

**REPORT FOR THE U. S. DEPARTMENT OF HOMELAND SECURITY
OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES**

CONDITIONS OF DETENTION EXPERT'S REPORT

July 16-18, 2019

Investigation regarding

UNITED STATES BORDER PATROL

EL PASO SECTOR BORDER PATROL STATIONS, EL PASO TEXAS

**El Paso Border Patrol Station (EPS)
El Paso Station's Satellite Processing Facility (PDT)
Ysleta Border Patrol Station (YST)
Clint Border Patrol Station (CTX)**

Complaints reviewed in this report include the following:
CRCL Complaint No.

19-07-CBP-0226, 19-08-CBP-0344, 19-09-CBP-0401, 19-09-CBP-0402,
19-07-CBP-0276, and 18-07-DHS-0369

Prepared by:

(b)(6) *MAS*

Rocklin, CA
August 18, 2019

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EL PASO SECTOR BORDER PATROL STATIONS

I. SUMMARY OF INVESTIGATION

The U.S. Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) conducted a July 16-18, 2019 onsite investigation at the United States (US) El Paso Sector Border Patrol (BP) Stations including the El Paso Border Patrol Station (EPS), the El Paso Station's Satellite Processing Facility (PDT), the Ysleta Border Patrol Station (YST), and the Clint Border Patrol Station (CTX) in El Paso, Texas. The El Paso del Norte Port of Entry (PDN) was toured during this onsite; however, was not a part of this investigation. The investigation was initiated due to complaints received alleging that USBP violated the civil rights and civil liberties of persons being detained at Border Patrol Stations in the El Paso Sector and the DHS Office of the Inspector General (OIG) report, OIG-19-46, published on May 20, 2019, titled "Management Alert-DHS Needs to address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center." This investigation looked at issues in the sector related to holding times for adults, families, and unaccompanied alien children (UACs), holding room and outdoor holding area conditions, care and treatment, medical screening and access to care, of individuals in United States Border Patrol (USBP) custody. During this onsite investigation, I reviewed the conditions of confinement related to hold room conditions, hold room area capacity, emergency response protocols, length of detention in CBP hold rooms, medical screening and medical care, suicide prevention, age and unaccompanied alien child status determinations, screening for trafficking, screening for credible fear, handling of personal property and identify documents, language access during processing, conditions of soft sided structures used for holding or other purposes, family unity, leadership involvement and oversight, staffing including attrition rate, searching of adult and minors, personal property, recreation, language access, safety and security, time in custody, use of force, screening for credible fear, citizenship determination, and sexual abuse victimization.

To examine the allegations in the complaints, this investigation reviewed the El Paso Sector stations and PDT's adherence to the US Customs and Border Patrol National Standards on Transport, Escort, Detention and Search (USCBP TEDS) in the relevant areas. Through this review, I found operational deficiencies related to some of the allegations in the complaints.

This report contains observations and recommendations to address deficiencies identified that are based on USCBP's TEDS, correctional experience, and recognized correctional standards including those published by the American Correctional Association (ACA).

II. PROFESSIONAL EXPERTISE

(b)(6)

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III. RELEVANT STANDARDS

A. USCBP Detention Standards

U.S. Customs and Border Protection National Standards on Transport, Escort, Detention, and Search (TEDS) (2015) currently apply to the El Paso Sector Border Patrol Stations and the PDT. The facilities were covered by these standards during the entire period relevant to this investigation. Consequently, I relied on the TEDS when looking at the specific allegations regarding conditions at the facility. Additionally, I considered Trafficking Victim Protection Reauthorization Act (TVPRA), USCBP Juvenile Coordinator Roles and Responsibilities January 2017, the Department of Homeland Security Language Access Plan, February 28, 2012, and US CBP Directive 2130-030, Prevention, Detection, and Response to Sexual Abuse and Assault in CBP Holding Facilities Directive.

IV. FACILITY BACKGROUND AND POPULATION DEMOGRAPHICS

El Paso Sector USBP Stations including the El Paso Border Patrol Station (EPS), the El Paso Station's Satellite Processing Facility (PDT), the Ysleta Border Patrol Station (YST), and the Clint Border Patrol Station (CTX) are located in El Paso, Texas. The EPS, PDT, YST and CTX are designated as 72-hour short term hold facilities and are operated by the USBP. The sector-wide population on July 18, 2019 was 511 detainees.

V. REVIEW PURPOSE AND METHODOLOGY

The purpose of this review was to examine the specific allegations made in the complaints, as well as to identify other areas of concern regarding the operation of the facility. I was also tasked with reviewing facility policies and procedures. As part of this review, I examined a variety of documents; was onsite in the EL Paso Sector on July 16-18, 2019, along with CRCL staff (b)(6), Policy Advisor, and (b)(6) (b)(6) Senior Policy Advisor; and interviewed El Paso Sector USBP, ERO, and contract medical staff.

The staff at the El Paso Sector stations and the PDT was very helpful during our onsite investigation. I appreciated the cooperation and assistance provided by USBP, ERO, and contract medical staff during our onsite.

In preparation for the onsite and completion of this report, I did the following:

- Reviewed the USCBP Juvenile Coordinator Roles and responsibilities
- Reviewed USCBP National Standards on Transport, Escort, Detention, and Search, October 2015:
 - General Standards
 - Transport and Escort
 - Searches of Individuals
 - Secure Detention Standards
 - At-Risk Populations
 - Sexual Abuse Victimization
 - Personal Property
 - Definitions
- Reviewed PREA documents
- Reviewed Juvenile Coordinator Roles and Responsibilities
- Reviewed USCBP Reno v. Flores Compliance Memorandum, October 16, 2015
- Reviewed Trafficking Victim Protection Reauthorization Act
- Reviewed the US CBP Directive 2130-030, Prevention, Detection, and Response to Sexual Abuse and Assault in CBP Holding Facilities Directive
- Reviewed the DHS Office of the Inspector General (OIG) report, OIG-19-46, published on May 20, 2019, titled "Management Alert-DHS Needs to address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center
- Reviewed relevant ACA correctional standards

While at the El Paso Sector Stations and the PDT on July 16-18, 2019, and post-visit, I did the following:

- Toured and inspected El Paso Sector Stations including the EPS, PDT, YTS, CTX in El Paso Texas which are designated as 72-hour hold facilities
- Interviewed USBP staff
- Interviewed National Guard staff
- Interviewed ERO staff
- Interviewed contract medical staff
- Reviewed UAC and detainee files
- Reviewed the TEDs
- Inspected Sexual Assault Prevention and Intervention posters
- Inspected I-Speak Posters
- Reviewed e3 Detention Management (e3DM) system components
- Reviewed training curriculum
- Reviewed recreation access at EPS, PDT, YST, and CTX
- Met with various US BP staff during the course of the review
- Inspected property rooms at each location

In the context of this report, a finding of "substantiated" refers to an allegation that was investigated and determined to have occurred; a finding of "not substantiated" refers to an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to

whether or not the event occurred; and a finding of “unfounded” means an allegation that was investigated and determined not to have occurred.

In general, I found that conditions have vastly improved since the original complaints were filed. Four facilities were visited as part of our onsite investigation: the El Paso Border Patrol Station (EPS), El Paso Station's Satellite Processing Facility (PDT), the Ysleta Border Patrol Station (YST) and the Clint Border Patrol Station (CTX).

VI. FINDINGS

A. EL PASO SECTOR-WIDE FINDINGS

My most significant finding is that CBP has been required to take on a mission that is humanitarian focused, while its core mission is border protection. CBP has made a significant effort to provide humanitarian services, but its facilities have not been constructed to support this mission. Additionally, staffing is deficient, and training, policies, and procedures are not adequate to handle the expanded mission. Nonetheless, the Border Patrol Agents with whom we engaged during the investigation were dedicated, had positive attitudes, and were empathetic about performing the many expanded responsibilities outside of their job description. CBP is working very diligently at trying to address the deficiencies that continue to exist in the sector and that existed in Spring 2019 due the significant number of detainees who surged across the border into the El Paso Sector.

At three of the four CBP facilities that were visited, I observed clean holding cells and well-stocked supplies. The implementation of TEDS and the increased usage of the e3DM computer system and sector. The e3DM computer software continues to be improved. The e3DM data tracking fields and alert functions are quite impressive. Many improvements to the e3DM software have been made since the investigation at the USBP Rio Grande Valley Sector in 2018. The e3DM software enables sector and station leadership to monitor sector-wide and individual station holding times, population levels, detainee demographics, links family members, and tracks numerous other critical functions.

During our onsite investigation, I identified the following issues:

SECTOR-WIDE POPULATION COUNT AND HOLDING TIMES

The sector-wide population on July 18, 2019 was 511 detainees. The average sector population processing time in custody (TIC) was 34 hours. The duration of detention TIC has vastly improved since the surge occurred; however, based on the e3DM El Paso Sector population reports on July 18, 2019 there were 21 detainees (14 Adults and 7 minors) that were held over the TEDS TIC standard of 72 hours.

FINDING: Hold Times in Excess of 72 Hours Continue to Exist

Recommendation:

- CBP should continue to work with Enforcement and Removal Operations and Health and Human Services Agency to reduce processing times to comply with TEDS § 4.1 Duration of Detention Standard of 72 hours.¹ (Priority 1)

(b)(5)

FINDING

(b)(5)

Recommendation:

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(b)(5)

SECTOR-WIDE MEDICAL SCREENING

Medical screening is not consistent at the EPS, PDT, YST and the CTX. The PDT does not use a medical screening form. The medical staff ask a series of six questions. If the detainee answers yes to any of the questions, a notation is made on a red wrist band. There is no notation made in the e3DM or any other system. Medical staff are on temporary assignment and the potential for a screening error is great due to the lack of using a consistent medical screening form and the lack of documentation. The EPS, YST, and CTX use a contract medical provider who does use a form; however the form is very basic and does not support an adequate medical screening. Lack of a consistent, documented medical screening puts detainees' health at great risk.

FINDING: CBP Sector-wide Does Not Adequately or Consistently Perform and Document Medical Screenings

¹ TEDS 4.1 Duration of Detention: Detainees should generally not be held for longer than 72 hours in CBP hold Rooms or holding facilities. Every effort must be made to hold detainees for the least amount of time required for their processing, transfer, release, or repatriation as appropriate and as operationally feasible.

Recommendation:

- CBP headquarters has developed a standardized medical screening form that is pending release. CBP headquarters should immediately finalize the medical screening form and release it to the Sector for implementation, TEDS § 4.0 Secure Detention Standards and § 4.10 Medical. (Priority 1)

SECTOR-WIDE CAMERA MONITORING SYSTEMS

I reviewed the camera systems at the EPS, PDT, YST and the CTX. All four camera systems at the EPS and three satellite stations were inadequate to provide reliable, effective video monitoring. Some of the security monitoring cameras were broken at each location. DVRs were also old and some did not work. The facilities reported they have requested replacement cameras or repairs that have not been granted for multiple years. Unreliable camera monitoring creates a significant safety and security risk.

