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

Re: U.S. Border Patrol's Verbal Abuse of Detained Individuals

I. Introduction

The American Civil Liberties Union Foundation of San Diego & Imperial Counties and the ACLU Border Rights Center (together, “ACLU”) hereby submit this administrative complaint to the Department of Homeland Security’s Office of Inspector General (“DHS OIG”), regarding the U.S. Border Patrol’s verbal abuse towards people in its custody.¹ As with the previous complaints in this series,² this complaint is derived from interviews the ACLU completed between March and July 2019 with people in San Diego and Tijuana who recently had been released from Border Patrol

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

² *CBP's Long History of Mistreatment of Detained People*, AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, <https://www.aclusandiego.org/legal/blp/cbp-mistreatment-of-detained-people/> (last visited July 6, 2020). *See also* AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, ET AL., ADMINISTRATIVE COMPLAINT RE: U.S. CUSTOMS AND BORDER PROTECTION AND BORDER PATROL'S ABUSE AND MISTREATMENT OF DETAINED PREGNANT PEOPLE (Jan. 2020) [hereinafter “Complaint #1: Pregnant People”], <https://www.aclusandiego.org/wp-content/uploads/2020/01/2020-01-22-OIG-Complaint-1-FINAL-1.pdf>; AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, ET AL., ADDENDUM TO COMPLAINT OF JANUARY 22, 2020 RE: U.S. CUSTOMS AND BORDER PROTECTION AND BORDER PATROL'S ABUSE AND MISTREATMENT OF DETAINED PREGNANT PEOPLE (Mar. 2020), <https://www.aclusandiego.org/wp-content/uploads/2020/03/2020-03-04-OIG-compl-preg-persons-addendum-appendix-FINAL.pdf>; AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, ET AL., ADMINISTRATIVE COMPLAINT RE: U.S. CUSTOMS AND BORDER PROTECTION AND BORDER PATROL'S ABUSE AND MISTREATMENT OF DETAINED SICK CHILDREN (Feb. 2020) [hereinafter “Complaint #2: Sick Children”], <https://www.aclusandiego.org/wp-content/uploads/2020/02/2020-02-18-OIG-Complaint-2-FINAL.pdf>; AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, ET AL., ADMINISTRATIVE COMPLAINT RE: SEPARATION OF FAMILIES VIA CBP DETENTION AND PROCESSING, AND THE AGENCY'S REFUSAL TO IMPLEMENT A DETAINEE LOCATOR SYSTEM (Apr. 2020) [hereinafter “Complaint #3: Separated Families”], <https://www.aclusandiego.org/wp-content/uploads/2020/04/2020-04-15-OIG-Complaint-3-FINAL.pdf>.

Although the ACLU’s three prior complaints addressed abuse and misconduct by both CBP and Border Patrol, this complaint more narrowly focuses on Border Patrol abuses.

custody.³ The ACLU requests that DHS OIG undertake a review based on the information contained in this complaint.

II. A Culture of Cruelty and Persistent Verbal Abuse

A culture of cruelty and impunity pervades the U.S. Border Patrol. Key factors that have contributed to this culture include (1) CBP's long adherence to a failed "prevention through deterrence" framework that incentivizes mistreatment of individuals in agency custody;⁴ (2) the rapid reorganization and militarization of U.S. immigration enforcement agencies in the aftermath of September 11, 2001; (3) irresponsible and unprecedented appropriations from Congress, without even minimal accountability requirements;⁵ and (4) reckless hiring surges, onboarding unqualified individuals into the largest federal law enforcement agency in the United States.⁶

This culture has been documented for years by journalists, former agency officials, advocates, and detained migrants.⁷ One Border Patrol agent reported "assaults and other abuses against migrants, a lack of effective oversight, and a disturbing culture of dehumanization in the agency."⁸ James Tomsheck, CBP's former internal affairs chief, repeatedly decried an agency

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

⁴ See, e.g., Jason de León, Eduardo "Lalo" García, & the Undocumented Migration Project, *A View from the Train Tracks*, SAPIENS, Feb. 16, 2016, <https://www.sapiens.org/culture/prevention-through-deterrence/> ("In the 1990s, the U.S. Border Patrol implemented a strategy called Prevention Through Deterrence. Since its inception, this approach has redirected migrant routes into the most inhospitable sections of the border, deploying the perilous desert as a tool to prevent entry into the United States.").

