



March 3, 2021

Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
3801 Nebraska Ave., NW
Washington, DC 20016

Re: Unresolved Complaints of CBP Misconduct Require Immediate Attention and Accountability

Dear Secretary Mayorkas,

Congratulations on your recent confirmation as the secretary of the Department of Homeland Security. The American Civil Liberties Union (“ACLU”) and the ACLU of Texas welcomes your commitment to an ongoing dialogue with civil society regarding reform measures that advance our shared vision of the United States as a “country of welcome.”¹ As you consider measures to reform Customs and Border Protection (“CBP”), we write to provide you with detailed information regarding abuses documented by the ACLU and its partners in the attached series of complaints with the Office of Inspector General (“OIG”) and other oversight components spanning from 2019 to 2020.

The cases and experiences we describe underscore that CBP reform is urgently needed. Our record of complaints shows that without serious and prompt changes to CBP, adults and children will suffer cruel and inhumane treatment at its hands—and the Biden administration will bear the responsibility. We request a meeting with you and your staff to discuss measures to address CBP detention, prevent misconduct, and ensure accountability.

For years, the ACLU, journalists, and other researchers have documented systemic patterns of harassment and abuse by CBP personnel. Civil society and government oversight bodies have consistently found that conditions in CBP custody violate the rights of those detained.² Under

¹ ACLU, *Letter to Secretary-Designate Mayorkas Ahead of Senate Confirmation Hearing*, <https://www.aclu.org/letter/aclu-letter-secretary-designate-mayorkas-ahead-senate-confirmation-hearing>.

² See, e.g., 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>; Dep’t of Homeland Sec., Office of Inspector General, *Management Alert – DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center* (May 30, 2019) <https://www.oig.dhs.gov/sites/default/files/assets/2019-05/OIG-19-46-May19.pdf>; 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* (July 2, 2019)

President Trump, conditions worsened. Since 2018, at least seven children died in CBP custody or shortly after being released, often after receiving delayed medical care or being denied care altogether. Border Patrol agents subjected detained migrants, including pregnant people, to physical mistreatment, verbal abuse, and severe delays in medical care, and horrendous detention conditions including lack of potable water, beds, showers, edible food, basic hygienic supplies, as well as freezing cell temperatures and lights left on 24 hours a day.

Further, the Trump administration enacted unlawful policies effectively ending access to asylum at the border, counter to the United States' longstanding history of providing protection to those fleeing persecution. CBP implemented many of these cruel and dubious policies, including separating families and returning vulnerable people to Mexico and their countries of origin despite known dangers and their fears of future persecution. As one Border Patrol agent told a mother seeking asylum with her child, "Forget about asylum, we might just take away your daughter."³

In CBP, and its law enforcement arm, U.S. Border Patrol, the Trump administration found the ideal agency to carry out its abusive policies. A systemic lack of accountability and transparency, that predates the Trump era, allowed the agency to facilitate the worst of Trump's anti-immigrant agenda largely shielded from scrutiny. The agency's internal oversight and discipline system failed to prevent abuses or hold personnel accountable for their actions.

Since 2019, the ACLU of Texas, along with the ACLU of San Diego & Imperial Counties and various partners, filed at least 13 separate complaints with CBP's joint intake system.⁴ These complaints include numerous individual examples of CBP abuse and were built on hundreds of interviews. Two of these complaints, related to Border Patrol custody conditions during the summer of 2019,⁵ were followed by OIG emergency reports on overcrowded conditions in CBP facilities,⁶ but were not to our knowledge directly investigated by the agency. Other complaints

<https://www.oig.dhs.gov/sites/default/files/assets/Mga/2019/oig-19-51-jul19.pdf>; ACLU of Arizona, *Federal Court Finds Conditions in Customs and Border Protection Detention Facilities Unconstitutional* (Feb. 19, 2020) <https://www.acluaz.org/en/press-releases/federal-court-finds-conditions-customs-and-border-protection-detention-facilities>; ACLU Of San Diego & Imperial Counties, *A Look Into U.S. Customs and Border Protection's Mistreatment of Children*, <https://www.aclusandiego.org/cbp-child-abusefoia/cbp> (last visited Feb. 10, 2021) (publishing over 30,000 pages of government records obtained via FOIA request relating to abuse and neglect of children in CBP custody).

