

November 30, 2023

Members of the U.S. Senate Committee on Homeland Security and Governmental Affairs

Members of the U.S. Senate Committee on the Judiciary

Members of the U.S. Senate Committee on Appropriations, Subcommittee on Homeland Security

Members of the U.S. Senate Committee on Health, Education, Labor, and Pensions

Members of the U.S. House of Representatives Committee on Homeland Security

**Re: Oversight of Medical Care in Customs and Border Protection Detention Facilities**



Dear Senators and Representatives:

We urge you to take immediate action to ensure proper oversight of the provision of medical care in Customs and Border Protection (“CBP”) detention and holding facilities. Advocates and government oversight agencies have long raised repeated concerns regarding the mistreatment of people in CBP custody. People detained by CBP, including children, have died and sustained serious injury due to medical neglect and failed internal oversight. In light of alarming reports that insufficient oversight by CBP of medical contractors has resulted in dangerous conditions for persons in its custody, we urge you to take immediate action. Congress should investigate CBP’s failed oversight with medical contractors, ensure enforceable standards for medical care in CBP custody, and ensure greater transparency and accountability by the agency.

We understand that Customs and Border Protection (“CBP”) will soon enter into a new contract for medical care in its detention facilities.<sup>1</sup> Recent reports by CBP Contract Officer Representative Troy Hendrickson now raise heightened concerns with respect to medical care provided in CBP custody and the agency’s continued failure to comply with federal contracting and oversight requirements. As Mr. Hendrickson’s recent whistleblower disclosure indicates, CBP contracting officers have long been aware of serious contract violations by Loyal Source Government Services (“Loyal Source”) in its provision of medical care at CBP detention facilities. These violations include: (1) Loyal Source’s substantial failure to provide sufficient employees to meet required medical staffing levels at CBP detention facilities, with vacancy rates of nearly 40 percent; (2) the provision of medical services by Loyal Source staff without appropriate medical licenses, or with expired licenses; (3) major privacy breaches of protected

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<sup>1</sup> Nick Miroff, *Medical Provider Vying for Border Contract Faces Scrutiny After Girl’s Death*, Washington Post, Nov. 19, 2023, <https://www.washingtonpost.com/immigration/2023/11/19/border-loyal-source-medical-care-migrants/>.

medical information of people in CBP custody; (4) and improper invoices for costs to CBP.<sup>2</sup>

However, CBP’s contracting officer apparently ignored and overrode these and other consistent violations, approving continued payment and use of Loyal Source’s services. At the same time, the contracting officer also apparently resisted efforts by Mr. Hendrickson and the CBP Chief Medical Officer, David Tarantino, to require corrective action or to hold Loyal Source accountable for these violations.<sup>3</sup> CBP’s agreements with Loyal Source have been worth at least \$630 million since 2015; this includes a \$421 million contract, which was awarded to Loyal Source in 2020 without any competitive bidding, with current payment at \$25 million per month to provide medical services in facilities nationwide.<sup>4</sup>



This clear failure of government oversight and accountability has led to tragic and preventable consequences, including the recent death of Anadith Reyes Alvarez, a medically vulnerable eight-year-old girl. According to CBP’s own investigation, Anadith died on May 17, 2023, at a CBP detention facility in Harlingen, Texas, after Loyal Source medical staff failed to review her medical documentation or to consult with or provide care by a physician, and refused her emergency medical transport and care. Loyal Source staff failed to provide this care despite a reported history of sickle cell anemia and heart problems, worsening flu symptoms, and a fever of 104.9 degrees.<sup>5</sup> As appointed court monitor Dr. Paul Wise concluded, Anadith’s death was a “preventable tragedy that resulted from a series of failures in the CBP medical and custodial systems,”

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<sup>2</sup> Protected Whistleblower Disclosure of Mr. Troy Hendrickson to Congress, Nov. 30, 2023 at 1, available at: <https://whistleblower.org/wp-content/uploads/2023/11/11-30-2023-Hendrickson-Congressional-Disclosure.pdf>.

<sup>3</sup> *Id.* at 11-12. Contracting officers have the authority to bind the federal government to a contract and negotiate on behalf of the U.S. Government. Contracting officers are responsible to ensure that all requirements of law and regulation are met prior to executing an action, that contractors comply with the terms of the contract, and that the interests of the United States are in its contractual relationships. Federal Acquisition Regulation 1.602-2.

<sup>4</sup> Nick Miroff, *Before Child Died in Custody, CBP Tried to Replace Medical Contractor*, Washington Post, Aug. 25, 2023, <https://www.washingtonpost.com/immigration/2023/08/25/border-medical-migrants-loyal-source/>; see also Sam.gov, U.S. CBP, Medical Services, Notice ID 20121070, Contract Award Number 70B03C20F00001383 (Sept. 28, 2020) (issuing sole source task order to Loyal Source); U.S. CBP, Limited-Sources Justification, Aug. 25, 2020 (asserting that “Loyal Source is particularly qualified . . . and has created a successful staffing model to recruit, hire, and maintain staff in austere areas,” and has “the immediate capability and capacity to perform the required services.”).

