families, many fleeing immediate and ongoing persecution, who are forced to wait because of CBP's refusal to process and receive asylum seekers. To be clear, the cause of the delay for Mexican asylum seekers is not the metering lists handled by those in Mexico—it is the result of CBP's intentional blocking of Mexican asylum seekers.

The Department of Homeland Security Office of Inspector General and Office of Civil Rights and Civil Liberties, as well as CBP's Office of Professional Responsibility, must fulfill their oversight obligations by investigating CBP's unlawful policy and issuing robust and timely recommendations for ending a policy that continues to violate the rights of thousands.

CBP must immediately end this policy and process all Mexican asylum seekers arriving at the U.S.-Mexico border.

Background

Through its turn back policy, CBP denies migrants access to the U.S. asylum system by turning away asylum seekers arriving at U.S. ports of entry. In April 2018, CBP expanded and formalized its policy of turning away asylum seekers at ports of entry across the U.S.-Mexico

border through the use of a practice known as “metering.”³ Under “metering,” CBP has systematically blocked those seeking protection at ports of entry across Texas by posting agents mid-bridge to turn away arriving migrants.⁴ Based on names currently on metering lists across the border, this policy has stranded an estimated 21,300 asylum seekers in Mexico, as of November 2019, where they face ongoing threats to their security.⁵

CBP’s unlawful policy of turning away asylum seekers at ports of entry has directly led to the creation of “metering” systems in northern Mexican border towns. In fact, documents obtained via litigation indicate early implementation of the policy included direct coordination with Mexican authorities to limit access at ports. For example, in a 2016 email, the Laredo Field Office instructed all port officers to follow the mandate of the CBP Commissioner and Deputy Commissioner to “meet with your INM [Mexican immigration agency] counterpart and request they control the flow of aliens to the ports of entry.” If their Mexican counterparts refused, CBP staff was instructed to tell arriving asylum seekers to return at a later time.⁶ CBP’s summary rejection of asylum seekers at ports and the agency’s reliance on resulting metering lists has directly resulted in a system that limits arriving asylum seekers’ access to ports of entry across the border.

From its inception, CBP has applied its turn back policy to a wide array of arriving asylum seekers, including particularly vulnerable populations.⁷ CBP has also refused to publicly

³ See, Robert Moore, *At the U.S. Border, Asylum Seekers Fleeing Violence Are Told to Come Back Later*, WASH. POST (June 13, 2018), available at https://www.washingtonpost.com/world/national-security/at-the-us-border-asylum-seekers-fleeing-violence-are-told-to-come-back-later/2018/06/12/79a12718-6e4d-11e8-afd5-778aca903bbe_story.html?utm_term=.c17d3d1d9df4; see also, “Special Review- Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy”, Office of Inspector General (Sept. 27, 2019), available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>

⁴ See, Dara Lind, *Trump Keeps Making It Harder for People to Seek Asylum Legally*, VOX (June 5, 2018), available at <https://www.vox.com/policy-and-politics/2018/6/5/17428640/border-families-asylum-illegal>

⁵ See, “Metering Update”, *supra* note 2; see also, “Barred at the Border: Wait ‘Lists’ Leave Asylum Seekers in Peril at Texas Ports of Entry,” HUMAN RIGHTS FIRST (April 2019), available at https://www.humanrightsfirst.org/sites/default/files/BARRED_AT_THE_BORDER.pdf; see also, Dara Lind, *Asylum- Seekers Who Followed Trump Rule Now Don’t Qualify Because of New Trump Rule*, PROPUBLICA (July 22, 2019), available at <https://www.propublica.org/article/asylum-seekers-that-followed-trump-rule-now-dont-qualify-because-of-new-trump-rule>; see also, USA: ‘You Don’t Have Any Rights Here’ Illegal Pushbacks, Arbitrary Detention & Ill-Treatment of Asylum-Seekers in the United States, AMNESTY INTERNATIONAL (Oct. 11, 2018), available at <https://www.amnesty.org/en/documents/amr51/9101/2018/en/>; see also, *Watch the U.S. Turn Away Asylum Seekers at the Border*, THE ATLANTIC (June 18, 2018), available at <https://www.theatlantic.com/video/index/563084/us-border-asylum/>

⁶ See, Second Amended Complaint at paras. 50-60, *AOL v. McAleenan*, No. 3:17-cv-02366-BAS-KSC (S.D. Cal. Nov. 13, 2018)

⁷ See, “Crossing the Line: U.S. Border Agents Illegally Reject Asylum Seekers,” HUMAN RIGHTS FIRST (May 2017), available at <https://www.humanrightsfirst.org/sites/default/files/hrf-crossing-the-line-report.pdf>

release official policy guidelines for its turn back policy or any relevant data to support its claims that capacity at ports limit their ability to process arriving asylum seekers.⁸

Despite abundant evidence to the contrary, CBP has consistently maintained that Mexican nationals are not subjected to turn backs or resulting metering systems. And in a memorandum entitled “Metering Guidance” and issued on April 27, 2018, Todd Owen, Executive Assistant Commission for CBP Office of Field Operations, instructed CBP southwest border field operation directors to be “particularly aware of any [Mexican immigration agency] controls that are preventing U.S. Citizens, LPRs [green card holders], or Mexican nationals (some of whom may intend to claim fear) from entering the United States.”⁹

Documentation by the ACLU and partner organizations—described in detail below—demonstrates that CBP is denying Mexican asylum seekers access to the U.S.

Mexican Nationals Subjected to CBP’s Turn Back Policy and Resulting Metering Systems

ACLU staff have confirmed that CBP has subjected approximately 3,000 Mexican nationals in Juarez, opposite El Paso, TX, and approximately 860 Mexican nationals in Matamoros, opposite Brownsville, TX, to its turn back policy and the resulting metering systems that limit their access to U.S. ports.

Information collected by partners indicates that Mexican nationals are currently subjected to CBP’s turn back policy at ports of entry across the whole southwest border. A report recently published by the Robert Strauss Center at the University of Texas at Austin tallied 11,000 Mexican nationals metered across 10 major ports of entry, making up 52 percent of all asylum seekers subjected to CBP’s policy and resulting metering lists. This includes some 5,000 Mexican Nationals being metered in Tijuana, 3,000 in Juarez, and several hundred in Mexicali, Nogales, and Agua Prieta.¹⁰ Notably, over 1,200 Mexican nationals are currently on a metering list in San Luis Rio Colorado, a small border south of Yuma, AZ.¹¹

This complaint contains 18 case examples from Mexican nationals unlawfully subjected to CBP’s turn back policy at ports of entry in El Paso and Brownsville.

⁸ See, FOIA Letter from ACLU of Texas to Customs and Border Protection Agency (Oct. 29, 2018), available at https://www.aclutx.org/sites/default/files/foia_minor_adjustment.pdf; see also, Letter from Senators Jerrold Nadler, Bennie G. Thompson and Zoe Lofgren to acting U.S. DHS Sec. Kevin McAleenan (Dec. 17, 2018), available at <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/Nadler-Lofgren-Thompson%2012.17%20Letter%20to%20CBP%20Commissioner.pdf>

⁹ See, *AOL v. McAleenan*, No. 3:17-cv-02366-BAS-KSC (S.D. Cal. Sept. 26, 2019), ECF No. 293-13

¹⁰ See, “Metering Update”, *supra* note 2. (This updated report highlights changes over the past three months across 14 Mexican border cities. The data reported is derived from conversations with asylum seekers, Mexican government officials, and representatives from U.S. and Mexican civil society organizations. These conversations were conducted during field research in nine border cities, and via phone interviews with individuals in five additional cities.)

¹¹ *Id.*

In September 2019, contrary to general prior practice, CBP began rejecting Mexican nationals at the El Paso sector ports of entry.¹² Local advocates in Juarez began to observe an increasing number of Mexican asylum-seeking families stranded at the foot of the Santa Fe bridge, connecting the Paso del Norte port of entry with downtown Juarez.¹³ Around the same time, the ACLU Border Rights Center also issued a letter to CBP expressing concern that the agency was justifying recent port closures with false claims of potential “mass entry” of migrants. During one such closures, reports indicated that the only migrants at the port were a group of 20 Mexican asylum seekers sleeping at the foot of the bridge.¹⁴ CBP agents on the Santa Fe bridge would later threaten arriving Mexican asylum seekers with further port closures if they themselves failed to limit the flow of Mexican asylum seekers at the port, according to asylum seekers interviewed by ACLU staff.

CBP has since rejected arriving Mexican nationals at all three major ports of entry in El Paso.

In September 2019, local advocates also observed asylum-seeking Mexican families denied entry at Gateway bridge in Matamoros. Families initially requested entry from CBP officials stationed at the middle of the bridge but were turned back and told there was no space for them. As a result, Mexican asylum seekers started to sleep at the base of the bridge, in the open-air and later in tent encampments comprised of individuals returned to Matamoros through the Migrant Protection Protocols (“MPP”), or “Remain in Mexico” program, and metered Central Americans. Currently, the population of the migrant encampment has grown to approximately 2,000 people, including approximately 560 Mexican asylum seekers, and has expanded over the Rio Grande/Rio Bravo River levy into the nearby wooded area.

Due to the growing encampment at Gateway bridge, metered Mexicans began attempting to seek asylum at the Brownsville & Matamoros (“B&M”) bridge in September 2019. Currently, there are approximately 300 people on the metered list for the B&M bridge maintained by the Mexican asylum seekers themselves. However, individuals were told in October 2019 that asylum seekers were no longer being accepted. In fact, not a single family was processed for over a week following an October 10th protest, during which CBP shut down the Gateway

¹² See, Julian Aguilar, *As Violence increases, more Mexicans are waiting in Ciudad Juarez to apply for asylum*, THE TEXAS TRIBUNE (Sept. 13, 2019), available at <https://www.texastribune.org/2019/09/13/number-mexicans-waiting-ciudad-juarez-apply-asylum-increasing/>

¹³ See, Nick Miroff, Mary Beth Sheridan and Kevin Sieff, *Surge of Mexican migrants is new challenge for Trump border crackdown*, WASH. POST (Oct. 18, 2019), available at https://www.washingtonpost.com/national/surge-of-mexican-migrants-is-new-challenge-for-trump-border-crackdown/2019/10/18/c40f6e72-f029-11e9-b648-76bcf86eb67e_story.html

¹⁴ See, Letter from ACLU of Texas to Customs and Border Protection- Office of Field Operations in El Paso (Sept. 4, 2019), available at https://www.aclutx.org/sites/default/files/field_documents/aclu_border_rights_center_-_cbp_port_closure_letter_9-4-19.pdf

bridge.¹⁵ As a result, approximately 100 families left the B&M bridge, giving up their places on this list. As of last week, approximately one family a day was being processed at this port of entry.

Living Conditions in Encampments in Juarez and Matamoros

Mexican asylum seekers in Juarez have formed encampments near the three pedestrian ports of entry in El Paso. In all three locations, asylum seekers report that their children do not have access to school, have trouble finding food, and sleep on the ground, either in tents, on concrete, or on dirt. In all three locations, asylum seekers report inadequate sanitary conditions, inadequate access to health care, and general fear of violence.

The Santa Fe bridge is located in downtown Juarez. Mexican asylum seekers are living on the street and sidewalks in an encampment next to train tracks, a bus stop, and busy streets. Approximately 60-70 percent of the people living in this encampment are children, who are forced to play on the busy streets. As of October 29, 2019, there were approximately 300 people living in this encampment. There are no public restrooms. Instead, asylum seekers must pay to access restrooms in a store or on the bridge. There are no public showers, and families are forced to rent hotel rooms by the hour in order to shower. Not all families have funds to ensure regular access to these facilities

The Cordova bridge is the most secluded of the three bridges in Juarez. Mexican asylum seekers live and sleep on the ground or in tents. There were approximately 400 families living there as of October 23, 2019. There are approximately six portable toilets, which have overflowed with feces, and no showers.

Close to 1,000 Mexican asylum seekers live in an encampment near Juarez's Zaragoza bridge. They all sleep on concrete sidewalks, under tarps or in tents. There are approximately five portable toilets on the street. During a recent rainstorm the encampment was completely flooded. The owner of a close-by strip mall momentarily let pregnant women into an empty storefront to escape the flooding. Some families struggle to locate sufficient food and all fear for their safety in Juarez.

In Matamoros, Mexican asylum seekers have formed one larger encampment at the base of the Gateway bridge and a much smaller one at the foot of the B&M bridge. Most people interviewed described immediate, imminent threats upon their lives and those of their children. Rejection by CBP has forced them into hiding, moving from location to location to avoid being discovered by those threatening their lives. As such, children are unable to attend school and adults are unable to work.

As of October 30, 2019, there were approximately 560 Mexican nationals living in a section of the approximately 2,000-person encampment at the Gateway bridge in Matamoros. There is no running water and only a handful of portable toilets available for the growing

¹⁵ See, Adolfo Flores, *Asylum-Seekers Protesting Squalid Conditions Shut down a US Border Crossing for 15 Hours*, BUZZFEED NEWS (Oct. 10, 2019), available at <https://www.buzzfeednews.com/article/adolfoflores/asylum-seekers-protesting-bridge-close-matamoros-texas>

encampment. The conditions are dangerous and unhygienic, with open defecation near the riverbank where people bathe and fish in the polluted water. Dead bodies and animal carcasses have been found in the water and frequent drownings have occurred over the last few months. Open fires are common near the tents, so there is a constant threat of smoke inhalation and tents catching fire. Cartels also pose a pervasive and a constant threat throughout this area. Shortly after speaking with ACLU staff on October 29, 2019, one metered Mexican woman was beaten by individuals believed to be connected with the local cartel. That woman is still alive and waiting on the metering list.

There were approximately 300 Mexicans on the metered list at the B&M bridge when ACLU staff conducted interviews on October 29 and 30, 2019. A majority of the individuals are taking refuge in a local Catholic Church or grouping together to rent rooms with multiple families crowded into tight quarters. One of the families interviewed is living in one room with eight people. They are all forced to sleep on the floor because there is no bed to share. A small number of people are sleeping in the open air at the foot of the bridge and bathe and wash their clothing in the river.

CBP's Statements Regarding the Turning Back of Mexican Asylum Seekers at Ports

CBP has carried out and expanded its turn back policy without providing Congress or the public any explanation of how the policy is implemented or the basis for the agency's action. In December 2018, a senior DHS official told Congressional staffers that limiting its capacity to process asylum seekers at ports of entry was a means of deterring further migration.¹⁶

CBP officials in El Paso and Brownsville have stated the opposite to ACLU staff—that Mexican asylum seekers should not be rejected at ports of entry and should be immediately processed. At a meeting in Brownsville on May 3, 2019, CBP Office of Field Operations (“OFO”) Port Director Tater Ortiz stated that his officers always admit Mexican asylum seekers. At a similar meeting in El Paso on September 5, 2019, CBP OFO leadership stated that they were not rejecting Mexicans at ports of entry and were in fact processing large numbers of them.

In response to reporting on the increased turn backs of Mexican asylum seekers, CBP spokespersons have attempted to sidestep the issue. Recognizing the agency's obligation to process arriving Mexican asylum seekers, CBP stated that “the agency processes asylum seekers as quickly as possible”¹⁷ or “as expeditiously as possible.”¹⁸ The agency has also stated it has

¹⁶ See, Sophie Weiner, *The Trump Administration is Allegedly Slowing the Asylum Process to Discourage Applicants*, SPLINTER NEWS (Dec. 18, 2018), available at <https://splinternews.com/the-trump-administration-is-allegedly-slowing-the-asylu-1831168211>

¹⁷See, Anna-Catherine Brigida, *Mexican Asylum Seekers Are Facing Long Waits at the U.S. Border. Advocates Say That's Illegal*, TIME (Oct. 16, 2019), available at <https://time.com/5701989/mexico-asylum-seekers-border/>

¹⁸See, Molly Hennessy-Fiske and Wendy Fry, *Mexican asylum seekers at multiple border crossings grow frustrated with waiting*, LA TIMES (Sept. 20, 2019), available at <https://www.latimes.com/world-nation/story/2019-09-30/u-s-customs-blocking-mexican-asylum-seekers-at-multiple-border-crossings>

redirected resources from vehicle entry lanes to process asylum seekers from Juarez.¹⁹ The agency, however, consistently stated that if no space is available asylum seekers are “instructed to wait.”²⁰

Mexican families interviewed by the ACLU indicate that CBP officers at ports of entry commonly maintain that a lack of capacity is the reason they will not process arriving asylum seekers. CBP’s capacity excuse does not comport with available information. In recent months CBP has processed a minimal number of individuals daily and has gone long periods where it allowed no one to seek asylum at the port. This occurred during a period, from May to September 2019, when overall border crossers dropped by over 66 percent.²¹ Such information undercuts the claim that CBP lacks capacity to process more arriving asylum seekers at ports.

CBP has further shrouded its turn back policy in near complete secrecy. The ACLU, along with members of Congress, has long demanded CBP provide data to substantiate its capacity claims.²² The agency has failed to do so. Moreover, CBP has repeatedly asked Congress for additional funding for detention space or other supposed “border security” measures.²³ Yet, CBP has not asked Congress for additional resources or reallocated current resources to address the claimed capacity limitations at ports. CBP’s lack of transparency and absence of funding requests again suggests the agency either does not have a capacity issue at ports or is ignoring the limitations and opting for continuing its turn back policy.

Rejecting Entry of Mexican Asylum Seekers is Unlawful

The principle of nonrefoulement, the core of all refugee law, prohibits the return of asylum seekers to the country from which they flee. Following World War II, the United States committed to respecting the principle of nonrefoulement through its ratification of various human rights and refugee treaties – treaties the United States Congress later incorporated into

¹⁹ See, Adolfo Flores, *Asylum-Seekers are trying to flee violence in Mexico. The U. S. is sending them right back*, BUZZFEED NEWS (Sept. 30, 2019), available at <https://www.buzzfeednews.com/article/adolfoflores/asylum-mexico-violence-trump-border-immigration>

²⁰ See, Lauren Villagram, *‘Just waiting to see if they give us a chance’: Mexican asylum seekers camp near Santa Fe bridge*, EL PASO TIMES (Sept. 20, 2019), available at <https://www.elpasotimes.com/story/news/2019/09/20/immigration-mexican-asylum-cbp-border-santa-fe-bridge/2368738001/>; also see Julian Aguilar, *As Violence increases, more Mexicans are waiting in Ciudad Juarez to apply for asylum*, THE TEXAS TRIBUNE (Sept. 13, 2019), available at <https://www.texastribune.org/2019/09/13/number-mexicans-waiting-ciudad-juarez-apply-asylum-increasing/>

²¹ See, “Southwest Border Migration FY 2019”, U.S. Customs and Border Protection (Oct. 29, 2019), available at <https://www.cbp.gov/newsroom/stats/sw-border-migration>

²² See, FOIA Letter from ACLU of Texas to Customs and Border Protection Agency, *supra* note 8; see also, Letter from Senators Jerrold Nadler, Bennie G. Thompson and Zoe Lofgren to acting U.S. DHS Sec. Kevin McAleenan, *supra* note 8.

²³ See, Pedro Rios, *If Congress Wants to Keep America Safe, Funding CBP is the Last Thing it Should be Doing*, NEWSWEEK (April 9, 2019), available at <https://www.newsweek.com/kristen-nielsen-kevin-mcaleenan-cpb-border-funding-1390436>

U.S. statute. All subsequent laws pertaining to the arrival and processing of asylum seekers were designed to uphold the United States' adherence to its nonrefoulement obligations. CBP's present turn back policy, particularly as applied to Mexican asylum seekers, ignores applicable law.

CBP's field manual instructs officers to refer anyone to a fear interview with an asylum officer if the person indicates "in any fashion or at any time during the inspection process, that he or she has a fear of persecution, or that he or she suffered or may suffer torture."²⁴ Alternatively, CBP can refer arriving asylum seekers directly to immigration court for review of potential asylum claims.²⁵ Neither processing option allows delay in processing or rejection of individuals arriving to ports.

The guidance memorandum promulgated on April 27, 2019 by CBP's Executive Assistant Commissioner from the OFO also states: "[a]t no point may an officer discourage a traveler from waiting to be processed, claiming fear of return, or seeking any other protection." CBP's turning away of Mexican nationals who express a fear of returning to Mexico is a violation of this directive and CBP's own guidelines.

CBP spokespersons have stated that officers stationed at the border are "making certain those who intend to apply have entry documents" and "[i]f they do not and there is no space available at the CBP facility they are instructed to wait."²⁶ Nothing in U.S. law and international treaties requires an asylum seeker to present a valid entry document before requesting asylum. In fact, those with valid entry documents are obviously unlikely to request asylum at ports as they can enter the United States and apply affirmatively for asylum, an option legally unavailable to those without documents sufficient to enter the United States. CBP further violates this its own guidance memorandum of April 27, 2019, when CBP officers direct Mexican officials to remove asylum seekers from international bridges, as asylum seekers interviewed by the ACLU have witnessed and experienced.

Turning asylum seekers back into the country from which they are fleeing is also unlawful under U.S. statute and international treaties. Under U.S. law, any person "who arrives in the United States ... may apply for asylum."²⁷ A federal judge recently found Congress intended such provision to apply to individuals seeking asylum with CBP officers at ports of entry.²⁸ The law further requires that "the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that

²⁴ See, Customs and Border Protection, Inspector's Field Manual, Section 17.15(b)(1), available at <http://www.aila.org/File/Related/11120959F.pdf>

²⁵ See, Matter of E-R-M- & L-R-M-, U.S. Department of Justice, Executive Office for Immigration Review, Board of Immigration Appeals, (June 3, 2011) (The use of expedited removal is in the discretion of DHS)

²⁶ See, Lauren Villagram, *supra* note 20

²⁷ 8 U.S.C. 1158 (a) (1) (2017)

²⁸ See, AOL v. McAleenan, No. 3:17-cv-02366-BAS-KSC (S.D. Cal. Aug. 8, 2019), ECF No. 280 at pg. 42-43

country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.”²⁹ Furthermore, Congress has also passed a clear set of laws governing the processing of all arriving migrants, including a mandatory duty to inspect and process asylum seekers—none of which grant CBP the authority to turn back or meter asylum seekers at ports of entry.³⁰

Lastly, international treaties, to which the United States are party, require that U.S. officials not reject asylum seekers at international borders and ensure they are not returned to a country where they fear future persecution.³¹ As explained by the Supreme Court, “Article 33 of the Convention, with certain exceptions, prohibits contracting states from expelling or returning a refugee to a territory where his or her life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group or political opinion.”³² CBP’s rejection of Mexican nationals fleeing Mexico, at U.S. ports of entry, does precisely what the law prohibits.

CBP’s actions documented in this complaint violate U.S. law, U.S. treaty obligations, and CBP’s own internal guidance.

CASE EXAMPLES:

El Paso, TX.

²⁹ 8 U.S.C. 1231 (b)(3)(A) (2005); IIRIRA also revised the asylum section of the INA, which likewise enshrines the principle of nonrefoulement. 8 U.S.C. 1158 (a)(1) (1994) (“Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien’s status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.”)

³⁰ See 8 U.S.C. 1225 (b)

³¹ See generally, B. Shaw Drake and Elizabeth Gibson, Vanishing Protection: Access to Asylum at the Border, City University of New York Law Review, Volume 21 Issue 1, Winter 2017, available at <https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1451&context=clr>; see also, James C. Hathaway, The Rights of Refugees Under International Law (2005) at 317 (*Refoulement*, taken from French, refers to the return of a person to a country where they have reason to fear persecution based on a protected ground); see also, Convention Relating to the Status of Refugees art. 1, July 28, 1951, 189 U.N.T.S. 137, <https://perma.cc/7FLY-HYFA> (Convention drafters understood non-refoulement to prohibit turning away asylum seekers at borders. Louis Henkin, United States representative to the convention drafting conference, explicitly stated: “Whether it was a question of closing the frontier to a refugee who asked admittance, or of turning him back after he had crossed the frontier, or even of expelling him after he had been admitted to residence in the territory, the problem was more or less the same. Whatever the case might be, whether or not the refugee was in a regular position, he must not be turned back to a country where his life or freedom could be threatened”); see also UN Ad Hoc Committee on Refugees and Stateless Persons, Ad Hoc Committee on Statelessness and Related Problems, First Session: Summary Record of the Twentieth Meeting Held at Lake Success, New York, on Wednesday, 1 February 1950, at 2.30. p.m., (Feb. 10, 1950), , available at <http://www.refworld.org/docid/3ae68c1c0.html>

³² *I.N.S. v. Stevic*, 467 U.S. 407, 426 (1984)

- E.R.U.H., along with his wife, who suffers from an enlarged heart, and his 3 children, age 19, 6, and 4, are from Juarez, Chihuahua, Mexico, are seeking protection in the United States, and have been subjected to metering systems at the Santa Fe bridge.** E.R.U.H was approached by cartel members in Juarez demanding he cross drugs into the United States. Drug cartel members have looked for E.R.U.H. at his house and his former job. He approached CBP agents at the middle of the Santa Fe bridge on or about October 28, 2019. He told CBP agents he and his family were Mexican citizens from Juarez fleeing from violence and requesting asylum from the United States. CBP agents laughed at him, told them there was nothing they could do for him, and sent him back into Mexico. He is currently separated from his family and living on the streets of Juarez attempting to avoid detection by local cartels who seek to kill him.
- B.J.C., along with her two children, from Zacatecas, Mexico, are seeking protection in the United States, have been rejected by CBP on three occasions, and have been subjected to metering system at the Santa Fe bridge in Juarez for over six weeks.** B.J.C. was forced to flee her home after cartel members kidnapped her son and said they would send her his severed head in a cooler if she did not pay. Her son was released after she paid the extortion fee, but Mexican police refused to investigate because the local police commander works for the cartel. B.J.C. arrived to the Santa Fe bridge on or about September 22, 2019 where she was stopped and told to put her name on a list to seek asylum in the United States. B.J.C. has approached CBP on three occasions. Each time she has identified herself as a Mexican asylum seeker. Each time CBP officers have rejected her, stating there is “no room.” CBP officers have also instructed Mexican asylum seekers to seek out Mexican immigration in Mexico to sign up for a list. B.J.C. has observed CBP process only eight Mexican families at the Santa Fe bridge in over a week. B.J.C. and her children sleep on the street in a tent with limited access to bathrooms and showers. She worries about the safety of her children but feels her only option for safety is waiting for potential protection in the United States.
- J.O.L., along with his pregnant wife and four children, ages eight, seven, five, and four, are from Zacatecas, Mexico, are seeking asylum in the United States, and have been subjected to the metering system at the Cordova international bridge for six weeks.** J.O.L. and his family were forced to flee their home after J.O.L. was identified as the music composer for a popular local group. Assuming he had money, cartel members targeted J.O.L. for threats and extortion. J.O.L. has observed CBP officers reject Mexican asylum seekers on multiple occasions. J.O.L. has observed CBP officers tell asylum seekers there is no asylum in the United States anymore. One CBP officer that asylum seekers have nicknamed “the racist” told a pregnant woman and her family “you all always make your own problems and then bring them to us. Go back to your country and take up your problems with organized crime.” J.O.L. reports periods of up to 15 consecutive days when CBP has processed zero Mexican asylum seekers. J.O.L. and his family do not leave the encampment near the port for fear of violence and further persecution in Juarez.

- J.M.F., along with his wife and four children, ages eight, seven, five and one, are from Michoacán, Mexico, and have been subjected to the metering system at the Cordova international bridge for over a month.** J.M.F. and his family were forced to flee their home after cartel members kidnapped and disappeared their relative. Cartel members continued to threaten to kill J.M.F. and take his children following the disappearance. J.M.F. helps manage the list at the Cordova international bridge and helped establish a card and stamp system to organize those waiting in the encampment. J.M.F. believes CBP knows about the metering system because other asylum seekers have reported to him that CBP officers rejected them because they were not the next ones on the list. J.M.F. also estimated that as of late October there were 400 families waiting at the Cordova International Bridge.
- J.C.G., along with his wife and three daughters, are from Michoacán, Mexico, and have been subjected to the metering system at the Zaragoza bridge for over six weeks.** J.C.G. was a taxi driver had to flee his home after cartels threatened to kill him if he did not pay an extortion fee for his taxi. J.C.G. previously managed the metering list at the Zaragoza bridge. In that role he approached CBP officers on the bridge on five different occasions. He showed CBP officers the list and explained the process they had set up. One CBP officer told J.C.G. that as long as he was posted on the bridge, he would not let a single Mexican asylum seeker across. Yet another CBP officer told J.C.G. that asylum did not exist anymore in the United States. Another CBP officer told him to go to other ports like Tijuana to seek asylum because they were not going to be allowed to pass here. J.C.G. estimated there are approximately 900 people waiting at the bridge, making up around 250 families. J.C.G. has observed CBP turn away a family with a child with cancer and a family with a child with frequent seizures, along with numerous pregnant women. J.C.G. and his family sleep on the street in tents and under tarps, along with the other families on the list.
- M.V.R., along with his daughter and grandson, age nine, are from Michoacán, Mexico, and have been subjected to the metering system at the Santa Fe international bridge for over three weeks.** M.V.R. and his family had to flee their home after the cartel kidnapped and tortured his son, leaving his mutilated body on the steps of the Public Ministry building in Hidalgo. Mexican policy told M.V.R. that it would be very dangerous for him to file a statement about the death of his son. After threats against him and his family continued, M.V.R. made the decision to flee for safety in the United States. M.V.R. arrived at the Santa Fe International Bridge on or about October 15, 2019 and put his name on the metering list. He cannot sleep in the encampment with other asylum seekers for fear that local cartel lookouts will identify him and his family. He and his family are currently staying in nearby motels and come to the bridge every day to remain on the metering list. He fears for his family's life while he waits for the opportunity to seek asylum at the port of entry.
- N.J.M, along with his wife and children, ages 11, 8, and 5, are from Michoacán, Mexico, have been turned away by CBP officers 5 times, and have been subjected to the metering system at the Zaragoza bridge for over 6 weeks.** N.J.M and his family were forced to flee their home after cartel violence prevented their children from

attending school and cartel members made direct threats on their life. When N.J.M. became one of the next five families on the metering list, he was therefore able to approach CBP officers to ask to be processed. In just one day, N.J.M. approached CBP officer on five separate occasions, each time identifying himself as a Mexican asylum seeker. Each time CBP officers told him they were only letting people through that have documents and that they were full. While waiting on the metering list, N.J.M. has observed CBP process two or three families per day with some periods where none were processed. N.J.M. sleeps in the street with his family. His 11-year-old son suffers from asthma and N.J.M. worries the coming cold weather may threaten his son's health. For N.J.M., returning home is not an option.

- **O.P.S., along with her husband and son, age seven, are from Michoacán, Mexico. Her son is deaf, suffers from partial facial paralysis and is largely non-verbal. They have been turned away by CBP officers and subjected to metering systems for weeks.** O.P.S. and her family were forced to flee their home after the cartels disappeared several family members and threatened her and her children. O.P.S. and her family first arrived to the Zaragoza bridge on or about September 6, 2019. After identifying themselves as Mexican asylum seekers, CBP officers on the bridge told them there were dangers everywhere, citing the Walmart massacre in El Paso, and asked if the family thought they were better than all the other people waiting. The CBP officer then told the family they would have to wait, maybe a just an hour or a whole year. O.P.S. and her family tried again the same day at the Santa Fe international bridge. O.P.S.'s child requires constant attention due to his disabilities. They currently sleep in a tent on the street. At the time of interview, CBP officers had rejected the family a total of nine times. O.P.S. fears for the safety of her family but is committed to continuing to wait until CBP will process her and her family.
- **S.R.A., along with his wife and two children, are from Michoacán, Mexico, and have been subjected to the metering system at the Santa Fe international bridge for over one month.** S.R.A. and his family were forced to flee their home due to threats from the cartel. After arriving to the Santa Fe bridge, S.R.A. and his family were stopped by Mexican officials and told to put their name on the metering list. S.R.A.'s daughter has down syndrome and a heart condition. Cold weather exacerbates her heart condition and she requires their constant attention to keep her safe. S.R.A. and his wife fear for her safety in Juarez. S.R.A. and his family cannot return to their home and need protection in the United States. They plan to wait as long as needed to seek protection.
- **J.M.O.S., along with his wife who is eight months pregnant, are from Michoacán, Mexico, are seeking protection in the United States, and have been subjected to metering systems in Juarez for a month and a half.** J.M.O.S. is fleeing his home after cartel members shot at his home and pointed guns at his wife. On or about October 28, 2019, J.M.O.S. and his wife walked up to the middle of the Zaragoza bridge to request asylum after waiting a week on the metering list. CBP officers turned them away even though they identified themselves as Mexican asylum seekers and told CBP officers it was their turn on the metering list. The officer told them there was no space, that there

was no asylum at this time, and that we should come back at a later date. Over a four day period J.M.O.S. and his wife tried to cross a total of 15 times, each time identifying themselves as Mexican asylum seekers. CBP officer rejected them. One CBP officer also told them that he did not want to see them on the bridge and that he would not let any Mexican cross into the United States to request asylum. J.M.O.S. and his wife have lived for the past month and a half in a tent, which is part of a tent encampment close to the base of the Zaragoza bridge. They sleep on a concrete floor; there are five temporary toilets placed on the street; and are forced to rent showers from persons who live close to the bridge.

- **M.M.R., along with her son, daughter, grandson, cousin, and pregnant niece, are from Durango, Mexico, are seeking protection in the United States, and have been subjected to metering systems in Juarez for a month and a half.** M.M.R. fled from Durango after drug cartel members threatened to kill her if she did not sell drugs from her home. On or around the end of September 2019, M.M.R. arrived in Juarez and wrote her name on a metering list at the Cordova international bridge. Around October 29, 2019, M.M.R. and her family walked to the middle of the bridge to request asylum. They identified themselves as Mexican asylum seekers and were told by CBP agents that there was no space for them and that they would have to wait at the bottom of the bridge. M.M.R. and her family currently live in a tent at the base of the Cordova international bridge in Juarez, Mexico. They have inadequate clothing and blankets for when the temperature drops, and they have limited access to restrooms and no access to showers.
- **M.I.L.R., who is eight months pregnant, along with her husband, her three-year-old son and her aunt, are from Durango, Mexico, are seeking protection in the United States, and have been subjected to metering systems in Juarez for over a month and half.** On or about October 29, M.I.L.R. walked with her family to the middle of the bridge to request asylum from CBP officials because it was her turn according to the metering list. After M.I.L.R. and her family identified themselves as Mexicans requesting asylum, the CBP agents told them there was no space for them to cross and to return in a few hours. Over the next few days they returned several times and each time were told by CBP agents that there was no space for them and to wait at the bottom of the bridge. M.I.L.R. is currently eight months pregnant and lives in a tent on the ground close to the base of the Cordova international bridge. M.I.L.R. was told by a gynecologist that her unborn child's umbilical cord is wrapped around his neck and that it was a high-risk pregnancy requiring a caesarian section in order to birth the child. M.I.L.R. does not have the 35,000 pesos needed to pay for the procedure. On or about October 29, 2019, M.I.L.R. and other asylum seekers were threatened by a Mexican police officer that child services would take their children away unless they left the encampment.
- **S.L.D., along with his wife and four children, ages 19, 17, 13, and 6, are from Oaxaca, Mexico, are seeking protection in the United States, and have been subjected to metering systems in Juarez since September 30, 2019.** S.L.D. fled from

Oaxaca after criminals threatened to kill him and killed his brother. On or about October 26, 2019, S.L.D. was told by CBP agents that even though he is a Mexican asylum seeker, he could not cross into the United States. S.L.D. sleeps in a tent on the concrete floor at the base of the bridge.

Brownsville, TX.

- **D.A.L., along with her parents and two children, are from Veracruz, Mexico, are seeking protection in the United States, and have been subjected to metering systems in Matamoros for 26 days.** D.A.L. and her family fled their home because they are in immediate danger of being kidnapped, tortured, and killed by members of the cartel. Her husband is presumed dead after being disappeared in late September 2019, even after she paid a ransom to kidnappers. On or about October 5, 2019, she and her family approached CBP officers in the middle of the New Bridge to request asylum. She showed the officers their Mexican birth certificates, a copy of the complaint she filed regarding her husband's kidnapping and explained why they were fleeing. The CBP officers turned her away, telling her that she should consider moving to another state within Mexico and that they would only take her 13 year-old-daughter because she is a U.S. citizen, but not the rest of her family. Two days later, she received messages from her husband's kidnappers indicating they have located her and her family. She and her family are now in hiding in Matamoros. D.A.L.'s daughter suffers from asthma and has already experienced two asthma attacks, with no access to medicine, while waiting her turn on the "metering" list.
- **J.H.D., along with his wife and two daughters, of Chiapas, Mexico, are seeking protection in the United States and has been subjected to metering systems in Matamoros for over a month.** J.H.D. and his family fled their home because cartels threatened them with death after they refused to pay a monthly tax to members of the cartel. His wife and children were being surveilled and his brother had been murdered by the same organization last year. Currently, J.H.D. and his family are living in a rented room shared with a family of four. The room is cramped and all eight of them have to sleep on the floor. J.H.D.'s wife continues to receive phone calls from the individuals from which their family fled. They fear they will be found soon if they are not allowed to cross into the United States. J.H.D. manages the list which includes 75 heads of households or approximately 300 people.
- **N.M.G.R., along with her daughter, age two, of Michoacán, Mexico, are seeking protection in the United States, and have been subjected to metering systems in Matamoros for nearly a month.** N.M.G.R. is fleeing her abusive husband, a member of organized crime, who is threatening to kill her and take her daughter. Her husband tracked her down and learned she was in Matamoros. When she told CBP officers of this situation, she was told to return at a different time to see if there was space to process her for asylum. When she returned, she was told there was no space. She has since fled to another city, where she hides with her daughter, and takes a 2-hour bus every day to Matamoros to check on the status of her number on the metered list. At the time of

interview, on October 30, 2019, she and her daughter were number 61 on the list. She is fearful her husband will find her and kill her if she is not allowed to cross into the United States soon.

- **S.L.J., along with his wife and daughter, 11 months old, of Chiapas, Mexico, are seeking protection in the United States, and have been subjected to metering systems in Matamoros for a month and a half.** S.L.J. is fleeing violence brought on by a rivalry between two Mexican political parties that have left him and his family targets. When S.L.J. and his family arrived in Matamoros to seek asylum at the B&M bridge, they were told by other metered Mexican asylum seekers that they had to sign onto a list. S.L.J. and his family are number three on the list. During the day, he and his family stay on the international bridge hoping CBP will allow them across. While they are waiting on the bridge, the family first in line requests asylum with the present CBP officers. S.L.J. noted that, typically, only one family crosses per day, but there are “pauses” of multiple days when CBP officers do not allow any families to cross. Officers typical claim there is “no space.” The first family in line asks the CBP officer every two hours if they will be allowed into the port to seek asylum. At night he and his family take refuge in a nearby Catholic Church. He and his family are in fear of what may happen to them while waiting because they were victims of a failed robbery at gunpoint that was stopped by other metered Mexicans at the international bridge. S.L.J. is concerned for the health of his infant daughter in the conditions they are forced to be in while being metered.
- **S.P.L.D.L., along with her husband and three children, ages 11, 8 and 6, of Chiapas, Mexico, are seeking protection in the United States, and have been subjected to metering systems in Matamoros for over a month.** S.P.L.D.L fled her home because a man from a neighboring village, San Juan Chamula, threatened to kill her and her family if she did not sell her eight-year-old daughter to him so that she could be married to his nephew when she turned 12. The man was seeking a kind of lay-a-way plan to purchase her daughter that appears to be the custom in San Juan Chamula. S.P.L.D.L. has witnessed families burned alive for refusing to comply with these kinds of requests. In Matamoros, she and her family have been forced to hide in plain sight, as there are many individuals from San Juan Chamula on the metered list that could easily inform the man threatening their lives of their whereabouts. S.P.L.D.L. and her family arrived in Matamoros on September 24, 2019. S.P.L.D.L. has been spending her days on the bridge with 5 families in total. She noted that only one family per day is being allowed in by U.S. officials.

CBP must end its unlawful turn back policy and immediately inspect and process all asylum seekers arriving to U.S. ports of entry. CBP most certainly cannot reject arriving Mexican nationals intending to seek protection in the United States. Doing so not only violates U.S. and international law, it places already vulnerable asylum seekers back within reach of their persecutors. Furthermore, CBP’s systemic violation of the law and its own policies only further exacerbates the humanitarian crisis along the border, a crisis that only exists because of this administration’s broad ranging effort to deny asylum seekers access to the United States by forcing tens of thousands to remain or return to Mexico.

We request an immediate end to this policy and demand a full investigation.