³ See "U.S. Border Patrol's Verbal Abuse of Detained Individuals," July 7, 2020, Appendix 12.

⁴ See Appendix 1-13

⁵ See "Abusive Conditions in Makeshift Border Patrol Holding Facilities at Paso del Norte Port of Entry in El Paso, Texas," March 30, 2019, Appendix 2, and "Abusive Conditions in Border Patrol Detention Facilities in the Rio Grande [Valley] Border Patrol Sector," May 17, 2019, Appendix 3.

⁶ Dep't of Homeland Sec., Office of Inspector General, *Management Alert – DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center* (May 30, 2019) <https://www.oig.dhs.gov/sites/default/files/assets/2019-05/OIG-19-46-May19.pdf>; 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* (July 2, 2019) <https://www.oig.dhs.gov/sites/default/files/assets/Mga/2019/oig-19-51-jul19.pdf>.

received initial form letter responses from the DHS Office for Civil Rights and Civil Liberties (“CRCL”) but no subsequent communication regarding any initiation or resolution of investigation.

CBP employs over 44,000 CBP officers and Border Patrol agents and has a nearly \$17 billion budget, yet its own accountability mechanisms consistently fail.⁷ A Cato Institute study found that between 2006 and 2016, CBP “misconduct and disciplinary infractions outstripped all other federal law enforcement” and “it is virtually impossible to assess the extent of corruption or misconduct ... because most publicly available information is incomplete or inconsistent.”⁸ The agency’s complaint and disciplinary systems are broken. According to data obtained by the American Immigration Council in 2017, the agency took “no action” in 95.9 percent of complaints filed against the agency between 2012 and 2015.⁹ Despite independent advisory panel recommendations issued in 2016, CBP has still not fixed its disciplinary system.¹⁰ The panel recommended CBP hire 350 internal affairs investigators and appoint a discipline czar to coordinate internal accountability. The agency has done neither.

Further, whistleblowers from CRCL have raised the alarm about the office’s inability to hold CBP accountable. Last year, former CRCL staff attorney and advisor Ellen Gallagher said the agency seemed to “mislead the public” by soliciting complaints of alleged violations “if [CRCL] had no intention of specifically investigating or resolving those individual complaints.”¹¹ In August 2020, CRCL staff stated publicly that CBP was ignoring their concerns about the development of a new use-of-force policy and the agency’s intention to use “chemical deterrents” at the border.¹²

⁷ U.S. Customs and Border Protection, *Snapshot: A Summary of CBP Facts and Figures* (June 2020) <https://www.cbp.gov/sites/default/files/assets/documents/2020-Jun/CBP-Snapshot-20200611-web.pdf>; American Immigration Council, *The Cost of Immigration Enforcement and Border Security* (Aug. 2, 2017) <https://www.americanimmigrationcouncil.org/research/the-cost-of-immigration-enforcement-and-border-security>.

⁸ Alex Nowrasteh, *Border Patrol Termination Rates: Discipline and Performance Problems Signal Need for Reform*, Cato Institute (Nov. 2, 2017) <https://www.cato.org/policy-analysis/border-patrol-termination-rates-discipline-performance-problems-signal-need-reform>.

⁹ Guillermo Cantor and Walter Ewing, *Still No Action Taken: Complaints Against Border Patrol Agents Continue to Go Unanswered*, American Immigration Council (Aug. 2, 2017) <https://www.americanimmigrationcouncil.org/research/still-no-action-taken-complaints-against-border-patrol-agents-continue-go-unanswered>.

¹⁰ 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>.

¹¹ Susan Ferriss, Alison Kodjak, and Joshua Phillips, *Homeland Security’s Civil Rights Unit Lacks Power To Protect Migrant Kids*, NPR (Aug. 2, 2019) <https://www.npr.org/sections/health-shots/2019/08/02/746982152/homeland-securitys-civil-rights-unit-lacks-power-to-protect-migrant-kids>.

¹² Julia Ainsley and Laura Strickler, *DHS staffers say Trump appointees Wolf, Cuccinelli ignoring input on protests, immigration policy*, NBC News (Aug. 7, 2020), <https://www.nbcnews.com/politics/immigration/dhs-staffers-say-trump-appointees-wolf-cuccinelli-ignoring-input-protests-n1236040>.