FINDING: The Security Camera Monitoring Systems are Unreliable at the EPS, PDT, YST and the CTX

Recommendation:

- CBP should replace broken cameras and recording equipment to ensure reliable video security monitoring and recording exists at the EPS, PDT, YST and the CTX to comply with § 4.6 Hold Room Monitoring. (Priority 1)

B. EL PASO BORDER PATROL STATION FINDINGS

Complaint Number 19-08-CBP-0344 was opened by CRCL based on a May 15, 2019 email notification received from the CBP SITROOM (SIR Number 19-EPTEPS-051419000028) regarding three Cuban nationals in custody: (b)(5)

(b)(5) While onsite I viewed the security camera system which is not constantly monitored. The camera positions are set, and do not provide adequate camera coverage of all holding areas. No one is dedicated to observing the camera feed at the soft-sided structures. Lack of constant camera monitoring increases safety and security risks.

FINDING: Sustained-Self Harm Incident occurred and follow up action is required

Recommendation:

- (b)(5)
CBP should conduct a camera assessment to ensure adequate camera coverage exists to Monitor holding areas and dedicate a security position to monitor the camera feeds to comply with TEDS § 4.6 Hold Room Monitoring. (Priority 1)

² TEDS 4.6 Hold Room Monitoring, Supervision and Inspections: Officers/Agents must closely supervise hold rooms when in use. Monitoring must occur in a regular and frequent manner. In hold rooms with visual limitations, a physical check is required. Direct supervision and control of detainees must be maintained at all facilities that do not have secure areas. Checks: Officers/Agents will physically check hold rooms on a regular and frequent manner, according to each operational office's policies and procedures. Physical inspections must be recorded in the appropriate electronic system(s) of record as soon as practicable.

- CBP should provide CBP, contract and temporarily assigned staff additional training related to recognizing the signs and symptoms of mental health concerns. (Priority 1)

(b)(5)

FINDING: (b)(5)

Recommendation:

- (b)(5)
- (b)(5)

(b)(5)

³ TEDS § 3.4 Gender of Searching Officer/Agent: Whenever feasible, officers/agents conducting a search or that are present at a medical examination, must be of the same gender, gender identity, or declared gender as the detainee being searched.

⁴ TEDS § 4.3 General Detention Procedures, Gender of Searching Officer/Agent: Whenever operationally feasible, officers/agents conducting a search or that are present at a medical examination must be of the same gender, gender identity, or declared gender as the detainee being searched.

⁵ TEDS § 7.2 Processing and Storage of Detainees' Personal Property, Inventory: The inventory of a detainee's personal property must be conducted in the presence of the detainee and recorded according to the operational office's policies and procedures. Storage of Personal Property: A detainee's personal property will be stored in a secure storage room or area. The secure storage room or area must be maintained in a clean and orderly manner and inspected as often as necessary to protect detainee property.

FINDING:

(b)(5)

Recommendation:

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(b)(5)

C. EL PASO STATION SATELLITE PROCESSING FACILITY (PDT) FINDINGS

Complaint Number 19-07-CBP-0226 was opened by CRCL based on email correspondence received from the ACLU of Texas. The ACLU letter raised condition of confinement concerns that included make shift outdoor Border Patrol holding areas for detainees, outdoor exposure to elements when held in an area under the Paso del Norte International Bridge. The letter alleged detainees were required to sleep on the ground under the bridge without any medical screening, were not provided adequate food, experienced prolonged exposure to extreme temperatures, were awoken by CBP staff every 3 hours, subjected to verbal abuse and racial slurs, sprayed arbitrarily with water by one CBP agent, lacked clean restroom and shower access, and were not provided with basic hygiene supplies. Complaint Number 19-09-CBP-0401 was opened based on the CRCL review of the Department of Homeland Security, Office of the Inspector General Report (OIG), published on May 30, 2019 titled "Management Alert-DHS Needs to Address Dangerous Overcrowding Conditions at El PASO Del Norte Processing Center." The OIG found dangerous holding conditions and that the station lacked the capacity to hold the hundreds of individuals currently in custody safely. The OIG also found that the station was holding the majority of detainees longer than 72 hours generally permitted under TEDS. The OIG expressed concern that "overcrowding and prolonged detention represent an immediate risk to the health and safety not just of the detainees, but also DHS agents and officers."

Exigent circumstances existed during the period of March through June 2019 at the PDT. Hundreds of detainees surged across the border for an ongoing period that the station's physical plant, staffing, supplies and other resources could not accommodate. The PDT, EPS, YST and the CTX all experienced overcrowded conditions during this period. CBP has made significant investments throughout the sector to increase capacity. CBP has procured and erected tents with large capacity, enhanced staffing, increased the number of portable toilets and showers, and procured additional supplies to decrease the TEDS violations. ERO has also improved the movement of detainees to other facilities and HHS has increased the availability of minor detainee housing. The sheer number of individuals continuously surging across the border for a long period of time contributed to the extreme conditions that are the basis for both the ACLU complaint and the OIG report. Unfortunately, the living conditions that were described in the ACLU complaint and OIG report appear to be accurate. When the surge occurred, immediate steps should have been taken to move the population to other facilities that had available space or other alternatives to mass detention should have been considered. The lack of a timely and effective emergency response plan contributed to the inhumane conditions, which could have been avoided with prior planning. During the onsite investigation, CBP staff at the PDT, EPS, YTS and the CTX stated they were anticipating another surge. Emergency response exercises should occur now before another surge event to ensure the El Paso Sector Stations, along with ERO and ORR facilities, are ready should one occur.

While onsite at the PDT, I observed conditions that continue to not meet TEDS. In the parking lot and back section of the facility on asphalt, netting-covered enclosures had been erected. The outdoor conditions in the heat as well as cold weather months can be extreme. Detainees held in this tent area would be exposed to extreme weather conditions without adequate protection. The outdoor holding areas also did not have any place for the detainees to sit. There is no flooring other than the asphalt for the detainees to sleep on. Chain link fencing had been placed underneath the netting, but not safely secured to separate groups of detainees. The fencing could easily be moved. There is no direct access to water in the tented areas and BP staff informed us that detainees would have to request a cup of water from CBP personnel. Detainees could also access the secured perimeter fence and razor wire in this outdoor area, which poses risks of escape and potential opportunity to use the razor wire for self-harm. Additionally, cameras do not monitor inside the netting-covered area, exacerbating safety and security concerns due to the lack of video monitoring.

FINDING: Sustained-The Surging of Detainees Across the Border Contributed to Extreme Overcrowding at the PDT, Which Created Unsafe and Unsanitary Conditions.

Sustained-Conditions continue to exist at the PDT that could jeopardize the safety of detainees held in outdoor areas.

Not Sustained-CBP Staff subjecting Detainees to Verbal Abuse and Racial Slurs.

Not Sustained-The CBP Officer Spraying Detainees with Water.

Recommendation:

- CBP should continue to prepare for additional mass detainee entry across the border. Emergency readiness and preparedness is key to safely and humanely housing large numbers of detainees who surge across the border for an extended period of time. (Priority 1)
- CBP should not hold detainees in the outdoor parking lot of the PDT under netting, which places detainees health and safety at risk and jeopardizes the safety and security of the detainees and CBP facility, TEDS § 4.0 Secure Detention Standards. (Priority 1)
- **(b)(5)**
- General Services should the repair the peeling and loose rubber padding in the holding cell designed to temporarily hold detainees who are at risk of self-harm, TEDS § 4.0 Secure Detention Standards. (Priority 1)
- General Services should ensure the modular shower unit that has been in place for several months, but still remains inoperable, is installed and available for use TEDS § 4.0 Secure Detention Standards. (Priority 1)

D. YSLETA STATION FINDINGS

Complaint Number 18-07-DHS-0369 was opened by CRCL based on an email referral from the CBP Information Center with a complaint from a detainee's client. Detainee #1's name is provided in Appendix A. The detainee complaints included that he spent 12 hours in the YST where he was not able to use the phone; the bathrooms were dirty; and CBP did not return his property which included \$1,210 Mexican pesos, a cell phone and a cell phone charger. I did review records and detainees are allowed calls during the intake processing. The detainee was provided the opportunity to use the phone during processing as soon as it was feasible. There is no way to determine the cleanliness of the restroom during the period of time when the detainee was at YST. I inspected the holding room restrooms, and they were clean at the time of this investigation. I reviewed records and the facility has a policy that the detainee is allowed 30 days to make arrangement to claim any property left at the YST for 30 days.

After 30 days there is a set policy of disposition of property. Any items or funds would have been disposed of per the policy after the 30 day period. Detainee #1's property was disposed of in compliance with the policy.

FINDING: Complaint Not Sustained-The telephone call was provided to the Detainee.

Complaint Not Sustained-Restrooms were clean at the time of the investigation.

Complaint Not Sustained-Detainee #1 was notified of the property disposition policy and YST personnel followed the policy when they disposed of Detainee #1's property.

Recommendation: None

E. CLINT STATION FINDINGS

Complaint Number 19-09-CBP-0402 was opened by CRCL based on the receipt of a referral from the Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR) regarding allegations that a minor reported regarding conditions that existed at CTX while she was held in custody. The minor Detainee #2, age 17, alleged DHS held her in custody for 13 days from May 23, 2019 to June 4. During that time the minor reported sleeping on the floor in a room that only had 8 beds, housed 32 people. (b)(5),(b)(7)(E)

(b)(5),(b)(7)(E) Complaint Number 19-07-CBP-0276 was opened by CRCL based on the receipt of a referral from the HHS, ORR regarding allegations by Detainee #3, age 14, that alleged DHS detained him for 9 days. A review of DHS records identified that the minor was held in DHS custody for eight days after his apprehension, and was transferred to CTX on or before March 22 and then transferred to ORR. The processing time was delayed due to the lack of appropriate housing. HHS has significantly increased housing availability which has reduced the crowding in holding rooms and significantly decreased the length of time held at the CTX. While conditions and holding times have improved dramatically since the complaints were made, if another massive surge occurs the system will become overloaded and most likely the violations will re-occur due to system capacity issues.

FINDING: Sustained-Both Detainee #1 and #2 Were Held in DHS Custody Beyond 72 Hours in crowded conditions

Recommendation:

- CTX should not house minor detainees beyond 72 hours and comply with TEDS § 4.1 Duration of Detention. HHS should ensure sufficient housing is available. (Priority 1)

VII. SUMMARY OF RECOMMENDATIONS

1. CBP should continue to work with Enforcement and Removal Operations and Health and Human Services Agency to reduce processing times to comply with TEDS § 4.1 Duration of Detention Standard of 72 hours.⁶ (Priority 1)

⁶ TEDS 4.1 Duration of Detention: Detainees should generally not be held for longer than 72 hours in CBP hold Rooms or holding facilities. Every effort must be made to hold detainees for the least amount of time required for their processing, transfer, release, or repatriation as appropriate and as operationally feasible.

2.

(b)(5)

3. CBP headquarters has developed a standardized medical screening form that is pending release. CBP headquarters should immediately finalize the medical screening form and release it to the Sector for implementation, TEDS § 4.0 Secure Detention Standards and § 4.10 Medical. (Priority 1)
4. CBP should replace broken cameras and recording equipment to ensure reliable video security monitoring and recording exists at the EPS, PDT, YST and the CTX to comply with § 4.6 Hold Room Monitoring. (Priority 1)

5.

(b)(5)

6. CBP should conduct a camera assessment to ensure adequate camera coverage exists to Monitor holding areas and dedicate a security position to monitor the camera feeds to comply with TEDS § 4.6 Hold Room Monitoring. (Priority 1)
7. CBP should provide CBP, contract and temporarily assigned staff additional training related to recognizing the signs and symptoms of mental health. (Priority 1)

8.