Sincerely,

Shaw Drake

Policy Counsel

Border Rights Center

American Civil Liberties Union of Texas

Rochelle Garza

Staff Attorney

American Civil Liberties Union of Texas

Bernardo Rafael Cruz

Immigrants' Rights Fellow

American Civil Liberties Union of Texas

Thomas Buser-Clancy

Staff Attorney

American Civil Liberties Union of Texas

Figure 1 through Figure 4: Pages from Mexican asylum seeker metering list at the Santa Fe International Bridge. (Oct. 28-29, 2019)

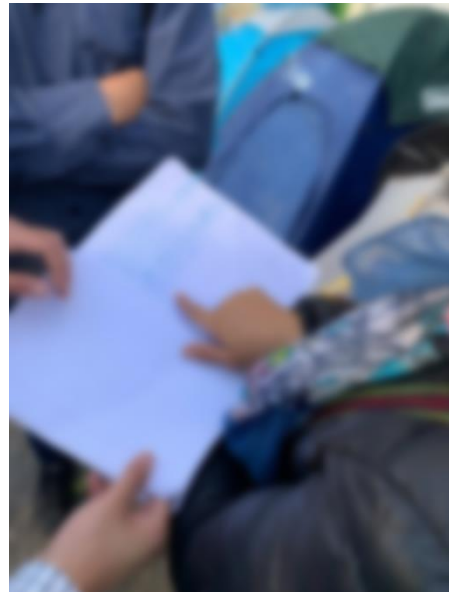
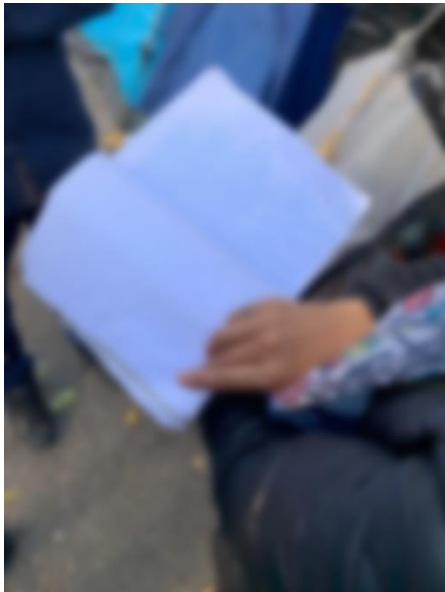
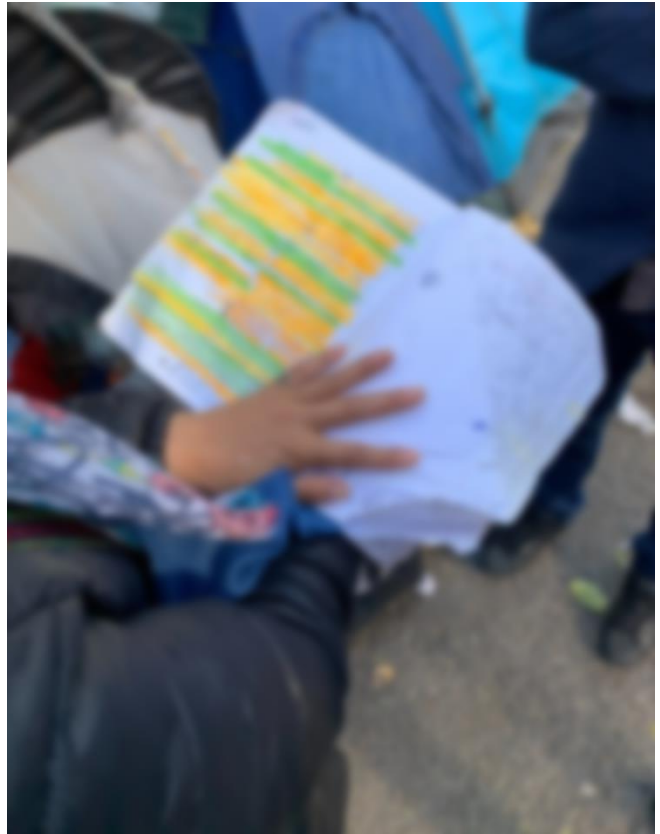
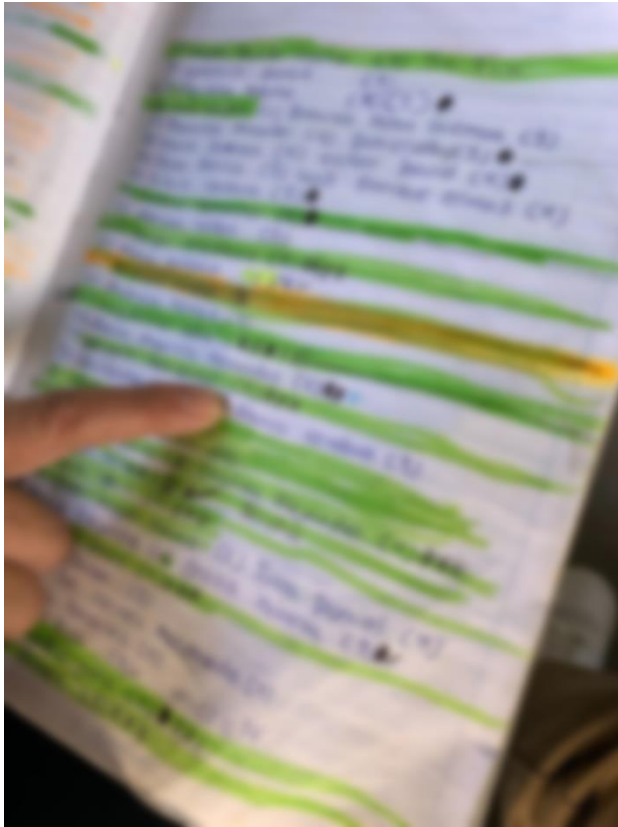


Figure 5: Pages from Mexican asylum seeker metering list at the Santa Fe International Bridge. (Oct. 28-29, 2019)

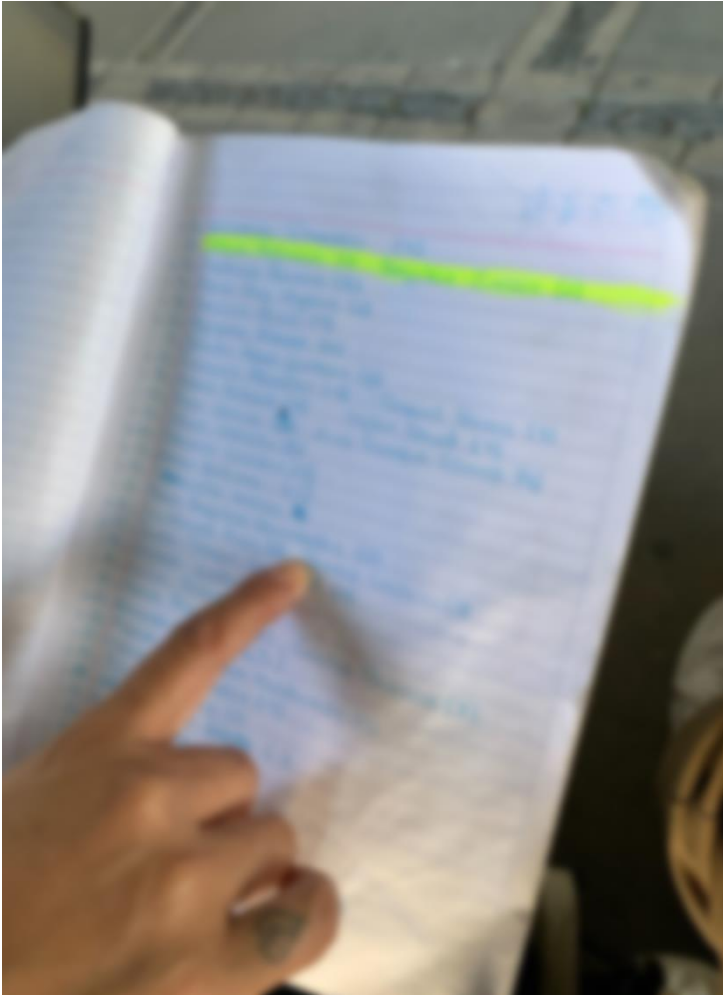


Figure 6: Pages from Mexican asylum seeker metering list at the Santa Fe International Bridge. (Oct. 28-29, 2019)

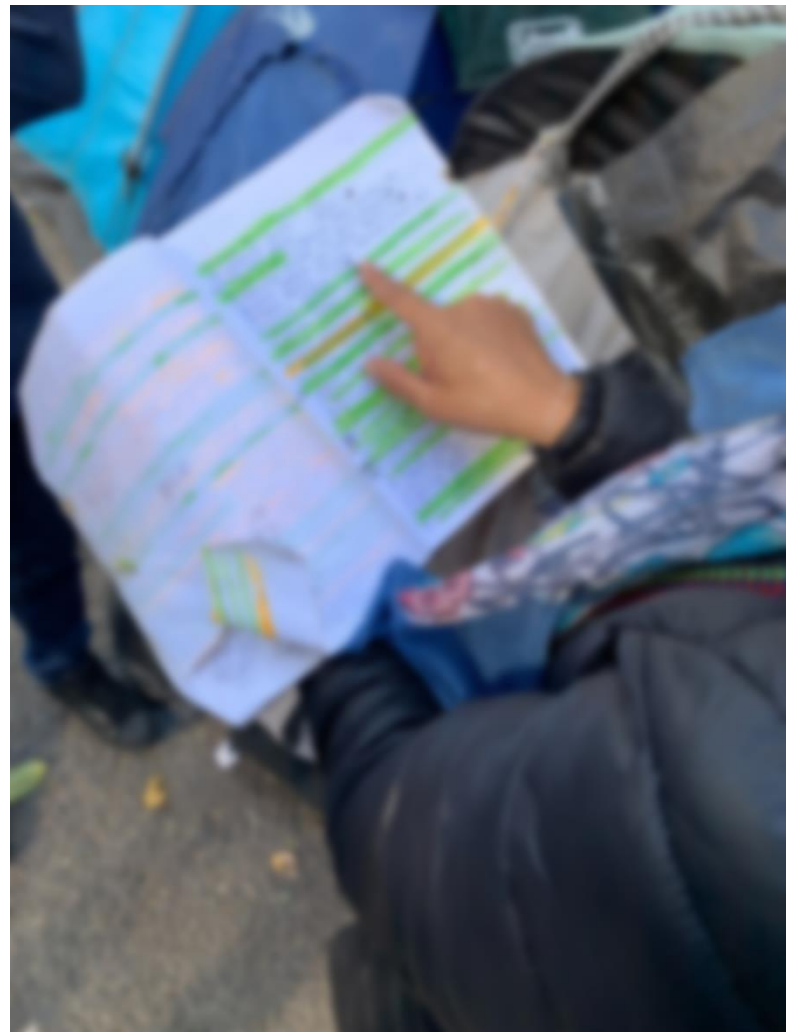




Figure 7: Portion of Mexican asylum seeker encampment near Santa Fe International Bridge. (Oct. 28, 2019)



Figure 8: Shared kitchen space at encampment at the Zarzoga International Bridge. (Nov. 1, 2019)

Figure 9: Section of tents in park near the Cordova International Bridge that are a part of the Mexican asylum seeker encampment. (Oct. 30, 2019)



Figure 10: Portions of Mexican asylum seeker encampment near Zaragoza International Bridge. (Nov. 1, 2019)



Figure 11: Portions of Mexican asylum seeker encampment near Zaragoza International Bridge. (Nov. 1, 2019)



Figure 12 and Figure 13: Portions of Mexican asylum seeker encampment on Gateway International Bridge. (Oct. 28, 2019)



Figure 14 and Figure 15: Rio Grande, where asylum seekers bathe and wash their clothes in contaminated water. (Oct. 29, 2019)



Figure 16: Makeshift open-fire pit at encampment, near Gateway International Bridge. (Oct. 29, 2019)



Figure 17: Portions of asylum seeker encampment on Gateway International Bridge. (Oct. 29, 2019)



Figure 18 and Figure 19: Clothes hanging to dry on fencing in encampment, near Gateway International Bridge. (Oct. 29, 2019)



Appendix 8

January 22, 2020

Joseph V. Cuffari
U.S. Department of Homeland Security
Office of Inspector General / MAIL STOP 0305
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via UPS and email to JointIntake@dhs.gov (CC jointintake@cbp.dhs.gov)

Re: U.S. Customs and Border Protection and Border Patrol's Abuse and Mistreatment of Detained Pregnant People

I. Introduction

The American Civil Liberties Union Foundation of San Diego & Imperial Counties and the ACLU Border Rights Center (together, "ACLU") hereby submit this administrative complaint to the Department of Homeland Security's Office of Inspector General ("DHS OIG"), regarding U.S. Customs and Border Protection ("CBP")'s mistreatment of detained pregnant people.¹ The ACLU requests that DHS OIG undertake a review based on the information contained in this complaint, which is the first in a series of four total complaints addressing the agency's abuse and neglect of detainees.²

This complaint is derived from interviews the ACLU completed between March and July 2019 with people in San Diego and Tijuana who recently had been released from CBP custody.³ During the course of these interviews, individuals related instances of heinous abuse or neglect by CBP officials, including Border Patrol agents.

¹ CBP is the largest law enforcement agency in the United States, with over 60,000 officers. Border Patrol is a subcomponent of CBP. Throughout this complaint, reference to CBP includes Border Patrol.

² Unless otherwise noted, the abuses described here occurred in Border Patrol stations, although some of the people the ACLU interviewed for this project also had been detained by CBP's Office of Field Operations ("OFO") at a port of entry. Neither CBP nor Border Patrol provides detainees with clear information regarding where they are detained (or on what authority), and detainees are sometimes transferred between facilities. Thus, it is not uncommon for individuals to express confusion after release when asked where and by whom they were detained. For these reasons, the complaints in this series may include some accounts stemming from CBP OFO custody rather than Border Patrol custody.

³ During this time period, the ACLU interviewed 103 individuals. To prepare this account, the ACLU reviewed a subset of the interviews completed (i.e., interviews with pregnant people), and selected a small sample of those interviews for inclusion in this complaint. Although the narratives included here reflect some of the most egregious instances of CBP's abuse and neglect of pregnant detainees, they also echo recurring themes of mistreatment consistently reported by pregnant people to the ACLU.

These reports are especially concerning given that most of these individuals are asylum seekers who had already endured significant trauma in fleeing their homelands to escape persecution. Many such immigrants experience sexual violence during a harrowing journey north to the United States and while trying to survive in northern Mexican border towns with limited or no means to secure shelter, food, or safety.⁴ When taken into CBP custody, these vulnerable individuals experienced further abuse and neglect that exacerbated their pre-existing trauma.

CBP's failure to adhere to the maximum detention periods set forth in its own policies aggravate these harms. CBP facilities are only intended to be used for short-term custody. Many of these facilities—including almost all Border Patrol stations—lack beds, showers, or full-time medical care staff. Cognizant of these structural deficiencies, CBP policy states that detainees “should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities.”⁵ Border Patrol policy is more restricted still, stating “[w]henver possible, a detainee should not be held for more than 12 hours.”⁶

The TEDS standards and Border Patrol Short-Term Custody policy establish a “floor”—that is, the bare *minimum* guidelines with which CBP must comply.⁷ CBP, however, routinely

⁴ Unlawful U.S. policies that interfere with an individual's statutory and regulatory rights to seek asylum in the United States have exacerbated these dangers. *See, e.g.*, Jason Kao & Denise Lu, *How Trump's Policies Are Leaving Thousands of Asylum Seekers Waiting in Mexico*, N.Y. TIMES, Aug. 18, 2019, <https://www.nytimes.com/interactive/2019/08/18/us/mexico-immigration-asylum.html> (describing metering and “Remain in Mexico”—a.k.a. “Migrant Protection Protocols”—program).

⁵ U.S. CUSTOMS AND BORDER PROTECTION, NAT'L STANDARDS ON TRANSPORT, ESCORT, DETENTION, AND SEARCH, at § 4.1 (Oct. 2015) [hereinafter “TEDS”], <https://www.cbp.gov/document/directives/cbp-national-standards-transport-escort-detention-and-search>.

⁶ U.S. BORDER PATROL, DETENTION STANDARDS: HOLD ROOMS AND SHORT TERM CUSTODY, REFERENCE NO. 08-11267, at § 6.2.1 (Jan. 31, 2008) [hereinafter “Border Patrol Short-Term Custody Policy”], <https://www.documentcloud.org/documents/818095-bp-policy-on-hold-rooms-and-short-term-custody.html>.

CBP OFO also has a hold room policy, but the only publicly available version of this policy the ACLU has been able to identify is heavily redacted. *See* U.S. CUSTOMS AND BORDER PROTECTION, DIRECTIVE NO. 3340-030B, SECURE DETENTION, TRANSPORT AND ESCORT PROCEDURES AT PORTS OF ENTRY, at 5–8 (rev. Aug. 2011), https://www.americanimmigrationcouncil.org/sites/default/files/foia_documents/access_to_counsel_cbp_requests_and_documents_4-9-13.pdf.

⁷ According to a 2016 Government Accountability Office report, “[t]he TEDS policy is intended as a foundational document” to be supplemented with more detailed policies developed by CBP subcomponents. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-16-514, IMMIGRATION DETENTION: ADDITIONAL ACTIONS NEEDED TO STRENGTHEN DHS MANAGEMENT OF SHORT-TERM HOLDING FACILITIES, at 9 n.14 (May 2016), <https://www.gao.gov/assets/680/677484.pdf>. As far as we can tell, however, CBP has not made more detailed policies available to the public.

CBP policies also operate against the backdrop of federal statutes and regulations that bind the agency to certain standards of care. For example, CBP's TEDS cites the following additional authorities: 19 U.S.C. §§ 482, 1461, 1581, 1582, & 1589a; 8 C.F.R. §§ 232, 235, 236, & 287; 6 C.F.R. § 115; Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 F.R. 13100 (Mar. 7, 2014) (to be codified at 6 C.F.R. pt. 115); and the Immigration and Nationality Act, Pub. L. No. 82-414, § 101, 66 Stat. 163, 167 (1952) (codified as amended at 8

disregards these minimum standards.⁸ For example, a July 2019 DHS OIG report found that, of 8,000 individuals detained by Border Patrol in the Rio Grande Valley, 3,400 (42.5 percent) were held in excess of 72 hours.⁹ More troubling still: 1,500 individuals (18.75 percent) were detained for *more than ten days*.¹⁰ Consistent with these reports, the ACLU's investigation likewise indicated that CBP officials frequently exceed these detention limits. Most individuals we interviewed had spent at least four or five days in CBP custody. One individual we spoke with had been detained for *eighteen* days. Overlong detentions not only transgress agency policies, but also facilitate detainee neglect and mistreatment, which may violate the United States Constitution.¹¹

As noted, Border Patrol stations lack bedding, showers, and staff trained to interact with or assist traumatized or otherwise vulnerable populations. People held in these facilities endure freezing

U.S.C. § 1101). The TEDS also reference other CBP policies, including: U.S. CUSTOMS AND BORDER PROTECTION OFF. OF FIELD OPERATIONS, CIS HB 3300-04B, PERSONAL SEARCH HANDBOOK (2004), https://foiarr.cbp.gov/docs/Manuals_and_Instructions/2009/283167437_7/1102030829_Personal_Search_Handbook_2.pdf; U.S. CUSTOMS AND BORDER PROTECTION OFF. OF TRAINING AND DEV., HB 4500-01C, USE OF FORCE POLICY, GUIDELINES AND PROCEDURES HANDBOOK (2014), <https://www.cbp.gov/sites/default/files/documents/UseofforcePolicyHandbook.pdf>; U.S. CUSTOMS AND BORDER PROTECTION, DIRECTIVE NO. 3340-030B, SECURE DETENTION, TRANSPORT AND ESCORT PROCEDURES AT PORTS OF ENTRY, at 5–8 (rev. Aug. 2011), https://www.americanimmigrationcouncil.org/sites/default/files/foia_documents/access_to_counsel_cbp_requests_and_documents_4-9-13.pdf; Border Patrol Short-Term Custody Policy, *supra* note 6; U.S. CUSTOMS AND BORDER PROTECTION, CBP POLICY ON NONDISCRIMINATION IN LAW ENFORCEMENT ACTIVITIES AND ALL OTHER ADMINISTERED PROGRAMS (2017), <https://www.cbp.gov/about/eeo-diversity/policies/nondiscrimination-law-enforcement-activities-and-all-other-administered>.

⁸ See, e.g., AM. IMMIGRATION COUNCIL, DETAINED BEYOND THE LIMIT: PROLONGED CONFINEMENT BY U.S. CUSTOMS AND BORDER PROTECTION ALONG THE SOUTHWEST BORDER, at 5–6 (Aug. 2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/detained_beyond_the_limit.pdf (finding, for period between September 1, 2014 and August 31, 2015: 67 percent of total number of individuals detained in CBP facilities across the southwest border were held for 24 hours or longer; 29 percent for 48 hours or longer; and 14 percent for 72 hours or longer).

⁹ DEP'T OF HOMELAND SEC., OFFICE OF INSPECTOR GENERAL, MANAGEMENT ALERT – DHS NEEDS TO ADDRESS DANGEROUS OVERCROWDING AND PROLONGED DETENTION OF CHILDREN AND ADULTS IN THE RIO GRANDE VALLEY, at 2–3 (July 2, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19.pdf>.

¹⁰ *Id.* at 2–3. See also, e.g., OVERCROWDING AND PROLONGED DETENTION AT CBP FACILITIES: HEARING BEFORE THE H. COMM. ON THE JUDICIARY, 116TH CONGRESS (2019), <https://judiciary.house.gov/legislation/hearings/overcrowding-and-prolonged-detention-cbp-facilities>.

¹¹ See, e.g., *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124 (9th Cir. 2018), *cert. denied sub nom. Cty. of Orange, Cal. v. Gordon*, 139 S. Ct. 794 (2019) (due process right to challenge inadequate medical care for pretrial detainees); see also, e.g., *J.P. v. Sessions*, No. CV-1806081-JAK-SKx, 2019 WL 6723686, at *32–33 (C.D. Cal. Nov. 5, 2019) (quoting *Gordon*, 888 F.3d at 1124–25) (granting preliminary injunction and holding plaintiffs likely to succeed on due process claim arising out of defendants' failure to provide adequate health care to immigration detainees subject to family separation policy); *Doe v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at *13–15 (D. Ariz. Nov. 18, 2016), *clarified on denial of reconsideration*, No. CV-15-00250-TUC-DCB, 2017 WL 467238 (D. Ariz. Jan. 3, 2017), *aff'd sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017) (noting constitutional entitlement to adequate health care in CBP facilities).

temperatures, inedible food (spoiled or frozen), insufficient potable water, overcrowding, and deprivation of medicine and basic hygienic supplies.¹² In light of these structural deficiencies and inhumane conditions, it is the ACLU's position that **these facilities are categorically unsuitable and inappropriate for any period of detention beyond the time required for initial processing, which should in no case exceed 12 hours.**

Our investigation corroborated a well-documented culture of cruelty, willful negligence, and impunity throughout CBP.¹³ It also highlighted the failure of existing agency policies to provide sufficient humanitarian and legal safeguards to protect detainees. Across accounts from recent detainees, four themes emerged: (1) mistreatment of pregnant people, (2) mistreatment and neglect of sick children, (3) family separations, and (4) verbal abuse. As noted, this complaint is the first in a four-part series that will address each theme in turn.

¹² Journalists, advocates, and non-governmental organizations have documented CBP detention conditions extensively over the past decade. *See, e.g.*, Zolan Kanno-Youngs, *Squalid Conditions at Border Detention Centers, Government Report Finds*, N.Y. TIMES, July 2, 2019, <https://www.nytimes.com/2019/07/02/us/politics/border-center-migrant-detention.html>; Dara Lind, *The Horrifying Conditions Facing Kids in Border Detention, Explained*, VOX, June 25, 2019, <https://www.vox.com/policy-and-politics/2019/6/25/18715725/children-border-detention-kids-cages-immigration>; Sheri Fink & Caitlin Dickerson, *Border Patrol Facilities Put Detainees With Medical Conditions at Risk*, N.Y. TIMES, Mar. 5, 2019, <https://www.nytimes.com/2019/03/05/us/border-patrol-deaths-migrant-children.html>; UNIV. OF CHICAGO L. SCHOOL INT'L HUM. RIGHTS CLINIC, ACLU BORDER LITIGATION PROJECT & ACLU BORDER RIGHTS CENTER, *NEGLECT AND ABUSE OF UNACCOMPANIED IMMIGRANT CHILDREN BY U.S. CUSTOMS AND BORDER PROTECTION*, at 16–27 (May 2018), <https://bit.ly/2zRynCa>; AM. IMMIGRATION COUNCIL, *HIELERAS (ICEBOXES) IN THE RIO GRANDE VALLEY SECTOR: LENGTHY DETENTION, DEPLORABLE CONDITIONS, AND ABUSE IN CBP HOLDING CELLS* (Dec. 2015), <https://www.americanimmigrationcouncil.org/research/hieleras-iceboxes-rio-grande-valley-sector>; AM. IMMIGRATION COUNCIL, *WAY TOO LONG: PROLONGED DETENTION IN BORDER PATROL HOLDING CELLS, GOVERNMENT RECORDS SHOW* (June 10, 2015), <https://www.americanimmigrationcouncil.org/research/way-too-long-prolonged-detention-border-patrol-holding-cells-government-records-show>; AMERICANS FOR IMMIGRANT JUSTICE, *THE "HIELERAS": A REPORT ON HUMAN AND CIVIL RIGHTS ABUSES COMMITTED BY U.S. CUSTOMS AND BORDER PROTECTION* (Aug. 7, 2013), <http://www.aijustice.org/the-hieleras-a-report-on-human-civil-rights-abuses-committed-by-u-s-customs-border-protection-2/>; NO MORE DEATHS, *A CULTURE OF CRUELTY: ABUSE AND IMPUNITY IN SHORT-TERM U.S. BORDER PATROL CUSTODY* (2011), <https://nomoredeaths.org/abuse-documentation/a-culture-of-cruelty/>.

¹³ *See, e.g.*, John Washington, *"Kick Ass, Ask Questions Later": A Border Patrol Whistleblower Speaks Out About Culture of Abuse Against Migrants*, INTERCEPT, Sept. 20, 2018, <https://theintercept.com/2018/09/20/border-patrol-agent-immigrant-abuse/>; Sarah Macaraeg, *The Border Patrol Files: Border Patrol Violence: U.S. Paid \$60m to Cover Claims Against the Agency*, GUARDIAN (U.S.), May 1, 2018, <https://www.theguardian.com/world/2018/may/01/border-patrol-violence-us-paid-60m-to-cover-claims-against-the-agency>; Charles Davis, *U.S. Customs and Border Protection Has Killed Nearly 50 People in 10 Years. Most Were Unarmed.*, NEW REPUBLIC, Jan. 4, 2015, <https://newrepublic.com/article/120687/border-patrol-officers-get-impunity-anonymity-immigrant-killings>; Garrett M. Graff, *The Green Monster: How the Border Patrol Became America's Most Out-of-Control Law Enforcement Agency*, POLITICO, Nov./Dec. 2014, <https://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220>; Carrie Johnson, *Former Border Protection Insider Alleges Corruption, Distortion in Agency*, NAT'L PUB. RADIO, Aug. 28, 2014, <https://www.npr.org/2014/08/28/343748572/former-border-protection-insider-alleges-corruption-distortion-in-agency>.

II. CBP Mistreatment of Pregnant People¹⁴

In recent years, the Department of Homeland Security has elected to detain increasing numbers of pregnant people, who have greater medical and physical care needs.¹⁵ Prolonged detention in CBP facilities without access to essential amenities (such as beds or showers) or care from trained medical professionals puts pregnant people at risk of dire health outcomes (including miscarriages and stillbirths).¹⁶

CBP's existing policies are woefully inadequate to safeguard this particularly vulnerable population. The TEDS standards require officials to assess whether an individual is pregnant during initial processing and to evaluate whether special procedures for "at-risk" individuals apply.¹⁷ Although "at-risk" detainees "may require additional care or oversight," the TEDS standards do not specify what type of additional care or oversight should be provided.¹⁸ The TEDS standards require CBP to offer pregnant detainees "a snack upon arrival and a meal at least six hours thereafter," and "regular access to snacks, milk, and juice."¹⁹ Pregnant detainees are not to be shackled or X-rayed.²⁰ The ACLU has identified no other express provisions in publicly available CBP or Border Patrol detention policies addressing care of pregnant detainees.

¹⁴ This complaint refers to "pregnant people" because transgender and non-binary people can also get pregnant. Many transgender men or nonbinary individuals retain their reproductive organs and, as a result, their capacity to become pregnant. *See, e.g.,* J.S. Brandt *et al.*, *Abstract: Transgender men, pregnancy, and the "new" advanced paternal age: A review of the literature*, MATURITAS (Oct. 2019), <https://www.ncbi.nlm.nih.gov/pubmed/31561817>.

¹⁵ *See, e.g.,* Maria Sacchetti, *Pregnant Immigration Detainees Spiked 52 Percent Under Trump Administration*, WASH. POST, Dec. 5, 2019, https://www.washingtonpost.com/immigration/pregnant-immigration-detainees-spiked-52-percent-under-trump-administration/2019/12/05/610ed714-16bb-11ea-8406-df3c54b3253e_story.html; Rochelle Garza, *Trump's War on Asylum-Seekers is Endangering Pregnant Women*, ACLU OF TEXAS (Oct. 3, 2019), <https://www.aclu.org/blog/immigrants-rights/trumps-war-asylum-seekers-endangering-pregnant-women>; https://www.aclutx.org/sites/default/files/aclu_oig_complaint_preg_mpp.pdf; Daniella Silva, *Senators Urge Trump Admin to Ease Policy on Detaining Pregnant Migrants*, NBC NEWS, Apr. 8, 2019, <https://www.nbcnews.com/news/us-news/senators-urge-trump-admin-ease-policy-detaining-pregnant-migrants-n991856>.

¹⁶ *See, e.g.,* Carolyn Sufirin, MD, PhD, et al., *Pregnancy Outcomes in US Prisons, 2016-2017*, 109 AM. J. PUB. HEALTH 5, 799–805 (2019) (discussing negative health impacts of substandard care for incarcerated pregnant individuals and their babies); *see also* Rachael Rettner, *Stress in Pregnancy Boosts Stillbirth Risk*, Live Science, Mar. 27, 2013, <https://www.livescience.com/28229-pregnancy-stress-stillbirth.html>. *See also, e.g.,* Zoë Schlanger & Justin Rohrlich, *A Pregnant Woman Miscarried While in Border Patrol Custody on July 4*, QUARTZ, July 9, 2019, <https://qz.com/1662543/a-migrant-lost-her-fetus-while-in-border-patrol-custody-on-july-4/>; Ema O'Connor & Nidhi Prakash, *Pregnant Women Say They Miscarried in Immigration Detention And Didn't Get The Care They Needed*, BUZZFEED NEWS, July 9, 2018, <https://www.buzzfeednews.com/article/emaconnor/pregnant-migrant-women-miscarriage-cpb-ice-detention-trump>.

¹⁷ TEDS, *supra* note 5, § 4.2.

¹⁸ *Id.* § 5.1.

¹⁹ *Id.* § 5.6.

²⁰ *Id.* §§ 5.5 & 5.7.

The ACLU's investigation indicates that Border Patrol fails to respect even these minimal standards or to provide prompt and necessary medical care to pregnant people in custody. Our interviews also indicate that Border Patrol agents subject pregnant people to physical mistreatment, verbal abuse, and/or neglect.

III. Individual Accounts of Pregnant People in CBP Detention

Based on our investigation, we have selected a number of individual accounts that illustrate CBP's unacceptable treatment of pregnant detainees. These accounts have been anonymized: names have been changed, and certain details omitted, to protect the affected individuals. The accounts are, however, reported faithfully and based on lengthy interviews conducted by ACLU staff, usually within days of release from CBP detention.

Jennifer's Account

Jennifer is a 24-year-old Honduran woman who fled to the United States with her two daughters. She was six months pregnant when she was apprehended and detained at a Border Patrol station in May 2019. Jennifer reported that, during her initial processing, a Border Patrol agent subjected her to excessive force. The agent, apparently infuriated that Jennifer and her friend were speaking to each other while awaiting processing, forcibly grabbed Jennifer by the arm and took her out of her seat. The agent then grabbed Jennifer by the shoulders from behind and slammed her face-first against a chain link fence three times. Jennifer attempted to shield her protruding stomach from the fence—crying out “You’re hurting me! I’m pregnant!”—yet the agent continued to throw her against the fence.²¹ Other officials witnessed this abuse but did not intervene. Jennifer's two daughters, ages two and seven, also witnessed the agent's assault on their mother, and cried out in fear as they helplessly watched. Jennifer experienced acute stress after the attack, both because she feared for the health of her pregnancy and was terrified that she would re-encounter the assailing Border Patrol agent while in custody. Border Patrol detained Jennifer for three days; throughout this period, she did not receive any medical care or treatment.

Nancy's Account

Nancy, a 30-year-old asylum seeker from El Salvador, came to the United States with her partner in May 2019. The pair was taken into Border Patrol custody and separated by agents. The Border Patrol denied each of Nancy's requests to communicate with her partner. Agents repeatedly

²¹ The Border Patrol's excessive force against Jennifer violates CBP's non-discrimination policy and policy requiring at-risk detainees, explicitly including pregnant individuals, be treated with special precautions. *See* TEDS, *supra* note 5, §§ 1.4, 4.2.

told Nancy that she and her partner had no recognized familial connection because they were not married, even though Nancy was pregnant with her partner's child. Nancy reported that the stress of traveling to the United States and being detained while pregnant and separated from her partner was overwhelming.

In Border Patrol custody, Nancy feared for her health and the health of her unborn child. She reported that the food she received was spoiled and served cold; she could not bring herself to eat it.²² Nancy also reported that the available drinking water had a burning smell of chlorine; Nancy feared the water was not potable because the water supply was connected to (and on top of) the toilet in her cell.²³ She was not provided with any hygiene products (toothbrush, toothpaste, sanitary pads). Nancy, who had been taken into custody in wet and mud-covered clothing, was neither permitted a change of clothing nor provided a chance to shower for the duration of her detention.²⁴

Nancy also feared illness in detention, as she was held in an overcrowded cell where detainees had to sleep back to back. She worried constantly about her pregnant belly being accidentally stepped on, kicked, or elbowed by other detainees. She recounted the fact that many detainees appeared to be sick, coughing with runny noses. When the detainees tried to express their health-related concerns to the Border Patrol agents on duty, the agents refused to take any action. Nancy recalls one agent saying, "You are only allowed to ask for a medic if you have a fever."

After seven days in Border Patrol custody, Nancy began to experience significant lower abdomen pain, a headache, and vomiting. She immediately reported her symptoms; in response, Border Patrol agents told her she was lying, and one told her, "If I were you, I would have returned home already." The agents' slander and indifference made Nancy afraid to report her significant pain and discomfort. Nevertheless, Nancy continued to try to tell the agents that she was unwell.²⁵

Finally—three days later, on Nancy's tenth day in Border Patrol custody—Nancy was transported to a nearby hospital for evaluation. Upon her arrival at the emergency room, doctors

²² CBP's own policies require food to be provided in "edible condition." See TEDS, *supra* note 5, § 4.13. See also Border Patrol Short-Term Custody Policy, *supra* note 6, § 6.8.

²³ CBP policy requires "functional drinking fountains or clean drinking water along with clean drinking cups must always be available to detainees." See TEDS, *supra* note 5, § 4.14. See also Border Patrol Short-Term Custody Policy, *supra* note 6, § 6.9.

²⁴ CBP's denial of basic hygienic products and the opportunity to shower during Nancy's prolonged detention also violated agency policy. See TEDS, *supra* note 5, § 4.11 (discussing basic hygiene items and showers).

²⁵ Nancy also reported that, throughout the entire time she was detained by Border Patrol, various Border Patrol agents pressured her to sign a "voluntary departure" form. Voluntary departure permits a respondent in removal proceedings to leave the United States by a certain date, without being subject to a formal removal order. Voluntary departure, however, still can trigger various grounds of inadmissibility for people who hope to enter the United States

witnessed Nancy experience symptoms consistent with a panic attack. Following examination, the doctors also diagnosed Nancy with dehydration, low potassium, low blood sugar, and a kidney infection (for which antibiotics were prescribed).

Nancy was returned to the Border Patrol holding cell after her hospitalization. The next day, she was finally released from Border Patrol custody and permitted to move to the San Diego Migrant Family Shelter, operated by Jewish Family Service. Her partner, however, remained detained.²⁶

Amaya's Account

Amaya is a 25-year-old Honduran asylum seeker who was detained for a total of eighteen days in CBP custody while five months pregnant. When Amaya was taken into custody, CBP neither permitted her to shower nor to change out of her dirty clothing. Consequently, a few days into her detention, Amaya developed a vaginal infection.

Eventually, agency officials allowed medical personnel to evaluate Amaya; these personnel conducted their examination in front of other detainees in a crowded holding cell, without any regard for Amaya's privacy. Amaya repeated her request for fresh clothing and clean undergarments, which was again denied. Amaya was prescribed antibiotics and prenatal vitamins. On her fifth day of detention, CBP allowed Amaya to shower; the water, however, was scorching hot, and burned her skin.²⁷ Amaya was not provided clean undergarments at this time. Desperate, she asked the other women in her holding cell to request pantliners from CBP officers for her to use.²⁸

Amaya's vaginal infection persisted. She was given clean undergarments only after two full weeks in CBP custody.

After Amaya was released, she was taken to the San Diego Migrant Family Shelter, operated by Jewish Family Service. Upon arrival, she was weighed and discovered she had lost approximately 22 pounds (10 kilograms) while in detention.

lawfully in the future. *See* AM. IMMIGRATION COUNCIL, PRACTICE ADVISORY, VOLUNTARY DEPARTURE: WHEN THE CONSEQUENCES OF FAILING TO DEPART SHOULD AND SHOULD NOT APPLY (Dec. 21, 2017), https://www.americanimmigrationcouncil.org/practice_advisory/voluntary-departure-when-consequences-failing-depart-should-and-should-not-apply.

²⁶ Eventually, Nancy's partner was transferred to U.S. Immigration and Customs Enforcement ("ICE") custody at the Otay Mesa Detention Facility.

²⁷ To the ACLU's knowledge, no Border Patrol stations in San Diego sector have showers accessible to detainees, so it is probable that Amaya was held in CBP OFO, rather than Border Patrol, custody. *See also supra*, note 2.

²⁸ Amaya reported that CBP officials would provide female detainees just one or two pantliners at a time; for this reason, Amaya asked several of her cell mates to request and share pantliners with her.

Irene's Account

Irene is a 35-year-old Honduran woman who fled her home country together with her husband after they both experienced persecution for being HIV-positive. When the Border Patrol apprehended the pair in January 2019, Irene was two months pregnant. Irene notified the Border Patrol agents of her pregnancy and HIV-positive status. Nevertheless, upon arrival at the Border Patrol station, agents confiscated Irene's HIV medication, prenatal vitamins, and all other belongings. The Border Patrol also separated Irene from her husband. Detained, ill, pregnant, and without her partner, Irene experienced acute physical and emotional stress, including anxiety about her confiscated HIV medicine (which is essential to managing her disease).²⁹

On her first night of detention, Irene experienced heavy vaginal bleeding and painful cramping. She began to fear that she had lost her placenta.³⁰ Irene yelled to the Border Patrol agents, screaming that she was afraid her baby was in danger and that she was bleeding profusely. In response, an agent told her, "Don't be so dramatic." Irene watched in horror as a pool of her own blood formed inside her holding cell. The only person who helped her during this harrowing experience was another detained woman, who massaged Irene's belly to try to ease her pain and attempted to comfort her. Irene, overwhelmed by the amount of blood and what appeared to be tissue passing from her vagina, fainted.

When she regained consciousness, Irene's cell mate told her that the Border Patrol had permitted her to retrieve a change of clothes for Irene from Irene's personal belongings. Irene cleaned herself as best she could and changed out of her blood-soaked attire. Of her cell mate, Irene later reported: "Without her help, I would not be alive; I owe her everything."

Irene did not receive any medical assistance or attention before, during, or after this experience. The Border Patrol did not provide her with any sanitary napkins or other hygienic

²⁹ The Border Patrol's confiscation of Irene's HIV medication and failure to make that medication available to Irene to self-administer contravenes agency policy. *See* TEDS, *supra* note 5, § 4.10; *cf.* Border Patrol Short-Term Custody Policy, *supra* note 6, § 6.7.5 ("Medications").

³⁰ Describing her experience to the ACLU investigator, Irene stated: "Se me salió la placenta, una gran bola de sangre." ("I lost the placenta, a large ball of blood.")

supplies.³¹ Irene was not even permitted to shower to clean off her own blood. Irene, believing she had miscarried, was deeply traumatized. She was not permitted to see or speak with her husband.

Instead of providing Irene with medical care, agents moved her to a segregated holding cell the next day. The Border Patrol did not explain this move, but Irene believes she was moved due to her HIV-positive status and heavy bleeding. While in the segregated cell, Irene received food through a small opening at the bottom of the cell door.

As Border Patrol had confiscated Irene's HIV medication, Irene's symptoms flared. She suffered intense trembling and cold sweats. In addition, Irene continued to experience symptoms consistent with miscarriage, including excruciating cramping and lower back pain.

After twelve days in Border Patrol custody, Irene finally was transferred to the Otay Mesa Detention Center, where she was evaluated by medical personnel. These providers confirmed that Irene was no longer pregnant.³²

IV. Recommendations

As these individual accounts reflect, CBP has failed to maintain even a baseline standard of care for pregnant people in its custody. Moreover, the extended periods of detention to which these vulnerable individuals are subjected exacerbate the physical, mental, and emotional harms detainees experience in CBP custody.

The ACLU asks that DHS OIG conduct an immediate review of CBP's treatment of pregnant people in its custody and issue recommendations to improve CBP and Border Patrol detention policies. At a minimum, we call upon DHS OIG to:

- (1) Recommend that CBP **stop detaining pregnant people**, and instead prioritize the prompt release of such individuals into U.S. shelters or into the care of their personal support networks in the United States.³³

³¹ As described in note 24, *supra*, the Border Patrol's failure to provide Irene with basic hygienic supplies violated CBP policy. *See* TEDS, *supra* note 5, § 4.11.

³² Irene did not, however, receive necessary medical care at Otay Mesa. When she asked for medication, she was told to "drink water and walk it off."

³³ As noted, *supra* note 4, CBP subjects pregnant people to a variety of unlawful U.S. policies that interfere with an individual's statutory and regulatory rights to seek asylum in the United States, including the so-called "Migrant Protection Protocols" and other fast-track deportation and removal procedures. As a corollary to this recommendation, CBP should immediately and formally **exempt all pregnant persons from such policies** and instead prioritize their prompt release from immigration detention. Subjecting people to other unlawful and abusive policies, such as the so-called "Migrant Protection Protocols," is not an acceptable alternative to humane treatment and prompt release.

- (2) Recommend that CBP policies and practices be revised to **prohibit any period of detention beyond the time required for initial processing, which should in no case exceed 12 hours.**³⁴
- (3) Recommend that CBP **develop, adopt, and publish explicit policies that will ensure adequate, timely medical care for pregnant people** in the agency's custody. Such policies should be developed in consultation with independent medical experts and rights stakeholders,³⁵ and reflect best practices recommended by professional associations (such as the American Medical Association and the American College of Obstetricians and Gynecologists).
- (4) Recommend that CBP **annually report on, and publish on its website, the number of pregnant people in its custody** over the preceding year, and, for all pregnant people detained in excess of 12 hours, **publicly report key information and statistics related to such detentions** over the preceding year, including each pregnant person's (a) total length of time spent in CBP detention, (b) access to edible food and potable water, (c) access to showers, (d) access to clean, warm bedding, and (e) access to fresh clothing (including clean undergarments); (f) the availability and provision of prenatal and other necessary medical care to each pregnant detainee in CBP custody (both on site and off site); (g) the use of restraints on pregnant detainees; and (h) incidents of miscarriage or stillbirth in CBP detention.³⁶
- (5) Assess **whether CBP oversight and disciplinary mechanisms are sufficient** to ensure that CBP officials are held accountable for all instances of detainee abuse, neglect, or other mistreatment, and to ensure that dangerous, abusive, or otherwise unfit CBP employees are removed promptly from duty.

Thank you for your time and careful attention to this submission. We look forward to your timely response.

³⁴ This would ensure that CBP's TEDS and other agency policies are consistent with the presumptive maximum detention period set out in Border Patrol's Short-Term Custody Policy, *see supra* note 6, at § 6.2.1.

³⁵ *See, e.g., Fact Sheet: Health Harms Experienced by Pregnant Women in U.S. Immigration Custody*, PHYSICIANS FOR HUMAN RIGHTS (Nov. 2019), <https://phr.org/wp-content/uploads/2019/12/PHR-Pregnant-Women-in-Immigration-Custody-Fact-Sheet-Nov-2019.pdf>.

³⁶ Such data collection and reporting will improve CBP accountability by providing public information necessary to allow external assessments of agency actions and adherence with governing policies.

Sincerely,

ACLU Foundation of San Diego & Imperial Counties

Mitra Ebadolahi, Senior Staff Attorney

Jacqueline Ramos, Legal Investigator

Sarah Thompson, Border Litigation Fellow/Staff Attorney

Kimberly Grano, Legal Fellow/Staff Attorney

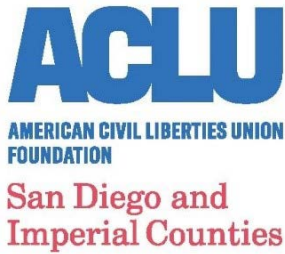
Perla Gonzalez, Legal Assistant

ACLU Border Rights Center

Shaw Drake, Policy Counsel

Astrid Dominguez, Director

Appendix 8(a)



March 4, 2020

Joseph V. Cuffari
U.S. Department of Homeland Security
Office of Inspector General / MAIL STOP 0305
245 Murray Lane SW
Washington, DC 20528-0305
via UPS and email to JointIntake@dhs.gov (CC jointintake@cbp.dhs.gov)

Re: U.S. Customs and Border Protection and Border Patrol’s Abuse and Mistreatment of Detained Pregnant People – Addendum to Complaint of January 22, 2020

The American Civil Liberties Union Foundation of San Diego & Imperial Counties, the ACLU Border Rights Center, and the ACLU National Prison Project (together, “ACLU”) hereby submit this letter and attached spreadsheet as an addendum to the complaint filed on January 22, 2020 with the Department of Homeland Security’s Office of Inspector General (“DHS OIG”),¹ regarding U.S. Customs and Border Protection (“CBP”)’s mistreatment of detained pregnant people.² By way of this addendum, the ACLU reiterates its request that DHS OIG undertake a review based on the information contained in the underlying complaint and the additional material provided herein.

In December 2019, the ACLU National Prison Project filed a Freedom of Information Act (“FOIA”) request regarding the treatment of pregnant people in CBP custody.³ In response to a

¹ The ACLU’s underlying complaint, addressing CBP’s abuse and mistreatment of pregnant people, is appended to this letter as Exhibit A, and also available online here: <https://www.aclusandiego.org/wp-content/uploads/2020/01/2020-01-22-OIG-Complaint-1-FINAL-1.pdf>. On February 20, 2020, DHS OIG issued a form “response” to the ACLU’s complaint, which is appended to this letter as Exhibit B. This response does not address any of the substance of the ACLU’s complaint, nor provide a clear timeline for such a response.

² CBP is the largest law enforcement agency in the United States, with over 60,000 officers. Border Patrol is a subcomponent of CBP. Throughout this complaint, reference to CBP includes Border Patrol.

³ AM. CIVIL LIBERTIES UNION NATIONAL PRISON PROJECT, RE: FOIA REQUEST RELATED TO CBP TREATMENT OF PREGNANT INDIVIDUALS AND PROVISION OF REPRODUCTIVE HEALTH CARE (Dec. 2019), https://www.aclu.org/sites/default/files/field_document/2019-12-06_cbp_repro_foia_filed.pdf

partial search for just one item of the ACLU's request, the DHS FOIA Office produced a spreadsheet from DHS's Office for Civil Rights and Civil Liberties ("CRCL") ("the CRCL spreadsheet").⁴ The CRCL spreadsheet contains forty-two cases involving CBP's alleged mistreatment of pregnant persons.⁵ The most recent cases included on the CRCL spreadsheet are dated September 2019.⁶

In combination with the information included in the ACLU's January 22, 2020 DHS OIG complaint, these cases further demonstrate the pervasiveness of CBP's mistreatment of pregnant persons. The CRCL spreadsheet includes accounts of CBP harassment of pregnant persons at airports, internal checkpoints, land border ports of entry, and within CBP detention facilities.⁷ Seven of the cases involve family separation and seven cases involve pregnant unaccompanied minors. Reported conduct ranges from verbal abuse to physical assault to failed provision of medical care.