Your administration has inherited a system ripe for continued mistreatment of those seeking refuge in the United States. As you work to develop a process at the border that upholds the dignity of migrants, it is imperative that your administration demonstrate the leadership necessary to prevent future abuses and ensure accountability and redress for the harms the agency and its employees have committed.

Attached you will find a short report summarizing the accompanying set of 13 administrative complaints filed by the ACLU and partners from 2019 to 2020. The outstanding complaints document abuses including, inhumane conditions in CBP custody; the unlawful rejection of people seeking asylum at ports of entry, including Mexican nationals; the inhumane treatment of particularly vulnerable populations, including pregnant women and children; pervasive verbal abuse by CBP personnel; and deadly car chases.

It is not enough to reverse Trump-era border policies. The roots of the problems described in this report extend to prior administrations. To address past abuses and protect against future ones, the scope of CBP power must be curtailed, past abuses must be investigated and those responsible must be held accountable, and true accountability mechanisms must be entrenched throughout the agency.

In addition, the ACLU urges that DHS take the following topline actions:¹³

Customs and Border Protection Detention¹⁴

1. Strictly limit CBP detention to the minimum period necessary for initial processing; transition away from CBP personnel playing a role in the processing of people seeking asylum; and end CBP's authority to make family separation determinations. Specifically, CBP should:
 - a. Revise policies and practices to prohibit any period of detention beyond the time required for initial processing, not to exceed 12 hours.
 - b. Fund and implement community-based alternatives to detention that ensure compliance with court and DHS imposed obligations and avoid needless detention.
 - c. Implement a telephonic and online locator system for persons in CBP custody (searchable by either (a) full name and A number OR (b) full name, country of origin, and date of birth).
 - d. Develop, adopt, and publish explicit policies that will ensure adequate, timely medical care for people in custody, in consultation with independent medical experts and stakeholders, and that reflect best practices recommended by professional associations.

¹³ For full policy papers and recommendations on a range of immigration and border related issues, see ACLU, *ACLU Immigration Policy Recommendations for the Biden-Harris Administration*, <https://www.aclu.org/aclu-immigration-policy-recommendations-biden-harris-administration>.

¹⁴ See ACLU, *Customs and Border Protection Accountability*, <https://www.aclu.org/other/customs-and-border-protection-accountability>.

Customs and Border Protection Accountability¹⁵

1. Establish meaningful accountability mechanisms by overhauling CBP's hiring, training, and discipline protocols; creating a unified complaint process; and developing and publishing disciplinary guidelines for officials. Specifically, CBP should:
 - a. Create, publish and implement a new complaint process that applies to all component agencies and is based on best practices for law enforcement investigations and oversight.
 - b. Strictly prohibit personnel from verbally abusing individuals in agency custody, implement specific zero-tolerance policies for anti-immigrant discrimination and racist employee conduct, and issue a clear written outline for the disciplinary processes to which personnel who do verbally abuse those in their custody will be subject.
2. Strengthen CBP's use-of-force standards to prohibit agents and officers from using deadly force unless necessary, as a last resort, to prevent imminent death or serious bodily injury, and only after all reasonable alternatives have been exhausted.
 - a. Adopt a standardized shooting review process that utilizes incident mapping and analysis software.
 - b. Immediately release CBP's vehicle pursuit policy and engage with stakeholder and experts to bring the policy in alignment with policing best practices and relevant Department of Justice guidelines.
 - c. Ensure robust transparency on CBP use-of-force incidents, including by:
 - i. Requiring the agency to make public the facts of any use-of-force incident that results in serious injury or death within 24 hours (whether of an officer or a member of the public).
 - ii. Requiring the agency to collect and publish on a quarterly basis data on all use-of-force incidents regardless of outcome.
 - iii. Creating a policy to impose a duty to report use of force by peers and supervisors and a duty to intervene when feasible to stop other officers from using force in violation of agency standards and the law. The policy should prohibit retaliation.
 - iv. Commissioning an independent review of all use-of-force fatalities in the last 10 years to identify patterns and practices of use-of-force misuse.

Asylum Protections¹⁶

1. Following reviews required by President Biden's February 2, 2021 immigration executive orders, the agency should promptly and fully rescind Trump administration orders, rules, directives, memos, decisions, guidance, and policies designed to restrict access to asylum at the southern border. In addition, it should end the use of other

¹⁵ *Id.*

¹⁶ See ACLU, *Restoring Asylum at the Border*, <https://www.aclu.org/other/restoring-asylum-border>.

policies predating the Trump administration that severely hinder access to asylum, such as placing those seeking asylum in expedited removal and “metering” at ports of entry.