(b)(5)

9.

(b)(5)

⁷ TEDS 4.6 Hold Room Monitoring, Supervision and Inspections: Officers/Agents must closely supervise hold rooms when in use. Monitoring must occur in a regular and frequent manner. In hold rooms with visual limitations, a physical check is required. Direct supervision and control of detainees must be maintained at all facilities that do not have secure areas. Checks: Officers/Agents will physically check hold rooms on a regular and frequent manner, according to each operational office's policies and procedures. Physical inspections must be recorded in the appropriate electronic system(s) of record as soon as practicable.

⁸ TEDS § 3.4 Gender of Searching Officer/Agent: Whenever feasible, officers/agents conducting a search or that are present at a medical examination, must be of the same gender, gender identity, or declared gender as the detainee being searched.

⁹ TEDS § 4.3 General Detention Procedures, Gender of Searching Officer/Agent: Whenever operationally feasible, officers/agents conducting a search or that are present at a medical examination must be of the same gender, gender identity, or declared gender as the detainee being searched.

10.

(b)(5)

11. CBP should continue to prepare for additional mass detainee entry across the border. Emergency readiness and preparedness is key to safely and humanely housing large numbers of detainees who surge across the border for an extended period of time. (Priority 1)

12. CBP should not hold detainees in the outdoor parking lot of the PDT under netting, which places detainees health and safety at risk and jeopardizes the safety and security of the detainees and CBP facility, TEDS § 4.0 Secure Detention Standards. (Priority 1)

13.

(b)(5)

14. General Services should the repair the peeling and loose rubber padding in the holding cell designed to temporarily hold detainees who are at risk of self-harm TEDS § 4.0 Secure Detention Standards. (Priority 1)

15. General Services should ensure the modular shower unit that has been in place for several months, but still remains inoperable, is installed and available for use TEDS § 4.0 Secure Detention Standards. (Priority 1)

16. CTX should not house minor detainees beyond 72 hours and comply with TEDS § 4.1 Duration of Detention. HHS should ensure sufficient housing is available. (Priority 1)

APPENDIX A

Detainee #1:

Detainee #2:

Detainee #3:

(b)(6)

Report for the U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties

U.S. Border Patrol, El Paso Sector, El Paso, Texas
El Paso Border Patrol Station (EPS)
El Paso Station's Satellite Processing Facility (PDT)
Ysleta Border Patrol Station (YST)
Clint Border Patrol Station (CTX)

Complaint Numbers:
Complaint Number: 19-07-CBP-0226
Complaint Number: 19-08-CBP-0401
Complaint Number 18-07-DHS-0369

Prepared By: (b)(6) MS, RD, LD/N, REHS/RS, CPFM, CJM
8/17/2019

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Introduction

On July 16 – 18, 2019, I assessed the environmental health and safety conditions pertaining to U.S. Customs and Border Patrol (CBP), El Paso Sector facilities in El Paso, Texas. This onsite investigation was provided under contract with the United States Department of Homeland Security, Office for Civil Rights and Civil Liberties (CRCL). Accompanying me on this investigation were (b)(6) Senior Policy Advisor, CRCL, (b)(6) Policy Advisor, CRCL; as well as one other subject matter expert who examined detention conditions and operations. Four facilities were assessed during this onsite investigation. These facilities included: The El Paso Border Patrol Station (EPS), El Paso Station's Satellite Processing Facility (PDT), the Ysleta Border Patrol Station (YST), and the Clint Border Patrol Station (CTX). The El Paso del Norte Port of Entry (PDN) was also toured during this onsite; however, this location was not a part of this onsite investigation.

The purpose of this onsite was to investigate complaints made of various alleged violations of civil rights and civil liberties pertaining to the El Paso Sector. In particular, the allegations contained in Complaint Number 19-07-CBP-0226, Complaint Number 19-08-CBP-0401, and Complaint Number 18-07-DHS-0369 were examined. These complaints raised allegations of inadequate food, insufficient amounts of restrooms, no access to showers or other hygiene products, denial of soap to wash hands after using the restroom, families being forced to sleep in unsanitary conditions, and very dirty holding areas and bathrooms. This investigation was conducted to obtain an impression of the validity of the allegations by assessing the various facilities adherence to applicable standards and best practices related to environmental conditions. The areas reviewed included food service, laundry, fire and life safety, housekeeping and sanitation, and maintenance. This review included visiting holding areas, food service areas, laundry, medical clinic, restroom and shower areas, and the intake area.

Qualifications

(b)(6)

Methodology

The basis of this report includes document reviews, tour of the facilities, facility staff interviews, visual observations, and environmental measurements. The findings and recommendations contained in this report are solely those of the author. The report cites specific examples of conditions found during this review; however, they should not be considered as all-inclusive of the conditions found during the inspection. Consideration was given to national and state standards including the 2015 U.S. Customs and Border Protection (CBP) National Standards on Transport, Escort, Detention, and Search (TEDS), Performance-Based Standards for Adult Local Detention Facilities, Fourth Edition, published by the American Correctional Association (ACA), and the Food and Drug Administration (FDA) Food Code 2017.

I would like to extend my sincere appreciation to all Border Patrol Agents and staff involved in our tours of the different locations within the El Paso Sector. The facility employees were helpful, respectful, accommodating, and placed no limitations on my requests. Their cooperation and assistance is greatly appreciated.

Facility Overview

The El Paso Sector is one of the nine sectors that runs along the southwest border between the United States and Mexico. The El Paso Sector is comprised of eleven stations. On July 17, 2019, the total headcount for the El Paso Sector was 511 detained, of which 21 (14 adults and 7 juveniles) were detained for over 72 hours. There were 23 UAC's (Unaccompanied Alien Children) (Clint Station), none of which had been held over 72 hours. The stations visited during this onsite are managed by the U.S. Border Patrol, El Paso Sector; however some services, such as meal preparations and delivery and janitorial services are contracted. The 2015 U.S. Customs and Border Protection National Standards on Transport, Escort, Detention, and Search (TEDS) are applicable to the visited facilities.

All facilities that were part of this onsite investigation were found to be operating in a humane manner, the facilities were clean and all staff members encountered were professional. The detainees encountered appeared well cared for, juveniles were awake, alert, and interacting amongst themselves and with staff. Acts as simple as agents purchasing/providing coloring books, crayons, board games, basketballs and soccer balls, to name a few, from their own pockets indicates their humanitarian mindset and dedication to their profession. It is also clear that while the responsibility of CBP is to protect the border of the United States, many additional responsibilities have become necessary in order to handle the tremendous increase in detainees experienced over the previous months in the El Paso Sector. It was clear from my observations that each facility has faced an abundance of challenges, and each facility has worked to overcome the challenges in a clear effort toward improvements.

Findings

Complaint Numbers: Complaint Number 19-07-CBP-0226, Complaint Number 19-08-CBP-0344, and Complaint Number 18-07-DHS-0369 – Food/Environmental

Complaint Number 19-07-CBP-0226 alleges that in early March 2019, there was inadequate food for asylum-seekers detained at the El Paso Del Norte Processing Center. In addition, this complaint alleges that several thousand people were forced to share four to six temporary restrooms that were often filthy and foul smelling, detainees were denied soap to wash their hands after using the restroom, there was no access to showers or other hygiene products, and due to overcrowding, families were forced to sleep in unsanitary conditions.

Complaint Number 19-08-CBP-0401 alleges that during the week of May 6, 2019, the OIG visited the El Paso Del Norte Processing Center (PDT) and found dangerous holding conditions, specifically that PDT does not have the capacity to hold the hundreds of individuals currently in custody and expressed concern that “overcrowding and prolonged detention represents an immediate risk to the health and safety not just of the detainees, but also DHS agents and officers”.

Complaint Number 18-07-DHS-0369 alleges that the holding area and the bathrooms at Ysleta Station were very dirty.

Findings: (Food) The allegation (Complaint Number 19-07-CBP-0226) that there was inadequate food for asylum-seekers detained at El Paso Del Norte Processing Center is unsubstantiated. During the onsite investigation, ample amounts of food, both meals and snacks and beverages were observed. There is a breakfast, lunch, and dinner meal served on a regular schedule (breakfast at 6 am, lunch at noon, and dinner at 6 pm), with snacks served between meals. Detainees are permitted to request snacks and juice at any time, self-service water is available at all times inside the PDT. Staff reported that breakfast and dinner are always hot meals, lunch is usually hot, but may also consist of a cold sandwich. Staff also reported that breakfast is delivered hot, and lunch is delivered cold and stored in refrigeration. Lunch is warmed in microwaves when it is time for lunch service. Hot meals were available with additional meals available after meal service, and detainees were observed in holding rooms with snacks and individual juice beverages during this onsite. However, it is important to point out that heating capacity at this station, and at all stations visited consists of microwaves. Specifically, at PDT, there is a reach-in refrigerator available to store the food items under refrigeration until

meal time. Staff report that they heat the meals in the microwaves for the hot meal service.

There are no therapeutic or faith-based diet meals provided. There is no coordination between medical assessment of detainees' dietary needs and meals that are provided. Staff did report that a faith-based objection to pork is accommodated by providing an alternate meal.

Applicable Standard: 2015 TEDS, Food and Beverage, and the FDA Food Code 2017

Analysis:

Food Service operations at PDT are contracted. Meals are pre-made and delivered to the stations by the contractor. There is no on-site meal preparation, and no equipment for cooking meals. CBP has several contracts for meal delivery and the menus vary consisting of meals such as burritos that may contain rice, refried beans, egg, black beans, etc., spaghetti and meat balls, ham/cheese sandwiches, hotdogs on a bun, and pulled pork sandwich. The 2015 TEDS Standard 4.13 Food and Beverage states, "Adult detainees, whether in a hold room or not, will be provided with food at regularly scheduled meal times", and "Adult detainees, whether in a hold room or not, will be provided with snacks between regularly scheduled meal times". This standard is met, breakfast, lunch, and dinner are served on a regular schedule, with snacks served in between meals. I would not be able to assess the food supplies that were available in early March 2019 during my visit in July 2019, however, the availability of only two microwaves would not be sufficient to properly heat hundreds of meals without significant delays, should PDT experience a large influx of individuals into this facility. In accordance with the 2017 FDA Food Code, proper microwave heating of cooked foods that have been refrigerated includes heating to an internal temperature of 165° F, and if held for service, must remain above 135° F. This would be nearly impossible to accomplish in two microwaves should there be hundreds of meals to heat.

Conclusion:

The food and beverage service program at PDT are adequate for detainees held on a temporary basis. There were adequate amounts of food available during my onsite inspection. Meals for heating were observed under proper refrigeration, and detainees were observed in holding rooms with snacks and juice. Self-service drinking water was available and detainees were permitted to access the drinking water. There is, however, a concern should PDT experience a large influx of detainees how PDT would be able to properly heat a large quantity of meals in an appropriate timeframe so that meal service schedules are adhered to.

Recommendations:

1. To ensure that adequate amounts of food are properly heated in a sufficient timeframe, and meal service can be provided to a large number of detainees on a regular schedule, CBP should ensure that PDT has adequate equipment for reheating food to proper temperatures, and for holding food hot should meals need to be held heated before service. Another option to accomplish this requirement would be to have meals delivered hot, or serve a cold meal that does not require reheating. (Applicable Standard: 2015 TEDS, Food and Beverage, and FDA Food Code 2017, Priority 2).