<sup>5</sup> U.S. CBP, *June 1, 2023 Update: Death in Custody of 8-Year-Old in Harlingen, Texas*, Jun. 1, 2023, <https://www.cbp.gov/newsroom/speeches-and-statements/june-1-2023-update-death-custody-8-year-old-harlingen-texas>.

including “an urgent need to greatly improve the quality assurance program utilized by the medical contractor and CBP medical oversight.”<sup>6</sup>

We urge you to immediately address CBP’s contract with Loyal Source for medical care, and underlying quality of care issues in CBP detention. In order to ensure that the abuses outlined in Mr. Hendrickson’s disclosure are never repeated, Congress should (1) closely investigate CBP’s oversight of contracts for medical care, and (2) allocate sufficient funding to ensure that individuals processed by CBP are promptly screened and provided appropriate medical care and support, and (3) ensure that funds allocated for the provision of care and support to migrants are used exclusively for that purpose.



### **I. Medical Care in CBP Detention Facilities Have Been Marked by Significant Neglect.**

Each day, CBP holds approximately 15,000 people in short-term detention facilities to process consideration of their entry into the United States.<sup>7</sup> CBP policy instructs that detained people “should generally not be held for longer than 72 hours in CBP hold rooms or facilities.”<sup>8</sup> However, CBP regularly detains people, including children, for periods long as 10 days and in many cases, over 30 days.<sup>9</sup> Government oversight agencies, media reports, and advocates alike have detailed numerous incidents of negligent medical care to people in CBP custody, including the denial of care to people with a ruptured appendix, broken bones, a damaged testicle due to injury by a Border Patrol Officer, severe fever, and infant diarrhea.<sup>10</sup> An ACLU investigation of government records illustrated multiple

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<sup>6</sup> Notice of Filing of Juvenile Care Monitor Report by Dr. Paul H. Wise at 38, *Flores v. Garland*, No. 2:85-cv-4544 (C.D. Cal.), Jul. 18, 2023, ECF No. 1352, available at <https://drive.google.com/file/d/131MREEFOOBO-tqKp4Sm5JZ-95U9S9xPn/view>.

<sup>7</sup> US CBP, *Custody and Transfer Statistics*, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics> (last updated Nov. 14, 2023).

<sup>8</sup> U.S. CBP, *Nat’l Standards on Transport, Escort, Detention, and Search* § 4.1 (Duration of Detention) (2015), <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf>.

<sup>9</sup> Priscilla Alvarez, *Adult Migrants Are Held in Border Facilities Amid Biden Administration Policy Changes*, Sources Say, CNN.com, Jul. 18, 2023, <https://www.cnn.com/2023/07/18/politics/migrants-border-facilities-biden-policies/index.html>; Anna Nawaz, *Hundreds of Children Have Been Held by Border Patrol for More Than 10 Days. The Legal Limit is 72 Hours*, PBS News Hour, Mar. 17, 2021, <https://www.pbs.org/newshour/nation/hundreds-of-children-have-been-held-by-border-patrol-for-more-than-10-days-the-legal-limit-is-72-hours>; Letter from ACLU of San Diego to Joseph Cuffari, DHS OIG (Feb. 18, 2020), <https://www.aclu-sdic.org/sites/default/files/2020-02-18-oig-complaint-2-final.pdf> [hereinafter “ACLU San Diego Letter, Feb. 18, 2020”].

<sup>10</sup> Keegan Hamilton, *Kids Allege Medical Neglect, Frigid Cells, and Rotten Burritos in Border Detention*, Vice.com, May 2, 2022, <https://www.vice.com/en/article/93b4vv/border-patrol-abuse-migrant-children>; Human Rights Watch, “*They Treat You Like You are Worthless*”: Internal DHS Reports of



case of denial of medical care to children in CBP custody, including denial of a pregnant minor with medical attention, which preceded a stillbirth; leaving a 4-pound premature baby and her minor mother in an overcrowded and dirty cell full of sick people, against medical advice; and withholding of prescription medication for a child who was detained after undergoing spinal surgery following a car accident.<sup>11</sup> The DHS Office of Inspector General recently reported that 5 people died in CBP custody after having a medical emergency in FY 2021.<sup>12</sup>