2. Return to the United States all people seeking asylum with open cases who are waiting outside the United States and release them to networks of care in the United States, on recognizance, bond, or parole while their cases proceed.
3. Restore eligibility for relief for all individuals ordered removed or who had cases terminated through MPP, PACR/HARP, the transit asylum ban, and the ACA policies, and permit them to pursue their claims for relief from within the United States.

Specifically,

- a. ICE OPLA should file motions to reopen all cases of individuals ordered removed, or otherwise terminated, through MPP, and under the transit asylum ban, or Trump era Attorney General guidance.
- b. CBP should rescind the expedited removal orders of all individuals ordered removed through PACR/HARP, the transit asylum ban, or the ACA policies.

Thank you for your attention. We look forward to your timely response.

Sincerely,



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CC:

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Summary of Unresolved Complaints

CBP Abuse of Detained Persons

COMPLAINT: “Abusive Conditions in Makeshift Border Patrol Holding Facilities at Paso del Norte Port of Entry in El Paso, Texas,” March 30, 2019.¹⁷

- I. **Summary:** CBP caged thousands of people seeking asylum in outdoor pens under the Paso del Norte bridge for multiple nights, subjecting them to dangerous, abusive, and inhumane conditions. The complaint calls for an immediate investigation into the decision to hold migrants in such conditions and into the resulting abuses and rights violations.

- II. **Case Examples / Key Details:**
 - A. CBP crammed several thousand people underneath the [El Paso del Norte] bridge into dirt-filled caged outdoor areas without enough space to stand, in an unprecedented and extreme violation of migrants’ rights.
 - B. All of the families interviewed by the ACLU reported being fed the same low-quality food in inadequate amounts. They reported receiving only one ham-and-cheese sandwich per person, three times a day, regardless of age or any dietary/religious restrictions. The only dietary accommodation children received was a packet of juice with their sandwich. Water access was reportedly limited to sinks near temporary restroom facilities.
 - C. Asylum-seeking families experienced prolonged exposure to low temperatures, sleep deprivation, inadequate food, received no medical screening or care, and were subjected to verbal and physical abuse at the hands of Border Patrol agents.
 - D. Mothers were verbally abused. They were told that they were responsible for their children’s suffering because they decided to come to the United States.

COMPLAINT: “Abusive Conditions in Border Patrol Detention Facilities in the Rio Grande Valley Border Patrol Sector,” May 17, 2019.¹⁸

- I. **Summary:** CBP subjected families and children seeking asylum in the Rio Grande Valley Border Patrol Sector to abusive, dangerous, and inhumane conditions in Border Patrol detention facilities. The complaint calls for an immediate investigation into the decision to hold migrants in such conditions and into the resulting abuses and rights violations.

- II. **Case Examples / Key Details:**
 - A. A 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.

¹⁷ Appendix 2

¹⁸ Appendix 3

- B. Over two thousand people, including families with infants and toddlers, were held for multiple days and nights in a crowded outdoor area with very little shade from the harsh south Texas elements.
- C. 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... Some families reported not even being provided with Mylar sheets.
- D. One family was held in a cell with 60 to 100 other migrants for 4 days and reported agents kicking anyone who fell asleep.
- E. 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 denying him medical care.
- F. One mother reported agents forcing her to recite the national anthem of her country to prove her citizenship, threatening to separate her from her daughter, claiming her identity documents were false and that she would be deported to her country where the gangs would kill her.

COMPLAINT: “Routine Failure to Provide Necessary Medical Care and Treatment to Individuals in Substance Withdrawal at Ports of Entry,” September 17, 2019.¹⁹

I. Summary: CBP placed people in its custody at risk of serious injury or death by failing to provide adequate or even basic medical care to persons undergoing the process of substance withdrawal and detoxification (including from prescribed medication) while at Ports of Entry. The complaint calls on CBP to comply with TEDS standards of medical care for POEs, as well as update TEDS standards to clarify and confirm its humanitarian obligations to persons in custody.

