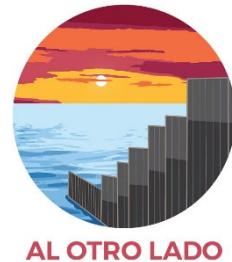




San Diego and
Imperial Counties



November 10, 2021

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. Customs and Border Protection’s Failure to Adjudicate
Urgent Humanitarian Parole Applications**

The ACLU Foundation of San Diego & Imperial Counties (“ACLU”), Jewish Family Service of San Diego (“JFS”), Immigrant Defenders Law Center (“ImmDef”), Al Otro Lado (“AOL”), and Transgender Law Center (“TLC”) submit this administrative complaint to the Department of Homeland Security (“DHS”) Office of Inspector General (“OIG”) regarding U.S. Customs and Border Protection (“CBP”) San Diego Office of Field Operations (“OFO”’s failure to timely adjudicate applications for humanitarian parole.¹ We urge an investigation into this problematic practice and provide crucial recommendations for DHS OIG to urge CBP San Diego OFO to adopt to prevent future harm to people seeking parole for urgent humanitarian or significant public benefit reasons.

The ACLU routinely encounters people who have been recently released from CBP custody in the San Diego region. JFS, ImmDef, AOL, and TLC regularly represent people in asylum proceedings and humanitarian parole applications along the California-Mexico border. JFS also operates the San Diego Rapid Response Network Migrant Shelter in San Diego, which receives into its care people upon release from CBP custody. Our organizations are core members of the California Welcoming Taskforce, which was created to coordinate a regional response to the Biden

¹ In this complaint, “CBP San Diego OFO” refers to all operations within the CBP San Diego Area of Responsibility, including the San Ysidro (PedEast and PedWest), Otay Mesa, Tecate, Andrade, and Calexico land ports of entry.

Administration's changes to border policies impacting people seeking asylum in our region. All of our organizations represent *pro bono* extremely vulnerable individuals seeking protection in the United States.

We are encouraged that DHS has taken some steps to roll back harmful border policies. However, inhumane and unlawful practices continue to obstruct access to protection at the border, to the detriment of impacted people, the groups and organizations that serve them on both sides of the border, and the government agencies left to respond to the consequences of such policies.² Specifically, the Title 42 order that effectively blocks access to the asylum process at the border, the cessation of all processes that allowed individuals and families to seek exemptions to the Title 42 order, and the potentially imminent resumption of the so-called "Migrant Protection Protocols" ("MPP") render the border effectively closed to people seeking asylum.³

As a result, the only remaining option for individuals and families in urgent need of safety in the United States is to solicit humanitarian parole pursuant to DHS's INA § 212(d)(5)(A) authority, which, by definition, allows individuals and families to seek parole into the United States for "urgent humanitarian" or "significant public benefit" reasons. 8 C.F.R. § 212.5(b). However, for months, CBP San Diego OFO has systemically failed to timely adjudicate applications for humanitarian parole, calling into question the availability of such relief in our region, and unnecessarily forcing people to endure dangerous conditions and face imminent harm in Mexican border cities.⁴

Despite DHS's statutory parole authority, the nebulous process for vulnerable people to seek humanitarian parole along the California-Mexico border has become increasingly opaque. Even for the undersigned organizations, which include some of the most experienced practitioners in the region, the humanitarian parole process has become unduly arduous to navigate. Together, between late August and early November 2021, our organizations have submitted 80 applications for humanitarian parole for urgent humanitarian or significant public benefit reasons, with 43 still pending—including some that have been pending nearly three months—with no final response. For context, in the same time period, CBP San Diego OFO has granted a mere 11 of the 80 applications and denied 26.

² See, e.g., Kate Morrissey, *Asylum seekers at San Diego border ask Biden for answers amid inconsistent policies*, SAN DIEGO UNION TRIBUNE (March 21, 2021), <https://www.sandiegouniontribune.com/news/immigration/story/2021-03-21/san-diego-migrants-border>; Molly Hennessy-Fiske, *Border Patrol holds migrant families for days under a south Texas bridge*, L. A. TIMES (Mar. 24, 2021), <https://www.latimes.com/world-nation/story/2021-03-24/texas-migrants-border-bridge>; James Dobbins, et al., *How Hope, Fear, and Misinformation Led Thousands of Haitians to the U.S. Border*, N. Y. TIMES (Sept. 17, 2021), <https://www.nytimes.com/2021/09/17/us/haitians-border-patrol.html>.

³ Consistent with demands our organizations have made elsewhere, we urge immediate and final terminations to the Title 42 order, MPP, and all policies that obstruct access to protection at the southern border.

⁴ This OIG Complaint seeks only to address how CBP responds to applications for humanitarian parole that it receives within the CBP San Diego Area of Responsibility. It does not address the process for applications submitted to U.S. Citizenship and Immigration Services, nor does it intend to provide a global solution for how all DHS component agencies should process applications for humanitarian parole.