Some of the accounts involving mistreatment or neglect of pregnant people included in the CRCL spreadsheet are as follows:

- On December 21, 2017, CRCL received an email referral from ORR regarding the case of a pregnant seventeen-year-old who allegedly was separated from her mother while in DHS custody in Eagle Pass, Texas on December 18, 2017. At the time of separation, the minor was five months pregnant.⁸

⁴ DHS's Privacy Office issued a "final" response letter to the ACLU's FOIA request, even though the letter confirms that DHS searched for just one of the categories of records listed in that FOIA request. *See* Exhibit C, appended hereto, also available online here: <https://www.aclu.org/letter/dhs-response-national-prison-projects-foia-request>. The CRCL spreadsheet is appended to this letter as Exhibit D and also available online here: <https://www.aclu.org/legal-document/cbp-matters-related-pregnancy>.

⁵ The CRCL spreadsheet contains forty-five rows referred to as "DHS matters," but three appear to be duplicates. For purposes of this letter we refer to each "DHS matter" as a case before the department. The document therefore contains 42 separate cases reported to the department.

⁶ The ACLU recognizes that row 38 of the CRCL spreadsheet is related to a September 2019 complaint the ACLU itself filed with both DHS OIG and CRCL regarding pregnant women subjected to the so-called "Migrant Protection Protocols" (also known as the "Remain in Mexico" program). Seven additional rows reference complaints filed by other non-profit organizations that may have also been filed with DHS OIG. Four other rows reference cases documented in public media reports, of which DHS OIG may also already be aware. Notably, fifteen cases were reported to CRCL from other federal agencies and officials, including the U.S. Department of Health & Human Services ("HHS") Office of Refugee Resettlement ("ORR") and U.S. Citizenship and Immigration Services Asylum Division. Sixteen other cases appear to be direct complaints to CRCL from impacted individuals or families.

⁷ Case descriptions in the CRCL spreadsheet are not universally clear regarding the location of the alleged conduct. The ACLU's review indicates that approximately fourteen cases involve conduct at a land port of entry, eight at airports, one at an internal checkpoint, and nineteen at DHS detention facilities.

⁸ *See* row 8 of CRCL spreadsheet.

- On August 15, 2018, CRCL received an email from a Texas non-profit organization regarding a woman in CBP custody who experienced a miscarriage after officers denied her requests for medical care over three days of persistent bleeding. One officer allegedly ignored her request for assistance, and another simply provided Kotex pads. Despite her condition, CBP officers placed her in handcuffs for criminal proceedings regarding her entry, at which time she was able to report her continued bleeding to her federal public defender.⁹
- On October 16, 2018, CRCL received a CBP Info Center referral regarding alleged CBP misconduct during a search at the Paso del Norte port of entry in El Paso, Texas. The complaint alleges CBP grabbed the “privates” of a woman who was five months pregnant during a pat down, forced her to squat several times, and asked her to urinate in a toilet. The woman reported feeling “traumatized” by the experience. The searches found no contraband and CBP allowed the woman to travel on.¹⁰
- On April 10, 2019, CRCL received a CBP Info Center referral regarding alleged CBP misconduct towards a family, including a pregnant mother, at the Ambassador Bridge port of entry in Detroit, Michigan. The complaint alleges that fifteen CBP officers surrounded their vehicle and groped the pregnant woman and her 15-month-old child in their genital areas during a search of the family and vehicle. The father described the officers as racist, unprofessional, and inadequately trained.¹¹

The CRCL spreadsheet also includes summaries of accounts indicating inappropriate prejudicial mistreatment of people who are perceived to be, or to have been, pregnant, and unlawful discrimination based on race or ethnicity. For example:

- On February 8, 2018, CRCL received an email referral through the CBP INFO Center from a pregnant woman regarding an alleged instance of discrimination based on race and ethnicity against her and her husband by CBP officers at the Rio Grande Valley Sector, Falfurrias Station internal checkpoint in Texas. The woman alleges that five to seven CBP officers surrounded the couple’s vehicle, demanding they exit. The officers allegedly mocked her husband’s accent (he is Syrian), and verbally

⁹ See row 13 of CRCL spreadsheet.

¹⁰ See row 17 of CRCL spreadsheet.

¹¹ See row 22 of CRCL spreadsheet.

harassed them saying, “You have no right to be here,” “you are not welcome here,” and “nobody gives a fuck who you are.”¹²

- On May 23, 2019, CRCL received a referral from ORR regarding allegations by an unaccompanied minor who CBP officers denied medical attention. CBP officers ignored the child’s pleas for medical assistance by accusing the child of being pregnant. After arriving at the ORR facility, the child was hospitalized. Her medical condition had worsened in CBP custody, where she received no medical treatment.¹³
- On June 24, 2019, CRCL received an email referral through the CBP INFO Center regarding CBP misconduct at the Santa Teresa, New Mexico port of entry. The complainant stated that CBP officers searching her and her car asked inappropriate questions, including if she was pregnant, if she was on her period, how many children she had given birth to, and whether her births had been vaginal births.¹⁴

We implore DHS OIG to conduct an immediate review of CBP’s treatment of pregnant people and issue recommendations to improve CBP and Border Patrol policies. At a minimum, we call on DHS OIG to adopt the recommendations detailed in Section IV of the ACLU’s January 22, 2020 complaint.

Thank you for your time and careful attention to this submission. We look forward to your timely response.

Sincerely,

ACLU National Prison Project

Eunice Hyunhye Cho, Senior Staff Attorney

ACLU Foundation of San Diego & Imperial Counties

Mitra Ebadollahi, Senior Staff Attorney

ACLU Border Rights Center

Shaw Drake, Policy Counsel

Astrid Dominguez, Director

¹² See row 9 of CRCL spreadsheet.

¹³ See row 25 of CRCL spreadsheet.

¹⁴ See row 32 of CRCL spreadsheet.

Exhibit A

Exhibit A is a copy of Appendix 8,
available on page 74.

Exhibit B



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

February 20, 2020

ACLU Foundation of San Diego & Imperial Counties
P.O. Box 87131
San Diego, CA 92138

ACLU Border Rights Center
P.O. Box 8306
Houston, TX 77288

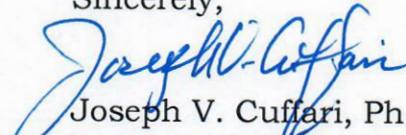
Dear ACLU Foundation of San Diego & Imperial Counties and ACLU Border Rights Center:

We received your January 22, 2020 letter to our office requesting a review of the U.S. Customs and Border Protection's (CBP) treatment of detained pregnant people.

We appreciate you sharing your letter. The DHS Office of Inspector General continues its unannounced inspections of CBP and U.S. Immigration and Customs Enforcement (ICE) detention facilities to evaluate compliance with CBP and ICE detention standards including health, safety, medical care, mental health care, grievances, and use of force. In addition, a list of our ongoing audits, inspections, and special reviews is published on our website at www.oig.dhs.gov/reports/ongoing-projects.

Please call me with any questions, or your staff may contact Rachel Magnus, Office of External Affairs, at (202) 981-6000.

Sincerely,



Joseph V. Cuffari, Ph.D.
Inspector General

Exhibit C



**Homeland
Security**

Privacy Office, Mail Stop 0655

February 13, 2020

SENT BY E-MAIL TO: echo@aclu.org

Eunice Cho
915 15th Street NW
7th Floor
Washington, DC 20005

Re: 2020-HQFO-00284

Dear Ms. Cho:

This is the final response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated December 6, 2019, and received by this office on December 6, 2019. You are seeking the following:

1. Any and all records related to the identification, classification, treatment, and care of pregnant persons apprehended by CBP, subject to secondary screening, extended questioning, an enforcement examination, or detention by CBP, or in CBP custody, including, but not limited to TEDS Sections 3.9, 4.2, 5.1, 5.5, 5.6, and 5.7.;
2. Any and all records related to the identification, classification, treatment, and care of survivors or victims of sexual assault apprehended by CBP, subject to secondary screening, extended questioning, an enforcement examination, or detention by CBP, or in CBP custody;
3. Any and all records related to the use of restraints on pregnant people, or people in active labor, delivery, or post-delivery recuperation in CBP custody;
4. Any and all records related to the custody, classification, treatment, or care of pregnant people or people in active labor under or subject to the Migrant Protection Protocols;
5. Any and all records, including, but not limited to, any databases, spreadsheets, lists, and other data compilations, that reflect the following:
 - a. The total number of individuals in CBP custody identified as pregnant while in CBP custody, including any lists broken down by month and/or facility at which the individual was housed.
 - b. The total number of individuals in CBP custody who gave birth while in CBP custody,

including any lists broken down by month and/or facility at which the individual was housed.

c. The total number of individuals in CBP custody who had a miscarriage while in CBP custody, including any lists broken down by month and/or facility at which the individual was housed.

d. The total number of individuals in CBP custody who terminated a pregnancy while in CBP custody, including any lists broken down by month and/or facility at which the individual was housed.

e. The total number of pregnant individuals apprehended by CBP, including any lists broken down by month and/or location of the apprehension.

f. The total number of pregnant individuals under or subject to the Migrant Protection Protocols;

6. Any and all records, including significant incident reports (SIRs) and associated documentation, regarding the identification, care, and treatment of individuals who are pregnant, postpartum, who recently had a miscarriage or who recently had a terminated pregnancy in CBP custody;

7. Any and all records, including significant incident reports (SIRs) and associated documentation, regarding the identification, care, and treatment of individuals who are pregnant, postpartum, who recently had a miscarriage or who recently had a terminated pregnancy and who are subject to MPP;

8. Any and all records documenting the use of restraints on pregnant people, people in active labor, delivery, or post-delivery recuperation in CBP custody;

9. Any and all records regarding the request or provision of preventative contraception, emergency contraception, or abortions to people in CBP custody;

10. All press releases, statements, post-investigation reports, summaries, or records of communication within federal agencies or federal agencies and local agencies or federal agencies and Mexican government officials containing, describing, referring to, or revealing information related to pregnant people, or people in active labor, delivery, or post-delivery recuperation in CBP custody or subject to the MPP; and

11. Any and all records related to an investigation of the treatment of pregnant people, or people in active labor, delivery, or post-delivery recuperation in CBP custody or subject to the MPP by the DHS Office of Inspector General, the DHS Office for Civil Rights and Civil Liberties, or the CBP Office of Professional Responsibility.

Please note our office only conducted a search for **item #11** of your request.

A search of the Department of Homeland Security, Office of Civil Rights and Civil Liberties (CRCL) for documents responsive to your request produced a total of 20 pages. Of those pages, I have determined the pages are partially releasable pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(A), (b)(7)(C), and (b)(7)(E).

Enclosed are 20 pages with certain information withheld as described below:

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

FOIA Exemption 7(A) protects from disclosure records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings. I have determined that the information you are seeking relates to an ongoing criminal law enforcement investigation. Therefore, I am withholding all records, documents, and/or other material, which if disclosed prior to completion, could reasonably be expected to interfere with law enforcement proceedings and final agency actions related to those proceedings. Please be advised that once all pending matters are resolved and FOIA Exemption 7(A) is no longer applicable, there may be other exemptions which could protect certain information from disclosure, such as FOIA Exemptions (6), 7(C), 7(D), and 7(E).

Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

Exemption 7(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. I determined that disclosure could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

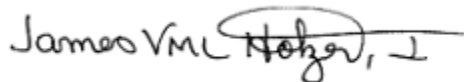
You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to:

Privacy Office, Attn: FOIA Appeals, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0655, Washington, D.C. 20528-0655, following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS FOIA regulations are available at www.dhs.gov/foia.

Provisions of FOIA allow DHS to charge for processing fees, up to \$25, unless you seek a waiver of fees. In this instance, because the cost is below the \$25 minimum, there is no charge.

If you need any further assistance or would like to discuss any aspect of your request, please contact our FOIA Public Liaison and refer to **2020-HQFO-00284**. You may send an e-mail to foia@hq.dhs.gov, or call 202-343-1743 or 1-866-431-0486. Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

A handwritten signature in black ink that reads "James VML Holzer, J." with a stylized flourish at the end.

James Holzer
Deputy Chief FOIA Officer

Enclosure(s): Responsive Documents, 20 pages

Exhibit D

CBP related matters with pregnant or pregnancy in the summary with date to DHS between 1-20-17 to 12-17-19

Generated on: 01/10/2020

For Office Use Only (FOUO)

Yellow - both charts//Green pregnancy only

Row	DHS Matters - Complaint Number	DHS Matters - Contact Number	DHS Matters - State	DHS Matters - Type	DHS Matter - Investigati on Type	DHS Matters - Last Action	DHS Matters - Last Action Date	DHS Matters - Date to DHS	DHS Matters - Date to CRCL	DHS Matters - Summary of Allegation	DHS Matters - Component Involved	DHS Matters - Primary Assignm ent	DHS Matters - Secondary Assignme nt	Issue - Issue	Issue - Basis	Issue - Situation	Issue - Situation Basis	Issue - Incident Location	Issue - Incident Date
1		Contact-DHS-17-1086	Closed	Contact		Info Layer - Sent to Component no further action	03/20/2017	03/07/2017	03/08/2017	On March 8, 2017, CRCL received an email referral from the CBP Info Center, (b)(7)(F) in which (b)(6) alleges that on March 5, 2017, after being referred to secondary inspection at the San Ysidro point of entry, a female CBP officer touched "all my body parts" during a search (b)(6) who is a United States citizen and is five months pregnant, alleges that the officer kicked her in the leg during the search.	CBP			Excessive or Inappropriate Use of Force		Port of entry/CBP checkpoint		San Ysidro, CA	
2		Contact-DHS-17-1376	Closed	Contact		Info Layer - Sent to Component no further action	06/05/2017	05/04/2017	05/04/2017	On May 4, 2017, CRCL received a CBP referral email (CIC Incident (b)(7)(F) regarding U.S. Citizen/Resident (b)(6) and her experience at the San Ysidro Port of Entry on April 30, 2017. (b)(6) stated that because she is six months pregnant she did not want to be exposed to radiation, so she asked the "man to get help driving her car through." (b)(6) alleges that female (b)(6) who did the pat down used excessive force and "hit [her] stomach hard." (b)(6) states that she has a high risk pregnancy slight placental abruption. CBP could not find a SIGMA report for the date in question, but did confirm that (b)(6) (b)(7)(C) works out of San Ysidro and forwarded the matter to OPR as well as CRCL.	CBP			Excessive or Inappropriate Use of Force		Port of entry/CBP checkpoint		San Ysidro, CA	
3		Contact-DHS-17-1385	Closed	Contact				05/08/2017	05/08/2017	On May 8, 2017, CRCL received an email from (b)(6) of the Kino Border Initiative on behalf of her client (b)(6) (b)(6) alleges that Border Patrol Agents encountered her and her husband (b)(6) soon after they crossed the border near Douglas, Arizona, on April 20, 2017, and processed them at the Douglas Border Patrol Station. Both (b)(6) and (b)(6) speak Mizteco; (b)(6) alleges that CBP failed to provide a translator for them. (b)(6) contends that while at the station, an agent told her that (b)(6) would be sent to Tucson, and she would be deported. Because (b)(6) (b)(6) is pregnant, she said she did not want to be deported alone. (b)(6) was deported to Nogales, Sonora on April 21, 2017. She alleges that she did not know where (b)(6) was or what process he would face, and contacted the Mexican consulate several times. The consulate was unable to update her on the status of his case, or find him in the system. (b)(6) states that on April 24, 2017, her attorney found (b)(6) on the roster for Operation Streamline and contacted his criminal defense attorney, who stated that the charges would be dismissed because (b)(6) does not speak fluent Spanish. (b)(6) reportedly was transferred to Otay Mesa Detention in New Mexico, instead of being deported. On April 29, 2017, (b)(6) contacted (b)(6) (b)(6) to tell her he would be deported to Mexico City. She alleges that this family separation has caused her grave emotional distress and put her in a vulnerable situation in a border city.	CBP			Language access (Limited English Proficiency)		Port of entry/CBP checkpoint		Douglas, AZ	04/20/2017

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4	17-10-CBP-0372	Contact-DHS-17-1764	Closed	Complaint	Short Form	Closed No Further Action	11/13/2017	07/12/2017	07/12/2017	On July 12, 2017, CRCL received email correspondence from (b)(6) on behalf of her niece (b)(6), (b)(6) an Egyptian national, regarding allegations that CBP discriminated against (b)(6) and denied her repeated requests for medical treatment after CBP denied her entry into the United States before returning her to Egypt on July 11, 2017. (b)(6) alleges that she arrived at Chicago O'Hare International Airport on July 10, 2017. (b)(6) contends that while CBP officers were questioning her, she mentioned that she was pregnant at which point they began to treat her differently, "like a criminal and questioned [her] for more than 4 hours." (b)(6) alleges that after CBP informed her that they were cancelling her visa and returning her to Egypt, officers "detained [her] in a cell-like room with a dirty mattress on the ground and a bathroom with no door." (b)(6) alleges that she had been bleeding a bit on the plane, but planned to deal with it when she left the airport. Instead, because she remained in CBP custody, she requested that the officers provide her medical assistance or take her to the hospital. (b)(6) contends that the officers "mocked [her] saying that it's such a coincidence that [she] was fine in Egypt, but the bleeding just started here. [She] asked more than once to go to the doctor, but they didn't acknowledge [her] request." Additionally, (b)(6) alleges that CBP officers would not allow her to speak to her aunt or her husband to inform them of her detention. (b)(6) claims that the room in which she was detained was freezing cold, that officers made her remove her sweater, and that she could not eat the food that they provided to her because it was excessively spicy. (b)(6) contends that she became "dizzy from the stress, lack of nutrition, and exhaustion from traveling 27 hours [and] started to fade out of consciousness. The paramedics came and took my	CBP	(b)(6)	(b)(6)	Medical/Mental Health Care	Medical Care	CBP Detention or CBP Deferred Inspection	CBP Hold Room	O'Hare International Airport	07/10/2017
5		Contact-DHS-17-2014	Closed	Contact				08/09/2017	08/09/2017	FAMILY SEPARATION ISSUE. On August 9, 2017, CRCL received an email referral from HHS ORR regarding unaccompanied child (UAC) (b)(6), age 3. The complaint allege that the UAC was separated from her father upon apprehension at the U.S. Border. The UAC's mother was contacted and she stated that they originally all traveled together but separated in Mexico because they had to take different buses to the border. The mother traveled with her nine year old son and she was released to a family friend because she is currently four months pregnant. According to EARM, the UAC and father, (b)(6) were separated at the Yuma Arizona Border Patrol Station due to her father's prior immigration violations.	CBP			Due Process		Unaccompanied minor	FAMILY SEPARATION	Yuma Border Patrol Station	

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6	18-01-CBP-0005	Contact-DHS-18-0074	Closed	Complaint	Short Form	Closed No Further Action	02/22/2018	10/17/2017	10/17/2017	On October 17, 2017, CRCL received an email referral from CBP INFO Center (b)(7)(E) regarding allegations by (b)(6) that on October 15, 2017, at approximately 1:00 a.m., as she and her boyfriend were crossing at Otay Mesa Port of Entry, a CBP officer forced her out of her car and elbowed her stomach; (b)(6) alleges that she is 38 weeks pregnant. (b)(6) alleges that in the line to cross, a woman driving another vehicle hit her side mirror, continued to drive, and then braked suddenly, causing (b)(6) boyfriend to bump into her vehicle. (b)(6) claims that the woman informed CBP of the incident, at which point CBP officers surrounded (b)(6) car, placed her boyfriend in handcuffs, and forced her out of the vehicle, elbowing her stomach, before she even had an opportunity to put her shoes on. (b)(6) claims that she informed the officer that she is 38 weeks pregnant and that he could have injured her unborn child, to which the chief allegedly responded, "It's all ok."	CBP	(b)(6)	(b)(6)	Excessive or Inappropriate Use of Force		Port of entry/CBP checkpoint			Orlando International	10/15/2017
7	18-03-CBP-0053	Contact-DHS-18-0629	Closed	Complaint	Referred	Closed No Further Action	06/07/2018	12/15/2017	12/15/2017	On December 15, 2017, CRCL received an email referral from DHS OIG (b)(7)(E) regarding allegations from (b)(6) in correspondence submitted to the OIG Public Website on December 4, 2017. (b)(6) a U.S. citizen, alleged that a CBP officer mistreated his mother-in-law, (b)(6) as she attempted to enter the United States on December 3, 2017, at Orlando International Airport in Orlando, Florida on a flight from Santo Domingo, Dominican Republic. He further alleges that (b)(6) mistreated his wife during questioning about her mother. (b)(6) states that (b)(6) was planning to visit him and his family, including his wife (b)(6) who is pregnant. (b)(6) states that (b)(6) had intended to spend Christmas with them, after which she planned to stay with them to take care of her pregnant daughter, (b)(6) until March 3, 2018. (b)(6) alleges that (b)(6) was subjected to sexual abuse, humiliation, and inappropriate conduct by female (b)(6). (b)(6) states that he and his wife waited for (b)(6) at the baggage claim area of the airport for a couple of hours with no sign of her. Then his wife (b)(6) received a call from (b)(6) which (b)(6) answered. (b)(6) allegedly questioned both (b)(6) by phone, asking them a series of "personal questions" and questioning them about (b)(6) and the purpose of her visit. According to (b)(6), (b)(6) began to call (b)(6) a liar and wrongly said that (b)(6) was coming to the US with intent to work. (b)(6) denied that and said that (b)(6) was visiting to help her. (b)(6) allegedly pressured (b)(6) by asking her how much she would pay (b)(6) wrote in	CBP	(b)(6)		Sexual assault/abuse	Staff/Detainee	Port of entry/CBP checkpoint		Orlando International	12/03/2017	

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8		Contact-DHS-18-0714	Closed	Contact		Info Layer - No Response necessary	01/04/2018	12/21/2017	12/21/2017	<p>FAMILY SEPARATION.</p> <p>On December 21, 2017, CRCL received an email referral form HHS ORR regarding Unaccompanied Child (UAC) (b)(7)(F), age 17. The complaint alleges that she was separated from her mother, (b)(6) while in DHS custody in Eagle Pass, TX. on 12/18/17.</p> <p>According to EARM, the UAC, her mother, and her cousin arrived at the International Bridge I port of entry at Eagle Pass, Texas claiming fear of returning to her home country of Honduras. The UAC is five months pregnant and was placed in Setton Home in San Antonio, Texas. Her mother was held at GEO Del Rio Texas and will be transferred to a women's facility as soon as space in approved.</p>	CBP			Due Process		Unaccompanied minor	FAMILY SEPARATION	Eagle Pass Port of Entry	
9		Contact-DHS-18-1159	Closed	Contact		Info Layer - Sent to Component no further action	02/15/2018	02/08/2018	02/08/2018	<p>On February 8, 2018, CRCL received an email referral from CBP INFO Center (b)(7)(F) regarding allegations by (b)(6) that CBP discriminated against her and her husband based on his race and ethnicity and harassed them when they proceeded through a CBP checkpoint in the Rio Grande Valley Sector, Falfurrias Station, Highway 281 on November 19, 2017. (b)(6) alleges that as the vehicle was waiting to proceed through the checkpoint, apparently a dog alerted, at which point a CBP officer demanded that (b)(6) open their trunk (b)(6) contends that she and her husband did not hear the officer's order, and the officer then yelled at them to proceed to secondary because they were "being detained." (b)(6) alleges that five to seven officers surrounded the vehicle and demanded that her husband exit the vehicle, at which point they patted him down. (b)(6) alleges that the officers told her to exit the vehicle and wait by the doors of the building outside; it was approximately 40-45 degrees outside. (b)(6) claims that she is pregnant, and had left her jacket in the car, and that officers did not give them their jackets for 10 to 15 minutes. (b)(6) alleges that while they were waiting the officers were unprofessional and made rude remarks to her husband, including "This is the last time you two will be seeing each other", "you have no rights here", "you are not welcome here", "nobody gives a fuck who you are." (b)(6) alleges that the officers also mocked her husband's accent. (In a previous complaint to CRCL, (b)(6) stated that her husband is Syrian.) (b)(6) claims that when she and her husband returned to the vehicle after CBP officers had searched in for 40 minutes to search the vehicle, "the soup my mother cooked for me that I left on the passenger's seat was thrown all over the car," damaging the vehicle's upholstery. (b)(6) claims that the following officers</p>	CBP			Discrimination/Profiling	National Origin	Port of entry/CBP checkpoint		Falfurrias Station	11/19/2017

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10		Contact-DHS-18-1993	Closed	Contact		Info Layer - No Response necessary	06/05/2018	05/05/2018	05/05/2018	On May 5, 2018, CBP officers assigned to the JFK International Airport POE in Jamaica, New York reported that a pregnant Haitian national experienced medical complications while undergoing a secondary inspection for under declared currency. Emergency Medical Technicians responded and the subject, accompanied by her Haitian national spouse, were transported and admitted to a local hospital, where it was confirmed that she had a miscarriage.	CBP			Medical/Mental Health Care	Medical Care	Port of entry/CBP checkpoint		John F. Kennedy International	
11		Contact-DHS-18-3655	Closed	Contact		Info Layer - Sent to Component no further action	09/04/2018	07/31/2018	07/31/2018	(b)(7)(F) On July 31, 2018, CRCL received an email referral from CBP INFO Center (b)(7)(E) regarding information from (b)(7)(E) in correspondence to the INFO Center dated, July 4, 2018, (b)(6) alleged that CBP officers at the Hidalgo Port of Entry in Hidalgo, Texas mistreated her as she was attempting to enter the U.S. on June 6, 2018. (b)(6) alleged that she was trying to enter the U.S. for her "health problems" and that CBP took her into custody for six hours at the POE. She alleged that officers took off all her clothes, told her she was a terrorist, verbally tortured her, and abused her. She said they sent her back to Mexico and that she "lost [her] baby in [her] belly." She did not specify when her pregnancy ended and did not provide information linking that event to her treatment by CBP. CRCL obtained (b)(6) from PCQS from searching on her name and entering "1995," the number in her email address, as the presumed year of her birth. According to the I-213 in EARM, (b)(6) is a citizen of the United Kingdom who stated at the POE that she wanted to travel to Atlanta, Georgia to visit a friend. In secondary inspection, (b)(6) was given a pat search. The I-213 states that (b)(6) said that she wanted to travel to Atlanta and work taking care of children and giving private lessons as she stated that she was an English teacher. She stated that she planned to stay in the U.S. for two months working and then move to Canada. The I-213 states that (b)(6) was four months pregnant and said she was in good health.	CBP			Inappropriate questioning / inspection conditions (Non TSA)	Treatment	Port of entry/CBP checkpoint		Hidalgo Port of Entry	06/03/2018
12		Contact-DHS-18-3770	Closed	Contact		Info Layer - Sent to Component no further action	08/24/2018	08/08/2018	08/08/2018	(b)(6) CRCL received email correspondence from CBP on August 8, 2018 reporting a complaint by a traveler from Kosovo who was refused admission. The traveler had a tourist visa and was 7 months pregnant. She was allegedly questioned in a belligerent in disrespectful manner, and the officer did not believe her when she said she was coming to visit her Aunt. She states that the trauma put her at high risk of miscarriage. She was not allowed to contact her husband until the next day, and was held at the airport apparently overnight. She states that she was questioned for approximately 5 hours.	CBP			Inappropriate questioning / inspection conditions (Non TSA)		Port of entry/CBP checkpoint		Detroit Metro Wayne County	07/11/2018

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13	18-11-DHS-0663	Contact-DHS-18-3851	Open	Complaint	Short Form	Under Investigation - non 504	04/05/2019	08/15/2018	08/15/2018	<p>On August 15, 2018, CRCL received email correspondence from (b)(6) of American Gateways on behalf of (b)(6). (b)(6), an ICE detainee at T. Don Hutto Detention Center in Taylor, Texas. In a CRCL Civil Rights Complaint form, (b)(6) alleged that she experienced a miscarriage in CBP custody and did not receive medical care for three days. Her allegations include the following:</p> <ol style="list-style-type: none"> 1. On June 2, 2018, she was apprehended by CBP when she was approximately 12-13 weeks pregnant; 2. A tall, white officer in a green uniform accused her of lying about her name, saying it was (b)(6) instead of (b)(6). According to (b)(6) the officer yelled at her, told her to shut up, and slammed the door. 3. The following day on June 3, 2018, she knocked on the glass window where the officers were and reported that she was bleeding. The officer from the night before allegedly yelled at her again about not telling the truth, but a different officer gave her a box of Kotex pads. 4. (b)(6) claimed that each time she used the bathroom, more blood came out and she used 6-7 pads on the 3rd. She stated that she was scared she was going to miscarry, and told other officers about the bleeding. She also claimed to be experiencing coldness and lower back pain and requested to see a doctor, but the officers just provided her with more pads. 5. On June 4, 2018, (b)(6) continued to experience bleeding and asked for a doctor. Allegedly, the CBP officers put her in handcuffs and yelled at her to get on a bus where they took her to criminal court to talk to a judge about her entry. When she told the public defender (PD) about what was happening to her, the PD wrote down a note that she needed to be seen by a doctor. Upon return to the CBP office, (b)(6) 	CBP,ICE	(b)(6)		Medical/Mental Health Care	Medical Care	Port of entry/CBP checkpoint		Brownsville Station	

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14	18-12-CBP-0580	Contact-DHS-18-4011	Closed	Complaint	Short Form	Closed No Further Action	09/24/2019	09/05/2018	09/05/2018	<p>Complaint #1- Asylum Turn Around</p> <p>On September 4, 2018, CRCL received allegations from (b)(6) Women's Refugee Commission on behalf of (b)(6) (b)(6) age 38, her children, and one grandson, all Mexican nationals. (b)(6) writes that on Monday, August 6, 2018, (b)(6) (b)(6) her children, and one grandson, all Mexican nationals, presented themselves at the Calexico Port of Entry (POE) in Calexico, California to seek asylum in the US. Her children's names and ages are as follows: (b)(6) (b)(6) (21), (b)(6) (16), (b)(6) (12), (b)(6) (b)(6) (6), and (b)(6) (3). (b)(6) (b)(6) grandson, who also came with her and was accompanied by his mother (b)(6) (b)(6) is (b)(6) (b)(6) daughter, (b)(6) was 8 months pregnant at the time the family presented itself. As they formed the line to enter the POE and got closer to the port building, an official approached them and asked why they were coming. When they responded that they wanted to seek asylum, the official said that they "shouldn't be there," indicating that they were clogging traffic, and that they would have to come another day. They sent (b)(6) (b)(6) and her family to Mexican officials - she is unsure whether it was INM or Grupo Beta - who took their names and phone number and said they would be called back to the Port when there was space. Other people took her and her family to a shelter nearby." (b)(6) (b)(6) continues: "[O]n Tuesday, August 7, 2018, (b)(6) (b)(6) received an early call to say that they would be able to come back to the POE that day. Around 1 or 2pm in the afternoon, Mexican officials arrived at the shelter and transferred her and her family back to the</p>	CBP	(b)(6)	(b)(6)	Due Process		Port of entry/CBP checkpoint		Calexico	08/06/2018

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15	18-12-CBP-0581	Contact-DHS-18-4042	Closed	Complaint	Short Form	Closed Informal Resolutions to Component	09/25/2019	09/04/2018	09/04/2018	<p>Complaint #2- CBP handling of asylum claim and conditions of detention.</p> <p>On September 4, 2018, CRCL received allegations from (b)(6) Women's Refugee Commission on behalf of (b)(6) (b)(6) age 38, her children, and one grandson, all Mexican nationals. (b)(6) writes that on Monday, August 6, 2018, (b)(6) (b)(6) her children, and one grandson, all Mexican nationals, presented themselves at the Calexico Port of Entry (POE) in Calexico, California to seek asylum in the US. Her children's names and ages are as follows: (b)(6) (21), (b)(6) (16), (b)(6) (12), (b)(6) (6), and (b)(6) (3). (b)(6) (b)(6) grandson, who also came with her and was accompanied by his mother (b)(6) (b)(6) is (b)(6) (4). (b)(6) (b)(6) daughter, (b)(6) was 8 months pregnant at the time the family presented itself. As they formed the line to enter the POE and got closer to the port building, an official approached them and asked why they were coming. When they responded that they wanted to seek asylum, the official said that they "shouldn't be there," indicating that they were clogging traffic, and that they would have to come another day. They sent (b)(6) (b)(6) and her family to Mexican officials - she is unsure whether it was INM or Grupo Beta - who took their names and phone number and said they would be called back to the Port when there was space. Other people took her and her family to a shelter nearby. (b)(6) (b)(6) continues: "[O]n Tuesday, August 7, 2018, (b)(6) (b)(6) received an early call to say that they would be able to come back to the POE that day. Around 1 or 2pm in the afternoon, Mexican officials arrived at the (b)(6)</p>	CBP	(b)(6)		Conditions of Detention		Port of entry/CBP checkpoint		Calexico Port of Entry	
16		Contact-DHS-18-4046	Closed	Contact		Info Layer - Sent to Component no further action	09/14/2018	08/27/2018	08/27/2018	<p>On August 27, 2018 CRCL received email correspondence from CBP Info Center regarding a migrant who was detained near Columbus, NM on August 7, 2018. The detainee was held at an unidentified short term CBP detention facility and alleges poor conditions including low temperatures which gave her a sore throat. In addition, the detainee was 7 months pregnant and although she told the BPA she was told to sit on the floor with other detainees, which cause her back pain.</p>	CBP			Conditions of Detention	Env Health / Sanitation	CBP Detention or CBP Deferred Inspection	CBP Detention	near columbus NM	08/07/2018

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17		Contact-DHS-19-0114	Closed	Contact		Info Layer - Sent to Component no further action	10/22/2018	10/16/2018	10/16/2018	On October 16, 2018, CRCL received a CBP Info Center referral (b)(7)(E) in which (b)(6) (b)(6) alleges on September 29, 2018, at the Paso Del Norte Bridge POE, she was selected for secondary inspection. She states she was searched, her car was searched, and subject to K9 inspection. She states she was patted down and her privates were grabbed several times. She alleges she was made to squat several times and states she is five months pregnant. She states she was asked to urinate so the toilet could be searched. She states an officer disputed that she was pregnant. She states the event traumatized her. Per CBP in the Info Center Referral, TECS indicates (b)(6) was referred to secondary due to inconsistency in her story and her behavior. It also notes a k-9 search of the vehicle led to an alert for the presence of narcotics; however, the k-9 alert did not lead to finding any narcotics. After negative results, the traveler was allowed to proceed.	CBP			Inappropriate questioning / inspection conditions (Non TSA)	Treatment	Port of entry/CBP checkpoint		Paso Del Norte Bridge	
18		Contact-DHS-19-0416	Closed	Contact		Info Layer - Respond to Sender with no further action	12/07/2018	11/27/2018	11/27/2018	On November 27, 2018, CRCL received email correspondence from (b)(6) in which she alleges that on August 30, 2018, at the Chicago O'Hare International Airport, Customs and Border Protection (CBP) improperly denied her VISA and entry to the U.S. and returned her to Palestine. She states when she arrived she was asked if she was pregnant, to which she replied yes she was six months pregnant but only intended to be in the U.S. for one month to visit her brother. She states her due date was mid-December. She states she was interrogated for five hours and her passport and phone were not returned to her until she reached Germany. She states her VISA was canceled, incurring her costs. She asks if this practice was based on the fact that she was pregnant and if so, if this is in keeping with human rights and international law.	CBP			Discrimination/Profiling	Sex	Port of entry/CBP checkpoint		Chicago-O'Hare International	
19		Contact-DHS-19-0691	Closed	Contact		Info Layer - No Response necessary	11/07/2019	01/10/2019	01/10/2019	On January 10, 2019, CRCL received an email referral from OIG (b)(6) regarding a December 20, 2018 phone call from (b)(6) a federal air marshal, who reported allegations of sexual assault against two unnamed pregnant detainees in an ICE facility in McAllen, TX. (b)(6) was approached in New Orleans on December 19, 2018, by (b)(6) (b)(6) who are part of the NOLA Grannies Project, an immigration advocacy group. They told him that two pregnant women had been sexually assaulted by an unnamed guard approximately one week earlier. (b)(6) believes that (b)(6) have more information on the identity of the detainees.	CBP,ICE			Sexual assault/abuse	Staff/Detainee	Immigration detention		unknown facility	12/12/2018

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20	19-05-ICE-0180	Contact-DHS-19-0968	Open	Complaint	Short Form	Under Investigation - non 504	03/12/2019	02/26/2019	02/26/2019	<p>On February 25, 2019, CRCL staff were made aware of a joint statement from ICE and CBP regarding a stillbirth in custody. On February 22, 2019, while being processed for release from DHS custody, (b)(6) a 24-year-old Honduran woman went into premature labor and delivered a stillborn baby at the Port Isabel Detention Center (PIDC) in Los Fresnos, Texas. The woman, whose name and identifying details were withheld in order to protect her privacy, reported being six months pregnant at the time of her apprehension by the U.S. Border Patrol (USBP), shortly before midnight on February 18 near Hidalgo, Texas. While in USBP custody, she was taken to the hospital and cleared for release on February 21 after receiving two medical screenings. In the late afternoon on February 22, she was transferred to ICE custody to be processed for release. That same evening, while being processed for release by ICE, she began complaining of abdominal discomfort and was examined by the ICE Health Service Corps (IHSC). The clinical director was called and ordered that she be sent to the hospital. EMS was called. At that time, she conveyed that the baby was coming. She went into premature labor, at 27 weeks pregnant, and delivered an unresponsive male infant. IHSC initiated CPR and EMS transported them both to the Valley Baptist Medical Center in Harlingen, Texas, where the infant was later pronounced dead. According to the statement, the woman remains in ICE custody awaiting medical clearance, after which she will be released from custody. The statement further stated, "Although for investigative and reporting purposes, a stillbirth is not considered an in-custody death, ICE and CBP officials are proactively disclosing the details of this tragic event to be transparent with Congress, the media and the public."</p>	CBP,ICE	(b)(6)		Medical/Mental Health Care	Death	Immigration detention		PORT ISABEL	

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21		Contact-DHS-19-1277	Closed	Contact		Info Layer - Sent to Component no further action	04/04/2019	03/26/2019	03/26/2019	On March 26, 2019, CRCL received an email referral from the CBP Info Center (b)(7)(E) in which (b)(7)(F) alleges on March 14, 2019, CBPOs at the Minneapolis-Saint Paul International Airport (MSP) failed to grant her an accommodation based on the fact that she is eight months pregnant, and misrepresented a form she was required to sign. (b)(6) alleges while she was in line she asked an officer if anyone could assist her with carrying her heavy bags and in placing them on the belt because she is eight months pregnant. She alleges the officer declined her request but another officer later saw her struggling and assisted her. During inspection, the officer found milk and instant noodles with a prohibited ingredient in them. She explained she thought milk was allowed for young children and that she didn't know about the prohibited ingredient in the instant noodles. She states a senior officer told her she would be fined three hundred dollars. She states CBP told her she had to pay immediately or face additional fines. (b)(7)(F) did not have enough money to pay the fine, but was able to contact her father who paid on her behalf. She states she signed a form when she paid the fee that at the time she did not realize Box 11a was checked which stated she was given an opportunity to amend her customs form. She states she was not given this opportunity. She also noticed another box was checked stating that she was notified of her right to a hearing and waived her right to the hearing. She claims she had asked what her options were to contest the fine and had been told there were no options. (b)(7)(F)	CBP			Abuse of authority/misuse of official position		Port of entry/CBP checkpoint		Minneapolis-St. Paul International	
22		Contact-DHS-19-1426	Closed	Contact		Info Layer - Sent to Component no further action	04/25/2019	04/10/2019	04/10/2019	On April 10, 2019, CRCL received an email referral from CBP INFO Center (b)(7)(F) reporting information from (b)(7)(F). In correspondence sent to the INFO Center on March 30, 2019, (b)(7)(F) wrote alleged that CBP officer(s) groped him, his pregnant wife, and his 15-month-old daughter in their genital areas during inspection at the Ambassador Bridge Port of Entry in Detroit, Michigan on March 30, 2019. (b)(7)(F) who stated that he and his wife and daughter are U.S. citizens, claimed that ten to 15 agents surrounded their vehicle because, he believed, an officer he described as racist, unprofessional, and inadequately trained perceived them to be a threat to him. (b)(7)(F) alleged that CBPOs handcuffed him and his wife while his frightened daughter was in her car seat; he used the term "cuffed" and did not specify if the cuffing involved only handcuffs. (b)(7)(F) contended that the "groping" and "grabbing" of genitals constitutes sexual assault.	CBP			Inappropriate touch/search of person (non-TSA)		Port of entry/CBP checkpoint		Ambassador Bridge Port of Entry	03/30/2019

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23		Contact-DHS-19-1489	Closed	Contact		Info Layer - No Response necessary	05/09/2019	04/18/2019	04/18/2019	THIS MATTER INVOLVES AN UNACCOMPANIED MINOR. On April 18, 2019, CRCL received an email referral from the U.S. Department of Health and Human Services Office of Refugee Resettlement (HHS ORR) regarding unaccompanied child (b)(6) (b)(6) age 17. The minor reported that she has been in DHS custody for four days. According to EARM, the minor claimed to be four months pregnant. The minor was apprehended by Border Patrol near San Ysidro, California on April 13, 2019, and was taken to Imperial Beach Border Patrol Station in San Diego, California for processing.	CBP			Due Process		Unaccompanied minor	Time in Custody	Imperial Beach Station	
24	19-08-CBP-0439	Contact-DHS-19-1583	Open	Complaint	Retained	Under Investigation - non 504	07/02/2019	05/02/2019	05/02/2019	Washington Post article states that in some cases DHS is violating its Migrant Protection Protocols program by sending back to Mexico some persons with "known physical/mental health issues." According to the article, "at least two pregnant women and a Honduran family that includes a 4-year-old girl with a neurological disorder were sent from El Paso to Ciudad Juarez, Mexico, under the MPP program, according to court proceedings in recent weeks. It is difficult for the girl to take in food, she is nonverbal and unable to walk, and her family argues that waiting in Mexico was a dangerous proposition." The mother says the daughter was diagnosed in Honduras with Guillain-Barre syndrome. According to the article, the mother crossed the border on March 29 with the 4-year-old and a 14-year-old and requested asylum after surrendering to Border Patrol agents in El Paso. She spent seven days in CBP custody and then was told that she would be returned to Ciudad Juarez. "They said that I needed to return because when I crossed, the law had changed," she said. At her request, agents called her husband in Florida, but they told him there was nothing they could do. After spending nearly three weeks at a migrant shelter in Ciudad Juarez, the family returned to El Paso in late April for an initial hearing in immigration court, and was interviewed by an asylum officer. The family was released to an El Paso migrant shelter, and then flew to Florida with tickets purchased by a charity program. CRCL requested and received the names and alien numbers of the family members mentioned in this article: (b)(6)	CBP	(b)(6)		Due Process		CBP Detention or CBP Deferred Inspection	CBP Detention	El Paso Station	04/05/2019

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25	19-08-CBP-0358	Contact-DHS-19-1734	Open	Complaint		Assign Complaint	06/04/2019	05/23/2019	05/23/2019	<p>THIS MATTER INVOLVES AN UNACCOMPANIED MINOR</p> <p>On May 23, 2019, CRCL received a referral from Department of Health and Human Services (DHHS), Office of Refugee Resettlement (ORR), regarding allegations by (b)(6) (h)(6) The minor alleges that while in CBP custody, she felt ill and requested medical treatment. The minor alleges that the officer accused her of being pregnant and denied her access to medical care. The minor states that the officer then accused all of the girls of being pregnant and denied the requests of others who requested access to medical treatment. The ORR intake coordinator stated that when minor arrived into ORR custody her medical condition had worsened and she was taken to a hospital for evaluation and was hospitalized.</p> <p>According to EARM, a BPA encountered the minor on May 13, 2019, in the Rio Grande Valley, Texas Border Patrol Sector and then transferred the minor to Rio Grande Valley Centralized Processing Center for processing. The minor was transferred into ORR custody on May 20, 2019.</p>	CBP	(b)(6)		Medical/Mental Health Care	Medical Care	Unaccompanied minor	Medical Care, Time in Custody	Rio Grande Valley Centralized Processing Center	05/13/2019
26	19-08-CBP-0440	Contact-DHS-19-1751	Open	Complaint	Retained	Under Investigation - non 504	07/02/2019	05/28/2019	05/28/2019	<p>On May 28, 2019, CRCL reviewed an article published by the Los Angeles Times on May 19, 2019, titled, "Pregnant women, other vulnerable asylum seekers are returned to Mexico to await hearings." The article states that only about 20 asylum-seekers have been exempted from the Migrant Protection Protocols (MPP) and allowed into El Paso. It notes that pregnant women "have been shipped back to Mexico without medical care to await their hearings" and details overcrowding in shelters in Ciudad Juarez. The L.A. Times interviewed (b)(6) (h)(6) a woman who is eight months pregnant and who was placed into MPP. On the day of (b)(6) immigration court hearing, the article noted, four other pregnant migrants in the MPP program, "along with a new mother carrying her 6-day-old daughter," crossed the bridge with (b)(6) The article states, "[T]he guidelines do not make provisions for all pregnant women, new mothers, parents with disabled children or transgender migrants -- all of whom have been returned to Juarez in recent weeks."</p>	CBP	(b)(6)		Due Process		Port of entry/CBP checkpoint		El Paso Station	