Findings: (Environmental): The allegation (Complain Number 19-07-CBP-0226) that at PDT, several thousand people were forced to share four to six temporary restrooms that were often filthy and foul smelling, detainees were denied soap to wash their hands after using the restroom, there was no access to showers or other hygiene products, and due to overcrowding, families were forced to sleep in unsanitary conditions is partially substantiated. During the onsite investigation, there were fifteen portable toilets and six portable handwashing stations. The portable toilets were clean and contained toilet paper. The handwashing stations all contained soap, running water and disposable paper towels. There was no trash/debris, including no toilet paper, observed outside of any of the portable toilets. There were temporary tents and netting set up outside of the PDT building. Most of the holding spaces are open air and covered with military camouflage netting meant to provide shade. These spaces do not have cooled air, but fans are available. Chain link fence is provided inside for separation. During the onsite investigation, there were no detainees currently held inside of these outdoor spaces, and there were no detainees utilizing the area under the bridge. PDT does not have any operable showers onsite. A six-stall shower trailer was observed on the PDT property. Based on information provided, these are the only showers available for detainees at PDT to use, and they are waiting for the trailer to be installed so the showers can be utilized. In addition, there was no showering on site during the large influx of migrants several months ago. Staff would have to take those being detained to another location to shower. Therefore, the allegation that there was no access to showers or other hygiene products is substantiated.

Applicable Standard: 2015 TEDS, Hygiene

Analysis:

Currently, no one is able to shower onsite at PDT. The only showers available are on a six-stall shower trailer that has not been installed. The 2015 TEDS Standard 4.11

Hygiene states, “Basic Hygiene Items: Detainees must be provided with basic personal hygiene items, consistent with short term detention and safety and security needs; Showers: Reasonable efforts will be made to provide showers, soap, and a clean towel to detainees who are approaching 72 hours in detention.” It is not possible for detainees in any large number to be afforded an opportunity to shower even within 72 hours. In addition, should PDT experience another large influx of migrants, six shower stalls will not be sufficient to accommodate the number of people that may be held in the holding area and tents outside. Restroom facilities are provided in accordance with the 2015 TEDS Standard 4.15 Restroom Facilities, which states, “Restroom accommodations will be available to all detainees and a reasonable amount of privacy will be ensured.”

Conclusion:

PDT has holding rooms that contain a toilet/sink/fountain, which were found to be operational. The temporary netting-covered holding area had portable toilets and portable handwashing stations outside for detainee use. However, shower accommodations are not adequate and are not in accordance with the 2015 TEDS Standard for Hygiene.

Recommendations:

2. PDT should ensure that as soon as possible, the shower trailer is installed and fully operational. Shower water temperature should be between 100° F - 120° F for appropriate showering and promotion of hygienic practices. PDT should also consider installing additional shower capability, as six shower stalls will not be sufficient to accommodate the number of people that may be held in the holding area and the tents outside should there be another large influx of migrants. (Applicable Standard: 2015 TEDS, Hygiene, Priority 2).

Findings: (Environmental): The allegation (Complaint Number 19-08-CBP-0401) that during the week of May 6, 2019, (PDT) was found with dangerous holding conditions, specifically that PDT does not have the capacity to hold the hundreds of individuals currently in custody and expressed concern that “overcrowding and prolonged detention represents an immediate risk to the health and safety not just of the detainees, but also DHS agents and officers” is substantiated. Staff reported during the onsite that PDT has a capacity to hold 123 detainees. However, during the influx in May 2019, PDT had so many detainees that they were reportedly staying “under the bridge” at PDT and in temporary tents to increase holding areas, and an outside medical triage

and intake (property) process had to be set up. During the onsite investigation, temporary tents and netting-covered holding spaces were observed, as well as the temporary medical triage area, and intake for property. These temporary areas were set up to address and accommodate the large influx of migrants that PDT experienced several months prior to this onsite. Currently, accommodations at PDT are still not sufficient to accommodate a large influx as previously experienced. The temporary netting-covered holding areas have a limited capacity, they are exposed to outside conditions and weather, there was no showering capability at the time of the onsite, and it would be hard to avoid cross exposure of ill persons with other detainees and staff of PDT. From an environmental standpoint, these are all concerns for health and safety of all detainees and staff of PDT.

Applicable Standard: 2015 TEDS, Hold Room Standards and Hygiene

Analysis:

Overcrowding does present an immediate risk to health and safety when a facility is overwhelmed and is not able to accommodate the needs of the detainees appropriately. Holding detainees in areas above capacity or maximum occupancy rate causes concerns for cleanliness and sanitation, not only of the facility but personal cleanliness and hygiene as well. Bacteria, germs, and disease are more easily spread in close living quarters and when ill persons cannot be separated from non-ill persons, or when personal hygiene is unable to be accommodated.

Conclusion:

The 2015 TEDS Hold Room Standards states, "Capacity: Every effort must be made to ensure that hold rooms house no more detainees than prescribed by the operational office's policies and procedures....under no circumstances should the maximum occupancy rate, as set by the fire marshal be exceeded." This is a concern for both detainees and staff that must work in the overcrowded environment; "Cleanliness: All facilities or hold rooms used to hold detainees must be regularly and professionally cleaned and sanitized." In addition the 2015 TEDS Standard Hygiene is also of concern when a facility is overcrowded.

Recommendations:

3. The PDT facility should ensure that a contingency plan outlining processes to be followed during a large influx of migrants is in writing and in place. Holding rooms and temporary outdoor holding to the extent possible should not be overcrowded. CBP does have a cleaning and sanitizing contract and processes in place, for example,

holding rooms and restrooms are cleaned two times per shift. However, a plan for additional cleaning and sanitation processes needs to be in place to ensure that detainee areas are kept clean and sanitized should a large influx of detainees occur. The contingency plan should include triggers that initiate a heightened level of cleaning and require the contractor to be onsite more often and for longer hours. Showering capability must be available to detainees, as well as personal hygiene items, soap, toilet paper, and disposable paper towels. (Applicable Standard: 2015 TEDS, Hold Room Standards & Hygiene, Priority 2).

Findings (Environmental): Complaint Number 18-07-DHS-0369 alleges that the holding area and the bathrooms at Ysleta Station were very dirty. While I would not be able to assess what the condition(s) of the bathrooms were at the time of this complaint, during the onsite investigation, the bathrooms at the Ysleta Station were inspected. None of the bathrooms were observed to be dirty, including the portable toilets. Staff reported that portable toilets are serviced four times per week by contract. Six portable toilets were observed in the temporary tent area, with portable handwashing stations and a six-stall shower trailer with two sinks was on-site.

Applicable Standard: 2015 TEDS, Restroom Facilities and Hygiene

Analysis:

The bathrooms at the Ysleta Station were clean at the time of the onsite investigation. Overcrowding conditions could cause a cleanliness issue with bathrooms if they are not cleaned/serviced at appropriate intervals. It is important that bathrooms are cleaned at a heightened frequency when they are used more often such as during overcrowded conditions.

Recommendations:

4. The Ysleta Station should ensure that protocols are in place to ensure that restrooms are cleaned/serviced frequently should a large number of detainees be present. For example, the frequency of servicing of portable toilets should be increased from the normal four times per week when there is an increased amount of detainees present. In addition, a plan for additional cleaning and sanitation processes needs to be in place to ensure that restroom areas are kept clean and sanitized should a large influx of detainees occur. The contingency plan should include triggers that initiate a heightened level of cleaning and require the contractor to be onsite more often and for longer hours. (Applicable Standard: 2015 TEDS, Restroom Facilities & Hygiene, Priority 2).

Other Observations:El Paso Border Patrol Station (EPS)Finding:

EPS facility contains multiple holding rooms with various capacities. The maximum capacity of each room is clearly marked on the outside of the room. On July 16, 2019, during the onsite, Room #232 was observed with 19 people; however the "Maximum Capacity of 14" was clearly shown outside of Room #232.

Applicable Standard: 2015 TEDS, Hold Room Standards

Conclusion: The EPS holding room operations were observed on July 16, 2019, out of compliance with the 2015 TEDS Hold Room Standards for Capacity. Nineteen detainees were inside of Room #232, which was five more than the posted maximum capacity for that room. At the time of this observation, there were other rooms that were not occupied. From an environmental standpoint, this type of overcrowding interferes with the ability to keep areas clean and can create health safety issues, such as spread of illness/disease.

Recommendation:

5. EPS should avoid overcrowding within holding rooms, and utilize additional space and/or rooms that are empty. (Applicable Standard: 2015 TEDS, Hold Room Standards, Priority 2).

Finding:

EPS has a reach-in freezer located in the holding area. The freezer was observed at an internal temperature of -7° F, an acceptable freezer temperature; however, there was a leak inside coming from the top (inside) that is dripping into a plastic cup causing frozen water in and around the cup. There's a sign next to the cup that says, "Do Not Remove Cup".

Applicable Standard: FDA Food Code 2017

Conclusion: Leaking inside of a freezer (or refrigerator) is a food safety violation and can cause contamination of food items stored below the leak. In accordance with the FDA

Food Code 2017, food must be stored where it is not exposed to splash, dust, or other contamination.

Recommendation:

6. EPS should have the leak inside of the freezer in the holding area repaired as soon as possible to avoid contamination of food items stored in the freezer. (Applicable Standard: FDA Food Code 2017, Priority 1).

Finding: Cleaning and sanitation of one of the holding rooms was observed during our tour. The person was utilizing power wash down equipment with automatic dispensing of cleaner/sanitizer to spray the walls and floor of the room. However, she was not initially wearing a mask or eye cover. She did obtain a mask after a few minutes, but no eye cover. She was wearing gloves.

Applicable Standard: 2015 TEDS, General Standards, Hold Room Standards, & Hygiene

Conclusion: There is no concern with the use of the power washing process; however, those operating this equipment should wear a mask and goggles. The power washing process creates a mist in the room as the process is being completed. There are bacteria in the rooms that will enter the air during the power washing process. Without a mask and goggles, the bacteria can be inhaled and/or enter the eyes. In addition, this same issue can happen with the chemicals that are being sprayed.

Recommendation:

7. To avoid exposure to bacteria and chemical mist, EPS should ensure that gloves, a mask, and goggles are worn at all times by janitorial personnel during the power washing process of holding rooms. In addition, at minimum gloves should always be worn during any cleaning process. (Applicable Standard: 2015 TEDS, General Standards, Hold Room Standards & Hygiene, Priority 1).

Finding:

There was insufficient lighting inside of the tent (soft sides area) where medical triage is to be completed for the soft-sided structures at EPS. The lighting was measured during the tour and was found anywhere from 7 – 12 foot candles, depending on where in the tent the lighting was measured.

Applicable Standard: 2015 TEDS, General Standards

Conclusion: This tent is being used for medical triage. Insufficient lighting hinders the medical staff from being able to clearly see what they are doing and increases the risk for errors to occur, which could be a safety issue. Lighting can easily be increased by adding additional lighting or using bright LED lighting.

Recommendation:

8. EPS should ensure that any area used for medical purposes has a minimum of 50 foot candles of lighting available. (Applicable Standard: 2015 TEDS, General Standards, Priority 2).

Finding:

Lunch service was observed during our tour at EPS. A burrito, snack, fresh fruit and individual juice were served. Drinking water was also available via self-service from water jugs (round thermos type beverage containers). The burritos were stored in a Cambro container (insulated container). The internal temperature of a burrito was taken during the lunch service. The internal temperature was 129° F. The proper temperature for holding hot food is 135° F or above.