⁵ See, e.g., *Factsheet: The Cost of Immigration Enforcement and Border Security*, AMERICAN IMMIGRATION COUNCIL (Oct. 14, 2019), <https://bit.ly/2VBDKjM> (noting tenfold increase in U.S. Border Patrol's annual budget from 1993 to 2019, from \$363 million to \$4.7 billion, and tripling of CBP budget from \$5.9 billion in FY2003 to \$17.1 billion in FY2019).

⁶ See, e.g., Garrett M. Graff, *The Green Monster: How the Border Patrol Became America's Most Out-of-Control Law Enforcement Agency*, POLITICO, Nov./Dec. 2014, <https://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220>.

⁷ See, e.g., Greg Grandin, *The Border Patrol Has Been a Cult of Brutality Since 1924*, INTERCEPT, Jan. 12, 2019, <https://theintercept.com/2019/01/12/border-patrol-history/>.

⁸ John Washington, "Kick Ass, Ask Questions Later": A Border Patrol Whistleblower Speaks Out About Culture of Abuse Against Migrants, INTERCEPT, Sept. 20, 2018, <https://theintercept.com/2018/09/20/border-patrol-agent-immigrant-abuse/>. As the number of assaults by agents on migrants has steadily increased, the Border Patrol has faked statistics to claim that assaults against agents are on the rise. See, e.g., Debbie Nathan, *How the Border Patrol Faked Statistics Showing a 73 Percent Rise in Assaults Against Agents*, INTERCEPT, Apr. 23, 2018, <https://theintercept.com/2018/04/23/border-patrol-agents-assaulted-cbp-fbi/>.

“culture that goes out of its way to evade legal restraints,” “clearly engineered to interfere with [oversight] efforts to hold the Border Patrol accountable.”⁹

Reports of abuse are widespread and persistent: these are not isolated or “one off” problems, but rather recurring instances of misconduct throughout agency sectors nationwide. CBP officials, including Border Patrol agents, systemically dehumanize immigrants and communities of color.¹⁰ For example, last year, court documents in a case against a Border Patrol agent who hit a migrant with his truck revealed a series of racist text messages in which the agent described immigrants as “disgusting subhuman shit unworthy of being kindling in a fire.”¹¹ The agent’s own lawyer defended these remarks by claiming they were “commonplace throughout the [Border Patrol sector]” and “part of the agency’s culture.”¹²

Perhaps the most common manifestation of this systemic dehumanization is CBP officials’ egregious verbal abuse of detained individuals. In 2014, advocates (including the ACLU) submitted an administrative complaint to DHS OIG on behalf of 116 children who had spent time in CBP custody, more than half of whom reported verbal abuse.¹³ Another survey found that 23 percent of migrant respondents reported “being yelled at, threatened, or verbally abused while in U.S. custody.”¹⁴ A full 75 percent “of those verbal abuses were attributed to the Border Patrol.”¹⁵

⁹ Carrie Johnson, *Former Border Protection Insider Alleges Corruption, Distortion in Agency*, NAT’L PUB. RADIO, Aug. 28, 2014, <https://www.npr.org/2014/08/28/343748572/former-border-protection-insider-alleges-corruption-distortion-in-agency>.