II. Case Examples / Key Details:

- A. One man 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. While in CBP custody, he 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.
- B. Upon arrest, a woman informed CBP officers that she had been addicted to alcohol and methamphetamine. Soon thereafter, she began experiencing dramatic symptoms of withdrawal. CBP officers did not take her to a hospital or provide her with any medical care for over four days. Instead, CBP closed her cell window to silence her continued pleas for medical attention.

¹⁹ Appendix 5

- C. During a period of five days in detention, a man 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.

COMPLAINT: “Abuse and Mistreatment of Detained Pregnant People,” January 22, 2020.²⁰

- I. **Summary:** CBP agents mistreated detained pregnant people and held them in inhumane conditions. The complaint includes the detailed accounts of four women who were mistreated, abused, and/or neglected by CBP while detained. The complaint calls for an immediate review of CBP’s treatment of pregnant people in its custody and makes recommendations, including that CBP stop detaining pregnant people; that CBP prohibit any period of detention beyond initial processing; and that DHS assess whether oversight and disciplinary mechanisms effectively hold CBP agents and officials accountable for mistreatment and abuse of detained pregnant people.

- II. **Case Examples / Key Details:**
 - A. Border Patrol stations lacked bedding, showers, and staff trained to interact with or assist traumatized or otherwise vulnerable populations, include pregnant people who are at risk of dire health outcomes (including miscarriages and stillbirths).
 - B. A woman reported that, during her initial processing, a Border Patrol agent subjected her to excessive force. The agent, apparently infuriated that she and her friend were speaking to each other while awaiting processing, forcibly grabbed her by the arm and took her out of her seat. The agent then grabbed her by the shoulders from behind and slammed her face-first against a chain link fence three times. She 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.”
 - C. Another woman reported that the food she received was spoiled and served cold; she could not bring herself to eat it. She feared the water was not potable because the water supply was connected to (and on top of) the toilet in her cell. She was not provided with any hygiene products (toothbrush, toothpaste, sanitary pads). Taken into custody in wet and mud-covered clothing, she was neither permitted a change of clothing nor provided a chance to shower for the duration of her detention.

²⁰ Appendix 8

SUPPLEMENTAL COMPLAINT: “Abuse and Mistreatment of Detained Pregnant People – Addendum to Complaint of January 22, 2020,” March 4, 2020.²¹

- I. Summary:** An addendum to the previous complaint, citing new and significant evidence that pregnant people suffer abuse in CBP Custody. Additional information obtained from a FOIA request filed by the ACLU National Prison Project in support of the previous complaint’s demands. The ACLU received a CRCL spreadsheet which included 42 additional cases involving CBP’s mistreatment of pregnant persons. Reported conduct ranges from verbal abuse to physical assault to failed provision of medical care.

- II. Case Examples / Key Details:**
 - A. 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 15 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.
 - B. 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.

SUPPLEMENTAL COMPLAINT: “Abuse and Mistreatment of Detained Pregnant People – Second Addendum to Complaint of January 22, 2020,” October 30, 2020.²²

- I. Summary:** This complaint details another example of CBP’s abuse of detained pregnant people – this time, against a Ms. Eva Doe. The complaint adds to the testimonies and examples from the original complaint and the first addendum regarding the abuse of pregnant people.

- II. Case Examples / Key Details:**
 - A. 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. The toilet and sink to which Ms. Doe had access in her holding cell lacked safeguards for privacy. Ms. Doe

²¹ Appendix 8(a)

²² Appendix 8(b)

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. Ms. Doe was five months pregnant. Her separation from the father of her child had caused her stress, anxiety, and emotional turmoil. She feared 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. 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.

COMPLAINT: "Abuse and Mistreatment of Detained Sick Children," February 18, 2020.²³

I. Summary: CBP detention devastates children's mental and physical development; children have died while in custody, and conditions are often inhumane and abusive. The complaint calls for an immediate review of CBP's treatment of sick children and demands investigation and key policy changes.

II. Case Examples / Key Details:

- A. At the emergency room, a doctor determined that a 6-week-old child 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 the child and her mother to detention.
- B. On the family's fifth day of detention, they were finally released to the San Diego Migrant Family Shelter. The mother recalled that, at the child'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 the child was weighed at the San Diego Migrant Shelter, she weighed only 4 kilos (8.82 pounds).