Applicable Standard: FDA Food Code 2017

Conclusion: The burrito on July 16, 2019, observed during lunch service at EPS was being held below 135° F, which is inside of the Temperature Danger Zone (41° F - 135° F). Food held between 41° F and 135° F, in the temperature danger zone, has the greatest potential for bacteria multiplication and can increase the likelihood of a foodborne illness outbreak.

Recommendation:

9. EPS should ensure food is above 135° F when being held for service. Hot holding equipment can be utilized to accomplish this requirement. (Applicable Standard: FDA Food Code 2017, Priority 1).

Finding:

Inside the storage tent (soft side) across from the laundry, cases of food and supplies are being stored. In addition, in this same tent, ill patients are being seen on both sides of the tent.

Applicable Standard: FDA Food Code 2017

Conclusion: Food and supply items should not be stored in the same area where ill patients are being seen. The sick area contains viruses and bacteria that can spread within this area.

Recommendation:

10. EPS should ensure that the medical sick call screening/process is isolated, and definitely not in an area where food is stored. (Applicable Standard: FDA Food Code 2017, Priority 1).

Finding:

During the onsite at EPS on July 16, 2019, the shower water temperature was measured in the female shower facility. The water temperature in the shower after running for several minutes was a maximum of 94° F.

Applicable Standard: American Correctional Association (ACA), Performance-Based Standards for Adult Local Detention Facilities, 4th Edition, Performance Standard 4B: Hygiene

Conclusion: Shower water temperature should be between 100° F and 120° F for appropriate showering and the promotion of hygienic practices.

Recommendation:

11. Based on information provided by EPS staff, all of the showers receive heated water from the same source. EPS should raise the temperature where the water for showers is heated to a minimum of 100° F, but no greater than 120° F. (Applicable Standard: American Correctional Association (ACA), Performance-Based Standards for Adult Local Detention Facilities, 4th Edition, Performance Standard 4B: Hygiene, Priority 1).

El Paso Station's Satellite Processing Facility (PDT)

Finding:

Two 6 ounce tubes of Colgate toothpaste were observed in the personal hygiene supplies area. Staff was asked if persons held at PDT share the tubes of toothpaste, which was confirmed. This is not an appropriate practice.

Applicable Standard: 2015 TEDS, Hygiene

Conclusion: Sharing of tubes of toothpaste among detainees is not an appropriate practice for health and sanitary reasons, and should not be permitted.

Recommendation:

12. In accordance with TEDS, Hygiene, "Detainees must be provided with basic personal hygiene items, consistent with short term detention and safety and security needs." PDT should obtain individual tubes or packets of toothpaste meant for single use. These can be obtained from any vendor that supplies correctional personal hygiene products. The Clint Station was found to have an ample supply of individual packets of toothpaste; the information for purchasing these should be shared amongst all stations. (Applicable Standard: 2015 TEDS, Hygiene, Priority 1).

Finding:

PDT has one padded holding room. This room was found with the floor peeling in two places.

Applicable Standard: 2015 TEDS, Hold Room Standards

Conclusion: The peeling floor allows for bacteria growth, as the floor cannot be cleaned properly in this state of disrepair. In addition, pieces of the peeling floor can be broken off and used for self-harm.

Recommendation:

13. PDT should have the floor in the padded holding room resurfaced to be smooth in all areas. (Applicable Standard: 2015 TEDS, Hold Room Standards, Priority 1).

Ysleta Border Patrol Station (YST)

Finding:

The lunch meal for July 18, 2019 (the day of our tour) had been delivered in a white insulated chest cooler. Based on information provided, the cooler had been delivered at approximately 9:30 am, and contained the lunch meals for the day. The cooler was completely full with no extra room. The meals inside were a foil wrapped burrito. One of the burritos was obtained from the inside of the chest cooler. The burrito was neither cold nor hot, rather it was "room temperature". The burrito was opened and found to have refried beans and egg inside. The delivered burritos were being held inside of the chest cooler, without refrigeration until it was time for lunch. Microwaves were available for heating; there was no other heating equipment. Staff reported that in order to heat the burritos, they would require being unwrapped from the foil (foil cannot go into the microwave) and then re-wrapped after heating.

Applicable Standard: FDA Food Code 2017

Conclusion: The food at YST is being held without proper refrigeration and in the temperature danger zone (between 41°F and 135° F), which is a serious food safety and FDA Food Code violation. The temperature danger zone is the range of temperature where bacteria is able to multiply most rapidly. Holding food in this danger zone increases the likelihood of a foodborne illness outbreak.

In addition, the volunteer assisting with the food service is a FEMA volunteer. I questioned her as to whether she had any food service training. She stated, "Only what FEMA had provided". However, her training may have lacked important information about food storage.

Recommendation:

14. YST should ensure that if deliveries of cooked/prepared food are to be held before meal service, proper equipment is available to hold food below 41°F. Another option is to obtain heating equipment to heat the meals and then hold them above 135° F. However, food cannot be held inside of an insulated chest cooler with no means of proper temperature control. Prepared food may not be stored or held inside of the Temperature Danger Zone, which is between 41° F and 135° F. (Applicable Standard: FDA Food Code 2017, Priority 1).

Clint Border Patrol Station (CTX)

Finding:

CTX was toured on July 18, 2019. During the tour laundry was observed being washed and dried in a room set up strictly for processing of laundry. Both the washing machines and dryers were models that may be utilized in a household or smaller model in a coin laundry. I inquired about the laundry detergent used and if any type of sanitizing agent was used in the washing part of the process. Staff reported that they purchased laundry detergent, the same as is sold retail and may be used in a washing machine at home.

Applicable Standard: 2015 TEDS, General Standards

Conclusion: Laundry processed at the CTX consists of laundry from multiple juvenile detainees. When laundry is co-mingled and washing machines are utilized to wash items from multiple individuals and/or groups, it is a best practice to utilize a sanitizing agent in the washing process to reduce and/or eliminate the potential for spread of bacteria or disease from one detainee to another.

Recommendation:

15. CTX should purchase a laundry sanitizing agent that can be individually added to each wash cycle. Sanitizing agents are available from any chemical company that sells laundry detergent supplies. As an alternative, the washing machines can be set up by a chemical company that sells laundry detergent supplies to automatically dispense detergent and a sanitizing agent into the washing machine during the appropriate cycle. (Applicable Standard: 2015 TEDS, General Standards, Priority 2).

Summary of 2015 TEDS Recommendations – Priority 1

The following are statements of issues/problems that are Priority 1 observations and are listed as Recommendations with Priority 1 throughout this report:

Recommendation #6

Observation: In the EPS holding room area, there is a freezer that has a leak inside coming from the top (inside) that is dripping into a plastic cup causing frozen water in and around the cup. There's a sign next to the cup that says, "Do Not Remove Cup".

Problem Reason: Leaking inside of a freezer (or refrigerator) is a food safety violation and can cause contamination of food items stored below the leak.

Applicable Standard: FDA Food Code 2017

Recommendation #7

Observation: Cleaning and sanitizing of holding rooms by power wash down was being completed at EPS without proper personal protective equipment (mask and goggles).

Problem Reason: The power washing process creates a mist in the room as the process is being completed. There are bacteria in the rooms that will enter the air during the power washing process. Without a mask and goggles, the bacteria can be inhaled and/or enter the eyes. In addition, this same issue can happen with the chemicals that are being sprayed.

Applicable Standard: 2015 TEDS, General Standards, Hold Room Standards & Hygiene, Priority 1)

Recommendation #9

Observation: The internal temperature of a burrito was taken during the lunch service at EPS. The internal temperature was 129° F. The proper temperature for holding hot food is 135° F or above.

Problem Reason: Food held between 41° F and 135° F, in the temperature danger zone, has the greatest potential for bacteria multiplication and can increase the likelihood of a foodborne illness outbreak.

Applicable Standard: FDA Food Code 2017

Recommendation #10

Observation: At EPS, cases of food and supplies are being stored inside of the same tent where ill patients are being seen on both sides of the tent.

Problem Reason: Food and supply items should not be stored in the same area where ill patients are being seen. The sick area contains viruses and bacteria that can spread within this area.

Applicable Standard: FDA Food Code 2017

Recommendation #11

Observation: The shower water temperature was measured in the female shower facility at EPS. The water temperature in the shower after running for several minutes was a maximum of 94° F.

Problem Reason: Shower water temperature should be between 100° F and 120° F for appropriate showering and the promotion of hygienic practices.

Applicable Standard: American Correctional Association (ACA), Performance-Based Standards for Adult Local Detention Facilities, 4th Edition, Performance Standard 4B: Hygiene

Recommendation #12

Observation: Two 6 ounce tubes of Colgate toothpaste were observed in the personal hygiene supplies area at PDT. Staff was asked if persons held at PDT share the tubes of toothpaste, which was confirmed. This is not an appropriate practice.

Problem Reason: Sharing of tubes of toothpaste among detainees is not an appropriate practice for health and sanitary reasons, and should not be permitted.

Applicable Standard: 2015 TEDS, Hygiene

Recommendation #13

Observation: PDT has one padded holding room. This room was found with the floor peeling in two places.

Problem Reason: The peeling floor allows for bacteria growth, as the floor cannot be cleaned properly in this state of disrepair. In addition, pieces of the peeling floor can be broken off and used for self-harm.

Applicable Standard: 2015 TEDS, Hold Room Standards

Recommendation #14

Observation: The food at YST is being held without proper refrigeration and in the temperature danger zone (between 41°F and 135° F), which is a serious food safety and FDA Food Code violation.

Problem Reason: Food held between 41° F and 135° F, in the temperature danger zone, has the greatest potential for bacteria multiplication and can increase the likelihood of a foodborne illness outbreak.

Applicable Standard: FDA Food Code 2017

Summary of 2015 TEDS Report Recommendations - (All Priority Levels)

1. To ensure that adequate amounts of food are properly heated in a sufficient timeframe, and meal service can be provided to a large number of detainees on a regular schedule, CBP should ensure that PDT has adequate equipment for reheating food to proper temperatures, and for holding food hot, should meals need to be held heated before service. Another option to accomplish this requirement would be to have meals delivered hot, or serve a cold lunch that does not require reheating. (Applicable Standard: 2015 TEDS, Food and Beverage, Priority 2).

2. PDT should ensure that the shower trailer is installed and fully operational as soon as possible. Shower water temperature should be between 100° F - 120° F for appropriate showering and promotion of hygienic practices. PDT should also consider installing additional shower capability, as six shower stalls will not be sufficient to accommodate the number of people that may be held in the holding area and the tents outside should there be another large influx of migrants. (Applicable Standard: 2015 TEDS, Hygiene, Priority 2).

3. The PDT facility should ensure that a contingency plan outlining processes to be followed during a large influx of migrants is in writing and in place. Holding rooms and temporary tents to the extent possible should not be overcrowded. CBP does have a cleaning and sanitizing contract and processes in place, for example, holding rooms and restrooms are cleaned two times per shift. However, a plan for additional cleaning and sanitation processes needs to be in place to ensure that detainee areas are kept clean and sanitized should a large influx of detainees occur. The contingency plan should include triggers that initiate a heightened level of cleaning and require the contractor to be onsite more often and for longer hours. Showering capability must be available to detainees, as well as personal hygiene items, soap, toilet paper, and disposable paper towels. (Applicable Standard: 2015 TEDS, Hold Room Standards & Hygiene, Priority 2).