¹⁰ See, e.g., A.C. Thompson, *Inside the Secret Border Patrol Facebook Group Where Agents Joke About Migrant Deaths and Post Sexist Memes*, PROPUBLICA, July 1, 2019, <https://www.propublica.org/article/secret-border-patrol-facebook-group-agents-joke-about-migrant-deaths-post-sexist-memes> (quoting University of Arizona sociologist Daniel Martinez, who asserts there “seems to be a pervasive culture of cruelty aimed at immigrants within CBP. This isn’t just a few rogue agents or ‘bad apples.’”); Ryan Devereaux, *Border Patrol Agents Tried to Delete Racist and Obscene Facebook Posts. We Archived Them*, INTERCEPT, July 5, 2019, <https://theintercept.com/2019/07/05/border-patrol-facebook-group/>; Washington, *supra* note 8.

¹¹ Cynthia Pompa, “Disgusting Subhuman Shit:” *Border Patrol Agent’s Actions and Attitudes Reflect Agency’s Violent Culture*, ACLU TEX. (Dec. 11, 2019), <https://www.aclutx.org/en/news/disgusting-subhuman-shit-border-patrol-agents-actions-and-attitudes-reflect-agencys-violent>.

¹² *Id.*

¹³ Letter from Nat’l Immigrant Just. Ctr. et al., to DHS CRCL & DHS OIG, Administrative Complaint Re: Systemic Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection (June 11, 2014), <https://cbpabusestest2.files.wordpress.com/2015/03/2014-06-11-dhs-complaint-re-cbp-abuse-of-uics.pdf>.

¹⁴ Josiah Heyman, Jeremy Slack & Daniel E. Martínez, WHY BORDER PATROL AGENTS AND CBP OFFICERS SHOULD NOT SERVE AS ASYLUM OFFICERS, CTR. FOR MIGRATION STUDIES (June 21, 2019), <https://cmsny.org/publications/heyman-slack-martinez-062119/>.

¹⁵ *Id.*

Researchers documenting Border Patrol's verbal abuse of detained individuals have identified various recurring patterns. Agents berate migrants for traveling to the United States and attempting to exercise their legal right to seek asylum.¹⁶ "Xenophobic nationalism is widespread," and derogatory comments are often accompanied by threatened or actual physical violence.¹⁷ Agents bully LGBTQ people, equate migrants to animals, and ridicule and humiliate parents trying to protect their children.¹⁸ These findings are consistent with accounts provided to the ACLU in recent investigations, and journalists' reports of endemic racism, misogyny, and homophobia within the Border Patrol.¹⁹

Border Patrol's verbal abuse is especially concerning given that many migrants are asylum seekers who have already endured significant trauma in fleeing their countries of origin to escape persecution or en route to the United States. For such individuals, immigration detention exacerbates pre-existing trauma.²⁰

A 2017 study by the Cato Institute examined available data between 2006 and 2016 and concluded that the Border Patrol's "agent termination rate for discipline or performance is much higher than for law enforcement officers at other large federal law enforcement agencies."²¹ Yet there is little or no meaningful oversight of Border Patrol misconduct. DHS's "oversight"

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See, e.g., *id.*; Grace Panetta, *Border Patrol officials reportedly forced a Honduran migrant to walk around a detention center holding a sign reading 'I like men' in Spanish*, BUS. INSIDER, July 5, 2019, <https://www.businessinsider.com/detained-migrant-forced-hold-sign-reading-i-like-men-report-2019-7?op=1>; Nick Valencia, et al., *Border Patrol agents allegedly tried to shame a migrant by making him hold a sign reading 'I like men,' emails show*, CNN, July 4, 2019, <https://www.cnn.com/2019/07/04/us/honduran-migrant-shamed-border-patrol/index.html>; Andrew Gumbel, *'They Were Laughing at Us': Immigrants Tell of Cruelty, Illness and Filth in US Detention*, GUARDIAN, Sept. 12, 2018, <https://www.theguardian.com/us-news/2018/sep/12/us-immigration-detention-facilities>; Cristina Novoa, *5 Revelations From Children in Border Patrol Facilities*, CENTER AM. PROGRESS, July 3, 2019, <https://www.americanprogress.org/issues/early-childhood/news/2019/07/03/471808/5-revelations-children-border-patrol-facilities/> ("Beyond demonstrating a shocking lack of compassion toward frightened children, testimonies also show that some guards appear to deliberately scare children in their custody").

