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U.S. Customs and Border Protection
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RE: Denial of Food to Asylum Seekers Awaiting Processing at San Ysidro Port of Entry

Dear Sirs and Madam:

This letter documents violations of U.S. Customs and Border Protection (CBP) policy and the U.S. Constitution at the San Ysidro port of entry. Specifically, the purpose of this correspondence is to document (1) CBP's failure to provide food to asylum seekers awaiting processing at the border; (2) CBP supervisors' apparent lack of knowledge as to official agency policies regarding the treatment of those awaiting processing at the ports of entry; and (3) CBP officers' lack of professionalism and abusive conduct towards both asylum seekers and their attorneys.

Denial of Food to "M.", Transgender and Disabled Asylum Seeker, for Thirty Plus Hours

Last Friday evening, I was contacted by Nicole Ramos, a U.S. citizen and U.S. immigration lawyer based in Tijuana, Baja California, Mexico. At around 1 p.m. on Thursday, March 17, 2016, Ms. Ramos had escorted her client, "M.", to the San Ysidro Port of Entry.¹ "M." is a disabled,

¹ In order to protect M.'s privacy, only her initial is used here.

transgender female Mexican citizen seeking asylum in the United States. Accordingly, she entered the line for asylum processing by CBP officers.

For the next thirty-four hours, the CBP officers on duty failed to provide “M.” with any food.

Approximately eight hours after escorting “M.” to the port of entry (around 9 p.m. on Thursday March 17), Ms. Ramos communicated with her client and learned that “M.” had not received any food. Ms. Ramos immediately contacted the CBP supervisor on duty and was assured that CBP officers fed individuals awaiting asylum processing three times per day.

Friday morning, when Ms. Ramos again spoke with her client, “M.” told her she was still in line for processing and had not been offered any food—more than eighteen hours after she had arrived at the port—despite her repeated requests to CBP officers for something to eat. In response to “M.’s” requests for food, CBP officers on duty had told her that it was her responsibility to bring her own food to the port.

Concerned for her client’s welfare, Ms. Ramos visited her at the port of entry, bringing her something to eat around 11 a.m. on Friday morning. At that time, Ms. Ramos again spoke with the CBP supervisor on duty. Contrary to what Ms. Ramos had been told by the previous CBP supervisor on duty, this CBP officer told Ms. Ramos that individuals awaiting credible fear interviews would be provided something to eat “if they asked.”

By 5 p.m. on Friday, “M.” remained in line for a credible fear interview and had still not been offered any food by CBP, despite her repeated requests for something to eat.

Around 9 p.m. on Friday, Ms. Ramos spoke with CBP supervisor Chief Knox. Chief Knox informed Ms. Ramos that CBP “was not obligated to feed people on the Mexican side” of the port of entry—a statement which is nonsensical given the fact that CBP officers line up asylum seekers awaiting processing in the U.S.-controlled area of the port. Chief Knox also informed Ms. Ramos that CBP would “get [to M.] when we get to her,” and that neither “M.’s” nor Ms. Ramos’ accounts of “M.’s” treatment were “believable.”

Prior to escorting “M.” to the port of entry, Ms. Ramos had prepared a letter to CBP describing her client’s disabilities and special needs. When “M.” tried to present this letter to CBP officers at the port, the officer she spoke with retorted that she had “wasted her money on an attorney” and further told her that “the letter doesn’t mean shit.”

Given CBP’s apparent inability to correctly articulate (much less apply) agency policy and complete indifference for asylum seekers’ welfare at the port of entry, Ms. Ramos was forced to send colleagues back to the port on Friday night with more food for her client. “M.” was finally taken in for processing on Saturday morning.

“M.’s” ordeal raises a number of serious concerns. First, the ACLU is deeply troubled to hear that the agency is denying asylum seekers food and water at regular intervals. Second, CBP’s inconsistent statements regarding agency policy with respect to the provision of food indicate a lack

of adequate training on basic protocols relevant to the humane treatment of asylum seekers. Finally, CBP officials' unprofessional and abusive remarks are unacceptable.

Individuals Awaiting Processing at Ports of Entry Must be Provided With Food and Water at Regular Intervals.

Individuals who present at the port of entry seeking asylum may have to wait for many hours—sometimes even days—before they are admitted for a credible fear interview and further processing. Without completing a credible fear interview at the port of entry, such individuals cannot pursue their asylum claims in the United States. While awaiting an interview, these asylum seekers must wait on line in the presence of CBP officers. If they leave the line, they lose their position.

In light of the fact that asylum seekers must wait on line to present their claims for processing at ports of entry, these individuals must be provided with food and water at regular intervals.

National policies establish minimum standards for the treatment of individuals subjected to short-term custody in facilities under CBP control. For example, the U.S. Border Patrol is required to provide individuals with “snacks and juice every four hours.” U.S. Border Patrol, Detention Standards, Ref. No. 08-11267, at § 6.8 (Jan. 31, 2008), *available at* bit.ly/1nBc6Ab. All individuals, “whether in a hold room or not, will be provided a meal if detained more than 8 hours or if their detention is anticipated to exceed 8 hours.” *Id.* “Regardless of the time in custody, juveniles will be provided with meal service, and at least every six hours thereafter; two of three meals must be hot.” *Id.* “Juveniles, small children, toddlers, babies, and pregnant women will have regular access to snacks, milk, or juice at all times.” *Id.* Individuals like “M.” who must wait in line for CBP processing in facilities under CBP control, like the San Ysidro port of entry, must be afforded these same minimum protections.