4. YST should ensure that protocols are in place to ensure that restrooms are cleaned/serviced frequently should a large number of detainees be present. For example, the frequency of servicing of portable toilets should be increased from the normal four times per week when there is an increased amount of detainees present. In addition, a plan for additional cleaning and sanitation processes needs to be in place to ensure that restroom areas are kept clean and sanitized should a large influx of detainees occur. The contingency plan should include triggers that initiate a heightened level of cleaning and require the contractor to be onsite more often and for longer hours. (Applicable Standard: 2015 TEDS, Restroom Facilities & Hygiene, Priority 2).

5. EPS should avoid overcrowding within holding rooms, and utilize additional space and/or rooms that are empty. (Applicable Standard: 2015 TEDS, Hold Room Standards, Priority 2).
6. EPS should have the leak inside of the freezer in the holding area repaired as soon as possible to avoid contamination of food items stored in the freezer. (Applicable Standard: FDA Food Code 2017, Priority 1).
7. To avoid exposure to bacteria and chemical mist, EPS should ensure that gloves, a mask, and goggles are worn at all times by janitorial personnel during the power washing process of holding rooms. In addition, at minimum, gloves should always be worn during any cleaning process. (Applicable Standard: 2015 TEDS, General Standards, Hold Room Standards & Hygiene, Priority 1).
8. EPS should ensure that if this area is used for any medical purposes, a minimum of 50 foot candles should be available. (Applicable Standard: 2015 TEDS, General Standards, Priority 2).
9. EPS should ensure food is above 135° F when being held for service. Hot holding equipment can be utilized to accomplish this requirement. (Applicable Standard: FDA Food Code 2017, Priority 1).
10. EPS should ensure that the medical sick call screening/process is isolated, and definitely not in an area where food is stored. (Applicable Standard: FDA Food Code 2017, Priority 1).
11. Based on information provided by EPS staff, all of the showers receive heated water from the same source. EPS should raise the temperature where the water for showers is heated to a minimum of 100° F, but no greater than 120° F. (Applicable Standard: American Correctional Association (ACA), Performance-Based Standards for Adult Local Detention Facilities, 4th Edition, Performance Standard 4B: Hygiene, Priority 1).
12. In accordance with TEDS, Hygiene, "Detainees must be provided with basic personal hygiene items, consistent with short term detention and safety and security needs." PDT should obtain individual tubes or packets of toothpaste meant for single use. These can be obtained from any vendor that supplies correctional personal hygiene products. The Clint Station was found to have an ample supply of individual packets of toothpaste; the information for purchasing these should be shared amongst all stations. (Applicable Standard: 2015 TEDS, Hygiene, Priority 1).

13. PDT should have the floor in the padded holding room resurfaced to be smooth in all areas. (Applicable Standard: 2015 TEDS, Hold Room Standards, Priority 1).

14. YST should ensure that if deliveries of cooked/prepared food are to be held before meal service, proper equipment is available to hold food below 41°F. Another option is to obtain heating equipment to heat the meals and then hold them above 135° F. However, food cannot be held inside of an insulated chest cooler with no means of proper temperature control. Prepared food may not be stored or held inside of the Temperature Danger Zone, which is between 41° F and 135° F. (Applicable Standard: FDA Food Code 2017, Priority 1).

15. CXT should purchase a laundry sanitizing agent that can be individually added to each wash cycle. Sanitizing agents are available from any chemical company that sells laundry detergent supplies. As an alternative, the washing machines can be set up by a chemical company that sells laundry detergent supplies to automatically dispense detergent and a sanitizing agent into the washing machine during the appropriate cycle. (Applicable Standard: 2015 TEDS, General Standards, Priority 2).



Homeland
Security

September 16, 2019

MEMORANDUM FOR: Carla Provost
Chief
U.S. Border Patrol
U.S. Customs and Border Protection

FROM: Peter E. Mina (b)(6)
Deputy Officer for Programs and Compliance
Office for Civil Rights and Civil Liberties

Dana Salvano-Dunn (b)(6)
Director, Compliance Branch
Office for Civil Rights and Civil Liberties

SUBJECT: El Paso Sector Onsite Investigation

El Paso Station One (EPS): 19-08-CBP-0344

Paso Del Norte Processing Center (PDT): 19-07-CBP-0226,
19-09-CBP-0401

Clint Station (CTX): 19-09-CBP-0402, 19-07-CBP-0276

Ysleta Station (YST): 18-07-DHS-0369

The U.S. Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) conducted an onsite investigation within the El Paso Border Patrol Sector from July 16-18, 2019. CRCL visited El Paso Station One (EPS), the Paso Del Norte Processing Center (PDT), Clint Station (CTX), and Ysleta Station (YST). CRCL reviewed U.S. Customs and Border Protection's (CBP's) general adherence to relevant CBP policies and procedures regarding short-term custody and investigated complaints relating to these Border Patrol stations within the El Paso Sector. CRCL also toured the El Paso Del Norte Port of Entry (PDN), however the conditions at PDN were not a part of this investigation.

As part of the investigation, CRCL engaged the assistance of subject-matter experts in the areas of corrections and detention and environmental health and safety to conduct a broad review of conditions at the above-referenced CBP facilities. To assist with the review, the experts reviewed the Stations' adherence to the U.S. Customs and Border Protection's National Standards on Transport, Escort, Detention and Search (TEDS), the Trafficking Victim Protection Reauthorization Act (TVPRA), CBP Juvenile Coordinator Roles and Responsibilities January 2017, the Department of Homeland Security Language Access Plan, February 28, 2012, and CBP Directive 2130-030, Prevention, Detection, and Response to Sexual Abuse and Assault in CBP Holding Facilities

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Directive in the relevant areas.¹

CRCL's two subject-matter experts identified recommendations through tours of the facilities, staff interviews, visual observations, environmental measurements, and a review of documents that included policies, procedures, training materials, and detainee files. On July 18, 2019, as part of the onsite closing discussions, CRCL and the two subject-matter experts discussed our findings with several members of the CBP El Paso Sector leadership team and the CBP Privacy and Diversity Office (PDO). Following the visit, on August 6, 2019, CRCL provided CBP with written informal preliminary findings and recommendations.

We greatly appreciated the cooperation and assistance provided by CBP leadership in El Paso, including Acting Patrol Agent in Charge (b)(6),(b)(7)(C), Port Director (b)(6),(b)(7)(C), Assistant Chief Patrol Agent (b)(6),(b)(7)(C), and CBP PDO staff (b)(6),(b)(7)(C), (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) (b)(6),(b)(7)(C).

Enclosed with this memorandum are the reports prepared by our subject-matter experts. The experts have provided both sector-wide and facility-specific recommendations. We have included the recommendations in the body of this memorandum and request that CBP formally concur or non-concur with these recommendations within 60 days, providing an implementation plan for all accepted recommendations.

CRCL's experts made the following recommendations related to issues within the El Paso Border Patrol Sector:

El Paso Sector-Wide Recommendations (4)

1. At the time of our onsite inspection, 21 detainees (14 adults and 7 minors) were in holding over the TEDS time in custody (TIC) standard of 72 hours. CBP should continue to work with Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations and Health and Human Services to reduce processing times to comply with TEDS § 4.1 Duration of Detention Standard of 72 hours.

2.

(b)(5)

3. Medical screening is not consistent at EPS, PDT, YST and CTX. The PDT does not use a medical screening form. The EPS, YST, and CTX use a contract medical provider who does

¹ CRCL's Environmental Health and Safety Expert also referenced the Performance-Based Standards for Adult Local Detention Facilities, Fourth Edition, published by the American Correctional Association (ACA), and the Food and Drug Administration (FDA) Food Code 2017.

use a form; however, the form used is very basic and our experts found that it does not support an adequate medical screening. CBP headquarters has developed a standardized medical screening form that is pending release. CBP headquarters should immediately finalize the medical screening form and release it to the Sector for implementation, TEDS § 4.0 Secure Detention Standards and § 4.10 Medical.

4. Our experts reviewed the camera systems and Digital Video Recording (DVR) at EPS, PDT, YST, and CTX and found that all four were inadequate to provide reliable, effective video monitoring, creating a significant safety and security risk. Border Patrol (BP) should replace broken cameras and recording equipment to ensure reliable video security monitoring and recording exists at the EPS, PDT, YST and the CTX to comply with § 4.6 Hold Room Monitoring.

El Paso Border Patrol Station One Recommendations (12)

5. Our experts sustained the allegations in Complaint Number 19-08-CBP-0344 regarding three Cuban nationals in custody who attempted self-harm on May 14, 2019, by cutting their wrists using wire from fencing surrounding the temporary tents while in custody at the EPS.

(b)(5)

6. Due to the sustained allegation of detainees attempting self-harm, CBP should conduct a camera assessment to ensure adequate camera coverage exists to monitor holding areas **(b)(5)** **(b)(5)** to comply with TEDS § 4.6 Hold Room Monitoring.

7. Due to the sustained allegation of detainees attempting self-harm, CBP should provide CBP employees and contractors additional training related to recognizing the signs and symptoms of potential mental health issues.

8. **(b)(5)**

9. **(b)(5)**

10. **(b)(5)**

(b)(5)

11. Our experts observed a leak in a freezer at EPS that was dripping into a plastic cup, with a sign next to the cup stating, "Do Not Remove Cup." Leaking inside of a freezer or refrigerator is a violation of the FDA Food Code. EPS should have the leak inside of the freezer in the holding area repaired as soon as possible to avoid contamination of food items stored in the freezer, to comply with the FDA Food Code 2017.
12. Our experts observed janitorial staff power-washing a room, initially without a mask or eye cover. After a few minutes, the staff member obtained a mask, but no eye protection. Without proper protection, including a mask and goggles, the bacteria and chemicals made airborne through power-washing can be inhaled or enter the eyes. To avoid exposure to bacteria and chemical mist, EPS should ensure that gloves, a mask, and goggles are worn at all times by janitorial personnel during the power washing process of holding rooms. In addition, at minimum gloves should always be worn during any cleaning process.
13. Our experts observed that food and supplies being stored inside the soft-sided storage tent across from the laundry. Our experts also observed ill patients being seen on both sides of the tent. Food and supply items should not be stored in the same area where ill patients are being seen. Ill detainees may spread viruses and bacteria to the food and supplies stored within this area. EPS should ensure that the medical sick call screening/process is isolated, and not in an area where food is stored; to comply with FDA Food Code 2017.
14. Our experts measured the shower water temperature in the female shower facility. The water temperature in the shower after running for several minutes was a maximum of 94° F. Based on information provided by EPS staff, all the showers receive heated water from the same source. EPS should raise the temperature where the water for showers is heated to a minimum of 100° F, but no greater than 120° F. *See: American Correctional Association (ACA), Performance-Based Standards for Adult Local Detention Facilities, 4th Edition, Performance Standard 4B: Hygiene.*
15. Our experts measured the lighting inside the medical triage tent at EPS and found the lighting, ranging from 7-12 foot-candles, to be insufficient. Insufficient lighting hinders the medical staff from being able to see clearly and increases the risk of errors. EPS should ensure that any area used for medical purposes has a minimum of 50 foot-candles of lighting available.
16. At the time of our visit on July 16, 2019, our experts observed that Room #232 held 19 detainees, when a sign reading "Maximum Capacity 14" was posted outside the room. EPS should avoid exceeding capacity limits in hold rooms and utilize additional space and/or rooms that are empty.