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27	19-09-CBP-0450	Contact-DHS-19-1830	Open	Complaint		Assign Complaint	07/16/2019	06/03/2019	06/03/2019	<p>TIME IN CUSTODY - RETENTION MEMO</p> <p>THIS MATTER INVOLVES AN UNACCOMPANIED MINOR. On June 3, 2019, CRCL received an email referral from HHS ORR regarding (b)(6). (b)(6) The minor alleged that she was in CBP custody for ten days between May 21, 2019 and May 31, 2019. EARM indicates that she presented herself for admission on May 21, 2019 at the San Ysidro Port of Entry in San Diego, California and was referred and escorted to the San Ysidro Admissibility Enforcement Unit on May 21, 2019. "While detained at the San Ysidro Admissibility Enforcement Unit, Area of Operations, the minor was provided with meals, a sleeping cushion, blanket, and showers. [The minor] was also questioned about her wellbeing by successfully answering the In-Processing Health Screening Form. [She] denied any immediate medical issues/concerns while in the custody of [CBP]. However, [the minor] stated she is eight months pregnant. [She] was referred to the Physician's Assistant on site at the SYS/POE Admissibility Enforcement Unit for evaluation and clearance while in the custody of [DHS]."</p>	CBP	(b)(6)	(b)(6)	Due Process		Unaccompanied minor	Time in Custody	San Ysidro Port of Entry	
28		Contact-DHS-19-1836	Closed	Contact		Info Layer - No Response necessary	07/03/2019	06/03/2019	06/03/2019	<p>On June 3, 2019, CRCL received a referral from ORR, which alleges that CBP detained UAC (b)(6) (b)(6) who is 17 years old and three months pregnant, for 12 days. According to EARM, OFO apprehended the UAC on May 19, 2019 at the San Ysidro, CA Port of Entry, and transferred custody to ORR on June 1, 2019. (b)(6) alleges she was held in a small cell with twenty-seven other people. It is not clear from the records where (b)(6) (b)(6) was held for the twelve days between the time she claimed asylum and the time she was transferred to ORR.</p> <p>(b)(6)</p>	CBP			Due Process		Unaccompanied minor	Time in Custody	San Ysidro POE	
29	19-09-CBP-0464	Contact-DHS-19-1919	Open	Complaint		Assign Complaint	07/19/2019	06/04/2019	06/04/2019	<p>TIME IN CUSTODY MEMO</p> <p>On June 11, 2019, CRCL received a referral from ORR. The correspondence alleges that DHS detained UAC (b)(6) for 11 days. According to EARM, USBP apprehended her on May 24 and transferred custody to ORR on June 3. Per EARM, she stated that she was seven months pregnant.</p>	CBP	(b)(6)	(b)(6)	Due Process		CBP Detention or CBP Deferred Inspection	CBP Detention	Clint Station	05/24/2019

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30	19-09-CBP-0414	Contact-DHS-19-1932	Open	Complaint		Assign Complaint	06/24/2019	06/05/2019	06/05/2019	<p>THIS MATTER INVOLVES AN UNACCOMPANIED MINOR</p> <p>On June 5, 2019, CRCL received an email from (b)(6) of Raices Texas on behalf of (b)(6). (b)(6) The minor alleges that after she was apprehended she told the Border Patrol Agent that she was spotting. The minor alleges that she was then transported to the processing center, at which she told the BPA that she was spotting and had a miscarriage warning. The minor alleges that the BPA continued the interview, which lasted for about an hour. The minor alleges that after the interview was over, she was taken to the hospital, but halfway there, the person who was transporting her realized that he did not have all of her paperwork so he had to go back to get them. She then went to the hospital, at which the doctor told her that she was under a lot of stress and needed some rest. The minor stated that she didn't know if the doctor told the officer this, because when she returned to the processing center she was forced to sleep on a hard surface with a foil blanket.</p> <p>According to EARM, a BPA encountered the minor on February 17, 2019, near Eagle Pass, Texas and transported her to the Eagle Pass S. Station for processing. EARM states that the minor was 3-months pregnant and was transported to the hospital for examination.</p>	CBP	(b)(6)		Medical/Mental Health Care	Medical Care	Unaccompanied minor	BORDER PATROL HOLD ROOM CONDITIONS, Medical Care	Eagle Pass South Station	02/17/2019
31		Contact-DHS-19-2131	Closed	Contact		Info Layer - No Response necessary	07/09/2019	06/10/2019	06/10/2019	<p>(b)(6)</p> <p>On 6/10/2019, CRCL received a referral from ORR, the correspondence alleges that CBP detained UAC (b)(6) who is 10-years-old, for 7 days. According to EARM, USBP/OFO apprehended the UAC on 6/8/2019 and transferred custody to ORR on 6/8/2019. UAC disclosed during his stay, he was provided three meals (breakfast, lunch, and dinner) and disclosed always having access to water. UAC informed case manager that he would be told to "shut up" by other minors in the detention center. Minor denied any abuse from the officers in the detention center. UAC informed case manager he was told to give up his mattress for the pregnant ladies in the detention center.</p>	CBP			Due Process		Unaccompanied minor	Time in Custody	Yuma Station	
32		Contact-DHS-19-2432	Closed	Contact		Info Layer - No Response necessary	07/26/2019	06/24/2019	06/24/2019	<p>On June 24, 2019, CRCL received an email from the CBP INFO center (b)(7)(F) with allegations from (b)(6) relating to the her experience at the Santa Teresa, New Mexico Port of Entry. (b)(6) alleges that on June 19, 2019, a CBPO at the POE behaved inappropriately when searching her and her car, including asking questions about whether she was pregnant, was on her period, how many children she had and whether those children were vaginal births.</p>	CBP			Inappropriate questioning / inspection conditions (Non TSA)	Treatment	Port of entry/CBP checkpoint		Santa Teresa POE	06/19/2019

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33		Contact-DHS-19-2601	Closed	Contact		Info Layer - No Response necessary	07/11/2019	07/04/2019	07/04/2019	On July 4, 2019, CRCL received a referral from ORR. The correspondence alleges that CBP detained UAC (b)(6) who is 17 years old, for 4 days. The UAC also alleges that she was at one facility for two days with her partner (an adult) and her three-year-old son before they were transferred to a second facility. The ORR intake interview states that the UAC believed her son should stay with her partner, so they stayed in a separate room from her at the second facility. She also alleged that she was not allowed to shower at the second facility. According to EARM, USBP apprehended the UAC on June 30, 2019 before transferring to ORR custody on July 3, 2019. EARM indicates that the first facility at which she and her family were detained was the Naco, Arizona Port of Entry. EARM also indicates that the UAC is eight months pregnant. Additionally, she stated that in 2014 her grandmother sold her to her husband when she was thirteen years old.	CBP			Due Process		Unaccompanied minor	Time in Custody	Naco, AZ POE	
34		Contact-DHS-19-2711	Closed	Contact		Info Layer - No Response necessary	08/15/2019	07/18/2019	07/18/2019	On July 22, 2019, CRCL received an email referral from the CBP Info Center (b)(7)(E) in which (b)(6) alleges on July 16, 2019 at the JFK International Airport, (b)(6) - (b)(7)(C) targeted her and her mother for additional screening, (b)(6) based on their race. (b)(6) states she and her mother are of Indian descent. She states she is pregnant, and had just been ill after getting off of the plane. She states they were approached to have their luggage inspected. (b)(6) explained to the officer she was pregnant and had just been ill, hoping the inspection would not take long. She states they were charged \$1900 because the CBPO claimed they did not report valuable they purchased overseas. (b)(6) states this is false and that she and her mother reported the purchases. She alleges he did not give her any paperwork explaining or documenting the fee.	CBP			Discrimination/Profiling	Race	Port of entry/CBP checkpoint		John F. Kennedy International	
35		Contact-DHS-19-2946	Closed	Contact		Info Layer - No Response necessary	08/22/2019	08/12/2019	08/12/2019	FAMILY SEPARATION On August 12, 2019, CRCL received a referral from ORR. The correspondence alleges that CBP detained UAC (b)(6) who is 14 years old, and separated the UAC from her adult sister. The UAC reported that she was traveling with her 20-year-old sister, and that she was separated from her sister immediately after apprehension. The UAC reported that immigration officials informed her that they were being separated because her sister was an adult. She further reported that her sister is pregnant. According to EARM, USBP apprehended the UAC on August 10, 2019 and transferred custody to ORR on August 11, 2019.	CBP			Due Process		Unaccompanied minor	FAMILY SEPARATION	Yuma Station	

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36		Contact-DHS-19-3243	Closed	Contact		Info Layer - No Response necessary	09/12/2019	09/09/2019	09/09/2019	MPP; Migrant Protection Protocols. CRCL reviewed a September 7, 2019, article from TIME magazine titled, "A Heavily Pregnant Migrant Crossed the U.S. Border Experiencing Contractions. American Doctors Stopped Her Labor, Then Sent Her Back to Mexico." The article describes a Salvadoran woman who was apprehended by Border Patrol while 8.5 months pregnant and experiencing contractions. The article states, "Agents took her to the hospital, where doctors gave her medication to stop the contractions. And then, according to the woman and her lawyer, she was almost immediately sent back to Mexico. There, she joined the more than 38,000 people forced to wait across the border for immigration court hearings under a rapidly expanding Trump administration policy. And her plight highlights the health risks and perils presented by the "Remain in Mexico" program."	CBP			Human Rights		Port of entry/CBP checkpoint		Rio Grande Valley Centralized Processing Center	09/07/2019
37	19-11-CBP-0646	Contact-DHS-19-3332	Open	Complaint	Short Form	Under Investigation - non 504	09/06/2019	08/16/2019	08/16/2019	This Complaint is regarding (b)(6) (h)(6) Young woman with 5 year-old daughter (h)(6) and 16 year-old brother (b)(6) Became pregnant with (h)(6) through kidnapping and rape when she was a minor. (h)(6) mother listed on birth cert. due to circumstances of pregnancy. Provided hospital records to CBP and requested DNA test. CBP separated her from daughter and minor brother. DNA test eventually confirmed parentage after months of separation. On August 16, 2019, CRCL received a direct submission from the Women's Refugee Commission detailing several cases of family separations occurring within the context of the Migration Protection Protocols (MPP), also known as "Remain in Mexico" (RIM). WRC provided A numbers for some of the MPP cases, which are categorized by (1) Biological parents separated from their children; (2) Legal guardians separated from their children; (3) Legal guardian or adoptive parent separated from their child; (4) Caretakers/common-law guardians separated from their children; (5) Families with children where parents and children are split up, with part of the family being sent back to Mexico (usually involving one young adult sibling); (6) Spouses and common law partners separated from each other; (7) Adult siblings separated from minor siblings. These examples also raise issues relating to CBP destroying legal documents, refusing to consider legal documents, poor detention conditions for persons held in CBP custody before being returned to Mexico, and indigenous language speakers and persons with medical issues being returned to Mexico under MPP.	CBP	(b)(6)		Human Rights		Port of entry/CBP checkpoint		Southern Border-MPP	
38		Contact-DHS-19-3441	Open	Contact		More Information Needed	10/24/2019	09/27/2019	09/27/2019	ACLU- Pregnant women returned to Mexico under the MPP Protocols. MIGRANT PROTECTION PROTOCOLS (MPP). On September 26, 2019, CRCL received a direct submission from the ACLU Border Rights Center and the ACLU of Texas, in the form of a letter requesting an investigation into several allegations of pregnant women, many in their third trimester and some near full-term, who have been subjected to the Migrant Protection Protocols (MPP). On September 27, 2019, (b)(6) (h)(6) reached out to the ACLU for the A numbers relating to these individual allegations.	CBP			Human Rights		Port of entry/CBP checkpoint		Southern Border (MPP)	09/26/2019

Row	DHS Matters - Complaint Number	DHS Matters - Contact Number	DHS Matters - State	DHS Matters - Type	DHS Matter - Investigation Type	DHS Matters - Last Action	DHS Matters - Last Action Date	DHS Matters - Date to DHS	DHS Matters - Date to CRCL	DHS Matters - Summary of Allegation	DHS Matters - Component Involved	DHS Matters - Primary Assignment	DHS Matters - Secondary Assignment	Issue - Issue	Issue - Basis	Issue - Situation	Issue - Situation Basis	Issue - Incident Location	Issue - Incident Date
39		Contact-DHS-19-3443	Closed	Contact		Info Layer - No Response necessary	10/04/2019	09/26/2019	09/26/2019	FAMILY SEPARATION On September 26, 2019, CRCL received a direct correspondence from (b)(6) from Morrison Child and Family Services on behalf of UAC (b)(6) who is 12 years old. According to the correspondence, the UAC reported that he was separated from his father, (b)(6) at the border. The UAC reported that his "father" has a different last name than his mother, (b)(6). He reported that his mother had sent his father POAs and that his father had his birth certificate. The UAC reported that upon apprehension, his father presented the documents, but that the BP agents said that the documents were fake and that his father would go to jail for five years for having false documents. He further reported that he did not speak to the agents at that time because he was crying. According to EARM, USBP apprehended the UAC on September 23, 2019 and transferred custody to ORR on September 25, 2019. According to EARM, the purported father admitted that he was not the UAC's biological father as he met the UAC's mother when she was six months pregnant, but stated that he raised the UAC like a son. According to EARM, the individual also stated that he never legally married the UAC's mother. According to EARM, the UAC is in custody at a shelter in Oregon, which is close to a where his biological mother lives in Beaverton, Oregon.	CBP			Due Process		Unaccompanied minor	FAMILY SEPARATION	Rio Grande Valley Centralized Processing Center	
40	20-01-CBP-0073	Contact-DHS-20-0109	Open	Complaint		Assign Complaint	11/06/2019	10/21/2019	10/21/2019	On October 21, 2019, CRCL received email notification from the CBP SITROOM regarding (b)(6) (b)(6) According to the notification: On October 15, 2019, CBP officers assigned to the San Ysidro, California POE reported that a Mexican national, who applied for asylum via the pedestrian lanes was admitted to the hospital. The subject was pregnant and complained of abdominal pains and vaginal bleeding. Officers transported the subject to a local hospital where she underwent surgery; however the fetus did not survive. The subject remains in the hospital for recovery and observation. (b)(6)	CBP	(b)(6)	(b)(6)	Medical/Mental Health Care	Death, Medical Care	Port of entry/CBP checkpoint		San Ysidro	
41		Contact-DHS-16-2061	Closed	Contact				08/30/2016	08/30/2016	THIS MATTER INVOLVED AN UNACCOMPANIED MINOR AND FAMILY SEPARATION ISSUE. On August 30, 2016, CRCL received an email referral from HHS ORR on behalf of unaccompanied child (UAC) (b)(6) age 9. The complaint allege that the UAC was separated from his mother (b)(6) (b)(6) on August 29, 2016 in McAllen, TX because the mother is currently at the hospital due to her pregnancy.	CBP			Due Process		Unaccompanied minor	FAMILY SEPARATION	McAllen, TX	08/29/2016

Row	DHS Matters - Complaint Number	DHS Matters - Contact Number	DHS Matters - State	DHS Matters - Type	DHS Matters - Investigation Type	DHS Matters - Last Action	DHS Matters - Last Action Date	DHS Matters - Date to DHS	DHS Matters - Date to CRCL	DHS Matters - Summary of Allegation	DHS Matters - Component Involved	DHS Matters - Primary Assignment	DHS Matters - Secondary Assignment	Issue - Issue	Issue - Basis	Issue - Situation	Issue - Situation Basis	Issue - Incident Location	Issue - Incident Date	
42	18-09-DHS-0400	Contact-DHS-18-3137	Open	Complaint	Short Form	Under Investigation - non 504	04/16/2019	06/18/2018	06/18/2018	On June 18, 2018, CRCL received an email referral from the DHS OIG (b)(6) regarding (b)(6) (b)(6) an ICE detainee at Otay Mesa (San Diego CCA) in San Diego, California. On 5/24/2018, a USCIS Asylum Officer submitted a complaint to the OIG website on behalf of (b)(6) (b)(6) regarding her medical care at the facility. (b)(6) (b)(6) alleged that officials "accelerated the loss of her baby," and reported that she was not satisfied with the explanations or proof that she was given regarding her pregnancy termination. Specifically, she stated that she was not shown an ultrasound that had been taken to assess the health of her fetus. She also claimed that she had to sleep on a top bunk after her pregnancy was terminated which caused her back, stomach, and leg pain (from climbing the ladder).	CBP,ICE	(b)(6)		Medical/Mental Health Care	Medical Care	Immigration detention			OTAY MESA DETENTION CENTER (SAN DIEGO CDF)	
43		Contact-DHS-18-3655	Closed	Contact		Info Layer - Sent to Component no further action	09/04/2018	07/31/2018	07/31/2018	On July 31, 2018, CRCL received an email referral from CBP INFO Center (b)(7)(F) regarding information from (b)(6) in correspondence to the INFO Center dated, July 4, 2018, (b)(6) alleged that CBP officers at the Hidalgo Port of Entry in Hidalgo, Texas mistreated her as she was attempting to enter the U.S. on June 6, 2018. (b)(6) alleged that she was trying to enter the U.S. for her "health problems" and that CBP took her into custody for six hours at the POE. She alleged that officers took off all her clothes, told her she was a terrorist, verbally tortured her, and abused her. She said they sent her back to Mexico and that she "lost [her] baby in [her] belly." She did not specify when her pregnancy ended and did not provide information linking that event to her treatment by CBP. CRCL obtained (b)(6) (b)(6) from PCQS from searching on her name and entering "1995," the number in her email address, as the presumed year of her birth. According to the I-213 in EARM, (b)(6) is a citizen of the United Kingdom who stated at the POE that she wanted to travel to Atlanta, Georgia to visit a friend. In secondary inspection, (b)(6) was given a pat search. The I-213 states that (b)(6) said that she wanted to travel to Atlanta and work taking care of children and giving private lessons as she stated that she was an English teacher. She stated that she planned to stay in the U.S. for two months working and then move to Canada. The I-213 states that (b)(6) was four months pregnant and said she was in good health.	CBP			Inappropriate questioning / inspection conditions (Non TSA)	Treatment	Port of entry/CBP checkpoint		Hidalgo Port of Entry	06/03/2018	
44		Contact-DHS-19-0022	Closed	Contact		Info Layer - Sent to Component no further action	10/11/2018	10/03/2018	10/03/2018	On October 3, 2018, CRCL received a referral from CBP INFO Center (b)(7)(E) regarding allegations by (b)(6) (b)(6) alleges that she was in the late stages of her pregnancy when she and her mother, who suffers from diabetes, attempted to fly to the United States on Etihad Airlines from Abu Dhabi. (b)(6) alleges that CBP denied her entry and cancelled her visa, and discriminated against her on the basis of her national origin (Egyptian) in doing so. (b)(6) claims that the CBP officers were rude to her, detained her at the airport for approximately 12 hours, which resulted in pain to her and harm to her mother.	CBP			Discrimination/Profiling	National Origin	Port of entry/CBP checkpoint		Abu Dhabi Preclearance	09/22/2018	

Row	DHS Matters - Complaint Number	DHS Matters - Contact Number	DHS Matters - State	DHS Matters - Type	DHS Matter - Investigation Type	DHS Matters - Last Action	DHS Matters - Last Action Date	DHS Matters - Date to DHS	DHS Matters - Date to CRCL	DHS Matters - Summary of Allegation	DHS Matters - Component Involved	DHS Matters - Primary Assignment	DHS Matters - Secondary Assignment	Issue - Issue	Issue - Basis	Issue - Situation	Issue - Situation Basis	Issue - Incident Location	Issue - Incident Date
45	19-11-CBP-0646	Contact-DHS-19-3332	Open	Complaint	Short Form	Under Investigation - non 504	09/06/2019	08/16/2019	08/16/2019	<p>This Complaint is regarding (b)(6) Young woman with 5 year-old daughter (b)(6) and 16 year-old brother (b)(6). Became pregnant with (b)(6) through kidnapping and rape when she was a minor. (b)(6) mother listed on birth cert. due to circumstances of pregnancy. Provided hospital records to CBP and requested DNA test. CBP separated her from daughter and minor brother. DNA test eventually confirmed parentage after months of separation.</p> <p>On August 16, 2019, CRCL received a direct submission from the Women's Refugee Commission detailing several cases of family separations occurring within the context of the Migration Protection Protocols (MPP), also known as "Remain in Mexico" (RIM). WRC provided A numbers for some of the MPP cases, which are categorized by (1) Biological parents separated from their children; (2) Legal guardians separated from their children; (3) Legal guardian or adoptive parent separated from their child; (4) Caretakers/common-law guardians separated from their children; (5) Families with children where parents and children are split up, with part of the family being sent back to Mexico (usually involving one young adult sibling); (6) Spouses and common law partners separated from each other; (7) Adult siblings separated from minor siblings. These examples also raise issues relating to CBP destroying legal documents, refusing to consider legal documents, poor detention conditions for persons held in CBP custody before being returned to Mexico, and indigenous language speakers and persons with medical issues being returned to Mexico under MPP.</p>	CBP	(b)(6)		Human Rights		Port of entry/CBP checkpoint		Southern Border-MPP	

Appendix 8(b)

October 30, 2020

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Office of Inspector General / MAIL STOP 0305
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via email only to Joint.Intake@dhs.gov (CC jointintake@cbp.dhs.gov)

Re: U.S. Customs and Border Protection and Border Patrol’s Abuse and Mistreatment of Detained Pregnant People – Second Addendum to Complaint of January 22, 2020

I. Introduction

The American Civil Liberties Union Foundation of San Diego & Imperial Counties (“ACLU”) hereby submits this second addendum to the complaint filed on January 22, 2020 with the Department of Homeland Security (“DHS”)’s Office of Inspector General (“DHS OIG”), regarding U.S. Customs and Border Protection (“CBP”)’s mistreatment of detained pregnant people.¹ The January complaint, which documented the accounts of multiple individuals who experienced horrific mistreatment in CBP custody while pregnant, reflected CBP’s failure “to maintain even a baseline standard of care for pregnant people in its custody.”² On March 4, 2020, the ACLU submitted an addendum to its January complaint, which contained a spreadsheet obtained from DHS’s Office for Civil Rights and Civil Liberties (“CRCL”) detailing forty-two cases of CBP’s mistreatment of pregnant persons.³

¹ The ACLU’s original complaint, addressing CBP’s abuse and mistreatment of pregnant people, is appended hereto as Exhibit A. It is also available online. *See* AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, ET AL., ADMINISTRATIVE COMPLAINT RE: U.S. CUSTOMS AND BORDER PROTECTION AND BORDER PATROL’S ABUSE AND MISTREATMENT OF DETAINED PREGNANT PEOPLE (Jan. 2020) [hereinafter “January 2020 Complaint”], <https://www.aclusandiego.org/wp-content/uploads/2020/01/2020-01-22-OIG-Complaint-1-FINAL-1.pdf>.

² *Id.* at 10.

³ The first addendum is appended hereto as Exhibit B. Note, however, that Exhibit B does not include all exhibits filed with the first addendum, which are available online. *See* AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, ET AL., ADDENDUM TO COMPLAINT OF JANUARY 22, 2020 RE: U.S. CUSTOMS AND BORDER PROTECTION AND BORDER PATROL’S ABUSE AND MISTREATMENT OF DETAINED PREGNANT PEOPLE (Mar. 2020) [hereinafter “March 2020 Addendum”], <https://www.aclusandiego.org/wp-content/uploads/2020/03/2020-03-04-OIG-compl-preg-persons-addendum-appendix-FINAL.pdf>.

This second addendum to the January complaint provides an account of U.S. Border Patrol's abuse and mistreatment of Ms. Eva Doe.⁴ While three months pregnant, Ms. Doe was detained in DHS custody for a harrowing *ten days*, during which she was separated from her husband and subjected to harsh conditions that placed her and her unborn child's health at risk. Ms. Doe's experience is yet another tragic example of the Border Patrol's blatant disregard for both the humanity of people it detains and its own policies.

By way of this addendum, the ACLU reemphasizes its request that DHS OIG undertake a meaningful review of CBP policies and procedures based on the information contained in the underlying complaint and the additional material provided herein. It is imperative that Border Patrol be held responsible for its pervasive and ongoing abuse of individuals detained in its custody.

II. **Facts**

Ms. Doe fled Cuba along with her husband in June 2019. They arrived at the United States-Mexico border in September 2019 and presented themselves at the Hidalgo Port of Entry to seek asylum. They were detained for two days in CBP custody before being placed in the so-called "Migrant Protection Protocols" ("MPP") and forced to remain in Mexico during the pendency of their immigration court proceedings.⁵ Over the next several months, they were paroled into the United States for multiple court hearings. At the conclusion of each hearing, they were returned to the city of Reynosa in Mexico.

In March 2020, an immigration judge denied Ms. Doe and her husband asylum. They both reserved appeal and were returned to Reynosa for an indefinite period of time. There, the couple faced the tremendous challenges of navigating a global pandemic in a foreign country, without critical resources. Ms. Doe and her husband both fell ill, yet due to their lack of access to medical care, they could not get treatment. Ms. Doe's husband additionally suffered threats and extortion in Mexico. Eventually, Ms. Doe and her husband learned they were pregnant with their first child.

⁴ This account has been anonymized: names have been changed to protect the affected individuals. The account is, however, reported faithfully and based on lengthy interviews conducted by ACLU staff following Ms. Doe's release from CBP detention.

⁵ The so-called "Migrant Protection Protocols" is an unlawful U.S. policy that interferes with people's statutory and regulatory rights to seek asylum in the United States. *See, e.g.*, DELIVERED TO DANGER, <https://deliveredtodanger.org/> (last visited Oct. 30, 2020); HUMAN RIGHTS FIRST, A YEAR OF HORRORS: THE TRUMP ADMINISTRATION'S ILLEGAL RETURNS OF ASYLUM SEEKERS TO DANGER IN MEXICO (Jan. 2020), <https://www.humanrightsfirst.org/sites/default/files/MPP-aYearofHorrors-UPDATED.pdf>; Jason Kao & Denise Lu, *How Trump's Policies Are Leaving Thousands of Asylum Seekers Waiting in Mexico*, N.Y. TIMES, Aug. 18, 2019, <https://www.nytimes.com/interactive/2019/08/18/us/mexico-immigration-asylum.html> (describing "Remain in Mexico"—a.k.a. "Migrant Protection Protocols"—program).

Fearful of ever-present threats to their safety, overwhelmed by unrelenting pandemic circumstances, and without legal counsel, the couple was unable to timely submit their immigration appeal. Consequently, the pair made the difficult decision to request asylum once more at a port of entry—this time, in Tijuana. When they arrived at the port of entry, however, U.S. immigration officers told the couple that the border was “closed” due to the coronavirus pandemic, and turned them away.

Ms. Doe’s harrowing ten-day period of detention in DHS custody began on September 8, 2020, when she and her husband once again attempted to enter the United States, this time turning themselves in to Border Patrol agents and requesting asylum. Agents transported Ms. Doe and her husband to the Chula Vista Border Patrol Station. Once there, Ms. Doe notified the agents that she was pregnant, even showing them photos from a recent ultrasound she had undergone while in Tijuana. Notwithstanding, Border Patrol agents separated Ms. Doe from her husband immediately after processing.⁶

The Border Patrol forced Ms. Doe to remove all outer layers of clothing, leaving her upper body clothed in only a sleeveless, thin-strapped blouse. Border Patrol agents gave Ms. Doe a floor mat and silver colored plastic (Mylar) sheet to use as a blanket before placing her in a large holding cell.⁷ The toilet and sink to which Ms. Doe had access in her holding cell lacked safeguards for privacy. Ms. Doe was never allowed to bathe while in Border Patrol custody and was instead provided a single moist towelette to clean her entire body every three to four days. She was also only provided a small plastic stick with a sponge tip every three to four days to brush her teeth. The Border Patrol kept the cell lights on 24 hours per day, which made it difficult for Ms. Doe to fall asleep. Ms. Doe felt very cold in the holding cell, unable to warm up with the Mylar sheet, and unable to sleep or rest. Despite her multiple requests, Ms. Doe was denied access to her prenatal vitamins and was never given an equivalent supplement while in CBP custody.

⁶ On April 15, 2020, the ACLU submitted another administrative complaint regarding the separation of families during CBP detention and processing. A copy of this complaint is appended hereto as Exhibit C. It is also available online. *See* AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, ET AL., ADMINISTRATIVE COMPLAINT RE: SEPARATION OF FAMILIES VIA CBP DETENTION AND PROCESSING, AND THE AGENCY’S REFUSAL TO IMPLEMENT A DETAINEE LOCATOR SYSTEM (Apr. 2020) [hereinafter “April 2020 Complaint”], <https://www.aclusandiego.org/wp-content/uploads/2020/04/2020-04-15-OIG-Complaint-3-FINAL.pdf>.

Today’s second addendum echoes the troubling themes regarding family separation and incommunicado detention set forth in the April 2020 complaint.

⁷ During her first night in custody, Ms. Doe was detained with one other person. For the remainder of her time in Border Patrol custody, Ms. Doe was detained completely alone and separated from her husband.

On her seventh day in Border Patrol custody, Ms. Doe observed agents taking her husband and his belongings out of the holding cell in which he had been detained. She was never given an opportunity to talk to him before he was taken away. She panicked as she saw the agents removing him from the facility, and began banging on the cell door pleading for the agents' attention. An agent informed Ms. Doe that her husband was being transferred to an ICE detention center and that she would soon be transferred as well. She recalls an agent explaining, to her horror, that many pregnant women are detained in ICE custody and that she could give birth while detained. Ms. Doe felt frozen in that moment, unable to catch her breath, with her hands going numb, and her heart rate accelerating. Ms. Doe soon caught the attention of a medical provider in the station, who explained that she had most likely experienced an anxiety attack.

After nine days detained at the Chula Vista Border Patrol Station, Ms. Doe was informed that she would be transferred to an ICE detention center. She was transported to a different location and spent her last night in a different holding cell with three other women. The following day, immigration officials transported her to an office where she was instructed to sign multiple documents she did not understand and told that she had court scheduled for November 18, 2020.

Thereafter, Ms. Doe was transported to a local San Diego hotel where she was greeted by Jewish Family Service San Diego Migrant Family Shelter ("JFS") staff. JFS staff were the first to explain to Ms. Doe that she was out of immigration custody and would be reunited with her family in the United States after completing a fourteen-day quarantine period in the shelter. Ms. Doe eventually learned that her husband was in ICE custody at the Otay Mesa Detention Center, where he remains as of the date of this submission.⁸ Prior to learning his whereabouts, Ms. Doe spent thirteen agonizing days without hearing from him, worrying about his safety and wellbeing.

Ms. Doe is currently five months pregnant. Her separation from the father of her child has caused her stress, anxiety, and emotional turmoil. She fears that her husband might not be present for their first child's birth, and that she will have to go through the experience alone without his support. Worse yet, Ms. Doe's source of greatest distress is the possibility that her husband will be deported to danger in their country of origin, without ever being able to see or hold their child.

⁸ In April 2020, the first major COVID-19 outbreak among ICE's 221 detention centers occurred at the Otay Mesa Detention Center, leading to the death of Carlos Ernesto Escobar Mejia, who had been detained there. *See* Chris Gelardi, "We Are Scared": Stuck Inside ICE Detention's Coronavirus Epicenter, THE APPEAL, May 6, 2020, <https://theappeal.org/otay-mesa-ice-detention-coronavirus/>; Camilo Montoya-Galvez, "My Son Is in Danger": Fear Mounts over Largest Coronavirus Outbreak in ICE Detention, CBS NEWS, May 15, 2020, <https://www.cbsnews.com/news/coronavirus-outbreak-ice-detention-center-immigrants/>.

III. **CBP Detention Harms Vulnerable Individuals**

In its January 2020 and April 2020 complaints, the ACLU detailed DHS's election to detain increasing numbers of pregnant people and CBP's forcible separation of family members during processing and detention.⁹ As demonstrated by Ms. Doe's experience, these abusive practices persist.

When processing and detaining individuals, CBP officials unilaterally decide which family members stay together and which are separated. Although CBP policy states that the agency "will maintain family unity to the greatest extent operationally feasible, absent a legal requirement or an articulable safety or security concern that requires separation,"¹⁰ the ACLU's April 2020 complaint documented numerous accounts of CBP processing or detention-related family separation in which no operational obstacles, legal mandates, or safety or security concerns existed.¹¹ In this case, too, there appears to be no legal requirement or safety or security concern justifying separation.

Family separations serve to intensify existing trauma which, although harmful for all individuals, creates additional risks for pregnant people. Forced family separation both exacerbates the trauma of being detained and increases the risk of depression, anxiety, and post-traumatic stress.¹² Psychological stress, including the experience of emotional trauma or loss of social support, creates a "significantly higher" risk of miscarriage,¹³ can increase risks in childbirth, and can affect the health, development, and long-term functioning of the child.¹⁴

Ms. Doe's experience is yet another case of senseless and harmful family separation, which is particularly egregious in light of Ms. Doe's pregnancy. Ms. Doe experienced intense emotional distress—which physically manifested in a panic attack—when she observed Border Patrol agents taking her husband away and upon learning that she could be forced to give birth in ICE custody

⁹ See January 2020 Complaint, *supra* note 1, at 5; April 2020 Complaint, *supra* note 6, at 2–3.

¹⁰ U.S. CUSTOMS AND BORDER PROTECTION, NAT'L STANDARDS ON TRANSPORT, ESCORT, DETENTION, AND SEARCH, at § 1.9 (Oct. 2015) [hereinafter "TEDS"], <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf>.

¹¹ April 2020 Complaint, *supra* note 6, at 4.

¹² LEIGH BARRACK, AM. IMMIGRATION COUNCIL, DIVIDED BY DETENTION: ASYLUM-SEEKING FAMILIES' EXPERIENCES OF SEPARATION 14 n.46 (Aug. 2016) https://www.americanimmigrationcouncil.org/sites/default/files/research/divided_by_detention.pdf.

¹³ Fan Qu *et al.*, *The Association Between Psychological Stress and Miscarriage: A Systematic Review and Meta-Analysis*, 7 SCI. REP., art. 1731, May 2017, at 1, <https://doi.org/10.1038/s41598-017-01792-3>.

¹⁴ Mary E. Coussons-Read, *Effects of Prenatal Stress on Pregnancy and Human Development: Mechanisms and Pathways*, 6 OBSTETRIC MED. 52, 52 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5052760/>.

without her husband. Then, Ms. Doe spent thirteen days in anguish because she neither knew her husband's whereabouts nor had any means to contact him. These enormously stressful—and entirely avoidable—events placed both Ms. Doe and her unborn child at heightened risk of pre- and post-birth complications. And, to this day, the pair remain separated as a result of the DHS's election to detain Ms. Doe's husband. The couple has been forced to endure the trauma of not knowing whether they will be reunited, whether Ms. Doe will have to give birth alone, or whether Ms. Doe's husband will ever meet his child. Ms. Doe's ordeal is yet one more manifestation of the DHS's persistent attacks on the reproductive rights of people in its custody.

Moreover, it is well established that CBP facilities, including Border Patrol stations, are not equipped for extended periods of custody like that endured by Ms. Doe. CBP's own policy states that detainees "should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities."¹⁵ The Border Patrol's policy is even more restrictive, limiting detention to 12 hours "[w]henver possible."¹⁶ Although CBP's TEDS standards state that "at-risk" detainees, such as pregnant people, "may require additional care or oversight," they do not specify what type of additional care or oversight should be provided.¹⁷ The TEDS standards *do* state that all detained individuals "must be provided with basic personal hygiene items," that "reasonable efforts will be made to provide showers, soap, and a clean towel to detainees who are approaching 72 hours in detention," and that "[w]hen available, clean blankets must be provided . . . upon request."¹⁸

Although the TEDS standards set the minimum guidelines with which CBP must comply,¹⁹ Ms. Doe's care fell well below even this low threshold. In addition to being detained for ten days (nine spent in a Border Patrol station), Ms. Doe was denied the most basic of necessities. While in Border Patrol custody, Ms. Doe was never provided an opportunity to bathe. In lieu of a toothbrush, she was given a small plastic stick with a sponge tip every three to four days to brush

¹⁵ TEDS, *supra* note 10, § 4.1.

¹⁶ U.S. BORDER PATROL, DETENTION STANDARDS: HOLD ROOMS AND SHORT TERM CUSTODY, REFERENCE NO. 08-11267, at § 6.2.1 (Jan. 31, 2008), <https://www.documentcloud.org/documents/818095-bp-policy-on-hold-rooms-and-short-term-custody.html>.

¹⁷ TEDS, *supra* note 10, § 5.1.

¹⁸ *Id.* at §§ 4.11, 4.12.

¹⁹ According to a 2016 Government Accountability Office report, "[t]he TEDS policy is intended as a foundational document" to be supplemented with more detailed policies developed by CBP subcomponents. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-16-514, IMMIGRATION DETENTION: ADDITIONAL ACTIONS NEEDED TO STRENGTHEN DHS MANAGEMENT OF SHORT-TERM HOLDING FACILITIES, at 9 n.14 (May 2016), <https://www.gao.gov/assets/680/677484.pdf>.

her teeth. Such prolonged detention—especially without access to essential amenities—is particularly dangerous for pregnant people. In Border Patrol custody, Ms. Doe was left, alone, cold, and scared, in a fluorescent-lit holding cell, worrying about her husband and the health and future of her unborn child.

Ms. Doe should not have been forced to endure this trauma and suffering while pursuing her legal right to seek asylum in the United States.

IV. DHS OIG's Failure to Adequately Respond to the ACLU's Prior Complaints

As noted, the ACLU submitted its first complaint regarding CBP's treatment of detained pregnant people in January 2020—ten months ago. On February 12, 2020, partially in response to the ACLU's complaint, fourteen U.S. senators signed a letter to CBP decrying the agency's mistreatment of detained pregnant people and noting "CBP's evasion of congressional oversight."²⁰ The senators specifically requested answers to a series of questions regarding CBP's record keeping practices, compliance with the TEDS standards, and mechanisms for holding officers who mistreat detained people accountable.²¹ To the ACLU's knowledge, CBP has not responded to the senators' letter.

On February 20, 2020, DHS OIG acknowledged receipt of the ACLU's complaint, stating only that DHS OIG "continues its unannounced inspections of CBP and [ICE] detention facilities to evaluate compliance with CBP and ICE detention standards"²²

In early April, the ACLU and JFS jointly submitted an administrative complaint that detailed the horrific experience of a Guatemalan woman who had sought asylum in the United States, been detained by Border Patrol, and forced to give birth while standing in the Chula Vista Border Patrol Station.²³ Subsequently, thirteen U.S. senators signed a letter to DHS OIG, urging the agency to conduct "a full and comprehensive investigation into CBP's treatment of pregnant people, including, but not limited to, whether its personnel are complying with existing standards, whether its policies need to be changed or developed further, and whether its oversight and accountability mechanisms

²⁰ Letter from Senator Richard Blumenthal et al. to Mark A. Morgan, Acting Comm'r, U.S. Customs & Border Prot. (Feb. 12, 2020), <https://bit.ly/2HOM3Vc>.

²¹ *Id.* at 3–4.

²² A copy of this correspondence is appended hereto as Exhibit D.

²³ AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, ET AL., ADMINISTRATIVE COMPLAINT RE: U.S. BORDER PATROL'S ABUSE AND MISTREATMENT OF A WOMAN AT THE CHULA VISTA BORDER PATROL STATION (Apr. 2020), https://www.aclusandiego.org/wp-content/uploads/2020/07/2020-04-07-OIG-Cmplt-Final_Redacted.pdf. A copy of this complaint is appended hereto as Exhibit E.

are sufficient to ensure compliance from its personnel.”²⁴ On June 2, 2020, DHS OIG informed the senators that it (1) was reviewing the specific circumstances surrounding the Guatemalan complainant’s account, and (2) planned to incorporate the senators’ concerns into an audit of detention facility policies and processes for handling medical intervention that would be publicly reported upon completion. To the ACLU’s knowledge, DHS OIG has neither commenced nor completed this promised audit.

Meanwhile, CRCL corresponded with the ACLU in late March and early April 2020 regarding the January 2020 complaint (which DHS OIG had “transferred” to CRCL). More than six months have passed since CRCL’s most recent correspondence on this complaint (in which CRCL promised it would “conduct an investigation of the concerns [the ACLU has] raised”).²⁵

To date, the ACLU has received no response to either its March 2020 supplemental complaint concerning pregnant people or its April 2020 complaint regarding family separation.

Thus, to date, neither DHS OIG nor CRCL has undertaken or completed any meaningful review of CBP’s systematic mistreatment of pregnant people detained in agency custody. Given the urgent and grievous nature of the concerns raised in the various complaints identified above, your failure to take timely action endangers the well-being of many detained individuals—including, but not limited to, pregnant people.

V. Recommendations

We once again implore DHS OIG to conduct **an immediate review** of CBP’s treatment of pregnant people in its custody. At a minimum, we call on DHS OIG to adopt the recommendations detailed in section IV of the ACLU’s January 2020 complaint on CBP’s mistreatment of detained pregnant people, section III of the ACLU and JFS’s April 2020 complaint on the mistreatment of a pregnant woman at the Chula Vista Border Patrol Station, and section V of the ACLU’s April 2020 complaint on family separation during CBP processing and detention.

In particular, the ACLU reiterates its key recommendations:

²⁴ Letter from Senator Richard Blumenthal et al. to Joseph V. Cuffari, Inspector Gen., U.S. Dep’t Homeland Sec. (Apr. 8, 2020), <https://bit.ly/3oPXRI3>.

²⁵ A copy of this correspondence is appended hereto as Exhibit F.

- (1) That CBP **stop detaining pregnant people**, and instead prioritize the prompt release of such individuals into U.S. shelters or into the care of their personal support networks in the United States.²⁶
- (2) That CBP policies and practices be revised to **prohibit any period of detention beyond the time required for initial processing, which should in no case exceed 12 hours.**²⁷
- (3) That CBP **develop, adopt, and publish explicit policies that will ensure adequate, timely medical care for pregnant people** in the agency's custody. Such policies should be developed in consultation with independent medical experts and rights stakeholders,²⁸ and reflect best practices recommended by professional associations (such as the American Medical Association and the American College of Obstetricians and Gynecologists).
- (4) That, when CBP apprehends pregnant people at or near the border, the agency should **immediately transport them to a local hospital for medical evaluation** prior to routine processing, given the arduous nature of journeys to and across the border, the health needs and risks associated with pregnancy, and the lack of medical facilities and trained medical professional staff in CBP detention facilities.
- (5) That CBP **annually report on, and publish on its website, the number of pregnant people in its custody** over the preceding year, and, for all pregnant people detained in excess of 12 hours, **publicly report key information and statistics related to such detentions** over the preceding year, including each pregnant person's (a) total length of time spent in CBP detention, (b) access to edible food and potable water, (c) access to showers, (d) access to clean, warm bedding, and (e) access to fresh clothing (including clean undergarments), (f) the availability and provision of prenatal and other necessary medical care to each pregnant detainee in CBP custody (both on site and off site), (g) the use of

²⁶ CBP subjects pregnant people to a variety of unlawful U.S. policies that interfere with an individual's statutory and regulatory rights to seek asylum in the United States, including the so-called "Migrant Protection Protocols" and other fast-track deportation and removal procedures. *See supra* note 5. As a corollary to this recommendation, CBP should immediately and formally **exempt all pregnant persons from such policies** and instead prioritize their prompt release from immigration detention. Subjecting people to other unlawful and abusive policies, such as the so-called "Migrant Protection Protocols," is not an acceptable alternative to humane treatment and prompt release.

²⁷ This would ensure that CBP's TEDS and other agency policies are consistent with the presumptive maximum detention period set out in Border Patrol's Short Term Custody Policy, *see supra* note 16, at § 6.2.1.

²⁸ *See Fact Sheet: Health Harms Experienced by Pregnant Women in U.S. Immigration Custody*, PHYSICIANS FOR HUMAN RIGHTS (Nov. 2019), <https://phr.org/wp-content/uploads/2019/12/PHR-Pregnant-Women-in-Immigration-Custody-Fact-Sheet-Nov-2019.pdf>.

restraints on pregnant detainees, and (h) incidents of miscarriage or stillbirth in CBP detention.²⁹

- (6) That DHS assess **whether CBP oversight and disciplinary mechanisms are sufficient** to ensure that CBP officials are held accountable for all instances of detainee abuse, neglect, or other mistreatment, and to ensure the dangerous, abusive, or otherwise unfit CBP employees are removed promptly from duty.
- (7) That CBP **refrain from detaining family units and instead prioritize their prompt release.**³⁰ Alternatively, and at a minimum, that officials assess CBP's **definition of “family” and recommend changes** (including consideration of a more inclusive approach to “family”) to **minimize family separation during CBP processing and detention.**³¹
- (8) That DHS and its components work with the Department of Health and Human Services and the Department of Justice to ensure an **inter-agency process to help reunite separated family members.**³² At a minimum, this inter-agency process should include mechanisms, such as an inter-agency hotline, to help detained family members locate and connect regularly and meaningfully with loved ones from whom they have been separated.