Border Patrol Station 1 in El Paso, Texas: Failure to Adequately Respond to COVID-19 Pandemic (March 27, 2020)²⁴

I. Summary: Border Patrol Station 1 in El Paso failed to respond to the COVID-19 pandemic by any public health metric. Agents failed to inform those detained of vital public health information; make vital, basic logistical accommodations to mitigate and prevent spread of the virus amongst detained persons and agents; or provide basic sanitary needs to prevent dissemination of the virus. The complaint calls for an investigation of the conditions and recommends various needed protocols.

II. Case Examples / Key Details:

- A. Identified conditions concerns at Border Patrol Station 1 include:

²³ Appendix 9

²⁴ Appendix 10

- i. Held over 150 persons in a single room with persons exhibiting flu-like symptoms;
- ii. 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;
- iii. Held people in cells where they are forced to be in close contact with each other, including by sleeping approximately three feet apart;
- iv. 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);
- v. Provided only a single square of toilet paper per use;
- vi. Denied detained individuals access to hand sanitizer;
- vii. Failed to provide adequate medical screening of detained individuals not exhibiting symptoms of illness; and
- viii. Failed to ensure uniform access to personal protective equipment for everyone in the detention facility.

Separation of Families via CBP Detention and Processing, and the Agency's Refusal to Implement a Detainee Locator System (April 15, 2020)²⁵

I. Summary: CBP systematically separated migrant families, compounding their harm with abuse and neglect of those families, causing these families emotional and physical trauma. In addition, CBP failed to create a detainee locator system, which would track where a particular person is being held. The complaint calls for: a telephonic and online detainee locator system and demands that CBP refrain from detaining family units and prioritize their release; evaluate information sharing practices and optimize them; and ensure an inter-agency process to reunite family members; among other recommendations.

II. Case Examples / Key Details:

- A. 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.
- B. 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.
- C. A child spent a total of nine days at Brown Field station, followed by two additional days in another Border Patrol facility (the name of which she did not know). After being separated from her mother and sister, she had no further contact with any of her family members during the eleven days she was in Border Patrol custody.

²⁵ Appendix 11

COMPLAINT: “Verbal Abuse of Detained Individuals,” July 7, 2020.²⁶

I. Summary: CBP has a deeply ingrained culture of verbally abusing and mistreating people in their custody. Current oversight and disciplinary mechanisms have proved grossly ineffective and allowed agents’ behavior to go unchecked. Included are specific instances of insults hurled by agents at detained people, including children. The complaint calls for: CBP to strictly prohibit personnel from verbally abusing individuals and implement zero-tolerance policies for anti-immigrant discrimination; the implementation of a new complaint system; measures to increase CBP transparency regarding complaints; and an evaluation of deficiencies in CBP’s Office of Professional Responsibility (OPR).

II. Case Examples / Key Details:

- A. “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
- B. “¿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
- C. “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.”
- D. “Why do they only send us their trash? You are all trash!” —Border Patrol agent to cell full of detained women and children.

CBP Abuses of Non-Detained People Seeking Asylum

COMPLAINT: “Illegally Denying Family Access to Ports of Entry to Lawfully Seek Asylum, Leading to Kidnapping and Mistreatment in Mexico,” March 27, 2019.²⁷

I. Summary: An exemplar of how CBP unlawfully denied asylum to people and the harm such denial inflicts: agents turned away a family from El Salvador seeking asylum at a U.S. port of entry, forcing the family into Mexico where they suffered a series of abuses. The family again sought asylum in the U.S. out of fear of staying in Mexico and were again denied passage into the U.S. by CBP agents. The family was finally allowed into the U.S. after a member of Congress and the ACLU made CBP leadership aware of the CBP agents’ actions. The complaint calls for an immediate investigation on the denial of entry to the family.

²⁶ Appendix 12

²⁷ Appendix 1.

II. Case Examples / Key Details:

- A. 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, a child in the family] suffers from heart arrhythmia. A Mexican hospital reportedly denied him medical care for the condition because he was a migrant. His condition requires regular medication and medical supervision.
- B. 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 CBP agents told the family 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.
- C. A CBP agent told the family that he was not a doctor and repeated his instruction that they must return to Mexico.
- D. 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. They were then kidnapped. 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.
- E. Approximately one and a half hours later, the Mexican federal immigration 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.
- F. "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 kidnappers.
- G. 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.

