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**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.<sup>1</sup> 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.<sup>2</sup>

As with our previous complaint regarding CBP's mistreatment of pregnant people,<sup>3</sup> 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.<sup>4</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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>.

<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.”<sup>7</sup>

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

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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.

<sup>5</sup> 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).

<sup>6</sup> 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>.

<sup>7</sup> 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](https://www.americanimmigrationcouncil.org/sites/default/files/foia_documents/access_to_counsel_cbp_requests_and_documents_4-9-13.pdf).

<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> More troubling still: 1,500 individuals (18.75 percent) were detained for *more than ten days*.<sup>11</sup> 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.<sup>12</sup> Overlong detentions not only transgress agency policies, but also facilitate detainee neglect and mistreatment, which may violate the United States Constitution.<sup>13</sup>

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<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](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](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>.

<sup>9</sup> *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](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).

<sup>10</sup> 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](https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19_.pdf).

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

<sup>12</sup> 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.

<sup>13</sup> *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.<sup>14</sup> 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.<sup>15</sup> It also highlighted the failure of existing agency policies to provide

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*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).

<sup>14</sup> 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/>.

<sup>15</sup> *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.”<sup>16</sup> Most unaccompanied children released from U.S. immigration custody are reunified with family members who live in the United States.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup> 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).<sup>20</sup> 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.<sup>21</sup> The American

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

<sup>17</sup> 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.”).

<sup>18</sup> *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>.

<sup>19</sup> Chotiner, *supra* note 18.

<sup>20</sup> AAP: Detention of Immigrant Children, *supra* note 18, at 6.

<sup>21</sup> *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.”<sup>22</sup> 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.”<sup>23</sup> Immigrant children should “receive timely, comprehensive medical care that is culturally and linguistically sensitive by medical providers trained to care for children.”<sup>24</sup> These recommendations echo a variety of legal provisions that exist to protect detained immigrant children.<sup>25</sup>

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.<sup>26</sup>

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COMMITTEE, 116<sup>th</sup> 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.”).

<sup>22</sup> AAP: Detention of Immigrant Children, *supra* note 18, at 1.

<sup>23</sup> *Id.*

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

<sup>25</sup> 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](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.

<sup>26</sup> *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](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.<sup>27</sup> 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.<sup>28</sup> CBP policy likewise requires that emergency medical services timely be provided when necessary.<sup>29</sup> Yet advocates have documented many cases in which no such medical evaluation or treatment was provided to sick children.<sup>30</sup> 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.<sup>31</sup>

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.<sup>32</sup> Children

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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).

<sup>27</sup> TEDS, *supra* note 6, § 4.1.

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

<sup>29</sup> TEDS, *supra* note 6, § 4.10.

<sup>30</sup> 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>.

<sup>31</sup> 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>.

<sup>32</sup> 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](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.<sup>33</sup> **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.**<sup>34</sup> 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.”<sup>35</sup>

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

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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.

<sup>33</sup> 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](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>.

<sup>34</sup> *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>.

<sup>35</sup> 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.”<sup>36</sup>

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

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<sup>36</sup> *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.<sup>37</sup> 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.<sup>38</sup>

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.

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<sup>37</sup> 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).

<sup>38</sup> 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.<sup>39</sup>

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.<sup>40</sup>

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.<sup>41</sup> 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

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

<sup>40</sup> 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.").

<sup>41</sup> 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.<sup>42</sup> 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.<sup>43</sup>

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

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<sup>42</sup> 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](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](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](https://www.aclutx.org/sites/default/files/pdn_border_patrol_abuse_oig_complaint.pdf).

<sup>43</sup> *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.<sup>44</sup>
- (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.**<sup>45</sup>

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<sup>44</sup> 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.

<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup>
- (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,<sup>49</sup> 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.<sup>50</sup>

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<sup>46</sup> 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.

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

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

<sup>49</sup> 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.

<sup>50</sup> 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.

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

Sincerely,

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