(continued on next page)

²⁹ Such data collection and reporting will improve CBP accountability by providing public information necessary to allow external assessments of agency actions and adherence with governing policies.

³⁰ DHS OIG should ensure that family separation via CBP processing and/or detention is not avoided by instead subjecting family members to prolonged ICE detention.

³¹ This is a minimum or “floor” recommendation. For years, advocates have called for family unity determinations to be made by trained professionals (including but not limited to licensed child welfare specialists), rather than DHS enforcement officials. *See, e.g.*, WOMEN’S REFUGEE COMMISSION, ET AL., BETRAYING FAMILY VALUES: HOW IMMIGRATION POLICY AT THE UNITED STATES BORDER IS SEPARATING FAMILIES (2017), <https://www.womensrefugeecommission.org/research-resources/betraying-family-values/>.

³² Certain government mechanisms for family reunification in specific circumstances already exist (for example, the sponsorship process, ICE’s Detention Reporting and Information hotline, and the Office of Refugee Resettlement’s hotline and address for email inquiries). These mechanisms, however, are inadequate to timely or completely rectify all instances of family separation resulting from CBP processing and detention.

Thank you for your time and careful attention to this submission. We look forward to your timely response.

Sincerely,

Mitra Ebadolahi, Senior Staff Attorney
mebadolahi@aclusandiego.org

Monika Y. Langarica, Immigrants' Rights Staff Attorney
mlangarica@aclusandiego.org

Jacqueline Ramos, Legal Investigator

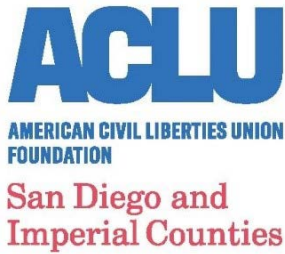
Emily Child, Border Litigation Fellow

ACLU Foundation of San Diego & Imperial Counties
P.O. Box 87131
San Diego, CA 92138-7131

Exhibit A

Exhibit A is a copy of Appendix 8,
available on page 74.

Exhibit B



March 4, 2020

Joseph V. Cuffari
U.S. Department of Homeland Security
Office of Inspector General / MAIL STOP 0305
245 Murray Lane SW
Washington, DC 20528-0305
via UPS and email to JointIntake@dhs.gov (CC jointintake@cbp.dhs.gov)

Re: U.S. Customs and Border Protection and Border Patrol’s Abuse and Mistreatment of Detained Pregnant People – Addendum to Complaint of January 22, 2020

The American Civil Liberties Union Foundation of San Diego & Imperial Counties, the ACLU Border Rights Center, and the ACLU National Prison Project (together, “ACLU”) hereby submit this letter and attached spreadsheet as an addendum to the complaint filed on January 22, 2020 with the Department of Homeland Security’s Office of Inspector General (“DHS OIG”),¹ regarding U.S. Customs and Border Protection (“CBP”)’s mistreatment of detained pregnant people.² By way of this addendum, the ACLU reiterates its request that DHS OIG undertake a review based on the information contained in the underlying complaint and the additional material provided herein.

In December 2019, the ACLU National Prison Project filed a Freedom of Information Act (“FOIA”) request regarding the treatment of pregnant people in CBP custody.³ In response to a

¹ The ACLU’s underlying complaint, addressing CBP’s abuse and mistreatment of pregnant people, is appended to this letter as Exhibit A, and also available online here: <https://www.aclusandiego.org/wp-content/uploads/2020/01/2020-01-22-OIG-Complaint-1-FINAL-1.pdf>. On February 20, 2020, DHS OIG issued a form “response” to the ACLU’s complaint, which is appended to this letter as Exhibit B. This response does not address any of the substance of the ACLU’s complaint, nor provide a clear timeline for such a response.

² CBP is the largest law enforcement agency in the United States, with over 60,000 officers. Border Patrol is a subcomponent of CBP. Throughout this complaint, reference to CBP includes Border Patrol.

³ AM. CIVIL LIBERTIES UNION NATIONAL PRISON PROJECT, RE: FOIA REQUEST RELATED TO CBP TREATMENT OF PREGNANT INDIVIDUALS AND PROVISION OF REPRODUCTIVE HEALTH CARE (Dec. 2019), https://www.aclu.org/sites/default/files/field_document/2019-12-06_cbp_repro_foia_filed.pdf

partial search for just one item of the ACLU's request, the DHS FOIA Office produced a spreadsheet from DHS's Office for Civil Rights and Civil Liberties ("CRCL") ("the CRCL spreadsheet").⁴ The CRCL spreadsheet contains forty-two cases involving CBP's alleged mistreatment of pregnant persons.⁵ The most recent cases included on the CRCL spreadsheet are dated September 2019.⁶

In combination with the information included in the ACLU's January 22, 2020 DHS OIG complaint, these cases further demonstrate the pervasiveness of CBP's mistreatment of pregnant persons. The CRCL spreadsheet includes accounts of CBP harassment of pregnant persons at airports, internal checkpoints, land border ports of entry, and within CBP detention facilities.⁷ Seven of the cases involve family separation and seven cases involve pregnant unaccompanied minors. Reported conduct ranges from verbal abuse to physical assault to failed provision of medical care.

Some of the accounts involving mistreatment or neglect of pregnant people included in the CRCL spreadsheet are as follows:

- On December 21, 2017, CRCL received an email referral from ORR regarding the case of a pregnant seventeen-year-old who allegedly was separated from her mother while in DHS custody in Eagle Pass, Texas on December 18, 2017. At the time of separation, the minor was five months pregnant.⁸

⁴ DHS's Privacy Office issued a "final" response letter to the ACLU's FOIA request, even though the letter confirms that DHS searched for just one of the categories of records listed in that FOIA request. *See* Exhibit C, appended hereto, also available online here: <https://www.aclu.org/letter/dhs-response-national-prison-projects-foia-request>. The CRCL spreadsheet is appended to this letter as Exhibit D and also available online here: <https://www.aclu.org/legal-document/cbp-matters-related-pregnancy>.

⁵ The CRCL spreadsheet contains forty-five rows referred to as "DHS matters," but three appear to be duplicates. For purposes of this letter we refer to each "DHS matter" as a case before the department. The document therefore contains 42 separate cases reported to the department.

⁶ The ACLU recognizes that row 38 of the CRCL spreadsheet is related to a September 2019 complaint the ACLU itself filed with both DHS OIG and CRCL regarding pregnant women subjected to the so-called "Migrant Protection Protocols" (also known as the "Remain in Mexico" program). Seven additional rows reference complaints filed by other non-profit organizations that may have also been filed with DHS OIG. Four other rows reference cases documented in public media reports, of which DHS OIG may also already be aware. Notably, fifteen cases were reported to CRCL from other federal agencies and officials, including the U.S. Department of Health & Human Services ("HHS") Office of Refugee Resettlement ("ORR") and U.S. Citizenship and Immigration Services Asylum Division. Sixteen other cases appear to be direct complaints to CRCL from impacted individuals or families.

⁷ Case descriptions in the CRCL spreadsheet are not universally clear regarding the location of the alleged conduct. The ACLU's review indicates that approximately fourteen cases involve conduct at a land port of entry, eight at airports, one at an internal checkpoint, and nineteen at DHS detention facilities.

⁸ *See* row 8 of CRCL spreadsheet.

- On August 15, 2018, CRCL received an email from a Texas non-profit organization regarding a woman in CBP custody who experienced a miscarriage after officers denied her requests for medical care over three days of persistent bleeding. One officer allegedly ignored her request for assistance, and another simply provided Kotex pads. Despite her condition, CBP officers placed her in handcuffs for criminal proceedings regarding her entry, at which time she was able to report her continued bleeding to her federal public defender.⁹
- On October 16, 2018, CRCL received a CBP Info Center referral regarding alleged CBP misconduct during a search at the Paso del Norte port of entry in El Paso, Texas. The complaint alleges CBP grabbed the “privates” of a woman who was five months pregnant during a pat down, forced her to squat several times, and asked her to urinate in a toilet. The woman reported feeling “traumatized” by the experience. The searches found no contraband and CBP allowed the woman to travel on.¹⁰
- On April 10, 2019, CRCL received a CBP Info Center referral regarding alleged CBP misconduct towards a family, including a pregnant mother, at the Ambassador Bridge port of entry in Detroit, Michigan. The complaint alleges that fifteen CBP officers surrounded their vehicle and groped the pregnant woman and her 15-month-old child in their genital areas during a search of the family and vehicle. The father described the officers as racist, unprofessional, and inadequately trained.¹¹

The CRCL spreadsheet also includes summaries of accounts indicating inappropriate prejudicial mistreatment of people who are perceived to be, or to have been, pregnant, and unlawful discrimination based on race or ethnicity. For example:

- On February 8, 2018, CRCL received an email referral through the CBP INFO Center from a pregnant woman regarding an alleged instance of discrimination based on race and ethnicity against her and her husband by CBP officers at the Rio Grande Valley Sector, Falfurrias Station internal checkpoint in Texas. The woman alleges that five to seven CBP officers surrounded the couple’s vehicle, demanding they exit. The officers allegedly mocked her husband’s accent (he is Syrian), and verbally

⁹ See row 13 of CRCL spreadsheet.

¹⁰ See row 17 of CRCL spreadsheet.

¹¹ See row 22 of CRCL spreadsheet.

harassed them saying, “You have no right to be here,” “you are not welcome here,” and “nobody gives a fuck who you are.”¹²

- On May 23, 2019, CRCL received a referral from ORR regarding allegations by an unaccompanied minor who CBP officers denied medical attention. CBP officers ignored the child’s pleas for medical assistance by accusing the child of being pregnant. After arriving at the ORR facility, the child was hospitalized. Her medical condition had worsened in CBP custody, where she received no medical treatment.¹³
- On June 24, 2019, CRCL received an email referral through the CBP INFO Center regarding CBP misconduct at the Santa Teresa, New Mexico port of entry. The complainant stated that CBP officers searching her and her car asked inappropriate questions, including if she was pregnant, if she was on her period, how many children she had given birth to, and whether her births had been vaginal births.¹⁴

We implore DHS OIG to conduct an immediate review of CBP’s treatment of pregnant people and issue recommendations to improve CBP and Border Patrol policies. At a minimum, we call on DHS OIG to adopt the recommendations detailed in Section IV of the ACLU’s January 22, 2020 complaint.

Thank you for your time and careful attention to this submission. We look forward to your timely response.

Sincerely,

ACLU National Prison Project

Eunice Hyunhye Cho, Senior Staff Attorney

ACLU Foundation of San Diego & Imperial Counties

Mitra Ebadolahi, Senior Staff Attorney

ACLU Border Rights Center

Shaw Drake, Policy Counsel

Astrid Dominguez, Director

¹² See row 9 of CRCL spreadsheet.

¹³ See row 25 of CRCL spreadsheet.

¹⁴ See row 32 of CRCL spreadsheet.

Exhibit C

Exhibit A is a copy of Appendix 13,
available on page 203.

Exhibit D

Exhibit D is a copy of Appendix 9,
available on page 153.

Exhibit E



April 08, 2020

Joseph V. Cuffari
U.S. Department of Homeland Security
Office of Inspector General / MAIL STOP 0305
245 Murray Lane SW
Washington, DC 20528-0305
JointIntake@dhs.gov; jointintake@cbp.dhs.gov

Via email

Re: **U.S. Border Patrol’s Abuse and Mistreatment of**
[REDACTED]

The ACLU Foundation of San Diego & Imperial Counties (“ACLU”), together with Jewish Family Service of San Diego (“JFS”) and Dr. Kay Daniels, MD, Clinical Professor of Obstetrics and Gynecology (“Dr. Daniels”)¹, submit this administrative complaint to the Department of Homeland Security’s Office of Inspector General (“DHS OIG”), regarding U.S. Border Patrol’s mistreatment of [REDACTED], who gave birth at the Chula Vista Border Patrol Station on February 16, 2020 under harsh conditions that placed her and her baby at unnecessary risk. ACLU and JFS call on DHS OIG to engage in a thorough investigation of the events that transpired while Ms. [REDACTED] was in Border Patrol custody and in a review of the policies and procedures that resulted in the abuse she suffered. We also provide crucial recommendations for DHS OIG to urge U.S. Customs and Border Protection (“CBP”)² to adopt to prevent incidents like this from occurring in the future.

The ACLU routinely encounters people who have been recently released from CBP custody in the San Diego region. JFS provides crucial services to individuals and families seeking asylum in the Tijuana/San Diego border region, including direct representation and operation of the JFS Migrant Family Shelter in San Diego. ACLU and JFS obtained all facts alleged in this complaint by interviewing Ms. [REDACTED] and reviewing her medical and immigration documents.

¹ Dr. Daniels is employed by Stanford University School of Medicine’s Department of Obstetrics and Gynecology. She joins this complaint in her individual professional capacity, not as a representative of Stanford University’s School of Medicine.

² Each reference to CBP in this document includes reference to Border Patrol, a sub-agency of CBP.

As you are undoubtedly aware, on January 22, 2020, the ACLU Foundation of San Diego & Imperial Counties and the ACLU Border Rights Center submitted an administrative complaint to DHS OIG detailing CBP’s abuse and mistreatment of pregnant people in its custody (“January 2020 complaint”).³ The January 2020 complaint documented the accounts of four women who experienced horrific treatment in CBP custody while pregnant and made a series of relevant recommendations. As we share below, Ms. [REDACTED] experience is tragically one more account to add to the mountain of evidence demonstrating that CBP detention facilities are categorically unsuitable and inappropriate for pregnant and other vulnerable people. Her experience further underscores why timely and meaningful DHS OIG review of CBP policies and procedures is necessary.

I. Facts

A. Ms. [REDACTED] Account

Ms. [REDACTED] fled Guatemala along with her husband and two daughters, ages two and 12, seeking asylum in the United States. Ms. [REDACTED] family was forced into the so-called “Migrant Protection Protocols” (“MPP”) in May 2019. Forced to remain in Mexico during the pendency of their immigration court proceedings, the family struggled to find a lawyer and access to other essential resources, including medical care and housing.⁴ Over the next several months, the family presented at the Mexican side of the San Ysidro Port of Entry (“POE”) for periodic immigration court hearings as early as 4:00 am, as required by the U.S. Department of Homeland Security (“DHS”) under MPP.

On January 13, 2020, when Ms. [REDACTED] was seven-months pregnant, the family presented at the POE for their third court hearing. DHS officials told Ms. [REDACTED] they would not transport her to immigration court due to the late stage of her pregnancy.⁵ Instead, officials transported her and her family to a Border Patrol station before sending them back to Mexico. The family’s next immigration court hearing was scheduled for May 04, 2020.

In February 2020, the persecutor who caused Ms. [REDACTED] family to flee Guatemala began harassing her, calling the family’s cellular phone and sending text messages threatening to find them in Tijuana. On February 16, 2020, desperate and fearful for her family’s

³ See AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, ET AL., ADMINISTRATIVE COMPLAINT RE: U.S. CUSTOMS AND BORDER PROTECTION AND BORDER PATROL’S ABUSE AND MISTREATMENT OF DETAINED PREGNANT PEOPLE (Jan. 2020), <https://www.aclusandiego.org/wp-content/uploads/2020/01/2020-01-22-OIG-Complaint-1-FINAL-1.pdf>. On March 04, 2020, the ACLU submitted an addendum to this complaint to DHS OIG. See <https://www.aclusandiego.org/wp-content/uploads/2020/03/2020-03-04-OIG-compl-preg-persons-addendum-appendix-FINAL.pdf>

⁴ This account is consistent with reports that document individuals’ widespread exposure to horrific conditions under MPP, including lack of “access to safe shelter, sufficient food, proper sanitation, or adequate medical care” as well as abysmal rates of attorney representation. Human Rights First, *A Year of Horrors: The Trump Administration’s Illegal Returns of Asylum Seekers to Danger in Mexico* (Jan. 2020), <https://www.humanrightsfirst.org/sites/default/files/MPP-aYearofHorrors-UPDATED.pdf>.

⁵ This account is consistent with media and first-hand reports of an emerging trend whereby DHS does not permit pregnant women to appear in immigration court for their scheduled hearings. See Max Rivlin-Nadler, *Pregnant Asylum-Seekers Barred From U.S. Entry For Court Hearings*, NAT’L PUBLIC RADIO (Feb. 23, 2020), <https://www.npr.org/2020/02/23/808536155/pregnant-asylum-seekers-barred-from-u-s-entry-for-court-hearings>.

wellbeing, Ms. ██████████ decided to seek safety in the United States once more, concluding she would rather be detained with her husband and daughters in the United States than risk her persecutor finding her family in Mexico. At that time, she was eight months pregnant, with a due date of March 14, 2020.

During their journey, Ms. ██████████ suffered from cough attacks and severe pain in her womb. Concerned for her wellbeing, Ms. ██████████ husband attempted to call 9-1-1- from the desert to no avail. Soon thereafter, a Border Patrol agent discovered and arrested the family, threatening to send them back to Mexico. Ms. ██████████ continued to be in obvious distress. Her husband pleaded for medical attention, but instead of transporting her to a hospital, the Border Patrol agent transported the family to the Chula Vista Border Patrol Station. During the drive, the agent subjected them to a “rough ride,”⁶ during which the agent jerked the steering wheel and slammed on the brakes of the vehicle, worsening Ms. ██████████ pain.

Once at the Chula Vista Border Patrol Station, agents began processing the family. During that time, Ms. ██████████ pain became excruciating and intolerable. In an attempt to withstand the pain, she stood up, holding onto a garbage can for support. Border Patrol agents repeatedly commanded her to sit down. Her cough worsened. Roughly thirty minutes after arriving to the station, in the midst of another coughing fit, she partially delivered her baby into her pants while standing and holding onto a garbage can. Ms. ██████████ was stunned; her due date was still four weeks away. Her husband heard the baby’s cries and, desperate to ensure the safety of his newborn child, lowered his wife’s pants and reached for the baby’s head, which was protruding out of her body. A Border Patrol agent and multiple medical staff also reached for the baby, some without gloves, and the baby was born. Although joyous about the birth of her child, Ms. ██████████ felt humiliated after realizing she had been surrounded by about 20 strangers, including multiple Border Patrol agents and other unknown detained men, while she gave birth.

After the delivery, Border Patrol agents continued to instruct Ms. ██████████ to sit down, but she could not due to the pain of the delivery. Paramedics arrived shortly after the birth and transported her to the Sharp Chula Vista Medical Center, where she stayed for two nights. There, medical professionals diagnosed her with influenza and gave the newborn baby prophylactic influenza treatment. Ms. ██████████ never spent a moment in the hospital without a Border Patrol agent in her room or directly observing her, which was invasive to her, given the deeply private and sensitive nature of her post-partum care. Ms. ██████████ was transported to the hospital alone, without her husband or other two daughters, all of whom remained locked up in the Chula Vista Border Patrol Station. The entire time she was at the hospital, Ms. ██████████ family was denied information about how she and the baby were doing.

The hospital discharged Ms. ██████████ on February 18, 2020, but Border Patrol agents returned her to the Chula Vista Border Patrol Station where they forced her to spend another night along with her newborn baby and the rest of her family. Border Patrol agents denied Ms. ██████████ a blanket for her newborn baby despite the extremely cold temperatures in the

⁶ See A. C. Thompson, “Dirtbag,” Savages,” Subhuman”: A Border Agent’s Hateful Career and the Crime That Finally Ended It, PROPUBLICA (Aug. 16, 2019), <https://www.propublica.org/article/border-agents-hateful-career-and-the-crime-that-finally-ended-it> (“[The agent had] been accused of giving a handcuffed suspect what agents called a ‘rough ride,’ slamming the brakes on his all-terrain vehicle in a way that flung the suspect into the ground.”).

holding cell. From the point of processing until she was released from Border Patrol custody, agents repeatedly harassed Ms. [REDACTED]. For instance, Border Patrol agents accused her of trying to enter the United States only to deliver her child, despite that the birth was a complete shock to her as her baby was due in mid-March.

Ms. [REDACTED] never had an opportunity to shower, despite requesting to, after she gave birth while in Border Patrol custody – not in the hospital nor at the Chula Vista Border Patrol Station.

Border Patrol finally released Ms. [REDACTED] and her family on February 19, 2020. The family arrived at the JFS Migrant Family Shelter, where Ms. [REDACTED] showered for the first time since giving birth. At the shelter, JFS staff assisted the family with other basic needs, including clothing, food, travel coordination, assistance with immigration court paperwork, and most importantly, critical medical care via the JFS Migrant Family Shelter’s subcontractor, the University of California, San Diego.

B. Discrepancies in Border Patrol’s Media Release

On February 19, 2020, Border Patrol published a press release⁷ that appears to be about Ms. [REDACTED] experience giving birth in the Chula Vista Border Patrol Station, which media outlets subsequently reported on.⁸ The press release and news reports contain several statements that are fundamentally at odds with Ms. [REDACTED] account. Border Patrol claimed “[t]he apprehending agent could visibly see that the woman was pregnant; however, the mother did not appear to be in distress and did not request any medical attention.”⁹ As detailed above, Ms. [REDACTED] was in severe distress when the Border Patrol agent arrested her and her family, so much so that her husband tried calling 9-1-1- from the desert. Both she and her husband requested medical attention at the point of arrest and repeated their requests until Ms. [REDACTED] gave birth.

Border Patrol additionally reported, “medical staff, along with agents, prepared an area for the mother to give birth.”¹⁰ Ms. [REDACTED] is not aware of agents having prepared an area for her to give birth; instead, she recalls agents repeatedly commanding she sit down while she was apparently in labor and until she ultimately delivered the baby into her pants while holding onto the

⁷ Media Release, U.S. Customs and Border Protection, *Migrant Mother Gives Birth at Border Patrol Station*, Feb. 19, 2020 (hereinafter “Border Patrol Media Release”), <https://www.cbp.gov/newsroom/local-media-release/migrant-mother-gives-birth-border-patrol-station>; Karen Kucher, *Woman suspected of illegally crossing into U.S. gives birth at Border Patrol office*, LOS ANGELES TIMES (Feb. 19, 2020) (hereinafter “LA Times Article”), <https://www.latimes.com/california/story/2020-02-19/guatemalan-woman-gives-birth-at-border-patrol-office-after-being-arrested-crossing-border>.

⁸ While the media release does not explicitly name Ms. [REDACTED], details contained therein match those in her case. For example, Ms. [REDACTED] is a 27-year-old Guatemalan woman who traveled with her husband and two children and gave birth at around 3:00 p.m. on February 16, 2020, at the Chula Vista Border Patrol Station.

⁹ Border Patrol Media Release, *supra* note 4.

¹⁰ *Id.*

edge of a garbage can. Ms. [REDACTED] recollection that gloveless agents reached for her baby further evinces Border Patrol’s apparent lack of preparedness. Finally, neither Ms. [REDACTED] nor her family members “used a ladder to get over the border fence.”¹¹

At best, Border Patrol’s inconsistent media release and statements to the press underscore the urgent need for DHS OIG investigation. At worst, it grossly misrepresents the tragic reality that Ms. [REDACTED] needlessly gave birth in a Border Patrol station, exposing herself and her newborn baby to significant labor-related danger despite her family’s numerous pleas for emergency medical assistance.

II. Relevant Standards of Care

A. *CBP’s Existing Policies Related to Pregnant People*

As the January 2020 complaint documented, CBP’s existing policies are wholly inadequate to safeguard pregnant people in CBP custody. The CBP National Standards on Transport, Escort, Detention, and Search (“TEDS”) require officials to assess whether an individual is pregnant during initial processing and to evaluate whether special procedures for “at-risk” individuals apply.¹² Although “at-risk” detainees “may require additional care or oversight,” the TEDS standards do not specify what type of additional care or oversight should be provided.¹³ The TEDS standards require CBP to offer pregnant detainees “a snack upon arrival and a meal at least six hours thereafter,” and “regular access to snacks, milk, and juice.”¹⁴ Pregnant detainees are not to be shackled or X-rayed.¹⁵ These limited provisions appear to be the extent of the accommodations required to be given to pregnant detainees, as we have identified no other express provisions in publicly available CBP detention policies addressing care of pregnant detainees.

B. *Medical Standard of Care for Pregnant People*

The changes wrought by pregnancy make a woman more vulnerable to threats to her and her baby’s health. These threats become more pronounced if a woman is under physical and physiological stress. In light of such potential health risks, ideally every woman of childbearing age should be screened for pregnancy upon being taken into custody. A screening should be conducted by a medical professional and include obtaining a menstrual history, inquiring about current contraception use, and testing for pregnancy when indicated.¹⁶

¹¹ LA Times Article, *supra* note 4.

¹² U.S. CUSTOMS AND BORDER PROTECTION, NAT’L STANDARDS ON TRANSPORT, ESCORT, DETENTION, AND SEARCH, at § 4.2 (Oct. 2015), <https://www.cbp.gov/document/directives/cbp-nationalstandards-transport-escort-detention-and-search>.

¹³ *Id.* § 5.1.

¹⁴ *Id.* § 5.6.

¹⁵ *Id.* § 5.5 & 5.7.

¹⁶ Am. Acad. of Pediatrics, *Guidelines of Perinatal Care* (8th ed. 2017).

When a woman is found to be pregnant, they or their custodian should arrange for prenatal medical care and provisions for adequate nutrition. Care includes avoiding strenuous physical activity, especially heavy lifting, which can lead to preterm birth or underweight babies, avoiding fall risk (e.g., by taking care to not place a third trimester pregnant woman on the top of a bunk bed), and providing adequate calories, calcium and iron supplementation to optimize the fetal growth. Avoiding shackling is also essential, as shackling may lead to blood clots, which can be fatal in pregnant women.¹⁷ At the time of labor, it is paramount that every woman be taken to a maternity hospital for delivery. Risk to the mother and the baby are profound if delivery occurs unaccompanied by medical professionals.¹⁸

Risks of labor outside of a hospital or without the assistance of medical professionals to a mother include postpartum hemorrhage,¹⁹ hypertension,²⁰ and damage to the mother's birth canal leading to long term disabilities including urinary and fecal incontinence. Underlying malnutrition, asthma, diabetes, anemia, infectious diseases such as tuberculosis, hepatitis B, and sexually transmitted diseases, including HIV or herpes, place women at heightened risk for poor obstetrical outcomes.

In addition to the risks to the pregnant women, risks to babies are also significant if the birth is not attended by trained medical personnel. Transmission of untreated infectious diseases, especially HIV and herpes, will greatly increase a baby's risk of morbidity. Importantly, this patient population is at considerable risk for a preterm delivery or the birth of an underweight infant both of which require immediate medical attention at time of delivery

Finally, the resources available in hospitals can be lifesaving for mothers as well as babies. Antibiotics can mitigate the risk of death to mothers and babies in the case of an infection. Surgical

¹⁷ Am. Coll. of Obstetricians & Gynecologists, Comm. on Health Care for Underserved Women, *Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females*, Comm. Op. No. 511 (Nov. 2011, reaff'd Nov. 2016), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2011/11/health-care-for-pregnant-and-postpartum-incarcerated-women-and-adolescent-females>

¹⁸ Unattended home births even when planned in the USA for low risk women have a two-fold increase risk of infant death and threefold risk of neonatal seizures. See *Guidelines of Perinatal Care*, *supra* note 16.

¹⁹ Postpartum hemorrhaging is bleeding that occurs after the baby is born. It is one of the leading causes of maternal mortality throughout the world. See The World Health Organization, *Recommendations on Prevention and Treatment of Postpartum Hemorrhage* (2012), https://www.who.int/reproductivehealth/publications/maternal_perinatal_health/9789241548502/en/. In the U.S. we have been able to decrease the death from postpartum hemorrhage by having blood products and surgical intervention immediately available in the hospital setting. See California Maternal Quality Care Collaborative and California Department of Public Health, *Obstetric Hemorrhage 2.0 Toolkit* (March 24, 2015), <https://www.cmqcc.org/resource/obstetric-hemorrhage-20-toolkit>.

²⁰ Hypertension accounts for 18% of maternal deaths. The diagnosis and management with medication can only be accomplished in a hospital. Without proper care, hypertension may lead a mother to have a seizure or a possible stroke leading to permanent disability or even death. See EE Petersen et al., *Vital Signs: Pregnancy-Related Deaths, United States, 2011–2015, and Strategies for Prevention, 13 States, 2013–2017*, Center for Disease Control and Prevention, Morbidity and Mortality Weekly Report 68 (May 10, 2019), <https://www.cdc.gov/mmwr/volumes/68/wr/mm6818e1.htm>.

intervention such as cesarean delivery is a lifesaving procedure often for both babies and mothers. Necessary specialists can only be provided in the hospital setting. At the time of birth, even full-term infants must have access to proper care, including adequate temperature control, screening for metabolic disorders, treatment with vitamin K, and antibiotic eye ointment. Premature infants often require respiratory support immediately after birth and depending on the prematurity longer term respiratory support is required.

It is critical to the health and safety of newborns and expectant mothers alike to ensure they have access to proper medical care, including trained medical professionals and resources available at hospitals, leading up and during delivery.

III. Recommendations

The egregious nature of Ms. [REDACTED] experience, including Border Patrol's departure from medical experts' recommendations, coupled with the major discrepancies between her and Border Patrol's respective accounts, underscore the need for DHS OIG to investigate the incident and review CBP and Border Patrol detention policies that relate to pregnant people.

Further, ACLU, JFS, and Dr. Daniels reiterate the recommendations laid out in the January 2020 complaint, especially those that call upon DHS OIG to:

- (1) Recommend that CBP stop detaining pregnant people, and instead prioritize the prompt release of such individuals into U.S. shelters or into the care of their personal support networks in the United States;
- (2) Recommend CBP immediately and formally exempt all pregnant persons from policies such as the so-called "Migrant Protection Protocols" and other fast-track deportation procedures and instead prioritize their prompt release from immigration detention;
- (3) Recommend that CBP develop, adopt, and publish explicit policies that will ensure adequate, timely medical care for pregnant people in the agency's custody. Such policies should be developed in consultation with independent medical experts and rights stakeholders, and reflect best practices recommended by professional associations (such as the American Medical Association, the American Academy of Pediatrics, and the American College of Obstetricians and Gynecologists); and
- (4) Assess whether CBP oversight and disciplinary mechanisms are sufficient to ensure that CBP officials are held accountable for all instances of detainee abuse, neglect, or other mistreatment, and to ensure that dangerous, abusive, or otherwise unfit CBP employees are removed promptly from duty.

As a result of Ms. [REDACTED] experience, ACLU, JFS, and Dr. Daniels additionally call upon DHS OIG to recommend:

- (5) Where CBP apprehends pregnant people at or near the border, the agency should immediately transport them to a local hospital for medical evaluation prior to routine processing, given the arduous nature of journeys to and across the border, the health needs and risks associated with pregnancy, and the lack of medical facilities and trained medical professional staff in CBP detention facilities;

- (6) CBP respect the privacy of individuals in labor or receiving post-partum care while in their custody;
- (7) Prompt release of people who are forced to give birth while in CBP custody, along with their families, as soon as possible after birth, with any processing to occur while the mothers are in the hospital, to avoid returning a newborn to CBP detention facilities; and
- (8) Timely access of all people who are forced to give birth while in CBP custody, and their newborn children, to basic necessities, including but not limited to showers, blankets, water, food, bottles, and other items essential for post-partum mothers who may be nursing and recovering from giving birth.

We are deeply concerned about Ms. [REDACTED] experience in Border Patrol custody, the material inconsistencies between Border Patrol's public statements and her account of the incident, and the inadequate policies and procedures that gave way to the abuse she endured. We urge DHS OIG to investigate the incident, review relevant policies and procedures, and adopt the recommendations contained herein to ensure others do not suffer as Ms. [REDACTED] and her family did.

Thank you for your attention to this important matter. Do not hesitate to contact us with questions or concerns.

Sincerely,

/s/ Monika Y. Langarica

Monika Y. Langarica

Immigrants' Rights Staff Attorney

ACLU Foundation of San Diego & Imperial Counties

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/s/ Kate Clark

Kate Clark, Esq.

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/s/ Dr. Kay Daniels

Dr. Kay Daniels, MD

Clinical Professor

Obstetrics and Gynecology

Email: kdaniels@stanford.edu

Exhibit F



**Homeland
Security**

April 14, 2020

Via electronic mail

Mitra Ebadolahi, Senior Staff Attorney
MEbadolahi@aclusandiego.org

Re: Complaint No. 20-06-CBP-0508

Dear Ms. Ebadolahi:

The Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL) received information from you, forwarded to our office by the DHS Office of Inspector General (OIG) on March 2, 2020, concerning the care and treatment of pregnant individuals while in U.S. Customs and Border Protection (CBP) custody.

Under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, CRCL has the responsibility to review and assess complaints against DHS employees and officials concerning violations of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion. We will conduct an investigation of the concerns you have raised.

CRCL takes allegations of violations of civil rights and civil liberties very seriously. The purpose of our review is to assess if your complaint implicates issues that should be addressed by DHS management. Under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, our complaint process does not provide individuals with legal or procedural rights or remedies. Accordingly, CRCL is not able to obtain any legal remedies or damages on behalf of your clients. Instead, we use complaints like yours to find and address problems in DHS policy and its implementation.

Please note that Federal law forbids retaliation or reprisal by any Federal employee against a person who makes a complaint or discloses information to this Office. 42 U.S.C. § 2000ee-1(e). If you believe that you or someone else is a victim of such a reprisal, please contact us immediately.

As we conduct our review of this complaint, a representative from CRCL may contact you for additional information. If you have any questions concerning this complaint, you may contact CRCL by phone at 866-644-8360, 866-644-8361 (TTY), or by email at CRCLCompliance@hq.dhs.gov. When you communicate with us, please include the complaint number. In addition, it is very important to notify us of any changes in your address or telephone number.

We thank you for your complaint; inquiries like yours help DHS meet its obligation to protect civil rights and civil liberties. You can expect to receive a letter from us informing you how we have concluded this matter.

Sincerely,

A handwritten signature in purple ink, appearing to read "Dana Salvano-Dunn". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Dana Salvano-Dunn
Director, Compliance Branch
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security

Appendix 9

February 18, 2020

Joseph V. Cuffari
U.S. Department of Homeland Security
Office of Inspector General / MAIL STOP 0305
245 Murray Lane SW
Washington, DC 20528-0305
via UPS and email to JointIntake@dhs.gov (CC jointintake@cbp.dhs.gov)

Re: U.S. Customs and Border Protection and Border Patrol's Abuse and Mistreatment of Detained Sick Children

I. Introduction

The American Civil Liberties Union Foundation of San Diego & Imperial Counties and the ACLU Border Rights Center (together, "ACLU") hereby submit this administrative complaint to the Department of Homeland Security's Office of Inspector General ("DHS OIG"), regarding U.S. Customs and Border Protection ("CBP")'s mistreatment of detained sick children.¹ The ACLU requests that DHS OIG undertake a review based on the information contained in this complaint, which is the second in a series of four total complaints addressing the agency's abuse and neglect of detainees.²

As with our previous complaint regarding CBP's mistreatment of pregnant people,³ this complaint is derived from interviews the ACLU completed between March and July 2019 with people in San Diego and Tijuana who recently had been released from Border Patrol custody.⁴

¹ CBP is the largest law enforcement agency in the United States, with over 60,000 officers. Border Patrol is a subcomponent of CBP. Throughout this complaint, reference to CBP includes Border Patrol.

² Unless otherwise noted, the abuses described here occurred in Border Patrol stations, although some of the people the ACLU interviewed for this project also had been detained by CBP's Office of Field Operations ("OFO") at a port of entry. Neither CBP nor Border Patrol provides detainees with clear information regarding where they are detained (or on what authority), and detainees are sometimes transferred between facilities. Thus, it is not uncommon for individuals to express confusion after release when asked where and by whom they were detained. For these reasons, the complaints in this series may include some accounts stemming from CBP OFO custody rather than Border Patrol custody.

³ The ACLU's first complaint, addressing CBP's abuse and mistreatment of pregnant people, is available here: <https://www.aclusandiego.org/wp-content/uploads/2020/01/2020-01-22-OIG-Complaint-1-FINAL-1.pdf>.

⁴ During this time period, the ACLU interviewed 103 individuals. To prepare this account, the ACLU reviewed a subset of the interviews completed (i.e., interviews involving accounts pertaining to sick children), and selected a small sample of those interviews for inclusion in this complaint. Although the narratives included here reflect some of the

During the course of these interviews, individuals related instances of heinous abuse or neglect by CBP officials, including Border Patrol agents.

These reports are especially concerning given that most of these individuals are asylum seekers who already had endured significant trauma in fleeing their homelands to escape persecution. Many immigrants endure a harrowing journey north to the United States and then struggle to survive in northern Mexican border towns with limited or no means to secure shelter, food, or safety.⁵ When taken into CBP custody, these vulnerable individuals experienced further abuse and neglect that exacerbated their pre-existing trauma.

CBP’s failure to adhere to the maximum detention periods set forth in its own policies aggravates these harms. CBP facilities are only intended to be used for short-term custody. Many of these facilities—including almost all Border Patrol stations—lack beds, showers, or full-time medical care staff. Cognizant of these structural deficiencies, CBP policy (“TEDS standards”) states that detainees “should generally” not be held for longer than 72 hours in CBP hold rooms or holding facilities.⁶ Border Patrol’s Short-Term Custody policy is more restricted still, stating “[w]henver possible, a detainee should not be held for more than 12 hours.”⁷

The TEDS standards and Border Patrol Short-Term Custody policy establish a “floor”—that is, the bare *minimum* guidelines with which CBP must comply.⁸ CBP, however, routinely

most egregious instances of CBP’s abuse and neglect of sick children, they also echo recurring themes of mistreatment consistently reported to the ACLU by people who experienced illness while in CBP custody.

⁵ Unlawful U.S. policies that interfere with an individual’s statutory and regulatory rights to seek asylum in the United States have exacerbated these dangers. *See, e.g.,* Jason Kao & Denise Lu, *How Trump’s Policies Are Leaving Thousands of Asylum Seekers Waiting in Mexico*, N.Y. TIMES, Aug. 18, 2019, <https://www.nytimes.com/interactive/2019/08/18/us/mexico-immigration-asylum.html> (describing metering and “Remain in Mexico”—a.k.a. “Migrant Protection Protocols”—program).

⁶ U.S. CUSTOMS AND BORDER PROTECTION, NAT’L STANDARDS ON TRANSPORT, ESCORT, DETENTION, AND SEARCH, at § 4.1 (Oct. 2015) [hereinafter “TEDS”], <https://www.cbp.gov/document/directives/cbp-national-standards-transport-escort-detention-and-search>.

⁷ U.S. BORDER PATROL, DETENTION STANDARDS: HOLD ROOMS AND SHORT TERM CUSTODY, REFERENCE NO. 08-11267, at § 6.2.1 (Jan. 31, 2008) [hereinafter “Border Patrol Short-Term Custody Policy”], <https://www.documentcloud.org/documents/818095-bp-policy-on-hold-rooms-and-short-term-custody.html>.

CBP OFO also has a hold room policy, but the only publicly available version of this policy the ACLU has been able to identify is heavily redacted. *See* U.S. CUSTOMS AND BORDER PROTECTION, DIRECTIVE NO. 3340-030B, SECURE DETENTION, TRANSPORT AND ESCORT PROCEDURES AT PORTS OF ENTRY, at 5–8 (rev. Aug. 2011), https://www.americanimmigrationcouncil.org/sites/default/files/foia_documents/access_to_counsel_cbp_requests_and_documents_4-9-13.pdf.

⁸ According to a 2016 Government Accountability Office report, “[t]he TEDS policy is intended as a foundational document” to be supplemented with more detailed policies developed by CBP subcomponents. *See* U.S. GOV’T ACCOUNTABILITY OFF., GAO-16-514, IMMIGRATION DETENTION: ADDITIONAL ACTIONS NEEDED TO STRENGTHEN DHS MANAGEMENT OF SHORT-TERM HOLDING FACILITIES, at 9 n.14 (May 2016),

disregards these minimum standards.⁹ For example, a July 2019 DHS OIG report found that, of 8,000 individuals detained by Border Patrol in the Rio Grande Valley, 3,400 (42.5 percent) were held in excess of 72 hours.¹⁰ More troubling still: 1,500 individuals (18.75 percent) were detained for *more than ten days*.¹¹ Consistent with these reports, the ACLU's investigation likewise indicated that CBP officials frequently exceed detention time limits. Most individuals we interviewed had spent at least four or five days in CBP custody. One individual we spoke with had been detained for *eighteen* days.¹² Overlong detentions not only transgress agency policies, but also facilitate detainee neglect and mistreatment, which may violate the United States Constitution.¹³

<https://www.gao.gov/assets/680/677484.pdf>. As far as we can tell, however, CBP has not made more detailed policies available to the public.

CBP policies also operate against the backdrop of federal statutes and regulations that bind the agency to certain standards of care. For example, CBP's TEDS cites the following additional authorities: 19 U.S.C. §§ 482, 1461, 1581, 1582, & 1589a; 8 C.F.R. §§ 232, 235, 236, & 287; 6 C.F.R. § 115; Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 F.R. 13100 (Mar. 7, 2014) (to be codified at 6 C.F.R. pt. 115); and the Immigration and Nationality Act, Pub. L. No. 82-414, § 101, 66 Stat. 163, 167 (1952) (codified as amended at 8 U.S.C. § 1101). The TEDS also reference other CBP policies, including: U.S. CUSTOMS AND BORDER PROTECTION OFF. OF FIELD OPERATIONS, CIS HB 3300-04B, PERSONAL SEARCH HANDBOOK (2004), https://foiarr.cbp.gov/docs/Manuals_and_Instructions/2009/283167437_7/1102030829_Personal_Search_Handbook_2.pdf; U.S. CUSTOMS AND BORDER PROTECTION OFF. OF TRAINING AND DEV., HB 4500-01C, USE OF FORCE POLICY, GUIDELINES AND PROCEDURES HANDBOOK (2014), <https://www.cbp.gov/sites/default/files/documents/UseofForcePolicyHandbook.pdf>; U.S. CUSTOMS AND BORDER PROTECTION, DIRECTIVE NO. 3340-030B, SECURE DETENTION, TRANSPORT AND ESCORT PROCEDURES AT PORTS OF ENTRY, at 5–8 (rev. Aug. 2011), https://www.americanimmigrationcouncil.org/sites/default/files/foia_documents/access_to_counsel_cbp_requests_and_documents_4-9-13.pdf; Border Patrol Short-Term Custody Policy, *supra* note 7; U.S. CUSTOMS AND BORDER PROTECTION, CBP POLICY ON NONDISCRIMINATION IN LAW ENFORCEMENT ACTIVITIES AND ALL OTHER ADMINISTERED PROGRAMS (2017), <https://www.cbp.gov/about/eeo-diversity/policies/nondiscrimination-law-enforcement-activities-and-all-other-administered>.

⁹ *See, e.g.*, AM. IMMIGRATION COUNCIL, DETAINED BEYOND THE LIMIT: PROLONGED CONFINEMENT BY U.S. CUSTOMS AND BORDER PROTECTION ALONG THE SOUTHWEST BORDER, at 5–6 (Aug. 2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/detained_beyond_the_limit.pdf (finding, for period between September 1, 2014 and August 31, 2015, that 67 percent of total number of individuals detained in CBP facilities across the southwest border were held for 24 hours or longer, 29 percent for 48 hours or longer, and 14 percent for 72 hours or longer).

¹⁰ DEP'T OF HOMELAND SEC., OFFICE OF INSPECTOR GENERAL, MANAGEMENT ALERT – DHS NEEDS TO ADDRESS DANGEROUS OVERCROWDING AND PROLONGED DETENTION OF CHILDREN AND ADULTS IN THE RIO GRANDE VALLEY, at 2–3 (July 2, 2019), https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19_.pdf.

¹¹ *Id.* at 2–3. *See also, e.g.*, OVERCROWDING AND PROLONGED DETENTION AT CBP FACILITIES: HEARING BEFORE THE H. COMM. ON THE JUDICIARY, 116th Congress (2019), <https://judiciary.house.gov/legislation/hearings/overcrowding-and-prolonged-detention-cbp-facilities>.

¹² This individual's account was featured in the ACLU's first complaint, addressing CBP's abuse and mistreatment of pregnant people. *See* AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, ET AL., ADMINISTRATIVE COMPLAINT RE: U.S. CUSTOMS AND BORDER PROTECTION AND BORDER PATROL'S ABUSE AND MISTREATMENT OF DETAINED PREGNANT PEOPLE (Jan. 2020), *supra* note 3.