COMPLAINT: "Illegally Denying Entry of United States Citizens as Mexican Authorities Threatened Them with Arrest," August 8, 2019.²⁸

- I. **Summary:** Three U.S citizens accompanied a minor seeking asylum to a U.S. port of entry; CBP officials turned away the minor and refused to allow the three U.S. citizens into the country, after which they were held by Mexican officials. The citizens were released, and the minor was granted access to asylum procedures, only after higher ranking CBP officials, the ACLU, and a member of Congress got involved. The complaint calls for an immediate investigation into the incident, the

²⁸ Appendix 4

removal of the CBP agents involved, and clarification on policy regarding the presentation of those seeking protection at ports of entry.

II. Case Examples / Key Details:

- A. Three U.S. citizens approached CBP agents stationed at the middle of the Eagle Pass International Bridge II opposite Piedras Negras, Mexico along with an unaccompanied minor seeking asylum. 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.
- B. The three citizens attempted to enter the United States and were told by CBP agents they would not be allowed to enter. They were taken back to Mexico, where they were held by local officials and law enforcement for an hour. The CBP Port Director called Mexican municipal government authorities to have them release the group after pressure from the ACLU and a member of Congress. The citizens arrived again at the border, where they were again stopped by CBP agents but eventually allowed to enter.

Pregnant women returned to Mexico under the “[Migrant] Protection Protocols” (MPP) (September 26, 2019)²⁹

- I. Summary:** CBP’s policy returning pregnant persons seeking asylum to Mexico under MPP subjected them to rape, kidnapping, assault, extortion, and death. While all people seeking asylum are subjected to harm, pregnant people are particularly vulnerable. The complaint heavily criticizes MPP in general and specifically calls for, at a minimum, the suspension of its application to cases involving pregnant people.

II. Case Examples / Key Details:

- A. DHS routinely returned pregnant women to Mexico under MPP, exposing them to further harm in particularly dangerous regions. DHS is returning pregnant women to places that are considered extremely dangerous -- Baja California, Tamaulipas, and Chihuahua, among others.
- B. Conditions which pregnant women were subjected to 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.
- C. 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.

²⁹ Appendix 6

- D. While detained in CBP custody, a “white, tall, blue-eyed woman,” wearing a green uniform told Y.C.F.F., one of the women interviewed that she should abort her baby because “Trump didn’t want there to be any more pregnant people here.” Y.C.F.F. was held in overcrowded conditions for three days. She has had no prenatal care in Matamoros.
- E. In early September 2019, when in CBP custody during her initial immigration court hearing, F.Y.C.H. [another interview subject] 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.

COMPLAINT: “Unlawful turn back of Mexican asylum seekers at ports of entry,”
November 14, 2019.³⁰

I. Summary: CBP violated U.S. and international law by turning back people seeking asylum to Mexico, the same country from which they were attempting to flee; and exacerbating a humanitarian crisis as asylum seekers were stuck in encampments and regularly face kidnappings, rapes, and disappearances. The complaint calls for an end to the unlawful turn back policy, and that agents inspect and process all people seeking protection arriving at U.S. ports of entry.

II. Case Examples / Key Details:

- A. CBP officers consistently denied 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.
- B. 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.
- C. In October 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 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.
- D. 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. 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.

³⁰ Appendix 7

- E. D.A.L., her parents, and her 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.’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.
- F. “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.”

U.S. Border Patrol’s Vehicle Pursuit Policy and the Deadly Pursuit and Crash on June 25, 2020 in El Paso, TX (July 20, 2020)³¹

I. Summary: Border Patrol engages in dangerous vehicle pursuit cases that result in an increase number of deaths and injuries, including a deadly crash that killed seven in El Paso in 2020. 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. 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. The complaint calls on the Inspector General to open an investigation into the deadly chase and crash of June 25, 2020 in El Paso and conduct a review of the agency’s vehicle pursuit policy.

II. Case Examples / Key Details:

- A. From 2015 to 2018 alone, at least 250 people were injured and 22 were killed in a vehicle crash due to a vehicle pursuit by Border Patrol.
- B. The number of people injured in Border Patrol pursuit crashes increased by 42 percent under the Trump administration.
- C. 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. 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. Wilmer Gomez of Guatemala was one of three survivors in the vehicle and says he remembers being chased by approximately seven Border Patrol vehicles. Other witnesses also recount that Border Patrol vehicles were speeding in pursuit when the crash occurred.

³¹ Appendix 13