In his investigation into conditions around the death of Anadith Reyes Alvarez, Dr. Paul Wise raised a number of concerns with the quality of medical care provided in CBP detention facilities, including variation in the thoroughness of the identification, documentation, and required consultation with on-call physicians for people with acute and chronic conditions, inconsistent conveyance of medical information, and inconsistent practice with respect to confiscation and replacement of medication upon release. Dr. Wise also noted that current medical protocols lacked regular assessment of children in their pods, including those with known medical conditions, and that isolation facilities lacked adequate medical supervision and surveillance. In addition, Dr. Wise observed that CBP's quality assurance program is "profoundly inadequate," as there is no clarity as to how systems of care are assessed, including for those with serious chronic conditions or children who develop acute conditions or deteriorate in CBP custody.<sup>13</sup>

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*Abuses by U.S. Border Officials* (2021), <https://www.hrw.org/report/2021/10/21/they-treat-you-you-are-worthless/internal-dhs-reports-abuses-us-border-officials>; ACLU San Diego Letter, Feb. 18, 2020; Letter from American Immigration Council et al., to Cameron Quinn, DHS CRCL, et al. (Sept. 4, 2019), <https://www.aila.org/library/deprivation-medical-care-to-children-cbp-custody>; Denise Nathan, *A 5-Year-Old Girl in Immigration Detention Nearly Died of an Untreated Ruptured Appendix*, *The Intercept*, Sept. 2, 2018, <https://theintercept.com/2018/09/02/border-patrol-immigrant-detention-medical-neglect-texas/>; Human Rights Watch, *In the Freezer: Abusive Conditions for Women and Children in U.S. Immigration Holding Cells* (2018), <https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells>.

<sup>11</sup> ACLU Border Rights, ACLU Border Litigation Project, and University of Chicago Law School Int'l Human Rights Clinic, *Neglect and Abuse of Unaccompanied Children by U.S. Customs and Border Protection* (2018), [https://www.dropbox.com/s/lplnnufjbcwci0xn/CBP%20Report%20ACLU\\_IHRC%205.23%20FINAL.pdf?dl=0](https://www.dropbox.com/s/lplnnufjbcwci0xn/CBP%20Report%20ACLU_IHRC%205.23%20FINAL.pdf?dl=0).

<sup>12</sup> DHS Office of Inspector General, *ICE and CBP Deaths in Custody During FY 2021*, OIG-23-12 3 (2023), <https://www.oig.dhs.gov/sites/default/files/assets/2023-02/OIG-23-12-Feb23.pdf>.

<sup>13</sup> Notice of Filing of Juvenile Care Monitor Report by Dr. Paul H. Wise at 29-30.



## II. CBP Has Misallocated Funds Meant for Medical Care and Failed to Conduct Proper Oversight of Medical Care in Detention Facilities

In 2020, the Government Accountability Office (GAO) completed an audit of CBP’s provision of medical services in facilities on the southwest border.<sup>14</sup> The resulting report, *Southwest Border: CBP Needs to Increase Oversight of Funds, Medical Care, and Reporting of Deaths*, raised several concerns with respect to misuse of funds and lack of contract oversight. First, GAO found that CBP had misused part of the \$112 million of funds specifically allocated for medical care and related consumables (such as hygiene products, food, clothing, and medical supplies) services for other expenses, including purchase of transportation vehicles, law enforcement equipment, and tactical gear. As the GAO concluded, CBP’s use of funds “violated the purpose statute because those items were not primarily used to provide medical services,” and was due in part to “lack of oversight roles and responsibilities for reviewing obligations once made to ensure those obligations were consistent with the purpose of the line item.”<sup>15</sup> Second, the GAO found that CBP contract officers had not conducted required annual reviews of the contract with Loyal Source from fiscal years 2016 to 2018; and in 2019, CBP’s review did not include all elements required under the Federal Acquisition Regulation (“FAR”). In light of CBP’s plans for a new award to Loyal Source in 2020, GAO underscored the importance of “properly documented” annual reviews on its medical service agreement. GAO noted that “contracting officers may miss opportunities for additional savings and to ensure that the agreement continues to be the best option to fill the need for contracted medical services.”<sup>16</sup>

The GAO report also raised serious concerns with the provision of medical care in CBP facilities, finding that CBP and its contractors “ha[d] not consistently implemented enhanced medical care policies and procedures at southwest border facilities.”<sup>17</sup> Specifically, the GAO concluded that even as CBP’s plan to implement medical care policies did call for oversight, it nevertheless failed to include several essential elements including performance targets and roles and responsibilities for corrective actions. The GAO concluded: “Until CBP develops and implements oversight mechanisms that include targets, roles, and responsibilities, the agency is not well-positioned to ensure consistent implementation of medical efforts.”<sup>18</sup> In the absence of those necessary oversight mechanisms, the GAO found that medical contractors did not implement, and were sometimes not even aware of other medical care standards and CBP policies.

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<sup>14</sup> GAO, *Southwest Border: CBP Needs to Increase Oversight of Funds, Medical Care, and Reporting of Deaths* (July 2020), <https://www.gao.gov/assets/gao-20-536.pdf> [hereinafter “GAO CBP Report.”].