Detainees who are neither charged with nor convicted of any crime, like “M.” and other asylum seekers awaiting CBP processing at ports of entry, have substantive due process rights under the Fifth Amendment to the United States Constitution and are entitled to “more considerate treatment” than pretrial detainees in criminal cases. *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004). Indeed, even convicted prisoners, who are protected by less stringent standards than pretrial detainees, are entitled to “adequate food.” *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).

The denial of regular meals to detainees unquestionably violates the Constitution. *See, e.g., Simmons v. Cook*, 154 F.3d 805, 808 (8th Cir. 1998) (failure to provide “four consecutive meals” in 32 hours violated prisoners’ rights); *Dearman v. Woodson*, 429 F.2d 1288, 1290 (10th Cir. 1970) (inmate’s allegation of “50½ hours of starvation” stated claim for constitutional violation); *Blount v. Miller*, No. 7:14CV00007, 2015 WL 1505772, at *7 (W.D. Va. Mar. 31, 2015) (denial of “six consecutive meals ... falls outside contemporary standards of decent treatment for prisoners”).

Accordingly, the denial of food at regular intervals to asylum seekers awaiting processing at ports of entry is a form of punishment that is constitutionally impermissible. *See, e.g., Pierce v. County of Orange*, 526 F.3d 1190, 1205 (9th Cir. 2008) (“if a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the governmental action is punishment that may not be inflicted upon detainees *qua* detainees”);

see also, e.g., United States v. Minero-Rojas, No. 11-CR-3253-BTM, 2011 WL 5295220, at *11 (S.D. Cal. Nov. 3, 2011) (“The Court finds it difficult to see how there may be a ‘legitimate governmental objective’ in not providing pretrial detainees with beds, hygiene products, and adequate food” (citing cases)).

In view of the foregoing, it is clear that “M.’s” treatment last Thursday and Friday violated not only CBP national policies but also the basic protections of the United States Constitution. Such inhumane and unlawful practices must stop.

CBP Officers’ Inconsistent Statements Regarding Agency Policies and Protocols Indicate a Lack of Adequate Training.

CBP is required to promulgate and implement policies and procedures related to the operation of ports of entry, including policies and procedures relevant to individuals awaiting processing on claims of asylum. Furthermore, CBP leadership is responsible for oversight and monitoring of line-level agents’ compliance with these policies and procedures, as well as other applicable laws (including, as explained above, the U.S. Constitution). CBP leadership is also responsible for the training and supervision necessary to ensure officer compliance with all such policies, procedures, and laws.

Here, the fact that an immigration attorney was given three completely different and contradictory responses to a straightforward inquiry by supervisory CBP officers indicates a lack of adequate training. Each and every line-level CBP officer and supervisory official should fully understand and consistently implement all basic protocols relevant to the humane treatment of individuals awaiting processing at our ports of entry.

CBP Officers’ Unprofessional and Abusive Remarks are Unacceptable and Must Not be Tolerated by Sector and National CBP Leadership.

Finally, the unprofessional and abusive comments made by a CBP officer to “M.” when she attempted to present a letter from her attorney, and from Chief Knox to Ms. Ramos when asked about the provision of food, are unacceptable. One of CBP’s “core values” is “defending and upholding the Constitution of the United States.” <http://www.cbp.gov/about>. Additionally, CBP maintains that the agency is “guided by the highest ethical and moral principles.” *Id.* Starving and verbally abusing potential asylum seekers and their attorneys are entirely at odds with these basic precepts.

Last week, the Homeland Security Advisory Council’s CBP Integrity Advisory Panel issued its Final Report. Among the thirty-nine formal recommendations included in this report was one that CBP “[a]cknowledge all complaints received from the public,” and, “[i]f the complaint amounts to allegations of misconduct potentially warranting discipline,” CBP Internal Affairs “should acknowledge [the complaint] with a letter or other documented communication to the complainant, verifying receipt of the complaint and assuring a fair and objective investigation.” Homeland Security Advisory Council, Final Report of the CBP Integrity Advisory Panel at 6 (Mar. 15, 2016), *available at* <https://www.documentcloud.org/documents/2761266-HSAC-CBP-IAP-Final-Report-DRAFT-FINAL.html>.

Consistent with these recommendations, I ask that CBP promptly acknowledge this letter; provide the ACLU with copies of all policies relevant to the treatment of asylum seekers who present at our ports of entry for processing by CBP officials; and issue a formal apology for the unprofessional and antagonistic conduct displayed by Chief Knox and other CBP officers in response to "M." and Ms. Ramos. I ask for a reply no later than Friday, **April 15, 2016**.

Thank you for your time and careful attention.

Sincerely,



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