¹⁹ See, e.g., Chantal da Silva, *Former Border Patrol Agent Says She Was Raped at Training Academy by Colleague Who Went on to Have Lifelong Career*, NEWSWEEK, Nov. 21, 2019, <https://www.newsweek.com/border-patrol-agent-raped-training-academy-1447407>; Thompson, *supra* note 10.

²⁰ See generally, e.g., U.S. COMM'N ON CIVIL RIGHTS, TRAUMA AT THE BORDER: THE HUMAN COST OF INHUMANE IMMIGRATION POLICIES at 65–66, 120–21 (Oct. 24, 2019), <https://www.usccr.gov/pubs/2019/10-24-Trauma-at-the-Border.pdf>; CTR. FOR VICTIMS OF TORTURE ET AL., TORTURED & DETAINED: SURVIVOR STORIES OF U.S. IMMIGRATION DETENTION at 13–14 (Nov. 2013), https://www.cvt.org/sites/default/files/Report_TorturedAndDetained_Nov2013.pdf.

²¹ Alex Nowrasteh, *Border Patrol Termination Rates: Discipline and Performance Problems Signal Need for Reform*, CATO INST. (Nov. 2, 2017), <https://www.cato.org/publications/policy-analysis/border-patrol-termination-rates-discipline-performance-problems-signal>.

mechanisms are structurally deficient and fail to address abuse of authority and impunity within CBP. Nearly six years ago—in September 2014—then-CBP Commissioner Gil Kerlikowske enlisted a consulting agency to complete a “comprehensive” examination “of CBP’s misconduct review process from intake, referral, investigation and discipline to improve [the agency’s] handling of these situations and improve transparency.”²² Shortly thereafter, then-Secretary of Homeland Security Jeh Johnson asked the Homeland Security Advisory Council to create a CBP Integrity Advisory Panel specifically to evaluate “efforts to deter and prevent corruption and the use of excessive force.”²³ Suggested reforms, however, were never implemented.²⁴ And, in 2017, data obtained by the American Immigration Council found that CBP took “no action” in 95.9 percent of complaints (including complaints of verbal abuse) against Border Patrol agents between January 2012 and October 2015.²⁵ To this day, government reports underscore persistent deficiencies in oversight and disciplinary mechanisms at the agency.²⁶

The Border Patrol’s verbal abuse of individuals in agency custody violates CBP policies; officials who engage in such abuse fail to “speak and act with the utmost integrity and professionalism,” “treat all individuals with dignity and respect,” or “perform their duties in a non-discriminatory manner.”²⁷ Ineffective oversight and disciplinary mechanisms permit these policy violations to continue unabated.

²² PIVOTAL PRACTICES CONSULTING LLC, CBP, COMPLAINTS AND DISCIPLINE SYSTEMS REVIEW: PUBLIC REPORT OF FINDINGS AND RECOMMENDATIONS 3 (Nov. 23, 2015), <https://www.cbp.gov/sites/default/files/assets/documents/2016-Mar/cbp-complaint-discipline-system-review.pdf>.
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²³ U.S. GOV’T ACCOUNTABILITY OFF., GAO-18-405, DEPARTMENT OF HOMELAND SECURITY: COMPONENTS COULD IMPROVE MONITORING OF THE EMPLOYEE MISCONDUCT PROCESS, at 13 (2018), <https://www.gao.gov/assets/700/693587.pdf>.

²⁴ See A.C. Thompson, *Years Ago, the Border Patrol’s Discipline System was Denounced as ‘Broken.’ It’s Still Not Fixed*, PROPUBLICA, June 20, 2019, <https://www.propublica.org/article/border-patrol-discipline-system-was-denounced-as-broken-still-not-fixed>.