Outstanding applications include:

- An application on behalf of a family of four including two minor children who have urgent medical needs due to their diagnosis of epilepsy, experience suffering frequent seizures, and cognitive complications (filed on Aug. 24, 2021 by ImmDef);
- An application on behalf of a family of five including a baby who needs urgent medical care due to suffering from macrocephaly, intracranial hypertension, and epilepsy, and who has fluid in their brain (filed on Sept. 20, 2021 by AOL); and
- An application on behalf of a gay man who lives with HIV and suffers from high blood pressure, anxiety, and extreme depression who cannot access critical medication or treatment in Mexico. After fleeing persecution in his home country, he has faced further threats to his safety and wellbeing in Mexico while being forced to wait for an opportunity to seek asylum in the United States (filed on Oct. 8, 2021 by TLC).

Most applications that have been adjudicated have been summarily denied without explanation, including:

- An application on behalf of a family of three who fled their home country due to death threats and domestic violence and cannot access urgent medical care in Mexico, including a mother who suffers from breast pain and inflammation, fevers, nausea, vomiting, and increased stress and anxiety, a child who has suffered eye bleeding after prolonged sun exposure, and another child who suffers from chronic nosebleeds (filed on Oct. 8, 2021 by ImmDef and summarily denied on Oct. 22, 2021);
- An application on behalf of a family of four who fled their home country due to persecution, including a five-year-old child with urgent medical needs stemming from her diagnosis of severe asthma, which has caused prolonged respiratory illness, and the child's mother, who has untreated high blood pressure. The family continued to receive death threats from their persecutors while forced to wait in Mexico for an opportunity to seek asylum in the United States (filed on Oct. 8, 2021 by ACLU and summarily denied on Oct. 22, 2021); and
- An application on behalf of a 21-year-old single woman who fled persecution in her home country only to be kidnapped by human traffickers, held hostage at gunpoint, starved, and sexually assaulted in Mexico while waiting for an opportunity to seek asylum in the United States. After five days in captivity, she threw herself out of a window to escape and landed on her knees, suffering significant physical injuries in addition to severe PTSD and depression as a result of the kidnapping (filed on Oct. 1, 2021 by JFS and summarily denied on Oct. 29, 2021).

Most often, after submission of urgent humanitarian parole requests, there is no response. Rather, the submissions go wholly unanswered. When JFS, ImmDef, AOL, TLC, and ACLU have followed up about outstanding applications, they often receive no response at all. When responses are provided, they are varied and sometimes conflicting, including:

- Responses indicating the applicant must reach out to Mexico-based non-governmental organizations overseeing “Consortium Processing,” a process entirely distinct from

- DHS's authority to grant parole under INA § 212(d)(5) pursuant to which applicants could seek to be exempted from Title 42 restrictions, which has been indefinitely suspended since September 2021;
- Responses indicating the applicant must contact UNHCR to register for MPP windown, a process entirely distinct from DHS's authority to grant parole under INA § 212(d)(5), which has been indefinitely suspended since August 2021;
 - Responses indicating the application is under review;
 - Responses requesting documentation that was included in the initial filing; and
 - Responses indicating CBP OFO cannot adjudicate certain humanitarian parole applications for the bureaucratic reason that supposedly only Border Patrol can adjudicate applications for individuals who have been enrolled into MPP by Border Patrol. Responses do not indicate CBP OFO will redirect such applications to Border Patrol, a component agency of CBP, nor do they provide relevant contact information or any other guidance for how to redirect such requests.

Where applications have finally been adjudicated, it has largely been the result of applicants' representatives being forced to repeatedly escalate the requests by following up with CBP San Diego OFO leadership, CBP headquarters, and DHS Office of Civil Rights and Civil Liberties, or after inquiries by members of the press.⁵ Local media coverage has confirmed that most humanitarian parole requests "are either left pending indefinitely or denied with little explanation."⁶ In one case, an urgent application for a two-year-old child who was at imminent risk of dying if he did not obtain life-saving cancer treatment unavailable to him in Tijuana went unanswered for over one week, and was only adjudicated after the San Diego Union Tribune sent an email inquiry about the case.⁷ A report published by Human Rights First also confirmed "CBP officials at southern border ports of entry are denying or ignoring nearly all requests for humanitarian parole[.]"⁸

While we understand the statute and regulations confer discretion upon delineated officials to grant or deny humanitarian parole applications, they do not confer discretion to ignore, pass off, or excessively delay the adjudication of humanitarian parole applications. *See* INA § 212(d)(5); 8 C.F.R. § 212.5(a) ("The authority of the Secretary to continue an [applicant] in custody or grant parole under section 212(d)(5)(A) of the Act *shall* be exercised by [the Secretary's designees]...subject to the parole and detention authority of the Secretary or [their] designees.") (emphasis added). Given the