Paso Del Norte Processing Center (PDT) Recommendations (5)

17. Our experts substantiated allegations in Complaint Number 19-07-CBP-0226 and Complaint Number 19-09-CBP-0401 relating to allegations by the complainant and findings by the DHS Office of Inspector General that the surge of detainees created extreme overcrowding at the PDT, leading to unsafe and unsanitary conditions. CBP should continue to prepare for

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additional large influxes. Emergency readiness and preparedness is key to safely and humanely housing large numbers of migrants crossing the border for an extended period of time. Preparing for another potential influx should include the following:

- Contingency planning for a large influx at the PDT facility that ensures holding rooms and temporary outdoor holding spaces are not overcrowded.
- A plan for additional cleaning and sanitation processes to ensure that detainee areas are kept clean and sanitized, should a large influx of detainees occur. The contingency plan should include triggers that initiate a heightened level of cleaning and require the contractor to be onsite more often and for longer hours. Showering capability must be available to detainees, as well as personal hygiene items, soap, toilet paper, and disposable paper towels.
- Our experts observed that only two microwaves were available for heating lunch, which was delivered with breakfast and stored in refrigeration until lunchtime. Two microwaves will be insufficient to properly heat meals if there is a large influx of detainees at PDT. CBP should ensure that PDT has adequate equipment for reheating food to proper temperatures, and for holding food hot should meals need to be held heated before service. Another option to accomplish food safety requirements would be to have meals delivered hot or serve a cold meal that does not require reheating; to comply with FDA Food Code 2017.

18. Our experts inspected netting-covered enclosures over asphalt used for outdoor holding at PDT. Detainees in this area would be subject to extreme temperatures and exposed to weather. The chain-link fencing was not secured and could easily be moved and detainees could also access the secured perimeter fence and razor wire in this outdoor area, which poses risks of escape and potential opportunity to use the razor wire for self-harm. Additionally, cameras do not monitor inside the netting-covered area, exacerbating safety and security concerns due to the lack of video monitoring. CBP should not hold detainees in the outdoor parking lot of the PDT under netting, which places detainees health and safety at risk and jeopardizes the safety and security of the detainees and the facility, TEDS § 4.0 Secure Detention Standards.
19. Our experts observed peeling and loose padding in the padded holding room, creating a risk that pieces could be broken off and used for self-harm. This peeling also allows for bacterial growth, as the floor cannot be properly cleaned in this state of disrepair. CBP should work with the General Services Administration (GSA) to repair the peeling and loose rubber padding in the holding cell designed to temporarily hold detainees who are at risk of self-harm, TEDS § 4.0 Secure Detention Standards. The floor in the padded holding room should be resurfaced to be smooth in all areas.
20. Our experts observed two 6-ounce tubes of toothpaste in the personal hygiene supplies area. PDT staff confirmed that persons held at PDT share the tubes of toothpaste, which is unsanitary. In accordance with TEDS, Hygiene, "Detainees must be provided with basic personal hygiene items, consistent with short term detention and safety and security needs." PDT should obtain individual tubes or packets of toothpaste meant for single use. These can be obtained from any vendor that supplies correctional personal hygiene products. The Clint

Station was found to have an ample supply of individual packets of toothpaste; the information for purchasing these should be shared amongst all stations.

21. PDT should ensure that as soon as possible, the shower trailer is installed and fully operational. Shower water temperature should be between 100° F - 120° F for appropriate showering and promotion of hygienic practices. PDT should also consider installing additional shower capability, as six shower stalls will not be sufficient to accommodate the number of people that may be held in the holding area and the tents outside should there be another large influx of migrants.

Ysleta Station Recommendations (2)

22. Our experts observed a cooler full of refried bean and egg burritos being held at room temperature from the time of delivery at 9:30am until the lunch meal. The food was being held without proper refrigeration and within the temperature danger zone (between 41° F and 135° F), which increases the likelihood of a foodborne illness outbreak and constitutes a serious food safety and FDA Food Code violation. YST should ensure that if deliveries of cooked/prepared food are to be held before meal service, proper equipment is available to hold food below 41° F. Another option is to obtain heating equipment to heat the meals and then hold them above 135° F. However, food must not be held inside of an insulated chest cooler with no means of proper temperature control. Prepared food may not be stored or held inside of the Temperature Danger Zone, which is between 41° F and 135° F.
23. The Ysleta Station should engage in contingency planning to prepare for another potential large influx of detainees. Such planning should include the following:
 - Contingency planning for a large influx at Ysleta Station that ensures holding rooms and temporary outdoor holding spaces are not overcrowded.
 - Protocols to ensure that restrooms are cleaned and serviced frequently if a large number of detainees are present. For example, the frequency of servicing of portable toilets should be increased from the normal four times per week when there is an increased amount of detainees present. The contingency plan should include triggers that initiate a heightened level of cleaning and require the contractor to be onsite more often and for longer hours.

Clint Station Recommendations (2)

24. Our experts sustained allegations that unaccompanied alien children (UACs) were detained beyond 72 hours in violation of TEDS §4.1 Duration of Detention. CTX should not house minors in detention beyond 72 hours, in compliance with TEDS § 4.1 Duration of Detention. HHS should ensure sufficient housing is available.
25. Our experts inquired about the laundry detergent and/or sanitizing agent used for on-site laundry at CTX and found that staff purchased retail laundry detergent without a sanitizing agent. When laundry is co-mingled and washing machines are utilized to wash items from multiple individuals and/or groups, it is a best practice to utilize a sanitizing agent in the washing process to reduce and/or eliminate the potential for spread of bacteria or disease

from one detainee to another. CTX should purchase a laundry sanitizing agent that can be individually added to each wash cycle. Sanitizing agents are available from any chemical company that sells laundry detergent supplies. As an alternative, the washing machines can be set up by a chemical company that sells laundry detergent supplies to automatically dispense detergent and a sanitizing agent into the washing machine during the appropriate cycle.

The complete expert reports are enclosed.

It is CRCL's statutory role to advise department leadership and personnel about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions and the implementation of those decisions. We look forward to working with CBP to determine the best way to resolve these concerns. We request that CBP provide a response to CRCL within 60 days whether it concurs or non-concurs with these recommendations. If you concur, please include an action plan. You can send your response by email. If you have any questions, please contact Policy Advisor (b)(6) by phone at (b)(6) or by email at (b)(6)

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Homeland
Security

September 27, 2023

MEMORANDUM FOR:

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Matthew Hudak
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FROM:

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Deputy Director, Compliance Branch
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SUBJECT:

Compliance Findings from CRCL's Onsite Visits to CBP
Facilities in the El Paso area, June 13-15, 2023

I. Purpose

Pursuant to 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, the Office for Civil Rights and Civil Liberties (CRCL) issues the following findings based on the above referenced visits.¹ In connection with these findings, CRCL has provided action items to address the identified concerns. These findings are not intended to be all-inclusive, but to provide a snapshot of critical issues that can be immediately remedied by CBP for maximum impact.

II. Background

Members of CRCL Compliance Branch's Rapid Response Team traveled to El Paso, Texas and Santa Teresa, New Mexico from June 13-16, 2023, to observe CBP's migrant processing and

¹ Under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, CRCL's Compliance Branch receives information and opens complaint investigations into possible violations of civil rights or civil liberties by DHS programs, activities, personnel, or contractors. CRCL may issue recommendations to a DHS Component or Office when CRCL's investigation identifies an area that warrants changes to policies, procedures, implementation, training, or oversight to enhance the protection of civil rights or civil liberties.

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custody operations in what had been anticipated to be a surge environment. CRCL also observed and received briefings from the Office of Field Operations' (OFO) on their operational use and processing of noncitizens using the CBP One app as relevant to CRCL's opened retained investigation regarding the civil rights and civil liberties implications of CBP One (Complaint Nos. 005827-23-CBP, 005762-23-CBP, 00624-23-CBP, 006149-23-CBP, 006058-23-CBP).² Lastly, CRCL also conducted an Implementation Review (Complaint No. 005468-23-CBP) of the relevant recommendations made in 2019 stemming from a prior onsite in El Paso.³

CRCL's onsite included a tour of U.S. Border Patrol's (USBP) El Paso Centralized Processing Center (CPC) and the newly opened Enhanced Hard-Sided Facility (EHF) during which CRCL staff had an opportunity to observe intake and processing, and conditions of detention while in CBP custody including medical care. USBP also provided CRCL staff with tours of the Paso Del Norte (PDT) and Santa Teresa (STN) stations and provided CRCL information regarding station operations, capacity, and processing of family units and family groups. This work supported CRCL's review of the CBP preparation done in anticipation of a surge of migrants as Title 42 concluded.⁴

CRCL staff was also able to observe the processing of migrants including the operational use of CBP One at Paso del Norte (PDN) Port of Entry. This included the intake and processing of noncitizens with appointments scheduled through the use of CBP One as well as of noncitizens who arrived at PDN without scheduled appointments. CBP OFO PDN also provided CRCL staff with a briefing regarding its use of CBP One and the post-Title 42 processing of noncitizens under the Circumvention of Lawful Pathways Final Rule.⁵

In addition to CRCL Compliance Branch's observations of USBP and OFO facilities, the Compliance Branch also visited two local El Paso migrant shelters and interviewed several noncitizens regarding their experiences including, but not limited to, the use of CBP One. In the coming months, the CRCL Compliance Branch will be issuing a full Findings and Recommendations Memorandum related the use of the CBP One App and will be issuing an Implementation Memorandum related to CRCL's prior recommendations. In addition to the work of the Compliance Branch, CRCL's Programs Branch has also been engaged in activity

² A retained investigation is one conducted by CRCL that involves formal notification from CRCL leadership to component leadership about the investigation, its scope, and the general plan for investigation. CRCL generally retains complaints that involve onsite investigations, or other complaints that present novel, egregious, or systemic civil rights or civil liberties issues.

³ CRCL reviews the implementation of select prior recommendations to a component to assess whether the component has completed the actions it agreed to take in its response to CRCL recommendations. The results of CRCL's El Paso Implementation review will be issued in a separate document once the review is complete.

⁴ 42 U.S.C. §§ 265, 268 and 42 C.F.R. § 71.40. In March 2020, the U.S. Centers for Disease Control and Prevention issued an order limiting migration across the southern and northern border pursuant 42 U.S.C. §§ 265, 268 and 42 C.F.R. § 71.40. CRCL has made numerous recommendations over the years stemming from past investigations related to ensuring civil rights of noncitizens during a surge. CRCL provided a compilation of these recommendations April 7, 2022, to SBCC in order to assist with the transition from Title 42. CRCL has attached that document to this memorandum as Appendix A

⁵ 88 FR 31314 (published May 16, 2023).

related to CBP operations in El Paso as well the use of the CBP One application. Specifically, The CRCL Community Engagement section had meetings with community stakeholders and observed CBP operations in El Paso from June 26-June 30, 2023; and the CRCL Immigration Section led efforts on CRCL's recently submitted Memo to CBP on *Significant Civil Rights Considerations and Advice Regarding the Implementation and Use of the CBP One™ Mobile Application* memo.