²⁵ Guillermo Cantor, Ph.D. & Walter Ewing, Ph.D., STILL NO ACTION TAKEN: COMPLAINTS AGAINST BORDER PATROL AGENTS CONTINUE TO GO UNANSWERED, AM. IMMIGRATION COUNCIL (Aug. 2, 2017), <https://www.americanimmigrationcouncil.org/research/still-no-action-taken-complaints-against-border-patrol-agents-continue-go-unanswered>.

²⁶ See, e.g., Thompson, *supra* note 24; DHS OIG, OIG-19-48, DHS NEEDS TO IMPROVE ITS OVERSIGHT OF MISCONDUCT AND DISCIPLINE (2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-48-Jun19.pdf>.

²⁷ U.S. CUSTOMS AND BORDER PROTECTION, NAT’L STANDARDS ON TRANSPORT, ESCORT, DETENTION, AND SEARCH, at §§ 1.2 (Integrity and Professionalism) & 1.4 (Non-Discrimination Policy) (Oct. 2015) [hereinafter “TEDS”], <https://www.cbp.gov/document/directives/cbp-national-standards-transport-escort-detention-and-search>.

III. Individual Accounts of Border Patrol Agents' Verbal Abuse

Our investigation identified many instances in which Border Patrol agents verbally abused individuals, including children, in their custody. This abuse may involve bullying, harassment, threats of violence or other harm, denigration, ridicule, racism, and misstatements about U.S. immigration law, including an individual's right to seek asylum. Recently detained individuals related the following statements to our investigator:²⁸

- “Olvídate del asilo, a la mejor te quitamos a tu hija.”
“Forget about asylum, we might just take away your daughter.”
—Border Patrol agent to woman while interrogating her about why she came to the United States.
- “No mantenemos hijos de nadie.”
“We don’t take care of anyone’s children.”
—Border Patrol agent to a mother when she asked for food for her 1-year old child who had not had any food to eat for an entire day.
- “Pendejadas las tuyas, esa mentira ya me la creo yo.”
“Your words are bullshit, I stopped believing that lie.”
—Border Patrol agent to woman trying to explain she had fled her country of origin to escape from her abusive partner.
- “Cabrona, échate para atrás.”
“You bastard, get back over there.”
—Border Patrol agent to woman as she was entering the country and injured from crossing the border wall.
- “¿Desgraciada, ¿porque tienes tantos niños si no los puedes cuidar? Puta, prostituta.”
“Disgraced woman, why do you have so many kids if you can’t take care of them? Slut, prostitute.”
—Border Patrol agent to a detained mother.
- “¿Trajiste a tu hija a los EEUU para prostituirla?”
“Did you bring your daughter to the U.S. to prostitute her?”
—Border Patrol agent to a mother with a 15-year-old daughter.
- “¿Cuáles de ustedes maricas sufren de asma?”
“Which of you faggots suffer from asthma?”
—Border Patrol agent to a holding cell of young boys aged 13 to 17.

²⁸ Most of ACLU’s interviews were conducted in Spanish, with contemporaneous notes taken in Spanish by our investigator. Where our notes contain the original Spanish quotes, we have provided that original (as relayed by the interviewee to our investigator) as well as our English translation. At times, our investigator memorialized a statement in English only during her interview (via simultaneous translation). In such cases, we have reproduced her English translation here.

Many of these quotes use degrading and offensive language that we hesitated to reprint. In the end, we decided to reproduce the language reported to remain as faithful as possible to the accounts of those we interviewed.