⁵ Without clear guidance of where to submit humanitarian parole applications, advocates have submitted completed parole applications and directed follow-up inquiries to the following CBP officials:
[REDACTED]

⁶ Kate Morrissey, *Child allowed into U.S. for urgent cancer treatment, a rare grant of humanitarian parole*, SAN DIEGO UNION TRIBUNE (Oct. 22, 2021),
<https://www.sandiegouniontribune.com/news/immigration/story/2021-10-22/child-cancer-treatment>

⁷ *Id.*

⁸ *Id.*; Human Rights First, "*Illegal and Inhumane*": Biden Administration Continues Embrace of Trump Title 42 Policy as Attacks on People Seeking Refuge Mount (Oct. 2021) at 4,
<https://www.humanrightsfirst.org/sites/default/files/IllegalandInhumane.pdf>.

urgent nature, by definition, of humanitarian parole requests, we are gravely concerned that CBP's refusal to timely adjudicate applications renders the parole authority obsolete in our region, and unnecessarily subjects vulnerable people to imminent harm and life-threatening dangers in Mexico.

Congress has made clear its intent that humanitarian parole be an option for people seeking entry into the United States for urgent humanitarian or public benefit reasons, regardless of any other circumstances. However, the current bleak state of the border—including restrictions imposed by the Title 42 order and the cessation of all formal processes to seek exemptions from the order, and the imminence of the potential resumption of MPP—make even more troubling CBP San Diego OFO's refusal to adjudicate the majority of humanitarian parole applications it has received from our region. Simply put, in this moment, humanitarian parole applications to CBP are the only lifeline by which vulnerable individuals facing imminent harm can access protection in the United States through the southern border. Given DHS's statutory humanitarian parole authority and the systematic inability of people seeking protection to access the asylum process in the United States, it is extremely urgent that DHS OIG investigate CBP San Diego OFO's practice of refusing to adjudicate humanitarian parole applications it receives, and ultimately that CBP San Diego OFO promptly adjudicate such applications.

Recommendations

We urge an investigation into CBP San Diego OFO's practice of failing to adjudicate humanitarian parole applications in a timely manner and call upon DHS OIG to make the following recommendations to CBP:

- (1) Accept and adjudicate all humanitarian parole applications transmitted electronically as well as those presented in person at any land ports of entry within the CBP San Diego Area of Responsibility, including San Ysidro (PedEast and PedWest), Otay Mesa, Tecate, Andrade, and Calexico, irrespective of whether applicants are *pro se* or represented by counsel, and irrespective of whether the applicants were previously enrolled in MPP;
 - a. As soon as practicable, and no later than 48 hours after submission, provide a dated acknowledgement of receipt of the humanitarian parole request to all applicants and/or their representative(s);
 - b. Meaningfully adjudicate all humanitarian parole applications based on the criteria for eligibility outlined in the statute and governing regulations. Where CBP denies an application for humanitarian parole, provide the reasons for the denial in writing to the applicant(s) and/or their representative(s);
 - c. On a quarterly basis, or upon applicable staffing changes, provide attorneys and legal services organizations with appropriate contact information for the official(s) tasked with reviewing and adjudicating humanitarian parole applications;
 - d. For those applications presented in person, collect contact information from the applicant(s) and/or their representative(s) that CBP San Diego OFO will use to communicate with the applicant(s) and/or their representative(s) regarding the application going forward;
- (2) Adjudicate humanitarian parole applications marked as “urgent” or “emergency” within 48 hours. Where an additional period of 48 hours is needed to consult with CBP

- Headquarters, inform the applicant(s) and/or their representative(s) of the delay as soon as practicable;
- (3) Where a humanitarian parole application does not contain sufficient information and/or documentation required for adjudication, respond to the applicant(s) and/or their representative(s) within 48 hours clearly noting the information and/or documents that the applicant must submit for timely adjudication. Upon receipt of complete information and/or documentation, adjudicate the application consistent with recommendations (1) and (2); and
- (4) Track and report, on a quarterly basis, the number of humanitarian parole applications received and adjudicated within the CBP San Diego Area of Responsibility, broken down by *pro se* and represented applicants.

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
Email: mlangarica@aclusandiego.org

/s/ Kate Clark
Kate Clark, Esq.
Senior Director of Immigration Services
Jewish Family Service of San Diego
Email: katec@jfssd.org

/s/ Margaret Cargioli
Margaret Cargioli
Managing Attorney
Immigrant Defenders Law Center
Email: mcargioli@immdef.org

/s/ Nicole Elizabeth Ramos
Nicole Elizabeth Ramos
Project Director, Border Rights Project
Al Otro Lado
Email: nicole@alotrolado.org

/s/ Meghan DuPuis Maurus
Meghan DuPuis Maurus
Managing Attorney and Legal Coordinator
Transgender Law Center
Email: maurus@transgenderlawcenter.org