¹³ *See, e.g., Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124 (9th Cir. 2018), *cert. denied sub nom. Cty. of Orange, Cal. v. Gordon*, 139 S. Ct. 794 (2019) (due process right to challenge inadequate medical care for pretrial detainees); *see also, e.g.*,

As noted, Border Patrol stations lack bedding, showers, and staff trained to interact with or assist traumatized or otherwise vulnerable populations. People held in these facilities endure freezing temperatures, inedible food (spoiled or frozen), insufficient potable water, overcrowding, and deprivation of medicine and basic hygienic supplies.¹⁴ In light of these structural deficiencies and inhumane conditions, it is the ACLU's position that **these facilities are categorically unsuitable and inappropriate for any period of detention beyond the time required for initial processing, which should in no case exceed 12 hours.**

Our investigation corroborated a well-documented culture of cruelty, willful negligence, and impunity throughout CBP.¹⁵ It also highlighted the failure of existing agency policies to provide

J.P. v. Sessions, No. CV-1806081-JAK-SKx, 2019 WL 6723686, at *32–33 (C.D. Cal. Nov. 5, 2019) (quoting *Gordon*, 888 F.3d at 1124–25) (granting preliminary injunction and holding plaintiffs likely to succeed on due process claim arising out of defendants' failure to provide adequate health care to immigration detainees subject to family separation policy); *Doe v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at *13–15 (D. Ariz. Nov. 18, 2016), *clarified on denial of reconsideration*, No. CV-15-00250-TUC-DCB, 2017 WL 467238 (D. Ariz. Jan. 3, 2017), *aff'd sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017) (noting constitutional entitlement to adequate health care in CBP facilities).

¹⁴ Journalists, advocates, and non-governmental organizations have documented CBP detention conditions extensively over the past decade. *See, e.g.*, Zolan Kanno-Youngs, *Squalid Conditions at Border Detention Centers, Government Report Finds*, N.Y. TIMES, July 2, 2019, <https://www.nytimes.com/2019/07/02/us/politics/border-center-migrant-detention.html>; Dara Lind, *The Horrifying Conditions Facing Kids in Border Detention, Explained*, VOX, June 25, 2019, <https://www.vox.com/policy-and-politics/2019/6/25/18715725/children-border-detention-kids-cages-immigration>; Sheri Fink & Caitlin Dickerson, *Border Patrol Facilities Put Detainees With Medical Conditions at Risk*, N.Y. TIMES, Mar. 5, 2019, <https://www.nytimes.com/2019/03/05/us/border-patrol-deaths-migrant-children.html>; UNIV. OF CHICAGO L. SCHOOL INT'L HUM. RIGHTS CLINIC, ACLU BORDER LITIGATION PROJECT & ACLU BORDER RIGHTS CENTER, *NEGLECT AND ABUSE OF UNACCOMPANIED IMMIGRANT CHILDREN BY U.S. CUSTOMS AND BORDER PROTECTION*, at 16–27 (May 2018) [hereinafter "Neglect and Abuse Report"], <https://bit.ly/2zRynCa>; AM. IMMIGRATION COUNCIL, *HIELERAS (ICEBOXES) IN THE RIO GRANDE VALLEY SECTOR: LENGTHY DETENTION, DEPLORABLE CONDITIONS, AND ABUSE IN CBP HOLDING CELLS* (Dec. 2015), <https://www.americanimmigrationcouncil.org/research/hieleras-iceboxes-rio-grande-valley-sector>; AM. IMMIGRATION COUNCIL, *WAY TOO LONG: PROLONGED DETENTION IN BORDER PATROL HOLDING CELLS, GOVERNMENT RECORDS SHOW* (June 10, 2015), <https://www.americanimmigrationcouncil.org/research/way-too-long-prolonged-detention-border-patrol-holding-cells-government-records-show>; AMERICANS FOR IMMIGRANT JUSTICE, *THE "HIELERAS": A REPORT ON HUMAN AND CIVIL RIGHTS ABUSES COMMITTED BY U.S. CUSTOMS AND BORDER PROTECTION* (Aug. 7, 2013), <http://www.ajjustice.org/the-hieleras-a-report-on-human-civil-rights-abuses-committed-by-u-s-customs-border-protection-2/>; NO MORE DEATHS, *A CULTURE OF CRUELTY: ABUSE AND IMPUNITY IN SHORT-TERM U.S. BORDER PATROL CUSTODY* (2011), <https://nomoredeaths.org/abuse-documentation/a-culture-of-cruelty/>.

¹⁵ *See, e.g.*, John Washington, *"Kick Ass, Ask Questions Later": A Border Patrol Whistleblower Speaks Out About Culture of Abuse Against Migrants*, INTERCEPT, Sept. 20, 2018, <https://theintercept.com/2018/09/20/border-patrol-agent-immigrant-abuse/>; Sarah Macaraeg, *The Border Patrol Files: Border Patrol Violence: U.S. Paid \$60m to Cover Claims Against the Agency*, GUARDIAN (U.S.), May 1, 2018, <https://www.theguardian.com/world/2018/may/01/border-patrol-violence-us-paid-60m-to-cover-claims-against-the-agency>; Charles Davis, *U.S. Customs and Border Protection Has Killed Nearly 50 People in 10 Years. Most Were Unarmed.*, NEW REPUBLIC, Jan. 4, 2015, <https://newrepublic.com/article/120687/border-patrol-officers-get-impunity-anonymity-immigrant-killings>; Garrett M. Graff, *The Green Monster: How the Border Patrol Became America's Most Out-of-Control Law Enforcement Agency*, POLITICO, Nov./Dec. 2014, <https://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220>; Carrie Johnson, *Former Border Protection Insider Alleges Corruption, Distortion in Agency*, NAT'L PUB. RADIO, Aug. 28, 2014, <https://www.npr.org/2014/08/28/343748572/former-border-protection-insider-alleges-corruption-distortion-in-agency>.

sufficient humanitarian and legal safeguards to protect detainees. Across accounts from recent detainees, four themes emerged: (1) mistreatment of pregnant people, (2) mistreatment and neglect of sick children, (3) family separations, and (4) verbal abuse. As noted, this complaint is the second in a four-part series that will address each theme in turn.

II. CBP Detention of Children

It is axiomatic that children are most likely to thrive in safe, stable environments among their families and loved ones. The U.N. Convention on the Rights of the Child recognizes the family “as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children.”¹⁶ Most unaccompanied children released from U.S. immigration custody are reunified with family members who live in the United States.¹⁷ In other words: practical alternatives to the detention of children exist.

Detention causes long- and short-term damage to children’s mental and physical health.¹⁸ Experts note that prolonged confinement of children—even in settings that purportedly provide for basic needs, such as food and hygiene—can have devastating impacts on children’s mental and physical development.¹⁹ Children released from detention may experience a wide range of lasting harms, including developmental delays and altered behaviors (*e.g.*, posttraumatic stress disorder, anxiety, depression, or suicidal ideation).²⁰ For these reasons, federal agencies should prioritize the prompt release of all detained children.

This is especially true for DHS agencies, including CBP. CBP routinely detains children—including children in need of medical attention—for extended periods of time.²¹ The American

¹⁶ United Nations Convention on the Rights of the Child preamble, Nov. 20, 1989, 1577 U.N.T.S. 3 (1989).

¹⁷ CONGRESSIONAL RES. SERV., R43599, UNACCOMPANIED ALIEN CHILDREN: AN OVERVIEW, at 11 (updated Oct. 9, 2019) [hereinafter “CRS UAC Report”], <https://fas.org/sgp/crs/homesecc/R43599.pdf> (stating that “most children [ORR] serves are reunified with family members.”).

¹⁸ *See, e.g.*, JULIE M. LINTON ET AL., AMERICAN ACADEMY OF PEDIATRICS COUNCIL ON COMMUNITY PEDIATRICS, POLICY STATEMENT: DETENTION OF IMMIGRANT CHILDREN, 139 PEDIATRICS 5, 1 (2017) [hereinafter “AAP: Detention of Immigrant Children”], <https://pediatrics.aappublications.org/content/pediatrics/139/5/e20170483.full.pdf>; *see also, e.g.*, Laura Santhanam, *How Detention Causes Long-Term Harm to Children*, PBS NEWS HOUR, Aug. 22, 2019, <https://www.pbs.org/newshour/health/how-detention-causes-long-term-harm-to-children>; Isaac Chotiner, *How the Stress of Separation and Detention Changes the Lives of Children*, NEW YORKER, July 13, 2019, <https://www.newyorker.com/news/q-and-a/how-the-stress-of-separation-and-detention-changes-the-lives-of-children>.

¹⁹ Chotiner, *supra* note 18.

²⁰ AAP: Detention of Immigrant Children, *supra* note 18, at 6.

²¹ *See, e.g.*, ASSESSING THE ADEQUACY OF DHS EFFORTS TO PREVENT CHILD DEATHS IN CUSTODY: HEARING BEFORE THE SUBCOMM. ON BORDER SECURITY, FACILITATION, & OPERATIONS OF THE H. HOMELAND SEC.

Academy of Pediatrics (“AAP”) has written that “Department of Homeland Security facilities do not meet the basic standards for the care of children in residential settings.”²² Detained children “deserve health care that meets guideline-based standards, treatment that mitigates harm or traumatization, and services that support their health and well-being.”²³ Immigrant children should “receive timely, comprehensive medical care that is culturally and linguistically sensitive by medical providers trained to care for children.”²⁴ These recommendations echo a variety of legal provisions that exist to protect detained immigrant children.²⁵

Yet a vast array of evidence collected by advocates, journalists, lawyers, and researchers shows that CBP is completely failing to provide this level of care for the children in its custody.²⁶

COMMITTEE, 116th Congress (2020) [hereinafter “House Committee Hearing on Child Deaths”], <https://www.congress.gov/video/2468118-1/conditions-immigration-detention-facilities>; *id.*, (written opening statement of Rep. Kathleen M. Rice (NY-4), Chairwoman, Subcomm. on Border Security, Facilitation, & Operations, <https://homeland.house.gov/download/011420-rice-opening-statement>) (“CBP continues to detain families with young children in need of medical attention well beyond the 72 hours allowed by the agency’s own protocols.”).

²² AAP: Detention of Immigrant Children, *supra* note 18, at 1.

²³ *Id.*

²⁴ *Id.* at 8. Experts likewise emphasize that “trauma-informed mental health screening and care are critical for immigrant children seeking safe haven.” *Id.*

²⁵ These provisions reflect a strong public policy of protecting children in federal immigration custody. The *Flores* Settlement, for example, establishes national standards on the treatment, detention, and release of children in federal custody. Children must be provided basic necessities, including “safe and sanitary” detention conditions, access to toilets and sinks, access to potable water and food, medical assistance, temperature controls and ventilation in detention facilities, and sufficient supervision to ensure safety from other detainees, including unrelated adults. *See* Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85-4544-RJK(Px) ¶ 12.A (C.D. Cal. Jan. 17, 1997) [hereinafter “*Flores* Settlement”], https://youthlaw.org/wp-content/uploads/2015/05/Flores_Settlement-Final011797.pdf; *Flores v. Reno: Press Resources and Documents*, NATL. CTR. YOUTH LAW, <https://youthlaw.org/publication/flores-press-resources> (last visited Feb. 7, 2020) (compilation of resources and key filings related to the *Flores* Settlement). Additionally, federal officials must treat all children in custody “with dignity, respect and special concern for their particular vulnerability as minors,” and “place each detained minor in the least restrictive setting appropriate to the minor’s age and special needs.” *Flores* Settlement ¶ 11; *see also* 8 U.S.C. § 1232(c)(2) (2013).

Federal law also requires unaccompanied migrant children to be transferred from DHS custody to the U.S. Department of Health and Human Services within 72 hours. *See* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (requiring DHS and other federal agencies to ensure that unaccompanied children are properly screened for credible fear of persecution or status as trafficking victims, and mandating transfer of children from DHS to HHS custody within 72 hours). Other federal laws that protect immigrant children include (1) the Victims of Child Abuse Act of 1990 (VCAA), Pub. L. 101-647, 104 Stat. 4792, which requires all law enforcement personnel working in federal facilities (including DHS officials in immigration detention facilities) to report suspected or alleged child abuse; and (2) the Prison Rape Elimination Act of 2003 (PREA), Pub. L. No. 108-79, 117 Stat. 972, whose DHS implementing regulations require CBP to collect and review data on all allegations of sexual abuse and assault in detention.

²⁶ *See, e.g.*, NAT’L CTR. YOUTH LAW ET AL., THE FLORES SETTLEMENT AGREEMENT & UNACCOMPANIED CHILDREN IN FEDERAL CUSTODY at 7–8 (Feb. 2019), <https://youthlaw.org/wp-content/uploads/2019/02/Flores-Congressional-Briefing.pdf> (discussing “profound and long-lasting harm” to children caused by CBP detention); KIDS IN NEED OF DEFENSE, THE BORDER, TRAFFICKING, AND RISKS TO UNACCOMPANIED CHILDREN—UNDERSTANDING THE IMPACT OF U.S. POLICY ON CHILDREN’S SAFETY at 7–8 (Nov. 18, 2019) (same), https://supportkind.org/wp-content/uploads/2019/12/KIND_Child-trafficking-at-border-paper-11-18-19-FINAL-1.pdf; CRS UAC REPORT, *supra*

Although the TEDS acknowledge that “at-risk” populations, including children, “may require additional care or oversight,” no specific safeguards are established.²⁷ Border Patrol policy specifies that detainees needing medical attention or showing signs of serious infection disease or contagion (including flu) are to be evaluated by qualified personnel as soon as possible.²⁸ CBP policy likewise requires that emergency medical services timely be provided when necessary.²⁹ Yet advocates have documented many cases in which no such medical evaluation or treatment was provided to sick children.³⁰ Physicians for Human Rights, for example, has identified at least five aspects of CBP detention that pose health risks to detainees: (1) inadequate medical screening (noting that less than 6 percent of CBP officers are trained EMTs); (2) poor access to emergency medical attention; (3) insufficient pediatric care; (4) confiscation or disruption of medication; and (5) dangerous holding cell conditions.³¹

The inadequacies of CBP’s own policies—and the agency’s failure to adhere to even these minimal standards, however inadequate—have led to a slew of preventable tragedies.³² Children

note 17, at 7–8 (discussing criticism of CBP for failing to uphold its obligations to care for immigrant children under *Flores* Settlement and other laws); HUMAN RIGHTS WATCH, IN THE FREEZER: ABUSIVE CONDITIONS FOR WOMEN AND CHILDREN IN US IMMIGRATION HOLDING CELLS (Feb. 28, 2018), <https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells> (describing frigid cold and other abuses in CBP detention); *A Look Into U.S. Customs and Border Protection’s Mistreatment of Children*, ACLU OF SAN DIEGO & IMPERIAL COUNTIES, <https://www.aclusandiego.org/cbp-child-abuse-foia/cbp/> (last visited Feb. 14, 2020) (publishing over 30,000 pages of government records obtained via FOIA request relating to abuse and neglect of children in CBP custody); Neglect and Abuse Report, *supra* note 14, at 10–35 (discussing evidence of CBP abuse of children in FOIA production); GOV’T ACCOUNTABILITY OFF., GAO-15-521, UNACCOMPANIED ALIEN CHILDREN: ACTIONS NEEDED TO ENSURE CHILDREN RECEIVE REQUIRED CARE IN CBP CUSTODY at 18–69 (July 2015), <https://www.gao.gov/assets/680/671393.pdf> (discussing CBP’s failure to adequately care for children in its custody).

²⁷ TEDS, *supra* note 6, § 4.1.

²⁸ Border Patrol Short-Term Custody Policy, *supra* note 7, § 6.7.

²⁹ TEDS, *supra* note 6, § 4.10.

³⁰ *See, e.g.*, AMERICAN IMMIGRATION COUNCIL, AMERICAN IMMIGRATION LAWYERS ASSOC., & CATHOLIC LEGAL IMMIGRATION NETWORK, ADMINISTRATIVE COMPLAINT RE: DEPRIVATION OF MEDICAL CARE TO CHILDREN IN CBP CUSTODY (Sept. 2019) [hereinafter “Deprivation of Medical Care to Children in CBP Custody”], <https://www.aila.org/File/DownloadEmbeddedFile/81836>; *see also, e.g.*, Press Release, American Immigration Council et. al., Complaint Demands Oversight of Customs and Border Protection (CBP) Facilities (Sept. 4, 2019), <https://www.aila.org/File/DownloadEmbeddedFile/81842>.

³¹ PHYSICIANS FOR HUMAN RIGHTS, HEALTH RISKS OF CUSTOMS AND BORDER PROTECTION DETENTION 1 (July 2019), <https://phr.org/wp-content/uploads/2019/07/PHR-Fact-Sheet-Health-Risks-of-CBP-Detention.pdf>.

³² In 2019, CBP adopted an interim and then a revised directive for “deployment of enhanced medical support efforts to mitigate risk to, and sustain enhanced medical efforts for persons in CBP custody along the Southwest Border.” U.S. CUSTOMS & BORDER PROTECTION, CBP DIRECTIVE NO. 2210-004, ENHANCED MEDICAL SUPPORT EFFORTS (Dec. 30, 2019) [hereinafter “CBP Enhanced Medical Support Directive”], https://www.cbp.gov/sites/default/files/assets/documents/2019-Dec/CBP_Final_Medical_Directive_123019.pdf; U.S. CUSTOMS & BORDER PROTECTION, CBP DIRECTIVE NO. 2210-003, INTERIM ENHANCED MEDICAL EFFORTS (Jan.

have been denied clean clothing and adequate food, and have been kept in crowded, unsanitary conditions in which they are exposed to shingles, scabies, chickenpox, and the flu.³³ **In the past two years, at least seven children have died in CBP custody or shortly after being released, many after receiving delayed medical care or being denied care altogether.**³⁴ That is why Members of Congress, expressing disappointment in the OIG’s closure of its investigations into two recent child deaths, have urged that “the [DHS] Inspector General must be doing everything in its power to examine the factors that led to these tragedies.”³⁵

It is patently clear that CBP should release all children (especially sick children) from its custody rather than continue detaining them. DHS’s own Senior Medical Officer of Operations told

28, 2019), <https://www.cbp.gov/sites/default/files/assets/documents/2019-Mar/CBP-Interim-Medical-Directive-28-January-2019.pdf>.

The revised directive states: “It is the policy of CBP that all individuals in custody will receive appropriate medical support in accordance with applicable authorities, regulations, standards, and policies.” CBP Enhanced Medical Support Directive ¶ 3. Yet the directive calls for a “phased approach to the identification of potential medical issues of persons in custody,” and makes medical assessments to detainees “*subject to availability* of resources and operational requirements” (emphasis added). *Id.* ¶¶ 7.1, 7.4. Indeed, in January 2020, a lead Border Patrol official advised Congress that the directive was merely “top-level guidance” and written to be “intentionally flexible.” House Committee Hearing on Child Deaths, *supra* note 21, at 5 (written statement of Brian S. Hastings, Chief of Law Enforcement Operations, U.S. Border Patrol, <https://homeland.house.gov/imo/media/doc/Testimony-Hastings.pdf>).

In other words: the directive **does not establish a baseline for treatment, let alone a set of meaningful standards to which Border Patrol agents will be held accountable**, even as children are dying in CBP custody. Moreover, the directive does not meaningfully address the structural drivers of CBP’s insufficient care for sick detainees, including children. *See supra* note 31. As such, the directive is insufficient to guarantee timely, necessary medical care for ill detainees, particularly sick children, in CBP custody.

³³ CBP has refused to provide flu vaccinations for people in its custody. *See, e.g.*, Gaby Del Valle, *Border Patrol Won’t Give the Flu Vaccine to Detained Kids*, VICE NEWS, Aug. 20, 2019, https://www.vice.com/en_us/article/43kvwj/border-patrol-wont-give-the-flu-vaccine-to-detained-kids-report-says (quoting CBP spokesperson); *see also, e.g.*, Molly Hennessy-Fiske, *After Child Deaths, Doctors Pressure Border Patrol to Let Them Administer Flu Vaccines*, L.A. TIMES, Nov. 19, 2019, <https://www.latimes.com/world-nation/story/2019-11-19/la-na-border-patrol-migrant-flu>; U.S. COMMISSION ON CIVIL RIGHTS, TRAUMA AT THE BORDER: THE HUMAN COST OF INHUMANE IMMIGRATION POLICIES 57 (Oct. 2019), <https://www.usccr.gov/pubs/2019/10-24-Trauma-at-the-Border.pdf>; Zolan Kanno-Youngs, *Poor Conditions Persist for Migrant Children Detained at the Border, Democrats Say*, N.Y. TIMES, Aug. 29, 2019, <https://www.nytimes.com/2019/08/29/us/politics/homeland-security-migrant-children.html>; Simon Romero *et. al.*, *Hungry, Scared, and Sick: Inside the Migrant Detention Center in Clint, Tex.*, N.Y. TIMES, July 9, 2019, <https://www.nytimes.com/interactive/2019/07/06/us/migrants-border-patrol-clint.html>.

³⁴ *See, e.g.*, Nicole Acevedo, *Why Are Migrant Children Dying in U.S. Custody?*, NBC NEWS, May 29, 2019, <https://www.nbcnews.com/news/latino/why-are-migrant-children-dying-u-s-custody-n1010316?fbclid=IwAR38n79Vu1jBLejqEPL8NCeCj7qaGinN2TJOUtFfEkVI1BKjDyISX3Jee7R>.

³⁵ House Committee Hearing on Child Deaths, *supra* note 21, at 4:41–4:58 (video of statement of Rep. Kathleen Rice).

DHS (and, particularly, CBP) have failed to produce documents requested (and then subpoenaed) by the House Committee on Homeland Security to facilitate that oversight body’s investigation into the deaths of children in CBP custody. *See* Letter from Bennie G. Thompson (MS-2), Chairman, H. Committee on Homeland Security, to Chad Wolf, Acting Secretary, U.S. Department of Homeland Security (Feb. 11, 2020), <https://homeland.house.gov/imo/media/doc/LetterDHSdocuments021120.pdf>.

Congress, “CBP is primarily a law enforcement organization, never designed to have a health care system within its walls.”³⁶

The ACLU’s investigation found that the Border Patrol fails to respect agency policies or provide prompt and necessary medical care to sick children in custody. Our interviews also indicate that Border Patrol agents subject sick children to physical mistreatment, verbal abuse, and/or neglect.

III. Individual Accounts of Sick Children in Border Patrol Detention

Our investigation identified many instances in which Border Patrol agents mistreated, abused, or neglected detained children in need of medical attention, including: a case involving a child who swallowed a choking hazard, turned purple, and began wheezing while agents interrogated his mother in another room (the agents then waited two hours before transporting the child to a hospital); a case involving an infant and toddler vomiting with diarrhea in a crowded cell yet provided no medical treatment (as their desperate mother used a tiny sink above the cell toilet to clean the children with water); and cases in which Border Patrol agents confiscated life-sustaining medication from children with chronic health conditions, without providing any immediate or follow-up medical attention. In the few cases in which sick children were evaluated by on-site medics in Border Patrol facilities, treatments offered were inadequate to alleviate or cure the children’s ailments.

From these accounts, we have selected two that exemplify many of the broader trends we documented. These accounts have been anonymized: names have been changed, and certain details omitted, to protect the affected individuals. The accounts are, however, reported faithfully and based on lengthy interviews conducted by ACLU staff, usually within days of release from Border Patrol detention.

Baby Sofia

Eric is a 34-year-old Honduran man who fled his home country with his wife Gloria after the couple received death threats. En route to the United States, Gloria gave birth to a daughter, Sofia, in Mexico.

When Border Patrol agents first apprehended the family, Sofia was only six weeks old. The agent who transported the family to a nearby Border Patrol station subjected them to a reckless

³⁶ *Id.* at 27:34–27:40 (video of statement of Dr. Alexander Eastman, Department of Homeland Security, Senior Medical Officer of Operations).

“rough ride,” causing Sofia to be jostled severely in her carrier as the Border Patrol vehicle traversed uneven terrain.³⁷ At the station, the agent who fingerprinted the family yelled at Gloria and told her she was a terrible mother for bringing her baby to the United States.³⁸

That night, Sofia began to cry incessantly, and Gloria noticed that the baby’s stomach was very hard. In response to the baby’s crying, a Border Patrol official ordered an evaluation by medical personnel, and agents transported Gloria and Sofia to a nearby emergency room. Gloria pleaded with the Border Patrol agents to allow Eric to accompany his family to the hospital, particularly because Gloria herself still felt weak from Sofia’s difficult birth and needed her husband’s support. Despite Gloria’s pleas, Border Patrol did not allow Eric to join them.

At the emergency room, a doctor determined that Sofia was dehydrated and constipated. The doctor explained that there was little he could do for the baby, and insisted that the baby see a pediatrician as soon as possible. Instead—and in direct contravention of this medical advice—the Border Patrol returned Gloria and Sofia to detention.

Throughout that next day (the family’s second in detention), Sofia’s symptoms intensified. The baby, who had not had a bowel movement for days, spent the entire day crying in apparent discomfort. Despite the baby’s obvious distress, Border Patrol officials did not provide additional medical assistance until late that evening, when agents transported Gloria and Sofia to a nearby children’s hospital. Again, Border Patrol did not permit Eric to accompany them. The examining physician again concluded that the infant was dehydrated and constipated, and administered a rectal suppository to help move the baby’s bowels. The doctor also scolded the Border Patrol agents who had accompanied Gloria and Sofia to the hospital, admonishing them that the conditions inside the facility (as Gloria had described them) “[were] no conditions for a newborn.” The doctor recommended prune juice to help Sofia with digestion.

³⁷ A “rough ride” is a euphemism for the practice of intentionally operating a vehicle in a manner that causes passengers physical harm, fear, or other discomfort. See, e.g., A.C. Thompson, “Dirtbag,” “Savages,” “Subhuman”: A Border Patrol Agent’s Hateful Career and the Crime That Finally Ended It, PROPUBLICA, Aug. 16, 2019, <https://www.propublica.org/article/border-agents-hateful-career-and-the-crime-that-finally-ended-it>; Ieva Jusionyte, *Pain on the Border: Fieldnotes from a Migrant Aid Center in Nogales, Mexico*, REVISTA: HARVARD REVIEW OF LATIN AMERICA (“Displacements” Issue) (Winter 2017), <https://revista.drclas.harvard.edu/book/pain-border>.

Infants are uniquely vulnerable to head and spine injuries, especially traumatic brain injuries, even when in appropriate car seats during motor vehicle accidents. See, e.g., Camille L. Stewart et. al., *Infant Car Seat Safety and Risk of Head Injury*, 49 J. PEDIATRIC SURGERY 193, 195 (2014), [https://www.jpedsurg.org/article/S0022-3468\(13\)00773-2/pdf](https://www.jpedsurg.org/article/S0022-3468(13)00773-2/pdf).

³⁸ ACLU has additional identifying details about this agent, which it can share with OIG upon request.

Once again, the Border Patrol ignored professional medical advice, returning Gloria and her sick infant to detention and refusing to provide the baby with prune juice to ease her digestive ailments.³⁹

Sofia continued to experience the same symptoms the following day, the family's third in detention. Gloria, feeling defeated and unable to help her clearly sick baby, recalled crying alongside Sofia while holding her in their cold holding cell. Anguished, Gloria asked the Border Patrol agents repeatedly for prune juice or anything else she could feed her baby (Gloria was herself provided only cold burritos and cookies). The agents ignored her requests and pleas for help.⁴⁰

Sofia cried throughout the family's third night and fourth day in Border Patrol custody. On the fourth evening, the Border Patrol transported Gloria and Sofia back to the children's hospital emergency room. (Yet again: Border Patrol did not allow Eric to go to the hospital with his wife and daughter, and agents gave Eric no information about Sofia's condition.) As before, the emergency room doctor recommended that Sofia be given prune juice to help ease her digestive issues and helped her empty her bowels.⁴¹ Once again, the Border Patrol returned Gloria and her sick infant to detention, without providing the prescribed prune juice. Gloria felt horrible and could not stop crying because she could not alleviate her baby's pain.

On the family's fifth day of detention, they were finally released to the San Diego Migrant Family Shelter, operated by Jewish Family Service. When the family arrived at the shelter, Sofia received a medical evaluation, which confirmed that the baby was still severely constipated and dehydrated. Gloria recalled that, at Sofia's final check-up in Tijuana, shortly before the family had arrived in the United States, she had weighed 5 kilos 200 grams (11.46 pounds). By the time Sofia was weighed at the San Diego Migrant Shelter, she weighed only 4 kilos (8.82 pounds).

5-Year-Old Adrian

Raquel is a 22-year-old Honduran woman who fled to the United States with her 5-year-old son, Adrian. They presented at a port of entry along the Texas-Mexico border, and were

³⁹ Cf. TEDS, *supra* note 6, § 5.6 ("Food must be appropriate for at-risk detainees' age and capabilities (such as formula and baby food).").

⁴⁰ Cf. TEDS, *supra* note 6 § 5.6 ("Any physical or mental injury or illness observed by or reported to an officer/agent should be reported to a supervisor and appropriate medical care should be provided or sought."); Border Patrol Short-Term Custody Policy, *supra* note 7 § 6.7.4 ("A supervisor will be notified as soon as possible of detainees needing medical attention.").

⁴¹ The medical record instructs: "Dose: please give 1 oz of prune juice once or twice a day till stool softens."

subsequently placed into one of the Border Patrol's pop-up tent facilities in Texas.⁴² Raquel reports that the two slept in makeshift structures and endured extreme overcrowding as well as discomfort from heavy rains, which caused the ground to be very muddy. The facilities had no showers, no soap or water for hand-washing, and a limited number of shared portable toilets that were cleaned only every three days.

On their second day in detention, Adrian began to suffer from a fever and an inflamed throat. Raquel recalls a medic being on site, but she was unable to get medical treatment for Adrian. Adrian's condition worsened; his fever persisted over the next three days. Finally, on their fifth day in detention, the Border Patrol took Adrian and Raquel offsite for medical evaluation. Raquel believes that the impetus for this transfer was the media's attention to the tent camp's squalid conditions.⁴³

At the offsite facility, Adrian was finally given antibiotics. After Adrian received medication, the Border Patrol transported the two to a San Diego-bound flight. Raquel, who was not told of the flight's destination, believed she was being deported back to her country of origin.

Upon arrival in San Diego, Adrian and Raquel were transferred to a local Border Patrol station. Raquel reports that the detention conditions she and her son experienced at this Border Patrol station were not much better than those they had endured in the tent camp. They were detained in a cell with approximately 100 other individuals. Adrian began to suffer from an upset

⁴² In 2019, Border Patrol set up tent encampments across Texas to increase its detention capacity. The agency claimed the tent facilities, including several located in the parking lots of existing Border Patrol stations and one under the Bridge of the Americas in El Paso, were necessary to accommodate those arriving at the border, rather than reassessing its hardline policy of across-the-board detention of arriving noncitizens regardless of flight risk. *See* Vanessa Yurkevich & Priscilla Alvarez, *Exclusive Photos Reveal Children Sleeping on the Ground at Border Patrol Station*, CNN, May 14, 2019, <https://www.cnn.com/2019/05/14/politics/border-patrol-mcallen-texas-pictures/index.html>; Nick Miroff, *Border Detention Cells in Texas Are So Overcrowded that U.S. is Using Aircraft to Move Migrants*, WASH. POST, May 11, 2019, https://www.washingtonpost.com/immigration/border-detention-cells-in-texas-are-so-overcrowded-that-us-is-using-aircraft-to-move-migrants/2019/05/11/bb221f70-73d9-11e9-9f06-5fc2ee80027a_story.html; Edwin Delgado, *US Builds Migrant Tent City in Texas as Trump Likens Influx to 'Disneyland'*, THE GUARDIAN, Apr. 29, 2019, <https://www.theguardian.com/us-news/2019/apr/28/tent-city-migrants-el-paso-texas>. *See also, e.g.*, ACLU BORDER RIGHTS CENTER ET AL., ADMINISTRATIVE COMPLAINT RE: ABUSIVE CONDITIONS IN BORDER PATROL DETENTION FACILITIES IN THE RIO GRANDE BORDER PATROL SECTOR (May 2019), https://www.aclutx.org/sites/default/files/aclu_-_rgv_border_patrol_conditions_oig_complaint_05_17_2019.pdf; ACLU BORDER RIGHTS CENTER ET AL., ADMINISTRATIVE COMPLAINT RE: ABUSIVE CONDITIONS IN MAKESHIFT BORDER PATROL HOLDING FACILITIES AT PASO DEL NORTE PORT OF ENTRY IN EL PASO, TEXAS (Mar. 2019), https://www.aclutx.org/sites/default/files/pdn_border_patrol_abuse_oig_complaint.pdf.

⁴³ *See, e.g.*, Adolfo Flores, *Immigrants Are Being Forced to Sleep Outside On The Ground At This Texas Facility: "Why Do They Treat Us Like This?"*, BUZZFEED NEWS (May 15, 2019), <https://www.buzzfeednews.com/article/adolfoflores/immigrants-outside-tents-texas-holding-center>; Julián Aguilar, *Border Patrol Erects More Tents in the Rio Grande Valley to House Asylum Seekers as Surge Continues*, TEXAS TRIBUNE, May 17, 2019, <https://www.texastribune.org/2019/05/17/south-texas-border-patrol-erecting-more-tents-hold-asylum-seekers/>.

stomach and diarrhea, but received no medical attention. On the family's third day in detention in San Diego, Border Patrol agents removed Raquel from the holding cell, leaving Adrian behind among other unrelated detainees. The agents interrogated Raquel, accusing her of not being Adrian's mother and threatening to take him away from her. Terrified, Raquel dropped down to her knees and begged the agents to allow her to stay with her son. One Border Patrol agent laughed at her. After more than an hour of questioning, agents finally returned Raquel to the holding cell. Later that night, Raquel and Adrian finally were released after more than eight days in Border Patrol custody.

IV. Recommendations

As these individual accounts reflect, CBP has failed to maintain even a baseline standard of care for sick children in Border Patrol custody. Moreover, the extended periods of detention to which these vulnerable individuals are subjected exacerbate the physical, mental, and emotional harms they endure while in Border Patrol custody.

The ACLU asks that DHS OIG conduct an immediate review of CBP's treatment of sick children in its custody and issue recommendations to improve CBP and Border Patrol detention policies. At a minimum, we call upon DHS OIG to:

- (1) Recommend that CBP establish policies and practices to **strictly prohibit the continued detention of sick children** against medical advice (whether provided by onsite or local area medical personnel).
- (2) Recommend that CBP **prioritize the release of all children** (both unaccompanied children and children detained with accompanying family members) **into ORR care, appropriate U.S. shelters, and/or the care of their personal support networks within the United States**, ensuring that children are held in CBP custody for the shortest period of time possible and that family units remain intact.⁴⁴
- (3) Recommend that CBP policies and practices be revised to **prohibit any period of detention beyond the time required for initial processing, which should in no case exceed 12 hours.**⁴⁵

⁴⁴ When a child is transferred from CBP to ORR custody, CBP should ensure that all health-related information pertaining to that child is automatically provided to ORR to facilitate continuity of medical care.

⁴⁵ This would ensure that CBP's TEDS and other agency policies are consistent with the presumptive maximum detention period set out in Border Patrol's Short-Term Custody Policy, *see supra* note 7, at § 6.2.1.

- (4) Recommend that CBP **increase on-site staffing of qualified medical professionals** and **revise its policies and practices** to provide clear instructions as to when additional medical services must be called in to treat people in its custody (including transfer to a hospital) and on what timeline.⁴⁶ Consistent with the DHS FY 2020 appropriations bill, professionals with child welfare expertise should be present at all ports of entry and Border Patrol stations to process children (and families with children) and to supervise their welfare while they remain in CBP custody.⁴⁷ CBP facilities should be staffed by physicians and other medical providers with pediatric training and expertise, and appropriately trained mental health professionals specializing in pediatric care and trauma.⁴⁸
- (5) Recommend that CBP **report monthly on, and publish on its website:** (a) certain information CBP is required to collect under the *Flores* Settlement, properly redacted, including statistics on minors kept in CBP custody for more than 72 hours and specific information on the length of each child's detention (*e.g.*, date of entry into CBP custody and date of transfer or discharge from CBP custody); (b) recorded instances of medical assistance requests by or on behalf of children; (c) recorded instances of provision of medical care to sick children,⁴⁹ specifying whether medical care was provided by CBP employees or third-party medical providers (and including the names of those providers); (d) instances of emergency services being called for and, separately, provided to children; (e) length of detention statistics for sick children; (f) length of time between requested medical assistance and provision of medical care; (g) types of medical problems reported by children when requesting care; and (h) investigative files and evidence related to deaths of minors in CBP custody, properly redacted to preserve the minors' privacy.⁵⁰

⁴⁶ The *Flores* Settlement requires DHS agencies to provide basic medical assistance and any necessary emergency services to detained children. Although neither the *Flores* Settlement nor CBP policy provide detailed descriptions of the scope of medical care to be provided, this requirement must be understood in the context of the requisite "special concern" owed to children. *See Flores* Settlement, *supra* note 25, ¶ 12A.

⁴⁷ Rep. Roybal-Allard, Department of Homeland Security Appropriations Bill, 2020, H.R. Rep. 116-180, pt. 9 at 20 (2019).

⁴⁸ Deprivation of Medical Care to Children in CBP Custody, *supra* note 30, at 12.

⁴⁹ As used here, the term "sick children" includes both children who have requested medical assistance and children who have been diagnosed with an illness by a medical professional in any country.

⁵⁰ Such data collection and reporting will improve CBP accountability by providing public information necessary to allow external assessments of agency actions and adherence with governing policies.

- (6) Assess **whether CBP oversight and disciplinary mechanisms are sufficient** to ensure that CBP officials are held accountable for all instances of detainee abuse, neglect, or other mistreatment, and to ensure that dangerous, abusive, or otherwise unfit CBP employees are removed promptly from duty.

Thank you for your time and careful attention to this submission. We look forward to your timely response.

Sincerely,

ACLU Foundation of San Diego & Imperial Counties

Mitra Ebadolahi, Senior Staff Attorney

Jacqueline Ramos, Legal Investigator

Sarah Thompson, Border Litigation Fellow/Staff Attorney

Kimberly Grano, Legal Fellow/Staff Attorney

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Appendix 10



March 27, 2020

VIA ELECTRONIC MAIL

Joseph Cuffari
Inspector General
U.S. Department of Homeland Security
254 Murray Lane SW
Washington, D.C. 20528
JointIntake@dhs.gov

Re: *Border Patrol Station 1 in El Paso, Texas: Failure to Adequately Respond to COVID-19 Pandemic*

Dear Mr. Cuffari,

The American Civil Liberties Union of Texas (ACLU of Texas), the ACLU Border Rights Center, and Las Americas Immigrant Advocacy Center submit this administrative complaint to the Department of Homeland Security's Office of Inspector General (DHS OIG) regarding Customs and Border Protection's (CBP) failure to adequately respond to the public health emergency posed by the COVID-19 global pandemic at Border Patrol Station 1 in El Paso, Texas. The ACLU of Texas, the ACLU Border Rights Center, and Las Americas request that DHS OIG take immediate steps to investigate and issue a management alert with recommendations based on the information contained in this complaint. This complaint is based on interviews with detained persons conducted by Las Americas, which provides direct representation to individuals detained by CBP.

Such an investigation is urgently necessary. Border Patrol, a sub-component of CBP, has failed to take even the most basic actions to prevent an outbreak of COVID-19 or mitigate the risk of harm to migrants, particularly the most vulnerable, from such an outbreak at its Station 1 facility. Border Patrol must act promptly to release all individuals detained in its custody at Station 1. In addition, for as long as any individuals remain detained, Border Patrol must take appropriate actions to provide for basic hygiene and safety at Station 1 in light of the danger that the COVID-19 pandemic presents to detained individuals' health and safety. Its failure to take these steps compels immediate action by OIG.

Specifically, notwithstanding the threat from COVID-19, Border Patrol has in its El Paso Station 1 facility:

- Held over 150 persons in a single room with persons exhibiting flu-like symptoms;
- Failed to provide information to detained individuals on the COVID-19 pandemic, such as recommended Center for Disease Control and Prevention (CDC) guidelines for preventing transmission of the virus;¹
- Held people in cells where they are forced to be in close contact with each other, including by sleeping approximately three feet apart;
- Failed to provide detained individuals with sufficient soap. For example, migrants reported that in one bathroom, only one of six sinks had a soap dispenser that in fact contained soap;
- Provided only a single square of toilet paper per use;
- Denied detained individuals access to hand sanitizer;
- Failed to provide adequate medical screening of detained individuals not exhibiting symptoms of illness; and
- Failed to ensure uniform access to personal protective equipment for everyone in the detention facility.

The COVID-19 public health emergency presents a particularly “grave risk of severe illness and death” to people in immigration detention facilities like Border Patrol Station 1.² As the Centers for Disease Control and Prevention has recognized, incarceration and detention conditions present “unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors.”³ These facilities are “congregate environments”—that is, places where people live, eat, and sleep in close proximity.⁴ Such congregate environments present a heightened risk for COVID-19 transmission, as shown by the virus’s rapid spread on cruise ships and in nursing homes.⁵ The extremely high rate of transmission at the Rikers Island jail demonstrates the particular risk to people in detention facilities.⁶

This is especially true in CBP detention facilities, where substandard hygiene conditions are well documented.⁷ Moreover, there is essentially no way for detained

¹ CDC, “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,” March 23, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

² *Dawson v. Asher*, 2:20-cv-00409 (W.D. Wash.), Declaration of Dr. Jonathan Louis Golob, ¶ 14, available at https://www.aclu.org/sites/default/files/field_document/5_declaration_of_dr_jonathan_louis_golob.pdf.

³ CDC, available at “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,” *supra* n. 1.

⁴ *Dawson*, Declaration of Dr. Marc Stern, ¶ 7, available at https://www.aclu.org/sites/default/files/field_document/6_declaration_of_dr_marc_stern.pdf.

⁵ *Id.*; *Dawson*, Declaration of Dr. Robert B. Greifinger, ¶ 8, available at https://www.aclu.org/sites/default/files/field_document/4_declaration_of_robert_b_greifinger_1.pdf.

⁶ Nick Pinto, *If Coronavirus Deaths Start Piling Up in Rikers Island Jails, We’ll Know Who to Blame*, The Intercept, March 23, 2020, available at <https://theintercept.com/2020/03/23/coronavirus-rikers-jail-de-blasio-cuomo/>.

⁷ DHS Office of Inspector General, *Management Alert – DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center (Redacted)*, OIG-19-46, (May 30, 2019) 3, available at

individuals to engage in the social distancing necessary to slow the virus's spread. In fact, detained individuals are unable to exercise the most basic of recommendations issued by the CDC, such as keeping a distance of 6 feet from others and regular handwashing, to protect themselves from catching and spreading the virus.⁸ By the time COVID-19 cases are detected, CBP's poor track record in providing medical care, combined with the factors that increase risk of transmission, threatens both rapid spread and severe harm.⁹ These conditions create what has been described as "a COVID-19 timebomb."¹⁰

DHS's own detention standards governing Border Patrol Station 1, the National Standards on Transport, Escort, Detention, and Search (TEDS), require that CBP provide appropriate medical care to everyone in its custody. The TEDS state that "[t]he safety of CBP employees, detainees, and the public is paramount during all aspects of CBP operations."¹¹ CBP staff are required to take "appropriate protective precautions" if they suspect "a detainee has an observed or reported medical condition, such as a contagious disease."¹² If CBP staff "suspects or a detainee reports that a detainee may have a contagious disease, the detainee should be separated whenever operationally feasible, and all other appropriate precautions must be taken and required notifications made, according to the operational office's policies and procedures."¹³ In light of the "grave risk" posed by this global pandemic,¹⁴ these standards compel urgent action to ensure the health of those currently detained.

Due to the threat posed by COVID-19, CBP must release all individuals detained in its custody at Border Patrol Station 1. In addition, for as long as any individuals remain detained, CBP must significantly improve medical care, hygiene, and other efforts to mitigate the risk posed by COVID-19.¹⁵ These actions, in compliance with the agency's own detention standards, are necessary to protect health and safety—and ultimately to save lives.

<https://www.oig.dhs.gov/sites/default/files/assets/2019-05/OIG-19-46-May19.pdf>; Human Rights Watch, *In the Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells* (Feb. 2018), available at <https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells>.

⁸ CDC, "How to Protect Yourself," March 25, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>.

⁹ Sheri Fink & Caitlin Dickerson, *Border Patrol Facilities Put Detainees With Medical Conditions at Risk*, N.Y. Times, March 5, 2019 (describing "signs of entrenched problems that have repeatedly put detainees with medical conditions at risk"), available at <https://www.nytimes.com/2019/03/05/us/border-patrol-deaths-migrant-children.html>; ACLU Border Litigation Project et al., *Neglect & Abuse of Unaccompanied Children by U.S. Customs and Border Protection* (2018) 21-23, available at <https://www.aclusandiego.org/civil-rights-civil-liberties/>; ACLU San Diego & ACLU Border Rights Center, *Re: U.S. Customs and Border Protection and Border Patrol's Abuse and Mistreatment of Detained Sick Children* (Feb. 18, 2020), available at <https://www.aclusandiego.org/wp-content/uploads/2020/02/2020-02-18-OIG-Complaint-2-FINAL.pdf>.