- **“If you keep complaining I will put you with the dogs.”**
—Border Patrol agent to woman when she refused to undress for a search during apprehension.
- “Yo mismo te voy a deportar, te voy a echar a México y vas a correr.”
“I am going to deport you myself, I will send you back to Mexico and you’ll have to run.”
—Border Patrol agent to man upon apprehension in the United States.
- “Ya saben a que vienen, ¿porque te quejas? ¿Qué, quieren una coca fría? ¡Aquí no es un hotel!”
“You know where you were coming, why are you complaining? What, did you want a cold soda? This is not a hotel!”
—Border Patrol agent to a cell of detained mothers as their children were crying and pleading for food.
- “Son indios de pata rajada, solo usan sus hijos para entrar.”
“You are all [derogatory expression referring to indigenous peoples], you only use your children to enter [the United States].”
—Border Patrol agent to detained father.
- “¡Aquí no se hace lo que voz dice, se hace lo que yo digo!”
“Here we don’t do what you say, you do what I say!”
—Border Patrol agent to pregnant woman asking for water.
- **“Are you fucking retarded? Stop playing with that shit.”**
—Border Patrol agent to children playing in holding cell.
- “Váyanse de aquí, ¿qué hacen aquí sí ni hablan inglés?, no valen nada.”
“Get out of here, what are you doing here if you don’t even speak English, you are worthless.”
—Border Patrol agent to woman and her family upon apprehension.
- **“He’s not even your son, you’re too old, he’s your grandson.”**
—Border Patrol agent to an older woman and her child upon apprehension.
- “No estás en tu casa, ¿tienes mierda en la cabeza?”
“You’re not at home, do you have shit for brains?”
—Border Patrol agent to woman who asked for a plastic cup to drink water.
- “Joder con ustedes, por eso no mejoran en su país.”
“I’ve fucking had it with you, this is why you guys don’t advance in your country.”
—Border Patrol agent to detained woman who did not understand his Spanish.
- “Usan sus hijos como si fueran pasaporte.”
“You all use your kids as if they were a passport.”
—Border Patrol agent to detained woman.

- **“If you can eat and pee you’re okay.”**
—Border Patrol agent to detained man with severe flu symptoms.
- **“If you would have never left your country you would not have to go through this.”**
—Border Patrol agent to detained woman as she begged to not be returned to Tijuana under the so-called Migrant Protection Protocols (“MPP”) (also known as the “Remain in Mexico” policy).
- **“What is going on in your guys’ country that you think the government here will take care of you?”**
—Border Patrol agent to 8-months-pregnant woman during processing.
- **“No me interesa porque te haz venido, por las buenas o las malas te regresas.”**
“I don’t care why you’ve come here, for better or worse you’re going back.”
—Border Patrol agent to detained father before putting his family into MPP.
- **“I know guys like you, always on the streets.”**
—Border Patrol agent to a 16-year-old boy during interrogation without his mom present while she was in separate holding cell.
- **“I don’t care, it’s not my life, not my problem.”**
—Border Patrol agent to detained woman as she tried to explain why she had left her country of origin.
- **“I don’t have to tell you, you broke the law, you have no rights.”**
—Border Patrol agent to woman when she asked what was on the form she was being instructed to sign.
- **“¡Levántense, puercas!”**
“Get up, pigs!”
—Border Patrol agent to a cell of detained women.
- **“This is jail, not a hotel.”**
—Border Patrol agent to woman who asked for an instant soup instead of a cold burrito.
- **“Why do they only send us their trash? You are all trash!”**
—Border Patrol agent to cell full of detained women and children.
- **“You are acting like a dumbass! I am tired of you!”**
—Border Patrol agent to teenage girl after she declined agent’s request to remove her sweatshirt because of freezing temperatures in holding cell.
- **“I am treating you the way illegals should be treated!”**
—Border Patrol agent to mother of teenage girl who stood up for her daughter after agent ridiculed her and told agent to “stop yelling at us.”
- **“You are an idiot but you sure are good at popping out kids.”**
—Border Patrol agent to detained mother.

IV. Recommendations

CBP's culture of cruelty must be checked, and Border Patrol agents held accountable when they verbally abuse individuals in their custody. And, as explained elsewhere in this complaint series, the extended periods of detention to which people are subjected exacerbate the physical, mental, and emotional harms they endure while in Border Patrol custody.²⁹

The ACLU asks that DHS OIG conduct an immediate review of CBP's oversight and accountability mechanisms and issue recommendations to address the Border Patrol's pervasive culture of cruelty, racism, and abuse toward migrants in the agency's custody.

