

November 30, 2023

The Honorable Alejandro Mayorkas  
Secretary of Homeland Security  
Washington, DC 20528

Troy A. Miller  
Senior Official Performing the Duties of the Commissioner  
U.S. Customs and Border Protection  
Washington, DC 20229

CC: Nathaniel Kaine, Chief of Staff, U.S. Customs and Border Protection  
Timothy Quinn, Executive Director, Office of Intergovernmental Public Liaison,  
U.S. Customs and Border Protection  
Paul Courtney, DHS Chief Procurement Officer  
Alexander Eastman, Chief Medical Officer, Customs and Border Protection



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

Dear Secretary Mayorkas and Acting Commissioner Miller:

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 your care and custody, we urge you to take immediate action.

CBP should (1) immediately terminate its blanket purchase agreement with Loyal Source Government Services (“Loyal Source”), and secure a new vendor under a contract that incorporates measurable, enforceable standards for the provision of medical care; (2) rapidly implement and enforce binding medical care standards and custody protocols to ensure the protection and rapid release of migrants encountered by or in CBP’s custody; and (3) ensure that contract medical providers are subject to rigorous oversight and quality assurance enforcement mechanisms.

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

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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,



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 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 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

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<https://www.washingtonpost.com/immigration/2023/11/19/border-loyal-source-medical-care-migrants/>.

<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.").



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

### **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

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<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>.

<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>; Amna 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,



multiple 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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<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 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/lplnnufjwci0xn/CBP%20Report%20ACLU\\_IHRC%205.23%20FINAL.pdf?dl=0](https://www.dropbox.com/s/lplnnufjwci0xn/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, the 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**

We urge CBP to undertake a thorough review not only of the Loyal Source contract but also CBP’s oversight of contractors who provide care to ensure that vulnerable people in your custody are not endangered by substandard medical care. These recommended policies are consistent with CBP’s stated goal of providing medical care to all detained people requiring medical attention, and prioritizing the processing of vulnerable populations, including those with medical conditions.<sup>23</sup>

#### **1. Ensure Effective Oversight of Medical Care in CBP Custody**

- Ensure that funds budgeted for medical care and related consumables (such as hygiene products, food, clothing, and medical supplies) for the support of people in CBP custody are allocated and spent for the appropriated purpose and are not diverted for other purposes.

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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.

<sup>23</sup> U.S. CBP, *Nat’l Standards on Transport, Escort, Detention, and Search* at 3.



- Via the CBP Office of Professional Responsibility, investigate whether CBP Contract Officers have conducted sufficient review and enforcement of Loyal Source’s compliance with requirements for its provision of medical care to people in CBP custody.
- Ensure that CBP effectively uses contract oversight provisions, including financial penalties and non-renewal authority, for the provision of medical care, with particular attention to violations of requirements for staffing levels, licensing, protection of confidential medical information, and instances of verified abuse and neglect.
- Provide the CBP Office of Chief Medical Officer with responsibility, authority, and resources to monitor the provision of medical care in CBP facilities, and to direct CBP Contracting Officers to enforce contract penalties or termination where necessary.
- Ensure that any contracts for medical care in CBP custody include clear expectations for quality of medical care, with reference to specific, measurable standards; continual monitoring or contractor reporting to CBP to assess adherence to contract provisions; and clear consequences for violations including corrective sanctions, financial penalties, suspension, contract termination, and mandatory reporting to medical boards.
- Ensure that any negative evaluations regarding these failures are reported to the Contractor Performance Assessment Reporting System (CPARS).

**2. Ensure that Medical Care in CBP Custody Properly Identifies Medically Vulnerable People, and Meets Community and Professional Standards of Care.**

In order to reduce the number of medically vulnerable persons reliant on CBP for medical treatment while in a detention setting and to improve the quality of care for those in detention:

- Expedite the transfer of people at elevated medical risk out of CBP custody, through rapid and accurate identification during initial intake screening and medical assessment.
- Ensure that all CBP detention, holding, or processing facilities provide medical staffing sufficient to meet community and professional standards. Implement enforceable agency standards and contract enforcement to ensure adequate staffing levels, and action plans when staffing falls below required levels, including expedited release from custody, and corrective actions with financial penalties under contract.
- Ensure that all staff who provide medical care at CBP facilities, including those working under contract or subcontract, have current, verified licensing to provide medical care; that practitioners provide care only at the level that they are licensed to perform; and that any practitioners with a revoked, restricted, or suspended license are explicitly prohibited



from providing care, with clear consequences for violations, including financial penalties under contract, and reports to local medical licensing authorities.

- Ensure prompt investigation of any reported abuses, including allegations of use of force, sexual harassment, abuse, or assault, or medical neglect by CBP's Office of Professional Responsibility ("CBP OPR").
- Ensure completion of medical screening and evaluation of adults within 12 hours of arrival in custody, with interpretation provided for non-Limited English Proficient (LEP) speakers and Deaf individuals. Triage of medical screening should be conducted to ensure that screening of medically vulnerable individuals takes priority and occurs immediately after apprehension. Ensure physician consultation of anyone with medically vulnerable individuals.
- Provide adequate and efficient CBP transport mechanisms to ensure rapid transfer of people requiring medical monitoring between facilities and external medical providers, to ensure that failures in CBP transportation logistics do not delay care.
- Immediately release detained people with medical conditions requiring medical monitoring to the care of external medical providers. People with medical conditions or mental illnesses must have access to any prescription medications and/or devices they had upon encounter, or be provided medication/devices within 12 hours, or sooner where lack of medication may be life-threatening (i.e. insulin, anticoagulants). Where the facility is unable to provide this level of pharmacy care, CBP must release such individuals immediately to external medical care providers.
- Ensure that such individuals are not returned to DHS custody and are released to the community upon discharge, with any outstanding processing to occur via mobile processing technologies while onsite in the care of the external medical providers.
- Provide stakeholder visitation and tours of CBP facilities used to temporarily detain individuals, as occurs with ICE detention facilities.

3. **Ensure Effective and Efficient Processing of People in CBP Custody:** As detention is not a suitable context for the delivery of medical care and to thus limit the detention of people requiring medical care and treatment, we urge you to:

- Ensure timely release of people from CBP custody. In particular, ensure the release of individuals with medical vulnerabilities, including people who are pregnant, postpartum, or nursing, from CBP custody, within 12 hours of apprehension.
- Ensure that individuals released from CBP custody are provided with a 30-day supply of prescription medications and/or replacements, medical



equipment, and any medical records or documentation upon release required for continuity of care.

- Require real time public release of information about CBP time in detention, particularly when it exceeds 72 hours, including for vulnerable populations (including unaccompanied children, families, pregnant, nursing and postpartum people, and people with medical vulnerabilities).

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". The signature is fluid and cursive.

Deirdre Schifeling  
ACLU Chief Political and Advocacy Officer