¹⁰ Judy Stone, *Immigrant Detainees Are Sitting On A COVID-19 Time Bomb - First Infection Reported*, Forbes, March 24, 2020, available at <https://www.forbes.com/sites/judystone/2020/03/24/immigrant-detainees-are-sitting-on-a-covid-19-time-bombfirst-infection-reported/#6878d1043af2>.

¹¹ TEDS 1.1, available at <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf>.

¹² TEDS 2.8.

¹³ TEDS 4.10.

¹⁴ *Dawson*, Declaration of Dr. Jonathan Louis Golob, *supra* n. 2.

¹⁵ The CDC recognizes that "[c]onsistent application of specific preparation, prevention, and management measures can help reduce the risk of transmission and severe disease from COVID-19." CDC, "How to Protect Yourself," *supra* n. 7.

CBP has not taken such steps. This inexcusable lack of action is currently endangering the lives of all those detained at Border Patrol Station 1, the agents, other staff, and the surrounding community. The ACLU has previously detailed steps CBP should take to protect detained populations at all its facilities.¹⁶ Here, we specifically ask that DHS OIG immediately investigate these conditions and issue recommendations to ensure that CBP takes the following actions at Border Patrol Station 1, including the following actions to mitigate the risk of COVID-19 for as long as any individuals remain detained:

- Immediately release all individuals detained in its custody.
- Provide sufficient soap in amounts reflective of the increased need to continuously wash one's hands pursuant to World Health Organization guidelines, and ensure that the soap and clean, warm water are available at times and locations where they are especially needed, including before and after meals and at all sinks near toilets. Migrants should also be provided with sufficient amounts of other hygienic materials and regular access to showers. Facilities should be cleaned frequently.
- Provide immediate medical evaluation and hospitalization, if needed, to any detained individual exhibiting symptoms of COVID-19—including fever, coughing, or shortness of breath. If hospitalization is not required, the person should be released to self-isolate outside a detention facility, with access to a hospital or other medical facility should they require additional medical care.
- Ensure all conditions in custody, including any sleeping arrangements, provide for sufficient social distancing at all times, for as long as individuals remain detained.
- Provide facility staff with the appropriate personal protective equipment, including gloves and masks, relevant to the contact they will have with confirmed or suspected COVID-19 cases. Facility staff must be provided with clear protocols and instructions on hygiene and other methods to reduce COVID-19 exposure, as well as on the requirements to screen, test and pursue medical transfer of individuals. Staff must be promptly trained on these protocols. Information about the spread of the virus, the risks associated with it, and prevention and treatment measures must be based on the best available science.
- Immediately begin educating those detained on the existence of a global COVID-19 pandemic; the steps that the facility is taking to mitigate the spread of the disease; the ways in which detainees can communicate with attorneys and loved ones during this time of uncertainty and anxiety; and the steps that individuals can take while detained to attempt to mitigate COVID-19 spread and to access medical care. All protocols and trainings to prevent the spread of the virus, the risks associated with it, and prevention and treatment measures must be based on the best available science.

¹⁶ AM. CIVIL LIBERTIES UNION, LETTER TO CBP RE: COVID-19 PREVENTION AND MANAGEMENT (March 2020), available at <https://www.aclu.org/letter/aclu-letter-cbp-and-border-patrol-detention-and-covid-19>. It is the ACLU's position that these facilities are categorically unsuitable and inappropriate for any period of detention beyond the time required for initial processing, which should in no case exceed 12 hours.

The conditions described above would be inadequate and inhumane under any normal circumstance, but during this global pandemic, they are inexcusable. Every day that these conditions persist increases the risk of a full-blown COVID-19 outbreak within Border Patrol Station 1. Accordingly, we request that DHS OIG take immediate action to investigate these conditions and ensure that CBP acts to protect the health and safety of those currently detained, through release and through steps to mitigate risk while individuals remain detained, in order to prevent severe illness and death from a COVID-19 outbreak at Border Patrol Station 1.

Sincerely,

American Civil Liberties Union of Texas

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Appendix 11

April 15, 2020

Joseph V. Cuffari
U.S. Department of Homeland Security
Office of Inspector General / MAIL STOP 0305
245 Murray Lane SW
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via email only to Joint.Intake@dhs.gov (CC jointintake@cbp.dhs.gov)

Re: Separation of Families via CBP Detention and Processing, and the Agency’s Refusal to Implement a Detainee Locator System

I. Introduction

The American Civil Liberties Union Foundation of San Diego & Imperial Counties and the ACLU Border Rights Center (together, “ACLU”) hereby submit this administrative complaint to the Department of Homeland Security’s Office of Inspector General (“DHS OIG”), regarding U.S. Customs and Border Protection (“CBP”)’s separation of family members via detention.¹ The ACLU requests that DHS OIG undertake a review based on the information contained in this complaint, which is the third in a series of four total complaints addressing the agency’s treatment of detainees in CBP facilities, including Border Patrol stations.²

As with our previous complaints regarding CBP’s mistreatment of pregnant people and sick children,³ this complaint is derived from interviews the ACLU completed between March and July

¹ CBP is the largest law enforcement agency in the United States, with over 60,000 officers. Border Patrol is a subcomponent of CBP. Throughout this complaint, reference to CBP includes Border Patrol.

² Unless otherwise noted, the abuses described here occurred in Border Patrol stations, although some of the people the ACLU interviewed for this project also had been detained by CBP’s Office of Field Operations (“OFO”) at a port of entry. Neither CBP nor Border Patrol provides detainees with clear information regarding where they are detained (or on what authority), and detainees are sometimes transferred between facilities. Thus, it is not uncommon for individuals to express confusion after release when asked where and by whom they were detained. For these reasons, the complaints in this series may include some accounts stemming from CBP OFO custody rather than Border Patrol custody.

³ *CBP’s Long History of Mistreatment of Detained People*, ACLU SAN DIEGO & IMPERIAL COUNTIES, <https://www.aclusandiego.org/legal/blp/cbp-mistreatment-of-detained-people/> (last visited Apr. 13, 2020). *See also* AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, ET AL., ADMINISTRATIVE COMPLAINT RE: U.S. CUSTOMS AND BORDER PROTECTION AND BORDER PATROL’S ABUSE AND MISTREATMENT OF DETAINED PREGNANT PEOPLE (Jan. 2020), <https://www.aclusandiego.org/wp-content/uploads/2020/01/2020-01-22-OIG-Complaint-1-FINAL-1.pdf>; AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, ET AL., ADDENDUM TO COMPLAINT OF JANUARY 22, 2020 RE: U.S. CUSTOMS AND BORDER PROTECTION AND BORDER

2019 with people in San Diego and Tijuana who recently had been released from CBP custody.⁴ Our investigation corroborated a well-documented culture of cruelty, willful negligence, and impunity throughout CBP.⁵ It also highlighted the failure of existing agency policies to provide sufficient humanitarian and legal safeguards to protect detainees. Across accounts from recent detainees, four themes emerged: (1) mistreatment of pregnant people, (2) mistreatment and neglect of sick children, (3) family separations, and (4) verbal abuse. As noted, this complaint is the third in a four-part series that will address each theme in turn.

II. CBP Processing and Detention Separates Families

In the spring of 2018, reports that DHS officials were forcibly and systematically separating parents from their young children upon taking custody of asylum-seeking families horrified the

PATROL'S ABUSE AND MISTREATMENT OF DETAINED PREGNANT PEOPLE (Mar. 2020), <https://www.aclusandiego.org/wp-content/uploads/2020/03/2020-03-04-OIG-compl-preg-persons-addendum-appendix-FINAL.pdf>; AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, ET AL., ADMINISTRATIVE COMPLAINT RE: U.S. CUSTOMS AND BORDER PROTECTION AND BORDER PATROL'S ABUSE AND MISTREATMENT OF DETAINED SICK CHILDREN (Feb. 2020), <https://www.aclusandiego.org/wp-content/uploads/2020/02/2020-02-18-OIG-Complaint-2-FINAL.pdf>.

⁴ During this time period, the ACLU interviewed 103 individuals. The ACLU reviewed a subset of these interviews (i.e., interviews involving accounts of family separation), and selected a small sample of those interviews for inclusion in this complaint.

⁵ See, e.g., John Washington, "Kick Ass, Ask Questions Later": A Border Patrol Whistleblower Speaks Out About Culture of Abuse Against Migrants, INTERCEPT, Sept. 20, 2018, <https://theintercept.com/2018/09/20/border-patrol-agent-immigrant-abuse/>; Sarah Macaraeg, *The Border Patrol Files: Border Patrol Violence: U.S. Paid \$60m to Cover Claims Against the Agency*, GUARDIAN (U.S.), May 1, 2018, <https://www.theguardian.com/world/2018/may/01/border-patrol-violence-us-paid-60m-to-cover-claims-against-the-agency>; Charles Davis, *U.S. Customs and Border Protection Has Killed Nearly 50 People in 10 Years. Most Were Unarmed.*, NEW REPUBLIC, Jan. 4, 2015, <https://newrepublic.com/article/120687/border-patrol-officers-get-impunity-anonymity-immigrant-killings>; Garrett M. Graff, *The Green Monster: How the Border Patrol Became America's Most Out-of-Control Law Enforcement Agency*, POLITICO, Nov./Dec. 2014, <https://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220>; Carrie Johnson, *Former Border Protection Insider Alleges Corruption, Distortion in Agency*, NAT'L PUB. RADIO, Aug. 28, 2014, <https://www.npr.org/2014/08/28/343748572/former-border-protection-insider-alleges-corruption-distortion-in-agency>.

In February 2020, a federal judge held that various aspects of Border Patrol detention conditions in the Tucson sector violate the U.S. Constitution, and ordered the agency to immediately implement a series of changes to safeguard detainees' well-being. See *Doe v. Wolf*, No. 15-cv-00250-DCB, 2020 WL 813774, at *22 (D. Ariz. Feb. 19, 2020) (post-trial order requiring Border Patrol to "provide[] conditions of confinement that meet basic human needs for sleeping in a bed with a blanket, a shower, food that meets acceptable dietary standards, potable water, and medical assessments performed by a medical professional").

American public.⁶ Thousands of families were torn apart.⁷ Although litigation successfully halted that particularly pernicious iteration of “family separation,” other forms of family separation occur as a result of CBP processing and detention each and every day.⁸

When processing and detaining individuals, CBP officials (including Border Patrol agents) unilaterally decide which family members stay together and which are separated—even though these immigration enforcement officers lack the specialized training or qualifications necessary to make such sensitive determinations.⁹ Little information is available regarding these decisions. For instance, although the Border Patrol’s policy lists examples of “family groups” that will be detained as a unit, that list has been redacted and does not appear to be publicly available.¹⁰ Meanwhile, as advocates have noted, DHS appears to have “adopted a very restrictive definition of ‘family’ to mean only parents or legal guardians accompanied by a child or children under the age of 18.”¹¹

⁶ See, e.g., Dara Lind, *The Trump Administration’s Separation of Families at the Border, Explained*, VOX, Aug. 14, 2018, <https://www.vox.com/2018/6/11/17443198/children-immigrant-families-separated-parents>; Aaron Hegarty, *Timeline: Immigrant Children Separated From Families at the Border*, USA TODAY, June 27, 2018, <https://www.usatoday.com/story/news/2018/06/27/immigrant-children-family-separation-border-timeline/734014002/>; Camila Domonoske & Richard Gonzales, *What We Know: Family Separation and ‘Zero Tolerance’ at the Border*, NAT’L PUB. RADIO, June 19, 2018, <https://www.npr.org/2018/06/19/621065383/what-we-know-family-separation-and-zero-tolerance-at-the-border>.

In February 2018, the ACLU filed a class action lawsuit challenging this type of family separation. See *Ms. L v. ICE*, ACLU (Jan. 13, 2020), <https://www.aclu.org/cases/ms-l-v-ice>. The lawsuit resulted in a preliminary injunction prohibiting separation in most cases of parents and their children and requiring the government to reunify parents and children within thirty days. See *Ms. L v. ICE*, 310 F. Supp. 3d 1133 (S.D. Cal. 2018). The ACLU is continuing to litigate to enforce the preliminary injunction. *Id.*; see also, e.g., *Ms. L v. ICE*, 415 F. Supp. 3d 980 (S.D. Cal. 2020) (order on motion to enforce preliminary injunction).

Last fall, advocates also initiated lawsuits to recover money damages for the extreme and lasting trauma DHS family separations have caused. See *A.I.I.L. v. Sessions*, ACLU (Oct. 3, 2019), <https://www.aclu.org/cases/aiil-v-sessions>; Complaint, *C.M. v. United States*, No. 2:19-cv-05217-SRB (D. Ariz., filed Sept. 19, 2019), https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/separated_family_members_seek_monetary_damages_from_united_states_complaint.pdf; *Separated Family Members Seek Money Damages from United States*, AM. IMMIGRATION COUNCIL, <https://www.americanimmigrationcouncil.org/litigation/separated-family-members-seek-monetary-damages-united-states> (last visited Apr. 13, 2020).

⁷ See, e.g., John Washington, *Family Separations at the Border Constitute Torture, New Report Claims*, INTERCEPT, Feb. 25, 2020, <https://theintercept.com/2020/02/25/family-separations-border-torture-report/>.

⁸ See, e.g., WOMEN’S REFUGEE COMMISSION, et al., *BETRAYING FAMILY VALUES: HOW IMMIGRATION POLICY AT THE UNITED STATES BORDER IS SEPARATING FAMILIES* (2017) [hereinafter “Betraying Family Values”], <https://www.womensrefugeecommission.org/images/zdocs/BetrayingFamilyValues-Feb2017.pdf>.

⁹ CBP officials are required, under federal law, to ascertain whether a child in their custody is “unaccompanied.” See, e.g., WILLIAM A. KANDEL, CONG. RESEARCH SERV., R43599, *UNACCOMPANIED ALIEN CHILDREN: AN OVERVIEW*, 6 (Oct. 9, 2019), <https://fas.org/sgp/crs/homesec/R43599.pdf>.

¹⁰ U.S. BORDER PATROL, *DETENTION STANDARDS: HOLD ROOMS AND SHORT TERM CUSTODY*, REFERENCE NO. 08-11267, at §§ 3.6, 6.24.12 (Jan. 31, 2008) [hereinafter “Border Patrol Short-Term Custody Policy”], <https://www.documentcloud.org/documents/818095-bp-policy-on-hold-rooms-and-short-term-custody.html>.

¹¹ Brief of Amicus Curiae Women’s Refugee Commission in Support of Petitioner’s Petition for Review and Remand at 15–16, *Usubakunov v. Barr*, No. 18-72974 (9th Cir. July 29, 2019) [hereinafter “WRC Amicus Brief”]. “This

Our investigation identified a number of troubling cases in which CBP processing and/or detention led to family separations, including:

- A woman whose heart condition worsened when, during processing, the Border Patrol separated her and her sister and transferred her sister to a different detention center without any advance notice or opportunity to say goodbye;
- A mother and her two sons (one a minor) apprehended by the Border Patrol and detained in a nearby station; when the mother, who had seriously injured her knee during her journey to the United States, was taken to a hospital for surgery, she was separated from her boys, who were left detained separately at the Border Patrol station. After her return from the hospital, the Border Patrol released the mother and minor son into the United States together, but separated the older son from them and transferred him to U.S. Immigration and Customs Enforcement (“ICE”) detention;¹²
- A grandmother who Border Patrol agents separated from her nine-year-old grandson after agents told her that his birth certificate was insufficient to establish biological familial ties. The grandmother was left anguished and fearful that her grandson would be given up to a U.S. family for adoption; and
- A family of nine which CBP separated into three different family units—notwithstanding the fact that all nine family members initially entered the United States together—and subjected to the so-called “Migrant Protection Protocols.”¹³ The entire family was forcibly removed to Mexico, with each of the three “units” then receiving different

restrictive definition means that DHS does not consider married adults, grandparents and grandchildren, parents and adult children, or aunts and uncles to be ‘family.’” *Id.* at 16. “Consequently, families composed of spouses or partners, adult children, siblings, aunts, uncles, or grandparents traveling together do not receive the designation of a ‘family unit’ and do not receive any special consideration for the preservation of their family.” *Id.*

¹² This family also included a father and two additional minor children, who had been separated from the mother and sons while crossing into the United States. Although the father saw one of his sons through a glass window while detained at the Border Patrol station and tried to explain to agents that his wife and other children were on site, the Border Patrol made no effort to reunite the family, and did not tell the mother that her partner was detained at the same station.

¹³ The so-called “Migrant Protection Protocols” is an unlawful U.S. policy that interferes with people’s statutory and regulatory rights to seek asylum in the United States. *See, e.g.,* DELIVERED TO DANGER, <https://deliveredtodanger.org/> (last visited Apr. 13, 2020); HUMAN RIGHTS FIRST, A YEAR OF HORRORS: THE TRUMP ADMINISTRATION’S ILLEGAL RETURNS OF ASYLUM SEEKERS TO DANGER IN MEXICO (Jan. 2020), <https://www.humanrightsfirst.org/sites/default/files/MPP-aYearofHorrors-UPDATED.pdf>; Jason Kao & Denise Lu, *How Trump’s Policies Are Leaving Thousands of Asylum Seekers Waiting in Mexico*, N.Y. TIMES, Aug. 18, 2019, <https://www.nytimes.com/interactive/2019/08/18/us/mexico-immigration-asylum.html> (describing “Remain in Mexico”—a.k.a. “Migrant Protection Protocols”—program).

master calendar hearing dates. This, in turn, resulted in separate nonrefoulement interviews. The stress of this arbitrary and inefficient separation of family members led the mother in the family to experience hyperventilating, vomiting, headache, and chest pain while awaiting her own nonrefoulement interview.

From these accounts, we have selected two that illustrate how family separation occurs as a result of CBP processing and detention. These accounts have been anonymized: names have been changed, and certain details omitted, to protect the affected individuals. The accounts are, however, reported faithfully and based on lengthy interviews conducted by ACLU staff, usually within days of release from Border Patrol detention.

Jessica's Account

Jessica is a 26-year-old Honduran asylum seeker who made the difficult journey to the United States with Gabriela, her 5-year-old daughter, and Bertha, her 57-year-old mother. The family crossed the border together in May of 2019. They entered the country via the river and were apprehended in or around McAllen, Texas. The three were then detained for four days, along with 200 to 300 others, in one of the Border Patrol's ad-hoc outdoor caged detention areas in Texas.¹⁴

During this time, a large storm occurred. Jessica and her family were forced to sleep outside on the ground without any bedding. They were drenched and covered with mud; wearing only thin sweaters, they suffered from acute cold. When the storm abated, the makeshift facility was moved to the parking lot of a nearby Border Patrol station; there, Jessica and her family slept on cement. Throughout this ordeal, they were not given enough food and did not receive basic necessities (like toothbrushes) or have access to showers.¹⁵

¹⁴ In 2019, Border Patrol set up outdoor encampments across Texas to increase its detention capacity rather than reassessing its hardline policy of detaining all arriving noncitizens without exception. Several of these outdoor encampments were located in the parking lots of existing Border Patrol stations. Another was placed under the Bridge of the Americas in El Paso. See Vanessa Yurkevich & Priscilla Alvarez, *Exclusive Photos Reveal Children Sleeping on the Ground at Border Patrol Station*, CNN, May 14, 2019, <https://www.cnn.com/2019/05/14/politics/border-patrol-mcallen-texas-pictures/index.html>; Nick Miroff, *Border Detention Cells in Texas Are So Overcrowded that U.S. is Using Aircraft to Move Migrants*, WASH. POST, May 11, 2019, https://www.washingtonpost.com/immigration/border-detention-cells-in-texas-are-so-overcrowded-that-us-is-using-aircraft-to-move-migrants/2019/05/11/bb221f70-73d9-11e9-9f06-5fc2ee80027a_story.html; Edwin Delgado, *US Builds Migrant Tent City in Texas as Trump Likens Influx to 'Disneyland'*, GUARDIAN, Apr. 29, 2019, <https://www.theguardian.com/us-news/2019/apr/28/tent-city-migrants-el-paso-texas>. See also, e.g., ACLU BORDER RIGHTS CTR. ET AL., ADMINISTRATIVE COMPLAINT RE: ABUSIVE CONDITIONS IN BORDER PATROL DETENTION FACILITIES IN THE RIO GRANDE BORDER PATROL SECTOR (May 2019), https://www.aclutx.org/sites/default/files/aclu_-_rgv_border_patrol_conditions_oig_complaint_05_17_2019.pdf; ACLU BORDER RIGHTS CTR. ET AL., ADMINISTRATIVE COMPLAINT RE: ABUSIVE CONDITIONS IN MAKESHIFT BORDER PATROL HOLDING FACILITIES AT PASO DEL NORTE PORT OF ENTRY IN EL PASO, TEXAS (Mar. 2019), https://www.aclutx.org/sites/default/files/pdn_border_patrol_abuse_oig_complaint.pdf.

¹⁵ While at this encampment, Border Patrol agents also subjected Jessica to an invasive and humiliating pat-down search that was conducted in front of hundreds of other people detained in the makeshift facility. As onlookers

On day four, Border Patrol agents called Bertha by name and led her away from Jessica and Gabriela. The agents told Jessica to wait behind and did not tell her where Bertha was being taken. Shortly thereafter, agents told Jessica that she and Gabriela would be transferred to another facility. This was the last time Jessica saw her mother. Jessica had no idea why they had been separated or where Bertha had been taken. Jessica was terrified to ask the agents for more information. She explained: “If you ask them, they make fun of you and laugh. They never answer.”

Jessica and Gabriela were then transferred to another Border Patrol detention facility in Texas, where they were detained for four more days. Then, they were transported to a third Border Patrol facility in California (via airplane), where they were detained for three additional days.

Finally, after *eleven days* in Border Patrol custody, Jessica and Gabriela were released to the San Diego Migrant Family Shelter, operated by Jewish Family Service.¹⁶

When our investigator first spoke with Jessica, she had been separated from Bertha for eight days, had no knowledge of her mother’s location, and was acutely concerned about her mother’s health. Only much later did Jessica learn that Bertha had been sent to an ICE detention center, and then deported from the United States back to Honduras.

Carolina’s Account

Carolina is a 24-year-old Guatemalan asylum seeker who arrived in the United States with her mother, father, and minor sister in April 2019. Upon apprehending the family, the Border Patrol transported them all to the Brown Field station in San Diego, California. There, Carolina, her mother, and her sister were separated from Carolina’s father.

After her first night in Border Patrol custody, Carolina was separated from her mother and sister as well. Although the family members all remained at the Brown Field station, they were kept

watched, Border Patrol agents made Jessica lift up her shirt and inserted their hands between the underwire of Jessica’s bra and her bare breasts. Agents also pulled out the waistline of Jessica’s pants and looked down her pants, then aggressively patted down her inseam area.

¹⁶ The duration of this detention is an egregious violation of both CBP policy (which sets a presumptive 72-hour cap on detention) and Border Patrol policy (which sets a 12-hour limit on detention). *See* U.S. CUSTOMS AND BORDER PROTECTION, NAT’L STANDARDS ON TRANSPORT, ESCORT, DETENTION, AND SEARCH, at § 4.1 (Oct. 2015) [hereinafter “TEDS”], <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf>; Border Patrol Short-Term Custody Policy, *supra* note 10, § 6.2.1.

in separate cells and not able to speak with one another. Border Patrol agents told Carolina that this separation was “due to her age.”¹⁷

Carolina spent a total of *nine days* at Brown Field station, followed by *two additional days* in another Border Patrol facility (the name of which Carolina did not know). After being separated from her mother and sister, Carolina had no further contact with any of her family members during the eleven days she was in Border Patrol custody. While in Border Patrol custody, Carolina became very ill; as a result of her separation from her family, Carolina endured this illness alone—without her mother, father, or sister’s presence to give her any comfort or sense of security.¹⁸

The Border Patrol then transferred Carolina to ICE custody. Carolina was detained for nearly three additional months (first in San Luis, Arizona, and then in Otay Mesa, California). From San Luis, Carolina was able to call a family member in the United States and let them know she was alive. That family member then contacted Carolina’s mother, father and minor sister, who had been forcibly returned to Mexico pursuant to the “Migrant Protection Protocols.” Prior to receiving that call, Carolina’s immediate family had spent seventeen days without knowing Carolina’s whereabouts.

Unlike her immediate family members, Carolina was released from immigration detention and welcomed at the San Diego Migrant Family Shelter operated by Jewish Family Service. Carolina passed a credible fear interview and was permitted to stay in the United States while her immigration case remains pending before the immigration court. Denied that opportunity, Carolina’s immediate family—who fled identical harm—are now trapped in Mexico for the duration of their immigration proceedings. Carolina and her family communicate via phone, unsure as to when—if ever—they will see each other again and be reunited as a family.

III. Family Separation Causes Significant Harms

Sadly, Jessica’s and Carolina’s accounts are not unique. CBP policy proclaims that the agency “will maintain family unity to the greatest extent operationally feasible, absent a legal requirement or

¹⁷ See also *supra* note 11 and accompanying text.

¹⁸ While detained at Brown Field station, Carolina developed a serious case of bronchitis; her symptoms included fever, throat pain, earaches, and ear bleeding. She was unable to eat. Carolina endured these symptoms for five days before the Border Patrol finally transported her to a nearby hospital for a medical evaluation. The doctor who examined Carolina prescribed a medication for her to take twice each day; back at the Brown Field station, however, Border Patrol agents gave Carolina her medicine only once each day, in the afternoon.

Upon transfer to ICE detention in San Luis, Carolina underwent a medical screening, during which she was weighed. At that time, Carolina learned that she had lost approximately eight pounds during her eleven days in Border Patrol custody.

an articulable safety or security concern that requires separation.”¹⁹ Yet, for years, advocates have documented CBP processing- or detention-related family separations where *no* operational obstacles, legal mandates, or safety or security concerns exist.²⁰ These separations, in turn, cause a myriad of concrete harms to vulnerable individuals.²¹ Family separations also undermine due process in the U.S. immigration system by preventing consistent, efficient, and fair adjudications.

First, family separations intensify trauma for already vulnerable populations. Asylum-seeking families often endure horrific circumstances as they endeavor to reach the relative safety of the United States.²² When these families are then separated upon arrival, family members understandably experience acute anxiety, worry, and distress. One 2015 study of detained asylum-seeking families found that “forced family separation only exacerbates the trauma of being detained, while increasing the risk of depression, anxiety, and post-traumatic stress.”²³ Once separated, family members experience extreme barriers to locating and communicating with loved ones. As explained further below, CBP does not operate a detainee locator system, which makes it virtually impossible for family members to find one another while in CBP custody. Moreover, the relevant federal agencies—CBP, ICE, and the U.S. Department of Health and Human Services’ Office of Refugee

¹⁹ TEDS, *supra* note 16, § 1.9.

²⁰ *See, e.g.*, WOMEN’S REFUGEE COMMISSION, ADMINISTRATIVE COMPLAINT RE: SEPARATION OF FAMILIES VIA THE “MIGRANT PROTECTION PROTOCOLS” (Aug. 2019) [hereinafter “WRC Family Separation Complaint”], <https://www.womensrefugeecommission.org/rights/resources/document/download/1830>; LEIGH BARRICK, AM. IMMIGRATION COUNCIL, DIVIDED BY DETENTION: ASYLUM-SEEKING FAMILIES’ EXPERIENCES OF SEPARATION (Aug. 2016) [hereinafter “Divided by Detention”], https://www.americanimmigrationcouncil.org/sites/default/files/research/divided_by_detention.pdf.

²¹ *See generally* Betraying Family Values, *supra* note 8.

²² *See, e.g.*, Gabriel H. Sanchez, *These Pictures Show the Dangerous and Sometimes Fatal Journey Immigrant Children Make to the US*, BUZZFEED, June 27, 2019, <https://www.buzzfeednews.com/article/gabrielsanchez/dangerous-fatal-migrant-journey-children-trending-mexico>; Valeria Luiselli, *Riding ‘the Beast’: Child Migrants Reveal Full Horror of Their Journeys to America*, GUARDIAN (U.S.), Oct. 5, 2017, <https://www.theguardian.com/inequality/2017/oct/05/riding-the-beast-child-migrants-reveal-full-horror-of-their-journeys-to-us>; UNICEF, BROKEN DREAMS: CENTRAL AMERICAN CHILDREN’S DANGEROUS JOURNEY TO THE UNITED STATES (Aug. 2016), <https://www.justice.gov/eoir/file/888441/download>.

²³ *Divided by Detention*, *supra* note 20, at 14 n.46 (citing KATHLEEN O’CONNOR, ET AL., UNITARIAN UNIVERSALIST SERVICE COMMITTEE, NO SAFE HAVEN HERE: MENTAL HEALTH ASSESSMENT OF WOMEN AND CHILDREN HELD IN U.S. IMMIGRATION DETENTION 9 (Oct. 2015), https://www.uusc.org/sites/default/files/mental_health_assessment_of_women_and_children_u.s._immigration_detention.pdf). In October 2016, an ICE Advisory Committee concluded that “DHS’s immigration enforcement practices should operationalize the presumption that detention is generally neither appropriate nor necessary for families – and that detention or the separation of families for purposes of immigration enforcement or management are never in the best interest of children.” REPORT OF THE ICE ADVISORY COMMITTEE ON FAMILY DETENTION CENTERS at 2 (Oct. 7, 2016), <https://www.ice.gov/sites/default/files/documents/Report/2016/acfrc-report-final-102016.pdf>.

Resettlement (“ORR”)—“do not have shared databases . . . although there is a process for those agencies to share data, information relating to separated family members often is not transmitted.”²⁴

Second, and relatedly, family separations interfere with individuals’ legal rights to seek asylum and other forms of immigration relief in the United States. Asylum-seeking families may have only one copy of key documentation necessary to corroborate the factual bases for asylum claims. When family members are separated, only one person retains access to this crucial evidence, even though that evidence may be relevant to all family members’ claims. Obtaining additional copies of key documents is virtually impossible for people in CBP custody, especially given the lack of access to resources like copiers, scanners, or translators.²⁵

Likewise, separation from family members impedes access to corroborating testimony necessary to establish credibility and eligibility for asylum and other forms of immigration relief. This problem is especially acute when one family member has a better understanding of the full reasons the family fled their home country (as may be the case, for example, of a parent separated from their partner and/or children). “Most [asylum-seeking] families have no other advocate beside themselves” in immigration court.²⁶ Nor are these concerns only applicable to minors separated from adult family members. Adults separated from family members may also be unable to pursue their asylum claims successfully, especially if they suffer from cognitive or other disabilities.²⁷

²⁴ WRC Amicus Brief, *supra* note 11, at 17; *see also, e.g.*, U.S. DEP’T HEALTH AND HUMAN SERVS., OFFICE OF INSPECTOR GENERAL, ISSUE BRIEF: SEPARATED CHILDREN PLACED IN OFFICE OF REFUGEE RESETTLEMENT CARE, OEI-BL-18-00511, 2 (Jan. 2019), <https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf> (emphasizing, in the context of children separated from family members, “the lack of an existing, integrated data system to track separated families across HHS and DHS”).

²⁵ *See, e.g.*, WRC Family Separation Complaint, *supra* note 20, at 4.

²⁶ *Id.* at 17; *see also, e.g.*, *Access to Attorneys Difficult for Those Required to Remain in Mexico*, TRAC, July 29, 2019, <https://trac.syr.edu/immigration/reports/568> (data showing that 1.2 percent of asylum seekers in the “Remain in Mexico”/“Migrant Protection Protocols” program had representation as of June 2019); Samantha Balaban, et al., *Without a Lawyer, Asylum-Seekers Struggle With Confusing Legal Processes*, NPR, Feb. 25, 2018, <https://www.npr.org/2018/02/25/588646667/without-a-lawyer-asylum-seekers-struggle-with-confusing-legal-processes>; INGRID EAGLY, ESQ. & STEVEN SHAFER, ESQ., AM. IMMIGRATION COUNCIL, ACCESS TO COUNSEL IN IMMIGRATION COURT (Sept. 2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf (generally discussing low level of representation in immigration court).

²⁷ *See, e.g.*, Order re Plaintiffs’ Motion for Partial Summary Judgment and Plaintiffs’ Motion for Preliminary Injunction on Behalf of Seven Class Members at 8, *Franco-Gonzalez et al. v. Holder et al.*, No. Cv-10-02211 DMG (DTBx) (C.D. Cal., Apr. 23, 2013), ECF No. 592, <https://www.aclu.org/legal-document/franco-gonzalez-v-holder-decision> (granting summary judgment and preliminary injunction to plaintiffs based, in part, on how plaintiffs “are unable to meaningfully access the benefit offered—in this case, full participation in their removal and detention proceedings—because of their [mental] disability.”); Gregory Pleasants, *National Qualified Representation Program*, VERA INST., <https://www.vera.org/projects/national-qualified-representative-program/learn-more> (last visited Apr. 13, 2020) (Without representation, “detained, unrepresented immigrants with mental and developmental disabilities face[] outcomes in their immigration proceedings that [are] often both unfair and inaccurate. These same immigrants [are] also

Third, family separations inhibit the fair and efficient functioning of U.S. immigration law. As Carolina’s case demonstrates, family members who are separated from one another often experience inconsistent decisions on their asylum claims—even when those claims stem from identical facts. “Presenting the facts and evidence of their case together, before the same judge, and in the same location” most often “create[s] the best conditions of adjudicators to understand [a] family’s claim and thus rule fairly.”²⁸

There is wide variation in both the timelines and outcomes of asylum cases before immigration judges across geographic regions of the United States.²⁹ And, as other advocates have observed, “[a]t a time when the immigration courts face an unprecedented, crushing caseload and respondents’ cases linger for years in the courts, multiple judges should not be required to hear the same claim and the same evidence in cases of immediate family members.”³⁰

For these reasons, CBP’s practice of separating family members in agency custody must end.

at heightened risk for prolonged immigration detention, with some detained for years with no progress in immigration proceedings.”).

In fact, the Board of Immigration Appeals itself lists the “identification and appearance of a family member or close friend who can assist the respondent and/or his legal representative” as a potential “safeguard” to protect individuals who are not sufficiently competent to navigate immigration proceedings. *Matter of M-A-M-*, 25 I. & N. Dec. 474, 483 (BIA 2011). Federal regulations contemplate similar forms of assistance. *See, e.g.*, 8 C.F.R. § 1240.4 (providing that an “attorney, legal representative, legal guardian, near relative, or friend” may “appear on behalf of” a respondent whose mental incompetency makes it “impracticable” for him or her to “be present” at a hearing); 8 C.F.R. § 1003.25(a) (permitting an immigration judge to waive the presence of a mentally incompetent respondent who is represented by an individual from one of the preceding categories); 8 C.F.R. § 1240.10(c) (prohibiting an immigration judge from accepting an admission of removability from an incompetent respondent unless accompanied by an “attorney, legal representative, a near relative, legal guardian, or friend,” and requiring a “hearing on the issues”).

²⁸ Divided by Detention, *supra* note 20, at 22.

²⁹ SOUTHERN POVERTY LAW CTR. & IMMIGRATION LAW LAB, THE ATTORNEY GENERAL’S JUDGES: HOW THE U.S. IMMIGRATION COURTS BECAME A DEPORTATION TOOL, at 10 (June 2019), https://www.splcenter.org/sites/default/files/com_policyreport_the_attorney_generals_judges_final.pdf (“Radical variations in case outcomes across the country demonstrate that courts are failing to apply immigration law in an impartial and uniform way.”); U.S. GOV’T ACCOUNTABILITY OFF., GAO-17-72, VARIATION EXISTS IN OUTCOMES OF APPLICATIONS ACROSS IMMIGRATION COURTS AND JUDGES, at 13 (Nov. 2016), <https://www.gao.gov/assets/690/680976.pdf> (“EOIR Data indicate that outcomes of completed asylum applications varied over time and across immigration courts and judges.”).

³⁰ Brief of Amicus Curiae Univ. of Houston Law Ctr. at al. in Support of Respondent at 11, *Matter of* [Redacted], No. [Redacted] (BIA 2017), www.law.uh.edu/faculty/ghoffman/2017%2004%2026%20amicus%20brf%20for%20BIA%20Univ%20Houston%20Law%20Ctr.pdf. *See also, e.g.*, Marissa Esthimer, *Crisis in the Courts: Is the Backlogged U.S. Immigration Court System at Its Breaking Point?* MIGRATION INFO. SOURCE, Oct. 3, 2019, <https://www.migrationpolicy.org/article/backlogged-us-immigration-courts-breaking-point>; John Yang, *How a ‘Dire’ Immigration Court Backlog Affects Lives*, PBS NEWSHOUR, Sept. 18, 2017, <https://www.pbs.org/newshour/show/dire-immigration-court-backlog-affects-lives>; Priscilla Alvarez, *Immigration Court Backlog Exceeds 1 Million Cases, Data Group Says*, CNN, Sept. 18, 2019, <https://www.cnn.com/2019/09/18/politics/immigration-court-backlog/index.html>; Denise Lu & Derek Watkins, *Court Backlog May Prove Bigger Barrier for Migrants Than Any Wall*, N.Y. TIMES, Jan. 24, 2019, <https://www.nytimes.com/interactive/2019/01/24/us/migrants-border-immigration-court.html>.

IV. CBP Refuses to Implement a Detainee Locator System, Exacerbating Harms

A detainee locator system allows family members, lawyers, and other advocates to pinpoint exactly where a particular person is being held.³¹ Typically, the use of such a system requires knowledge of the detainee’s country of origin and “alien number” (“A number”), or their exact full name, country of origin and date of birth. Unlike ICE, CBP has never implemented a detainee locator system, nor does it facilitate visitation or communications with family or lawyers. CBP’s refusal to do these things aggravates the harms that stem from the agency’s practice of separating family members through processing and detention. Although ICE’s system is far from perfect, advocates and families rely on it to locate their clients and loved ones.

In December 2017, CBP released a report to Congress in which the agency claimed to have analyzed “the possibility of [a detainee locator] system and determined that [it] is not operationally feasible.”³² Our review of CBP’s claims, however, indicate that the agency’s position is unjustified.³³

First, CBP argues that a detainee locator system is unnecessary, emphasizing the allegedly “short term” nature of CBP detention.³⁴ CBP policy states that detainees “should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities.”³⁵ Border Patrol policy is more restricted still, stating “[w]henver possible, a detainee should not be held for more than 12

³¹ As CBP has recognized, “[t]he intent of creating a [detainee locator system] is to provide the general public with an accessible system that would allow the public to conduct online Internet-based queries to locate persons detained by CBP for administrative and/or criminal violations.” U.S. CUSTOMS AND BORDER PROTECTION, ONLINE DETAINEE LOCATOR SYSTEM (FY2017 Report to Congress), ii (Dec. 4, 2017) [hereinafter “CBP Detainee Locator Report”], https://www.dhs.gov/sites/default/files/publications/CBP%20-%20Online%20Detainee%20Locator%20System_0.pdf.

³² *Id.*

³³ CBP’s position is particularly perplexing against the backdrop of numerous watchdog agencies’ recommendations following the harrowing chaos at the height of the Trump administration’s family separations in 2018. *See, e.g.*, DHS OIG, DHS LACKED TECHNOLOGY NEEDED TO SUCCESSFULLY ACCOUNT FOR SEPARATED FAMILIES, OIG-20-06, at 8 (Nov. 25, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-11/OIG-20-06-Nov19.pdf>; CONG. RESEARCH SERV., R45266, THE TRUMP ADMINISTRATION’S “ZERO TOLERANCE” IMMIGRATION ENFORCEMENT POLICY, at 24 (Feb. 26, 2019), <https://fas.org/sgp/crs/homsec/R43599.pdf>; KATHRYN A. LARIN, ET AL., U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-19-368T, UNACCOMPANIED CHILDREN: AGENCY EFFORTS TO IDENTIFY AND REUNIFY CHILDREN SEPARATED FROM PARENTS AT THE BORDER, at 9 (Feb. 7, 2019), <https://www.gao.gov/assets/700/696788.pdf>; DHS OIG, SPECIAL REVIEW – INITIAL OBSERVATIONS REGARDING FAMILY SEPARATION ISSUES UNDER THE ZERO TOLERANCE POLICY, OIG-18-84, at 9–11 (Sept. 27, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>; SARAH HERMAN PECK, CONG. RESEARCH SERV., 7-5700, FAMILY SEPARATION AT THE BORDER AND THE *Ms. L.* LITIGATION, at 4 (July 31, 2018), <https://fas.org/sgp/crs/misc/LSB10180.pdf>.

³⁴ CBP Detainee Locator Report, *supra* note 31, at 2.

³⁵ *See* TEDS, *supra* note 16, § 4.1.

hours.”³⁶ Yet—as evident from the accounts included in this four-part complaint series—CBP often detains people for periods that *far exceed* the maximum time periods permitted under agency policy and federal law.³⁷ For example, a July 2019 DHS OIG report found that, of 8,000 individuals detained by Border Patrol in the Rio Grande Valley, 3,400 (42.5 percent) were held in excess of 72 hours.³⁸ More troubling still: 1,500 individuals (18.75 percent) were detained for *more than ten days*.³⁹ Consistent with these reports, the ACLU’s investigation likewise indicated that CBP officials frequently exceed detention time limits. Most individuals we interviewed had spent at least four or five days in CBP custody. One individual we spoke with had been detained for *eighteen* days.⁴⁰

CBP must not be allowed to disappear people for days or weeks on end without providing some publicly accessible information regarding detainees’ whereabouts.

CBP also claims that information contained in a detainee locator system “would become outdated quickly”; because “some individuals may be transferred rapidly from one station to another, it may be difficult to reflect such a transfer accurately.”⁴¹ But, as the largest federal law enforcement agency in the United States, CBP already has systems to log individuals it detains and

³⁶ See Border Patrol Short-Term Custody Policy, *supra* note 10, § 6.2.1.

³⁷ See *supra* note 3 (citing to first two complaints in this series); see also, e.g., GUILLERMO CANTOR, PH.D., AM. IMMIGRATION COUNCIL, DETAINED BEYOND THE LIMIT: PROLONGED CONFINEMENT BY U.S. CUSTOMS AND BORDER PROTECTION ALONG THE SOUTHWEST BORDER, at 5–6 (Aug. 2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/detained_beyond_the_limit.pdf (finding, for period between September 1, 2014 and August 31, 2015, that 67 percent of total number of individuals detained in CBP facilities across the southwest border were held for 24 hours or longer, 29 percent for 48 hours or longer, and 14 percent for 72 hours or longer).

³⁸ DEP’T OF HOMELAND SEC., OFFICE OF INSPECTOR GENERAL, OIG-19-51, MANAGEMENT ALERT – DHS NEEDS TO ADDRESS DANGEROUS OVERCROWDING AND PROLONGED DETENTION OF CHILDREN AND ADULTS IN THE RIO GRANDE VALLEY, at 2–3 (July 2, 2019), https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19_.pdf.

³⁹ *Id.* at 2–3. See also, e.g., OVERCROWDING AND PROLONGED DETENTION AT CBP FACILITIES: HEARING BEFORE THE H. COMM. ON THE JUDICIARY, 116th Congress (2019), <https://judiciary.house.gov/legislation/hearings/overcrowding-and-prolonged-detention-cbp-facilities>.

⁴⁰ This individual’s account was featured in the ACLU’s first complaint, addressing CBP’s abuse and mistreatment of pregnant people. See AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, ET AL., ADMINISTRATIVE COMPLAINT RE: U.S. CUSTOMS AND BORDER PROTECTION AND BORDER PATROL’S ABUSE AND MISTREATMENT OF DETAINED PREGNANT PEOPLE (Jan. 2020), *supra* note 3, at 3.

As we have explained in our earlier complaints, CBP facilities lack bedding, showers, and staff trained to interact with or assist traumatized or otherwise vulnerable populations. People held in these facilities endure freezing temperatures, inedible food (spoiled or frozen), insufficient potable water, overcrowding, and deprivation of medicine and basic hygienic supplies. See *id.* at 3–4 & n.12 (collecting sources documenting CBP detention conditions). In light of these structural deficiencies and inhumane conditions, it is the ACLU’s position that **these facilities are categorically unsuitable and inappropriate for any period of detention beyond the time required for initial processing, which should in no case exceed 12 hours.**

⁴¹ CBP Detainee Locator Report, *supra* note 31, at 2.

releases, and undoubtedly has the resources required to accurately track detainees' whereabouts. Indeed, if CBP cannot, at bare minimum, keep track of detainees, then the agency should not be in the business of detaining *anyone*.

Second, CBP claims that the "location of detained persons and of CBP activities constitutes law enforcement-sensitive information that should not be public."⁴² This is illogical, since the locations of Border Patrol stations are available on CBP's own website.⁴³ Likewise, the location of ports of entry is a matter of public record. There is no legitimate law enforcement function associated with the effective disappearance of people for days (or weeks) on end. Family members, advocates, and lawyers have a right to know where their loved ones and clients are held. This basic information is not "law enforcement sensitive."⁴⁴

Third, CBP asserts that "members of the public generally will not have a legitimate reason to locate" detainees, because "CBP does not allow for relatives or other people to come and visit [detainees] while they are being processed or held at a station."⁴⁵ Yet the fact that CBP does not permit people to *visit* detainees does not justify a refusal to facilitate a person's efforts to *locate* a specific detainee.⁴⁶ Without the ability to timely locate and contact separated family members, individuals' due process rights will be undermined, as they may be unable to prepare and present their claims for relief. Additionally, separated family members have an interest in knowing whether their loved ones are in CBP custody (versus transferred, deported, or missing).