At a minimum, we call upon DHS OIG to:

- (1) Recommend that CBP **strictly prohibit personnel³⁰ from verbally abusing** individuals in agency custody. Recommend that CBP issue a **clear written outline for the disciplinary processes** to which personnel who do verbally abuse those in their custody will be subject. Recommend that CBP implement specific **zero-tolerance** policies for **anti-immigrant discrimination and racist employee conduct**.
- (2) Recommend that DHS create, publish and implement a **new complaint process** that applies to all component agencies, is based on best practices for law enforcement investigations and oversight, and includes:
 - (a) Various effective mechanisms for complaint submission (e.g., an online complaint form, a mobile device application, and a toll-free number), any one of which may be used to submit any immigration or border-related complaint, and each of which is made available to the public in multiple languages; *and*
 - (b) A uniform process for review and investigation of any complaint, including written confirmation of receipt with reference number within 24 hours of submission; *and*

²⁹ CBP facilities are only intended to be used for short-term custody. Many of these facilities—including almost all Border Patrol stations—lack beds, showers, or full-time medical care staff. Cognizant of these structural deficiencies, CBP policy states that detained individuals “should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities.” TEDS, *supra* note 27, at § 4.1. Border Patrol's policy is more restricted still, stating “[w]henver possible, a detainee should not be held for more than 12 hours.” U.S. BORDER PATROL, DETENTION STANDARDS: HOLD ROOMS AND SHORT TERM CUSTODY, REFERENCE NO. 08-11267, at § 6.2.1 (Jan. 31, 2008) [hereinafter “Border Patrol Short-Term Custody Policy”], <https://www.documentcloud.org/documents/818095-bp-policy-on-hold-rooms-and-short-term-custody.html>. See also, e.g., Complaint #1: Pregnant People, *supra* note 2, at 2, 3–4; Complaint #2: Sick Children, *supra* note 2, at 2, 4.

³⁰ As used throughout these recommendations, “CBP personnel” includes all agency employees, including U.S. Border Patrol agents.

- (c) A requirement that CBP personnel preserve and collect all potentially relevant records (including video and audio files), and turn over all such records to investigators within 60 days of request; *and*
 - (d) A requirement that CBP provide every complainant with written resolution of any complaint within one year of receipt.
- (3) Recommend **measures to increase CBP transparency regarding complaints** of official abuse and other misconduct, including:
- (a) The adoption of a national, standardized database of complaints and other misconduct investigations and written resolutions (to include findings of civil liability and/or referrals for criminal prosecution). The database should be publicly accessible while protecting complainants' privacy; *and*
 - (b) A requirement that CBP provide, to both the OIG and relevant congressional oversight committees, an annual report on the results of all disciplinary investigations involving CBP personnel (including any explanation for why a particular officer or agent was or was not disciplined) and plans to address identified trends.
- (4) Evaluate the **deficiencies in CBP's Office of Professional Responsibility (OPR)** that have allowed for recurring abusive and unprofessional behavior among CBP personnel and identify additional disciplinary mechanisms necessary for OPR to timely and meaningfully address personnel misconduct. Recommend that OPR develop and publish **disciplinary guidelines for all CBP personnel**. These guidelines should include provisions for suspension and/or termination for either certain egregious misconduct and/or repeated, lesser misconduct. These guidelines should also clarify the disciplinary progression for all forms of misconduct, including verbal abuse, abuse of authority, lying, excessive use of force, etc.
- (5) Recommend that CBP policies and practices be revised to **prohibit any period of detention beyond the time required for initial processing, which should in no case exceed 12 hours.**³¹

(continued...)

³¹ This would ensure that CBP's TEDS and other agency policies are consistent with the presumptive maximum detention period set out in Border Patrol's Short-Term Custody Policy, *see supra* note 29, at § 6.2.1.

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

Sincerely,

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