<sup>15</sup> GAO CBP Report at 11-16.

<sup>16</sup> *Id.* at 44-45.

<sup>17</sup> *Id.* at 30.

<sup>18</sup> *Id.* at ii.



For example, the GAO specifically noted that some “contracted medical providers did not consistently implement CDC-recommended practices,” and were unaware of interim medical directives or its requirements.<sup>19</sup> Finally, and alarmingly, the GAO concluded that CBP lacked reliable information on deaths, serious injuries, and suicide attempts and had not consistently reported deaths of individuals in custody to Congress.<sup>20</sup>

As a result of the GAO’s investigation, in 2021, CBP detailed Mr. Hendrickson to work jointly with the CBP Office of Chief Medical Officer (OCMO) as program staff, and as a Contract Officer Representative under the CBP Office of Acquisition. In this role, Mr. Hendrickson repeatedly raised concerns regarding Loyal Source’s failure to provide adequate staffing, improper use of unlicensed staff, privacy breaches, unauthorized or inappropriate security violations, and improper invoices to CBP. With the support of then-Chief Medical Officer Dr. David Tarantino, Mr. Hendrickson requested that the agency take corrective action against Loyal Source on multiple occasions. Instead, the Contracting Officer with authority over the contract refused to do so, and ultimately failed to impose corrective action over Loyal Source.<sup>21</sup>

CBP’s failure to exercise proper oversight over the provision of medical care in its facilities has placed detained people at great risk of harm and death. As Dr. Paul Wise noted in his review of Anadith Reyes Alvarez’s death, a critical systemic weakness in the provision of medical care in CBP custody includes the “urgent need to greatly improve the quality assurance program utilized by the medical contractor and CBP medical oversight.”<sup>22</sup>

### **III. Recommendations**

In light of these serious and systemic concerns regarding CBP’s oversight and provision of medical care to people in its custody, we make the following recommendations to Congress:

- Hold hearings and ensure an investigation into CBP’s contracting and oversight process for medical care in detention.
- Request that GAO conduct a renewed investigation into CBP’s oversight of medical care, reporting of deaths, and use of funds spent for medical care in CBP custody.
- Condition the receipt of appropriated funds to CBP on the implementation of clear, measurable, and enforceable standards for the provision of medical care in CBP custody.

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<sup>19</sup> *Id.* at 29-30, 34.

<sup>20</sup> *Id.* at ii.

<sup>21</sup> Protected Whistleblower Disclosure of Mr. Troy Hendrickson to Congress at 11-12.

<sup>22</sup> Notice of Filing of Juvenile Care Monitor Report by Dr. Paul H. Wise at 47.



- Provide and authorize funding for DHS’s Shelter in Service Program (SSP), to support localities in the provision of immediate services for care and support of those processed by CBP.
- Allocate sufficient and specific funding to CBP at ports of entry and at Border Patrol Stations for processing to ensure that asylum seekers are promptly screened, provided medical screening and support during processing and/or custody.<sup>23</sup>
- Conduct robust oversight of medical care in CBP detention, including aggressive use of subpoena authority and unannounced site visits.
- Establish special or select committees to investigate failure to provide appropriate medical care in CBP custody, the sufficiency of internal reviews of contracted or subcontracted medical providers, and act to enforce independent third-party certification of CBP compliance with measures to improve CBP detention conditions.
- Request that the DHS Office of Civil Rights and Civil Liberties investigate and issue recommendations regarding CBP’s oversight of medical care, reporting of deaths, and use of funds spent for medical care in CBP custody.
- Require CBP to make publicly available contracts, and any corrective actions taken to enforce contract terms, for the provision of medical care in CBP facilities.
- Strengthen whistleblower protections, including those of government contractors, by passing S. 1524, the Expanding Whistleblower Protections for Contractors Act of 2023.

Thank you for your consideration of these important issues. We look forward to working with you to ensure that policies can be developed and implemented that protect the safety and lives of people receiving medical care in your custody. If you have any questions or need further detail, please contact Eunice Cho, Senior Staff Attorney, ACLU National Prison Project ([echo@aclu.org](mailto:echo@aclu.org)), and Sarah Mehta, Senior Border Policy Counsel, ACLU National Political Advocacy Division ([smehta1@aclu.org](mailto:smehta1@aclu.org)).

Sincerely,

A handwritten signature in blue ink, appearing to read "Deirdre Schifeling".

Deirdre Schifeling  
ACLU Chief Political and Advocacy Officer

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<sup>23</sup> See Letter from Deirdre Schifeling, ACLU, to President Biden, Re: Protecting Our Asylum System in Negotiations with Congress (Nov. 3, 2023), <https://www.aclu.org/wp-content/uploads/2023/11/11032023-WH-Letter-on-Asylum.pdf>.