⁴² *Id.*

⁴³ See, e.g., *San Diego Sector, California*, <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/san-diego-sector-california> (last visited Apr. 13, 2020); *Imperial Beach Station*, <https://www.cbp.gov/border-security/along-us-borders/border-patrol-sectors/san-diego-sector-california/imperial-beach-station> (last visited Apr. 13, 2020).

⁴⁴ CBP claims that a detainee locator system "could help smugglers to determine the exact location of targeted apprehensions, thereby allowing them to adjust their targeted routes to avoid these areas." CBP Detainee Locator Report, *supra* note 31, at 2. This is a total non-sequitur: the detainee locator system would specify where an individual is *detained*, not where that person was *apprehended*.

⁴⁵ *Id.* at 3.

⁴⁶ The Administrative Procedure Act and other legal provisions provide a broad statutory right to counsel in administrative proceedings, which at least one district court has relied on to hold that there is a right of access to counsel for those in CBP custody. See *Doe v. Wolf et al.*, No. 19-cv-2119-DMS (AGS), 2020 WL 209100, at *1 (S.D. Cal., Jan. 14, 2020) (order granting motion for classwide preliminary injunction, holding that "Petitioners have met their burden and that the Administrative Procedures Act [], specifically 5 U.S.C. § 555(b), provides a right to retained counsel in these circumstances."); AM. IMMIGRATION COUNCIL, CBP RESTRICTIONS ON ACCESS TO COUNSEL, https://www.americanimmigrationcouncil.org/sites/default/files/foia_documents/access_to_counsel_cbp_foia_factsheet.pdf (last visited Apr. 13, 2020) (citing 5 U.S.C. § 555(b) and 8 C.F.R. § 292.5(b) and several agency policy documents to show right to access to counsel in CBP custody).

In summary: CBP routinely detains individuals in excess of the upper time limits set in agency policy, “disappearing” vulnerable people into a veritable black hole. The agency’s parallel practice of separating family members, also in apparent contravention of agency policy, causes significant personal and systemic harms. Change on both fronts is essential and overdue.

V. Recommendations

The ACLU asks DHS OIG to (a) conduct an immediate review of CBP’s separation of family members through processing and detention and the agency’s refusal to implement a detainee locator system, and (b) issue recommendations to improve CBP and Border Patrol detention policies. At a minimum, we call upon DHS OIG to:

- (1) Recommend that CBP immediately **implement a telephonic and online detainee locator system** (searchable by either (a) full name and A number OR (b) full name, country of origin, and date of birth) for all individuals in CBP custody.
- (2) Recommend that CBP **refrain from detaining family units and instead prioritize their prompt release.**⁴⁷ Alternatively, and at a minimum, assess CBP’s **definition of “family” and recommend changes** (including consideration of a **more inclusive approach to “family”**) to **minimize family separation during CBP processing and detention.**⁴⁸
- (3) **Evaluate information sharing practices**—both (a) between DHS and other key governmental departments (notably HHS) and (b) within DHS—to ensure that government agencies **generate and maintain timely and accurate information** regarding detained family members.
- (4) Recommend that DHS and its components work with HHS and the Department of Justice to ensure an **inter-agency process to help reunite separated family members.**⁴⁹ At a minimum, this inter-agency process should include mechanisms, such as an inter-agency

⁴⁷ DHS OIG should ensure that family separation via CBP processing and/or detention is not avoided by instead subjecting family members to prolonged ICE detention.

⁴⁸ This is a minimum or “floor” recommendation. For years, advocates have called for family unity determinations to be made by trained professionals (including but not limited to licensed child welfare specialists), rather than DHS enforcement officials. *See* *Betraying Family Values*, *supra* note 8, at 7; *see also supra* note 9 and associated text. The ACLU echoes these calls.

⁴⁹ Certain government mechanisms for family reunification in specific circumstances already exist (for example, the sponsorship process, ICE’s Detention Reporting and Information hotline, and ORR’s hotline and address for email inquiries). These mechanisms, however, are inadequate to timely or completely rectify all instances of family separation resulting from CBP processing and detention.

hotline, to help detained family members locate and connect regularly and meaningfully with loved ones from whom they have been separated.

- (5) Recommend that DHS work with the Executive Office for Immigration Review to ensure that family members have meaningful and equitable opportunities to **request consolidation of their immigration cases and receive fair, efficient immigration adjudications.**⁵⁰
- (6) Recommend that CBP policies and practices be revised to **prohibit any period of detention beyond the time required for initial processing, which should in no case exceed 12 hours.**⁵¹
- (7) Assess **whether CBP oversight and disciplinary mechanisms are sufficient** to ensure that CBP officials are held accountable for all instances of detainee abuse, neglect, or other mistreatment, and to ensure that dangerous, abusive, or otherwise unfit CBP employees are removed promptly from duty.

Thank you for your time and careful attention to this submission. We look forward to your timely response.

Sincerely,

ACLU Foundation of San Diego & Imperial Counties
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Jacqueline Ramos, Legal Investigator
Sarah Thompson, Border Litigation Fellow/Staff Attorney
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⁵⁰ Although an individual can move for consolidation, this technical process favors people who have access to immigration lawyers. Our recommendation, by contrast, is that DHS and EOIR streamline the process by which an individual can request consolidation of their case with their family members'—without requiring, e.g., motion practice.

⁵¹ This would ensure that CBP's TEDS and other agency policies are consistent with the presumptive maximum detention period set out in Border Patrol's Short-Term Custody Policy, *see supra* note 10, at § 6.2.1.

Appendix 12

July 7, 2020

Joseph V. Cuffari
U.S. Department of Homeland Security
Office of Inspector General / MAIL STOP 0305
245 Murray Lane SW
Washington, DC 20528-0305
via email to JointIntake@dhs.gov (CC jointintake@cbp.dhs.gov)

Re: U.S. Border Patrol's Verbal Abuse of Detained Individuals

I. Introduction

The American Civil Liberties Union Foundation of San Diego & Imperial Counties and the ACLU Border Rights Center (together, “ACLU”) hereby submit this administrative complaint to the Department of Homeland Security’s Office of Inspector General (“DHS OIG”), regarding the U.S. Border Patrol’s verbal abuse towards people in its custody.¹ As with the previous complaints in this series,² this complaint is derived from interviews the ACLU completed between March and July 2019 with people in San Diego and Tijuana who recently had been released from Border Patrol

¹ CBP is the largest law enforcement agency in the United States, with over 60,000 officers. Border Patrol is a subcomponent of CBP. Throughout this complaint, reference to CBP includes Border Patrol.

² *CBP's Long History of Mistreatment of Detained People*, AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, <https://www.aclusandiego.org/legal/blp/cbp-mistreatment-of-detained-people/> (last visited July 6, 2020). *See also* AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, ET AL., ADMINISTRATIVE COMPLAINT RE: U.S. CUSTOMS AND BORDER PROTECTION AND BORDER PATROL’S ABUSE AND MISTREATMENT OF DETAINED PREGNANT PEOPLE (Jan. 2020) [hereinafter “Complaint #1: Pregnant People”], <https://www.aclusandiego.org/wp-content/uploads/2020/01/2020-01-22-OIG-Complaint-1-FINAL-1.pdf>; AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, ET AL., ADDENDUM TO COMPLAINT OF JANUARY 22, 2020 RE: U.S. CUSTOMS AND BORDER PROTECTION AND BORDER PATROL’S ABUSE AND MISTREATMENT OF DETAINED PREGNANT PEOPLE (Mar. 2020), <https://www.aclusandiego.org/wp-content/uploads/2020/03/2020-03-04-OIG-compl-preg-persons-addendum-appendix-FINAL.pdf>; AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, ET AL., ADMINISTRATIVE COMPLAINT RE: U.S. CUSTOMS AND BORDER PROTECTION AND BORDER PATROL’S ABUSE AND MISTREATMENT OF DETAINED SICK CHILDREN (Feb. 2020) [hereinafter “Complaint #2: Sick Children”], <https://www.aclusandiego.org/wp-content/uploads/2020/02/2020-02-18-OIG-Complaint-2-FINAL.pdf>; AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, ET AL., ADMINISTRATIVE COMPLAINT RE: SEPARATION OF FAMILIES VIA CBP DETENTION AND PROCESSING, AND THE AGENCY’S REFUSAL TO IMPLEMENT A DETAINEE LOCATOR SYSTEM (Apr. 2020) [hereinafter “Complaint #3: Separated Families”], <https://www.aclusandiego.org/wp-content/uploads/2020/04/2020-04-15-OIG-Complaint-3-FINAL.pdf>.

Although the ACLU’s three prior complaints addressed abuse and misconduct by both CBP and Border Patrol, this complaint more narrowly focuses on Border Patrol abuses.

custody.³ The ACLU requests that DHS OIG undertake a review based on the information contained in this complaint.

II. A Culture of Cruelty and Persistent Verbal Abuse

A culture of cruelty and impunity pervades the U.S. Border Patrol. Key factors that have contributed to this culture include (1) CBP's long adherence to a failed "prevention through deterrence" framework that incentivizes mistreatment of individuals in agency custody;⁴ (2) the rapid reorganization and militarization of U.S. immigration enforcement agencies in the aftermath of September 11, 2001; (3) irresponsible and unprecedented appropriations from Congress, without even minimal accountability requirements;⁵ and (4) reckless hiring surges, onboarding unqualified individuals into the largest federal law enforcement agency in the United States.⁶

This culture has been documented for years by journalists, former agency officials, advocates, and detained migrants.⁷ One Border Patrol agent reported "assaults and other abuses against migrants, a lack of effective oversight, and a disturbing culture of dehumanization in the agency."⁸ James Tomsheck, CBP's former internal affairs chief, repeatedly decried an agency

³ During this time period, the ACLU interviewed 103 individuals. To prepare this account, the ACLU reviewed a subset of the interviews completed (i.e., interviews involving accounts of verbal abuse by agency officials), and selected a small sample of those interviews for inclusion in this complaint. Although the narratives included here reflect some of the most egregious instances of CBP's abuse of power, they also echo recurring themes of mistreatment consistently reported to the ACLU by people held in CBP custody.

⁴ See, e.g., Jason de León, Eduardo "Lalo" García, & the Undocumented Migration Project, *A View from the Train Tracks*, SAPIENS, Feb. 16, 2016, <https://www.sapiens.org/culture/prevention-through-deterrence/> ("In the 1990s, the U.S. Border Patrol implemented a strategy called Prevention Through Deterrence. Since its inception, this approach has redirected migrant routes into the most inhospitable sections of the border, deploying the perilous desert as a tool to prevent entry into the United States.").

⁵ See, e.g., *Factsheet: The Cost of Immigration Enforcement and Border Security*, AMERICAN IMMIGRATION COUNCIL (Oct. 14, 2019), <https://bit.ly/2VBDKjM> (noting tenfold increase in U.S. Border Patrol's annual budget from 1993 to 2019, from \$363 million to \$4.7 billion, and tripling of CBP budget from \$5.9 billion in FY2003 to \$17.1 billion in FY2019).

⁶ See, e.g., Garrett M. Graff, *The Green Monster: How the Border Patrol Became America's Most Out-of-Control Law Enforcement Agency*, POLITICO, Nov./Dec. 2014, <https://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220>.

⁷ See, e.g., Greg Grandin, *The Border Patrol Has Been a Cult of Brutality Since 1924*, INTERCEPT, Jan. 12, 2019, <https://theintercept.com/2019/01/12/border-patrol-history/>.

⁸ John Washington, "Kick Ass, Ask Questions Later": *A Border Patrol Whistleblower Speaks Out About Culture of Abuse Against Migrants*, INTERCEPT, Sept. 20, 2018, <https://theintercept.com/2018/09/20/border-patrol-agent-immigrant-abuse/>. As the number of assaults by agents on migrants has steadily increased, the Border Patrol has faked statistics to claim that assaults against agents are on the rise. See, e.g., Debbie Nathan, *How the Border Patrol Faked Statistics Showing a 73 Percent Rise in Assaults Against Agents*, INTERCEPT, Apr. 23, 2018, <https://theintercept.com/2018/04/23/border-patrol-agents-assaulted-cbp-fbi/>.

“culture that goes out of its way to evade legal restraints,” “clearly engineered to interfere with [oversight] efforts to hold the Border Patrol accountable.”⁹

Reports of abuse are widespread and persistent: these are not isolated or “one off” problems, but rather recurring instances of misconduct throughout agency sectors nationwide. CBP officials, including Border Patrol agents, systemically dehumanize immigrants and communities of color.¹⁰ For example, last year, court documents in a case against a Border Patrol agent who hit a migrant with his truck revealed a series of racist text messages in which the agent described immigrants as “disgusting subhuman shit unworthy of being kindling in a fire.”¹¹ The agent’s own lawyer defended these remarks by claiming they were “commonplace throughout the [Border Patrol sector]” and “part of the agency’s culture.”¹²

Perhaps the most common manifestation of this systemic dehumanization is CBP officials’ egregious verbal abuse of detained individuals. In 2014, advocates (including the ACLU) submitted an administrative complaint to DHS OIG on behalf of 116 children who had spent time in CBP custody, more than half of whom reported verbal abuse.¹³ Another survey found that 23 percent of migrant respondents reported “being yelled at, threatened, or verbally abused while in U.S. custody.”¹⁴ A full 75 percent “of those verbal abuses were attributed to the Border Patrol.”¹⁵

⁹ Carrie Johnson, *Former Border Protection Insider Alleges Corruption, Distortion in Agency*, NAT’L PUB. RADIO, Aug. 28, 2014, <https://www.npr.org/2014/08/28/343748572/former-border-protection-insider-alleges-corruption-distortion-in-agency>.

¹⁰ See, e.g., A.C. Thompson, *Inside the Secret Border Patrol Facebook Group Where Agents Joke About Migrant Deaths and Post Sexist Memes*, PROPUBLICA, July 1, 2019, <https://www.propublica.org/article/secret-border-patrol-facebook-group-agents-joke-about-migrant-deaths-post-sexist-memes> (quoting University of Arizona sociologist Daniel Martinez, who asserts there “seems to be a pervasive culture of cruelty aimed at immigrants within CBP. This isn’t just a few rogue agents or ‘bad apples.’”); Ryan Devereaux, *Border Patrol Agents Tried to Delete Racist and Obscene Facebook Posts. We Archived Them*, INTERCEPT, July 5, 2019, <https://theintercept.com/2019/07/05/border-patrol-facebook-group/>; Washington, *supra* note 8.

¹¹ Cynthia Pompa, “Disgusting Subhuman Shit:” *Border Patrol Agent’s Actions and Attitudes Reflect Agency’s Violent Culture*, ACLU TEX. (Dec. 11, 2019), <https://www.aclutx.org/en/news/disgusting-subhuman-shit-border-patrol-agents-actions-and-attitudes-reflect-agencys-violent>.

¹² *Id.*

¹³ Letter from Nat’l Immigrant Just. Ctr. et al., to DHS CRCL & DHS OIG, Administrative Complaint Re: Systemic Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection (June 11, 2014), <https://cbpabusestest2.files.wordpress.com/2015/03/2014-06-11-dhs-complaint-re-cbp-abuse-of-uics.pdf>.

¹⁴ Josiah Heyman, Jeremy Slack & Daniel E. Martínez, WHY BORDER PATROL AGENTS AND CBP OFFICERS SHOULD NOT SERVE AS ASYLUM OFFICERS, CTR. FOR MIGRATION STUDIES (June 21, 2019), <https://cmsny.org/publications/heyman-slack-martinez-062119/>.

¹⁵ *Id.*

Researchers documenting Border Patrol's verbal abuse of detained individuals have identified various recurring patterns. Agents berate migrants for traveling to the United States and attempting to exercise their legal right to seek asylum.¹⁶ "Xenophobic nationalism is widespread," and derogatory comments are often accompanied by threatened or actual physical violence.¹⁷ Agents bully LGBTQ people, equate migrants to animals, and ridicule and humiliate parents trying to protect their children.¹⁸ These findings are consistent with accounts provided to the ACLU in recent investigations, and journalists' reports of endemic racism, misogyny, and homophobia within the Border Patrol.¹⁹

Border Patrol's verbal abuse is especially concerning given that many migrants are asylum seekers who have already endured significant trauma in fleeing their countries of origin to escape persecution or en route to the United States. For such individuals, immigration detention exacerbates pre-existing trauma.²⁰

A 2017 study by the Cato Institute examined available data between 2006 and 2016 and concluded that the Border Patrol's "agent termination rate for discipline or performance is much higher than for law enforcement officers at other large federal law enforcement agencies."²¹ Yet there is little or no meaningful oversight of Border Patrol misconduct. DHS's "oversight"

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See, e.g., *id.*; Grace Panetta, *Border Patrol officials reportedly forced a Honduran migrant to walk around a detention center holding a sign reading 'I like men' in Spanish*, BUS. INSIDER, July 5, 2019, <https://www.businessinsider.com/detained-migrant-forced-hold-sign-reading-i-like-men-report-2019-7?op=1>; Nick Valencia, et al., *Border Patrol agents allegedly tried to shame a migrant by making him hold a sign reading 'I like men,' emails show*, CNN, July 4, 2019, <https://www.cnn.com/2019/07/04/us/honduran-migrant-shamed-border-patrol/index.html>; Andrew Gumbel, *'They Were Laughing at Us': Immigrants Tell of Cruelty, Illness and Filth in US Detention*, GUARDIAN, Sept. 12, 2018, <https://www.theguardian.com/us-news/2018/sep/12/us-immigration-detention-facilities>; Cristina Novoa, *5 Revelations From Children in Border Patrol Facilities*, CENTER AM. PROGRESS, July 3, 2019, <https://www.americanprogress.org/issues/early-childhood/news/2019/07/03/471808/5-revelations-children-border-patrol-facilities/> ("Beyond demonstrating a shocking lack of compassion toward frightened children, testimonies also show that some guards appear to deliberately scare children in their custody").

¹⁹ See, e.g., Chantal da Silva, *Former Border Patrol Agent Says She Was Raped at Training Academy by Colleague Who Went on to Have Lifelong Career*, NEWSWEEK, Nov. 21, 2019, <https://www.newsweek.com/border-patrol-agent-raped-training-academy-1447407>; Thompson, *supra* note 10.

²⁰ See generally, e.g., U.S. COMM'N ON CIVIL RIGHTS, TRAUMA AT THE BORDER: THE HUMAN COST OF INHUMANE IMMIGRATION POLICIES at 65–66, 120–21 (Oct. 24, 2019), <https://www.usccr.gov/pubs/2019/10-24-Trauma-at-the-Border.pdf>; CTR. FOR VICTIMS OF TORTURE ET AL., TORTURED & DETAINED: SURVIVOR STORIES OF U.S. IMMIGRATION DETENTION at 13–14 (Nov. 2013), https://www.cvt.org/sites/default/files/Report_TorturedAndDetained_Nov2013.pdf.

²¹ Alex Nowrasteh, *Border Patrol Termination Rates: Discipline and Performance Problems Signal Need for Reform*, CATO INST. (Nov. 2, 2017), <https://www.cato.org/publications/policy-analysis/border-patrol-termination-rates-discipline-performance-problems-signal>.

mechanisms are structurally deficient and fail to address abuse of authority and impunity within CBP. Nearly six years ago—in September 2014—then-CBP Commissioner Gil Kerlikowske enlisted a consulting agency to complete a “comprehensive” examination “of CBP’s misconduct review process from intake, referral, investigation and discipline to improve [the agency’s] handling of these situations and improve transparency.”²² Shortly thereafter, then-Secretary of Homeland Security Jeh Johnson asked the Homeland Security Advisory Council to create a CBP Integrity Advisory Panel specifically to evaluate “efforts to deter and prevent corruption and the use of excessive force.”²³ Suggested reforms, however, were never implemented.²⁴ And, in 2017, data obtained by the American Immigration Council found that CBP took “no action” in 95.9 percent of complaints (including complaints of verbal abuse) against Border Patrol agents between January 2012 and October 2015.²⁵ To this day, government reports underscore persistent deficiencies in oversight and disciplinary mechanisms at the agency.²⁶

The Border Patrol’s verbal abuse of individuals in agency custody violates CBP policies; officials who engage in such abuse fail to “speak and act with the utmost integrity and professionalism,” “treat all individuals with dignity and respect,” or “perform their duties in a non-discriminatory manner.”²⁷ Ineffective oversight and disciplinary mechanisms permit these policy violations to continue unabated.

²² PIVOTAL PRACTICES CONSULTING LLC, CBP, COMPLAINTS AND DISCIPLINE SYSTEMS REVIEW: PUBLIC REPORT OF FINDINGS AND RECOMMENDATIONS 3 (Nov. 23, 2015), <https://www.cbp.gov/sites/default/files/assets/documents/2016-Mar/cbp-complaint-discipline-system-review.pdf>.

²³ U.S. GOV’T ACCOUNTABILITY OFF., GAO-18-405, DEPARTMENT OF HOMELAND SECURITY: COMPONENTS COULD IMPROVE MONITORING OF THE EMPLOYEE MISCONDUCT PROCESS, at 13 (2018), <https://www.gao.gov/assets/700/693587.pdf>.

²⁴ See A.C. Thompson, *Years Ago, the Border Patrol’s Discipline System was Denounced as ‘Broken.’ It’s Still Not Fixed*, PROPUBLICA, June 20, 2019, <https://www.propublica.org/article/border-patrol-discipline-system-was-denounced-as-broken-still-not-fixed>.

²⁵ Guillermo Cantor, Ph.D. & Walter Ewing, Ph.D., STILL NO ACTION TAKEN: COMPLAINTS AGAINST BORDER PATROL AGENTS CONTINUE TO GO UNANSWERED, AM. IMMIGRATION COUNCIL (Aug. 2, 2017), <https://www.americanimmigrationcouncil.org/research/still-no-action-taken-complaints-against-border-patrol-agents-continue-go-unanswered>.

²⁶ See, e.g., Thompson, *supra* note 24; DHS OIG, OIG-19-48, DHS NEEDS TO IMPROVE ITS OVERSIGHT OF MISCONDUCT AND DISCIPLINE (2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-48-Jun19.pdf>.

²⁷ U.S. CUSTOMS AND BORDER PROTECTION, NAT’L STANDARDS ON TRANSPORT, ESCORT, DETENTION, AND SEARCH, at §§ 1.2 (Integrity and Professionalism) & 1.4 (Non-Discrimination Policy) (Oct. 2015) [hereinafter “TEDS”], <https://www.cbp.gov/document/directives/cbp-national-standards-transport-escort-detention-and-search>.

III. Individual Accounts of Border Patrol Agents' Verbal Abuse

Our investigation identified many instances in which Border Patrol agents verbally abused individuals, including children, in their custody. This abuse may involve bullying, harassment, threats of violence or other harm, denigration, ridicule, racism, and misstatements about U.S. immigration law, including an individual's right to seek asylum. Recently detained individuals related the following statements to our investigator:²⁸

- “Olvídate del asilo, a la mejor te quitamos a tu hija.”
“Forget about asylum, we might just take away your daughter.”
—Border Patrol agent to woman while interrogating her about why she came to the United States.
- “No mantenemos hijos de nadie.”
“We don’t take care of anyone’s children.”
—Border Patrol agent to a mother when she asked for food for her 1-year old child who had not had any food to eat for an entire day.
- “Pendejadas las tuyas, esa mentira ya me la creo yo.”
“Your words are bullshit, I stopped believing that lie.”
—Border Patrol agent to woman trying to explain she had fled her country of origin to escape from her abusive partner.
- “Cabrona, échate para atrás.”
“You bastard, get back over there.”
—Border Patrol agent to woman as she was entering the country and injured from crossing the border wall.
- “¿Desgraciada, ¿porque tienes tantos niños si no los puedes cuidar? Puta, prostituta.”
“Disgraced woman, why do you have so many kids if you can’t take care of them? Slut, prostitute.”
—Border Patrol agent to a detained mother.
- “¿Trajiste a tu hija a los EEUU para prostituirla?”
“Did you bring your daughter to the U.S. to prostitute her?”
—Border Patrol agent to a mother with a 15-year-old daughter.
- “¿Cuáles de ustedes maricas sufren de asma?”
“Which of you faggots suffer from asthma?”
—Border Patrol agent to a holding cell of young boys aged 13 to 17.

²⁸ Most of ACLU’s interviews were conducted in Spanish, with contemporaneous notes taken in Spanish by our investigator. Where our notes contain the original Spanish quotes, we have provided that original (as relayed by the interviewee to our investigator) as well as our English translation. At times, our investigator memorialized a statement in English only during her interview (via simultaneous translation). In such cases, we have reproduced her English translation here.

Many of these quotes use degrading and offensive language that we hesitated to reprint. In the end, we decided to reproduce the language reported to remain as faithful as possible to the accounts of those we interviewed.

- **“If you keep complaining I will put you with the dogs.”**
—Border Patrol agent to woman when she refused to undress for a search during apprehension.
- **“Yo mismo te voy a deportar, te voy a echar a México y vas a correr.”**
“I am going to deport you myself, I will send you back to Mexico and you’ll have to run.”
—Border Patrol agent to man upon apprehension in the United States.
- **“Ya saben a que vienen, ¿porque te quejas? ¿Qué, quieren una coca fría? ¡Aquí no es un hotel!”**
“You know where you were coming, why are you complaining? What, did you want a cold soda? This is not a hotel!”
—Border Patrol agent to a cell of detained mothers as their children were crying and pleading for food.
- **“Son indios de pata rajada, solo usan sus hijos para entrar.”**
“You are all [derogatory expression referring to indigenous peoples], you only use your children to enter [the United States].”
—Border Patrol agent to detained father.
- **“¡Aquí no se hace lo que voz dice, se hace lo que yo digo!”**
“Here we don’t do what you say, you do what I say!”
—Border Patrol agent to pregnant woman asking for water.
- **“Are you fucking retarded? Stop playing with that shit.”**
—Border Patrol agent to children playing in holding cell.
- **“Váyanse de aquí, ¿qué hacen aquí sí ni hablan inglés?, no valen nada.”**
“Get out of here, what are you doing here if you don’t even speak English, you are worthless.”
—Border Patrol agent to woman and her family upon apprehension.
- **“He’s not even your son, you’re too old, he’s your grandson.”**
—Border Patrol agent to an older woman and her child upon apprehension.
- **“No estás en tu casa, ¿tienes mierda en la cabeza?”**
“You’re not at home, do you have shit for brains?”
—Border Patrol agent to woman who asked for a plastic cup to drink water.
- **“Joder con ustedes, por eso no mejoran en su país.”**
“I’ve fucking had it with you, this is why you guys don’t advance in your country.”
—Border Patrol agent to detained woman who did not understand his Spanish.
- **“Usan sus hijos como si fueran pasaporte.”**
“You all use your kids as if they were a passport.”
—Border Patrol agent to detained woman.

- **“If you can eat and pee you’re okay.”**
—Border Patrol agent to detained man with severe flu symptoms.
- **“If you would have never left your country you would not have to go through this.”**
—Border Patrol agent to detained woman as she begged to not be returned to Tijuana under the so-called Migrant Protection Protocols (“MPP”) (also known as the “Remain in Mexico” policy).
- **“What is going on in your guys’ country that you think the government here will take care of you?”**
—Border Patrol agent to 8-months-pregnant woman during processing.
- **“No me interesa porque te haz venido, por las buenas o las malas te regresas.”**
“I don’t care why you’ve come here, for better or worse you’re going back.”
—Border Patrol agent to detained father before putting his family into MPP.
- **“I know guys like you, always on the streets.”**
—Border Patrol agent to a 16-year-old boy during interrogation without his mom present while she was in separate holding cell.
- **“I don’t care, it’s not my life, not my problem.”**
—Border Patrol agent to detained woman as she tried to explain why she had left her country of origin.
- **“I don’t have to tell you, you broke the law, you have no rights.”**
—Border Patrol agent to woman when she asked what was on the form she was being instructed to sign.
- **“¡Levántense, puercas!”**
“Get up, pigs!”
—Border Patrol agent to a cell of detained women.
- **“This is jail, not a hotel.”**
—Border Patrol agent to woman who asked for an instant soup instead of a cold burrito.
- **“Why do they only send us their trash? You are all trash!”**
—Border Patrol agent to cell full of detained women and children.
- **“You are acting like a dumbass! I am tired of you!”**
—Border Patrol agent to teenage girl after she declined agent’s request to remove her sweatshirt because of freezing temperatures in holding cell.
- **“I am treating you the way illegals should be treated!”**
—Border Patrol agent to mother of teenage girl who stood up for her daughter after agent ridiculed her and told agent to “stop yelling at us.”
- **“You are an idiot but you sure are good at popping out kids.”**
—Border Patrol agent to detained mother.

IV. Recommendations

CBP's culture of cruelty must be checked, and Border Patrol agents held accountable when they verbally abuse individuals in their custody. And, as explained elsewhere in this complaint series, the extended periods of detention to which people are subjected exacerbate the physical, mental, and emotional harms they endure while in Border Patrol custody.²⁹

The ACLU asks that DHS OIG conduct an immediate review of CBP's oversight and accountability mechanisms and issue recommendations to address the Border Patrol's pervasive culture of cruelty, racism, and abuse toward migrants in the agency's custody.

At a minimum, we call upon DHS OIG to:

- (1) Recommend that CBP **strictly prohibit personnel³⁰ from verbally abusing** individuals in agency custody. Recommend that CBP issue a **clear written outline for the disciplinary processes** to which personnel who do verbally abuse those in their custody will be subject. Recommend that CBP implement specific **zero-tolerance** policies for **anti-immigrant discrimination and racist employee conduct**.
- (2) Recommend that DHS create, publish and implement a **new complaint process** that applies to all component agencies, is based on best practices for law enforcement investigations and oversight, and includes:
 - (a) Various effective mechanisms for complaint submission (e.g., an online complaint form, a mobile device application, and a toll-free number), any one of which may be used to submit any immigration or border-related complaint, and each of which is made available to the public in multiple languages; *and*
 - (b) A uniform process for review and investigation of any complaint, including written confirmation of receipt with reference number within 24 hours of submission; *and*

²⁹ CBP facilities are only intended to be used for short-term custody. Many of these facilities—including almost all Border Patrol stations—lack beds, showers, or full-time medical care staff. Cognizant of these structural deficiencies, CBP policy states that detained individuals “should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities.” TEDS, *supra* note 27, at § 4.1. Border Patrol's policy is more restricted still, stating “[w]henver possible, a detainee should not be held for more than 12 hours.” U.S. BORDER PATROL, DETENTION STANDARDS: HOLD ROOMS AND SHORT TERM CUSTODY, REFERENCE NO. 08-11267, at § 6.2.1 (Jan. 31, 2008) [hereinafter “Border Patrol Short-Term Custody Policy”], <https://www.documentcloud.org/documents/818095-bp-policy-on-hold-rooms-and-short-term-custody.html>. See also, e.g., Complaint #1: Pregnant People, *supra* note 2, at 2, 3–4; Complaint #2: Sick Children, *supra* note 2, at 2, 4.

³⁰ As used throughout these recommendations, “CBP personnel” includes all agency employees, including U.S. Border Patrol agents.

- (c) A requirement that CBP personnel preserve and collect all potentially relevant records (including video and audio files), and turn over all such records to investigators within 60 days of request; *and*
 - (d) A requirement that CBP provide every complainant with written resolution of any complaint within one year of receipt.
- (3) Recommend **measures to increase CBP transparency regarding complaints** of official abuse and other misconduct, including:
- (a) The adoption of a national, standardized database of complaints and other misconduct investigations and written resolutions (to include findings of civil liability and/or referrals for criminal prosecution). The database should be publicly accessible while protecting complainants' privacy; *and*
 - (b) A requirement that CBP provide, to both the OIG and relevant congressional oversight committees, an annual report on the results of all disciplinary investigations involving CBP personnel (including any explanation for why a particular officer or agent was or was not disciplined) and plans to address identified trends.
- (4) Evaluate the **deficiencies in CBP's Office of Professional Responsibility (OPR)** that have allowed for recurring abusive and unprofessional behavior among CBP personnel and identify additional disciplinary mechanisms necessary for OPR to timely and meaningfully address personnel misconduct. Recommend that OPR develop and publish **disciplinary guidelines for all CBP personnel**. These guidelines should include provisions for suspension and/or termination for either certain egregious misconduct and/or repeated, lesser misconduct. These guidelines should also clarify the disciplinary progression for all forms of misconduct, including verbal abuse, abuse of authority, lying, excessive use of force, etc.
- (5) Recommend that CBP policies and practices be revised to **prohibit any period of detention beyond the time required for initial processing, which should in no case exceed 12 hours**.³¹

(continued...)

³¹ This would ensure that CBP's TEDS and other agency policies are consistent with the presumptive maximum detention period set out in Border Patrol's Short-Term Custody Policy, *see supra* note 29, at § 6.2.1.

Thank you for your time and careful attention to this submission. We look forward to your timely response.

Sincerely,

ACLU Foundation of San Diego & Imperial Counties

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Sarah Thompson, Border Litigation Fellow/Staff Attorney

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Appendix 13



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Re: U.S. Border Patrol's Vehicle Pursuit Policy and the Deadly Pursuit and Crash on June 25, 2020 in El Paso, TX.

The American Civil Liberties Union of Texas Border Rights Center (“ACLU”) writes to request that the Inspector General immediately open an investigation into the U.S. Customs and Border Protection’s (“CBP”)¹ vehicle pursuit policy and the recent deadly crash of June 25, 2020, in El Paso, TX, that killed seven people.² Border Patrol refuses to release their vehicle pursuit policy, thereby making it impossible to review its compliance with relevant guidelines, legal protections, or police best practices.³ The high number of injuries and deaths resulting from Border Patrol’s actions suggest either that the policy fails to protect the safety and lives of pursuit subjects or that agents are consistently acting outside the bounds of agency policy. Either way, these issues warrant scrupulous review and investigation by the Inspector General.

I. Pattern of Deadly High-Speed Border Patrol Chases Demonstrates that June 25, 2020 Chase and Crash is not an Isolated Incident

Border Patrol agents often engage in high-speed vehicle chases. One study found that from 2015 to 2018 alone, at least 250 people were injured and 22 were killed in a vehicle crash due to such a pursuit.⁴ The analysis also found that out of over 500 Border Patrol vehicle pursuits, one in three ended in a crash.⁵ Notably, since President Donald Trump assumed office, the number of people injured in Border Patrol pursuit crashes has increased by 42 percent.⁶

¹ Customs and Border Protection includes the Border Patrol, which conducts most vehicle pursuits. This request therefore asks for the CBP agency-wide policy but references Border Patrol pursuits.

² Alfredo Corchado, “Witnesses contradict Border Patrol’s claim that they weren’t chasing car when 7 died in crash,” *The Dallas Morning News*, July 1, 2020, available at <https://www.dallasnews.com/news/immigration/2020/07/01/witnesses-contradicts-border-patrols-claim-that-they-werent-chasing-car-when-7-died-in-crash/>.

³ René Kladyk, “Witnesses say Border Patrol chased car moments before it crashed, killing 7,” *El Paso Matters*, July 1, 2020, available at <https://elpasomatters.org/2020/07/01/witnesses-say-border-patrol-chased-car-moments-before-it-crashed-killing-7/>.

⁴ Brittany Mejia, Kavitha Surana and James Queally, “Trapped in a Deadly Chase,” *ProPublica*, April 4, 2019, available at <https://features.propublica.org/border-crashes/death-injuries-in-high-speed-border-patrol-chases/>.

⁵ *Id.*

⁶ Debbie Nathan, “Border Patrol Agent Speaks out about a High-Speed Chase That Ended in a Immigrant’s Death,” *The Intercept*, February 28, 2020, available at <https://theintercept.com/2020/02/28/border-patrol-el-paso-texas-car-chase/>.

Under certain circumstances, a high-speed vehicle pursuit can constitute use of deadly force.⁷ In a case involving a high-speed police pursuit, the Supreme Court ruled that law enforcement's actions during pursuits may constitute a violation of the Fourth Amendment.⁸ Border Patrol pursuits continue to include lethal tactics, such as boxing in moving vehicles, puncturing tires and other methods aimed at spinning vehicles off the road.⁹ These chases also happen in treacherous weather conditions and in populated locations including school zones, residential areas, and strip mall parking lots.¹⁰ Moreover, Border Patrol agents have no official cutoff speed,¹¹ despite the Department of Justice ("DOJ") recommendations that agencies set speed limits that law enforcement vehicles may travel in relation to existing speed limits.¹² Additionally, the DOJ suggests that vehicle pursuit policies should explicitly describe tactics that may or may not be used and delineate environmental conditions in which pursuits may or may not be conducted.¹³

These tragedies continue to occur with disturbing frequency. In January 2020, a Border Patrol chase resulted in a fatal crash near downtown El Paso.¹⁴ While CBP denied participating in the chase, police reports and the agency's own records suggest that a Border Patrol agent was pursuing the vehicle at the time of the crash.¹⁵ On July 1, 2020, a Border Patrol agent ran over a migrant with their Border Patrol vehicle while chasing a group of migrants.¹⁶ While CBP claims they are investigating this incident, the victim has already been deported.¹⁷

II. The Deadly High-Speed Border Patrol Chase of June 25, 2020 and Inadequate Investigation

On June 25, 2020, another Border Patrol vehicle chase led to a crash that killed seven people in the same location in El Paso, TX.¹⁸ Gustavo Cervantes, 18, of El Paso; Yadira Barrera, 16, of El Paso; Liliana Jimenez, 16, of El Paso; Jorge Manuel Acosta, 19, of El Paso; Oscar Miguel Garcia-Bran, 21, of Guatemala; Elvira Tot-Chiroy, 19, of Guatemala; and Santos Porfirio-Garcia, 32, of Guatemala were reported deceased by either the El Paso Police or their family members.¹⁹ Wilmer Gomez of Guatemala was one of three survivors in the vehicle and says he remembers being chased by approximately seven Border Patrol vehicles.²⁰ Other witnesses also recount that Border Patrol vehicles were speeding in pursuit when the crash occurred.²¹

⁷ *Brower v. Cty. of Inyo*, 489 U.S. 593 (1989) (considering a high-speed police pursuit that led to the death of the fleeing driver and holding that the police officers violated the Fourth Amendment); Hugh Nugent, Edward F. Connors, III, J. Thomas McEwen and Lou Mayo, "Restrictive Policies for High-Speed Police Pursuits," National Institute of Justice, May 16, 1990, available at <https://www.ncjrs.gov/pdffiles1/Digitization/122025NCJRS.pdf>.

⁸ *Id.*

⁹ Mejia, *supra* note 4.

¹⁰ *Id.*

¹¹ *Id.*

¹² Nugent, *supra* note 7, at 18.

¹³ *Id.*

¹⁴ Nathan, *supra* note 6.

¹⁵ *Id.*

¹⁶ Kladzyk, *supra* note 3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*; see also Corchado, *supra* note 2.

²⁰ *Id.*

²¹ *Id.*

Again, CBP denied engaging in a chase at the time of either two El Paso crashes, despite these witness accounts and internal Border Patrol records that suggest that Border Patrol vehicles were speeding in pursuit at the time of both crashes.²² The El Paso Police Department (“EPPD”) press release regarding the January crash states that the driver lost control of the vehicle and caused the crash.²³ However, a whistleblower agent revealed that Border Patrol was conducting a dangerous pursuit of the vehicle on a section of road known as the “deadly curve” to local law enforcement officers at the time that the chase took place.²⁴ Yet the EPPD press release only states, “Border Patrol agents drove towards the vehicle.”²⁵ While the CBP Office of Professional Responsibility (“OPR”) opened an investigation regarding the January incident,²⁶ the ACLU is not aware of any findings or outcomes of this investigation.

Most recently, Border Patrol officials have directed questions regarding the June 25, 2020 crash to the EPPD, who is currently investigating the crash,²⁷ but the EPPD has refused to respond to questions about the incident or indicate that they are considering contradicting accounts of the crash.²⁸ Most alarmingly, EPPD spokesperson Robert Gomez indicated the department is focused on “why the vehicle fled” - an inappropriate focus for an investigation into the cause of a deadly crash.²⁹ Moreover, the EPPD has a history of supporting Border Patrol,³⁰ conducting flawed investigation with little transparency, and refusing appropriate oversight of their investigations.³¹ CBP OPR is also reviewing the incident; however, CBP OPR is limited to reviewing agent conduct and are unlikely to take on the systemic issue implicated here.³²

III. Lack of Transparency Surrounding Border Patrol’s Vehicle Pursuit Policy Poses an Obstacle to Accountability

CBP’s pursuit policy allegedly allows agents to engage in these dangerous chases. While briefing reporters, Border Patrol agent Justin Castrejon stated, “[w]e have a very exact pursuit policy,” and that crashes were “something we experience from time to time as Border Patrol agents.”³³ Another Border Patrol agent reported that agents receive a refresher training every year in which they review the written vehicle pursuit policy.³⁴

²² Nathan, *supra* note 6; Kladzyk, *supra* note 3.

²³ The City of El Paso, “9th Traffic Fatality of the Year,” News Release, January, 31, 2020, available at <http://www.elpasotexas.gov/~media/files/coep/police%20department/press%20releases/20/20-029267%209th%20traffic%20fatality%20of%20the%20year.ashx>.

²⁴ Nathan, *supra* note 6.

²⁵ The City of El Paso, *supra* note 23.

²⁶ *Id.*

²⁷ Aaron Martinez, “El Paso police reveal details in fatal Downtown crash; group seeks Border Patrol inquiry,” El Paso Times, June 26, 2020, available at <https://www.elpasotimes.com/story/news/crime/2020/06/26/el-paso-fatal-car-crash-accident-border-patrol-investigation/3265472001/>.

²⁸ Kladzyk, *supra* note 3.

²⁹ Corchado, *supra* note 2.

³⁰ See City of El Paso, “City Council Agenda Review,” Vimeo, June 6, 2020, available at <https://livestream.com/cityofelpaso1/agenda-review/videos/207190189> (EPPD describes their collaboration with Border Patrol on recent protests and the department’s general support for the agency); see also City of El Paso Texas, “Virtual Community Meeting for the Eastside Regional Command Center,” YouTube, July 8, 2020 (EPPD discuss further collaboration with Border Patrol, specifically through the department’s use of Border Patrol helicopters).

³¹ See *Sanchez v. Gomez*, No. EP-17-CV-133-PRM, 2020 U.S. Dist. LEXIS 36199 (W.D. Tex. Mar. 3, 2020).

³² Martinez, *supra* note 27.

³³ Mejia, *supra* note 4.

³⁴ Kladzyk, *supra* note 3.

Border Patrol's actions do not appear to adhere to DOJ guidelines, which suggest that law enforcement agents should balance the danger to the public of the chase itself against the danger to the public of the offender remaining at large when evaluating whether or not to pursue a vehicle.³⁵ DOJ guidelines state that, "[f]or anyone other than a violent felon, the balance weighs against the high-speed chase."³⁶ Senator Dianne Feinstein has called on CBP to reevaluate its vehicle pursuit policies, writing that their policy appears to offer, "insufficient protection against possible injuries and fatalities, either to bystander members of the public or occupants of a pursued vehicle. This has led to catastrophic and unwarranted results."³⁷

CBP has refused to publicly share its written vehicle pursuit policy³⁸ despite the DOJ Pursuit Management Task Force's guidance that, "law enforcement agencies compile and disseminate appropriate pursuit data for their own agencies."³⁹ Further, CBP has declined requests for information about their policy from Senator Dianne Feinstein.⁴⁰ This lack of accountability is highly alarming, especially given the tragic number of injuries and lives lost.

Given these concerns and the gravity of these issues, the Inspector General should immediately open an investigation into the tragic chase and crash of June 25, 2020 and conduct a detailed review of Border Patrol's vehicle pursuit policy.

Thank you for your time and careful attention to this submission. We look forward to your timely response.

Sincerely,

/s/ Shaw Drake
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cc: Congresswoman Veronica Escobar (TX-16); House Committee on Homeland Security; House Committee on Oversight and Reform.

³⁵ See Kenneth L. Bayless, Robert Osborne and The Aerospace Corporation, "Pursuit Management Task Force Report," National Institute of Justice, September 1998, available at <https://www.justnet.org/pdf/Pursuit-Management-Task-Force-Report.pdf>.

³⁶ *Id.*

³⁷ See Senator Dianne Feinstein, "Feinstein Calls on Border Patrol to Examine Vehicle Pursuit Policies After Recent Deaths," Committee on the Judiciary, May 3, 2019, available at <https://www.judiciary.senate.gov/press/dem/releases/feinstein-calls-on-border-patrol-to-examine-vehicle-pursuit-policies-after-recent-deaths>.

³⁸ Kladzyk, *supra* note 3.

³⁹ Bayless, *supra* note 35.

⁴⁰ Kladzyk, *supra* note 3.