III. CRCL Action Items for Consideration

During the visit to El Paso, CRCL identified a number of issues with civil rights and civil liberties:

A. CBP One Appointments

1. Missed CBP One Appointments due to Unforeseen Circumstances

As discussed during a meeting with CRCL and CBP Policy on June 20, 2023, CRCL observed and later interviewed a noncitizen family waiting at the Paso del Norte bridge who had missed their scheduled CBP One appointment because they were allegedly kidnapped in Mexico by criminal gang members and held until relatives raised the funds for their release. This same noncitizen family reported numerous migrants have been subject to this type of extortion activity by criminal gangs and the pattern of extortion that the family allegedly experienced was similar to that described in media reporting of activity in Laredo.

CRCL Action Items for Consideration: There appears to be no formal mechanism for CBP to retain CBP One appointment information to confirm that a noncitizen had an appointment. Thus, if an appointment is missed for a compelling reason that may rebut the presumption under the Circumvention of Lawful Pathways Final Rule, it cannot be verified.⁶ CBP could enhance civil rights and civil liberties protections by developing and implementing additional CBP policies and guidance to CBP Officers instructing them to document contemporaneously the nature of the missed appointment and to confirm in the CBP records whether an appointment was made. This information is needed for an Asylum Officer to evaluate whether a noncitizen has rebutted the presumption of asylum ineligibility under the Circumvention of Lawful Pathways Final Rule.

⁶ Noncitizens can rebut the presumption of asylum ineligibility in exceptionally compelling circumstances, including if they demonstrate that, at the time of their unauthorized entry, they or a member of their family with whom they were traveling: 1) faced an acute medical emergency; 2) faced an extreme and imminent threat to their life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or 3) were a victim of a severe form of trafficking, as defined in 8 CFR § 214.11.

2. Identification of At-Risk Populations with Scheduled Appointments

CRCL also has concerns regarding the CBP One allocation of scheduled appointments. OFO does not appear to have a formal mechanism to assess if arriving noncitizens may be members of an at-risk population (e.g., disabilities, LGBTQI+ status, special needs, etc.) other than pregnancy.⁷ According to a briefing OFO provided to CRCL on June 5, 2023, CBP allocates the total available CBP One appointments both randomly and using a weighted algorithm that prioritizes noncitizens who have been waiting the longest. At PDN, CRCL observed that of the group of noncitizens who arrived for their scheduled 7:00 a.m. appointment, CBP officers prioritized processing family units first in the Unified Secondary System (USEC).⁸ Within USEC, officers are prompted to ask the noncitizens a set of five “Pregnancy-Related” questions after receiving their files to process, however no other identification of noncitizens who may be members of at-risk populations takes place.

CRCL Action Items for Consideration: Following the termination of Title 42, noncitizens are no longer required to attest to any vulnerability criteria to schedule an appointment as CBP processes all noncitizens arriving at ports of entry. Absent this requirement, CRCL found that CBP no longer has a mechanism to ascertain members of at-risk populations who had previously been identified by meeting the vulnerability criteria. CRCL requests that CBP consider identifying noncitizens who may be members of an at-risk population during the CBP One app registration for a scheduled appointment.⁹ Moreover, CBP should also consider the development of priority queuing for appointments for noncitizens who are members of at-risk population regardless of their use of the CBP One app.

⁷ CRCL is using the definition of at-risk populations included in U.S. Customs and Border Protection, *National Standards on Transport, Escort, Detention, and Search*, October 2015 which defines at risk populations as individuals in the custody of CBP who may require additional care or oversight, who may include: juveniles; UAC; pregnant individuals; those known to be on life-sustaining or life-saving medical treatment; those at higher risk of sexual abuse (including but not limited to gender nonconforming, intersex, and transgender); reported victims of sexual abuse; those who have identified mental, physical or developmental disabilities; those of advanced age; or family units.

⁸ CBP’s Unified Secondary System is a module under the Automated Targeting system that handles the secondary inspection process from referral to resolution. In 2021, CBP expanded the use of USEC to received specified biographic and biometric information via the CBP One App. DHS/CBP/PIA-067(a) Privacy Impact Assessment Unified Secondary.

⁹ While the Title 42 Order was in effect the vulnerability criteria included physical or mental illness; disability; pregnancy; no access to safe housing or shelter in Mexico; under the age of 21; over the age of 70; have been threatened or harmed while in Mexico.

B. Identification of members of At-Risk populations for Non-Scheduled Appointments

CRCL observed seven individuals standing in line on the Mexican side of the Paso del Norte bridge at 7:00 a.m. on June 13, 2023. According to CBP officers, these seven individuals did not have a CBP One appointment. When CRCL returned to the bridge in the afternoon, the seven individuals were gone and CBP officers could not determine whether or not that they had entered the port. There did not appear to be any assessment by the CBP officers on the bridge regarding whether the waiting noncitizens without an appointment were members of an at-risk population.

CRCL Action Items for Consideration: CRCL suggests that CBP develop and implement a priority queue for identifying and prioritizing for processing migrants who arrive at ports of entry without a CBP One appointment but who are members at risk populations population and/or who missed their appointment due to compelling circumstances that would meet the rebuttal presumption under the Circumvention of Lawful Pathways Final Rule.

C. Language Access

CRCL appreciates CBP's ongoing work with CRCL's Program Branch (Anti-Discrimination and Immigration sections) regarding language access concerns in the scheduling of CBP One appointments, especially the need for CBP to take immediate steps to provide greater access and/or alternatives for noncitizens who are not literate in English, Spanish, or Haitian Creole, the only languages in which the Advance Submission and Appointment Scheduling functionality of the CBP One app is available. CRCL Compliance Branch did observe some language access issues related to the processing of noncitizens not related to the use of the CBP One app to schedule appointments. CRCL interviewed ten noncitizens at migrant shelters who reported that CBP officers had asked them to sign documents that contained information required by law such as a Form I-862 (Notice to Appear) and Form I-770 (Notice for Rights and Disposition). All of these noncitizens claimed that these vital documents were neither available nor read to them in their native language and provided evidence to CRCL staff in support of those allegations.¹⁰

¹⁰ CRCL was shown a copy of a Form I-770 in which the CBP Officer affirmed that the subject (an approximately three-month-old infant) had both been given the notice to read and that the CBPO had read the notice to the subject in Spanish. The CBPO also affirmed that infant admitted deportability and requested to return to his/her country voluntarily without a hearing. The mother of the subject asserted that had the document been read to her in Spanish she would have objected. The family was Venezuelan except for the infant who had been born in Ecuador. She did not want her infant returned to a different nation.

CRCL Action Items for Consideration: CBP is required to adhere to the Customs and Border Protection, Language Access Plan, and has existing guidance relating to the translation of vital documents.¹¹ In this particular case, it appears that CBP was not following that guidance. CRCL requests that CBP fully implement its language access procedures when providing these documents to noncitizens during their processing.

D. Medications

At USBP's EHF in El Paso, CRCL observed a detainee's inhaler stored inside a property bag in the property room. When CRCL obtained the Subject ID number based on the property tag and asked the contract medical providers to access the Electronic Medical Record for the individual, there was no record of the person having arrived with an inhaler, nor was there any record of CBP providing the individual with a U.S. prescription for a replacement inhaler.

CRCL Action Items for Consideration: CBP has guidance in place for USBP and its contract medical providers to identify and evaluate when someone arrives at a facility with foreign medication. In this case, CBP did not document that the individual arrived with medication. CBP's Chief Medical Officer's staff should review the practices of medication handling at this facility. In addition, it would be helpful for CBP to document the name, dosage, and purpose of the foreign medication in the appropriate system(s) of record even if CBP through the contract medical provider prescribes a U.S. equivalent, and to document whether the original medication was discarded or stored.

E. Personal Property

CRCL observed contractors telling people who recently entered the facility to discard their outer clothing layers into trash bins even though the clothing did not appear to be soiled (although a minor child appeared to test positive for an undisclosed illness). CRCL also observed one contractor telling a different minor child to throw away two small toys with which he was playing. CRCL also saw one staff member staple the hand-written notation of a detainee's U.S. contact information inside the A-file without returning the piece of paper to the detainee.

CRCL Action Items for Consideration: USBP has personal property guidance for persons in custody that permits the exclusion of certain items in facilities to be categorized as contraband or a health hazard.¹² Based on CRCL's observations, it

¹¹ U.S. Customs and Border Protection, *Language Access Plan*, (November 18, 2016)

¹² See U.S. Border Patrol Internal Operating Procedure Personal Effects (Personal Effects IOP), April 15, 2021; CBP National Standards on Transport, Escort, Detention, and Search (TEDS), October 2015, Section 7.

is possible that USBP in El Paso is broadly categorizing all of detainees' clothing and personal effects as a health hazard even when they are not wet or soiled (or otherwise meet the definition of health hazard), except for some personal items of value. Therefore, USBP may be discarding personal property in the El Paso sector in a manner that is not consistent with policy, and which is unnecessarily upsetting to particularly vulnerable noncitizens, such as children.¹³ However, CRCL was unable to observe a sufficient sample size related to this activity during its onsite to make a definitive conclusion.

IV. Conclusion

CRCL is very appreciative of the USBP and OFO personnel who took time from their critical ongoing duties and responsibilities at the border to provide CRCL staff an overview of their operations and requested briefings. In addition, CRCL would like to express gratitude for the professionalism and generosity of the CBP staff in the El Paso sector, who responded to CRCL's questions and shared their significant expertise related to USBP and OFO operations. CRCL is also grateful to the CBP Privacy and Diversity Office staff who helped coordinate and make this onsite visit possible.

CRCL looks forward to continued collaboration on these issues and feedback from CBP on our observations and action items. Please feel free to contact us if you have any questions regarding this report.

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(b)(6),(b)(7)(C)

¹³ TEDS § 7.1: "All detainees' personal property discovered during apprehension or processing and not deemed to be contraband will be safeguarded, itemized, . . . and documented in the appropriate electronic system(s) of record."

Personal Effects IOP: "A health hazard, a subclass of contraband, is personal property which, if stored within USBP facilities for any length of time, may pose a risk to detainees, contractors, or employees." Examples of health hazards include: "perishable items, any food or drink, substances soiled with bodily fluids, petroleum products, external battery packs, poisons . . . wet items . . . powders, and liquids."

Nathaniel Kaine

Chief of Staff

U.S. Customs and Border Protection

(b)(6),(b)(7)(C)

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(b)(6),(b)(7)(C)

REPORT FOR THE U. S. DEPARTMENT OF HOMELAND SECURITY

OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES

CONDITIONS OF DETENTION EXPERT'S REPORT

August 31-September 3, 2020

Investigation regarding

**RIO GRANDE VALLEY SECTOR BORDER PATROL STATIONS
AND CENTRAL PROCESSING CENTER, TEXAS**

Complaints reviewed in this report include the following:

CRCL Complaint Nos. 19-08-CBP-0345, 19-08-CBP-0358, 19-10-CBP-0497,
19-10-CBP-0551, 19-12-CBP-0671, 19-12-CBP-0724, 19-12-CBP-0732,
and 19-11-CBP-0748

Prepared by:

(b)(6) *MAS*

Rocklin, CA

March 31, 2021

RIO GRANDE VALLEY SECTOR BORDER PATROL STATIONS

I. SUMMARY OF INVESTIGATION

The U.S. Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) conducted an August 31-September 3, 2020 virtual onsite investigation in the U.S. Border Patrol (USBP) Rio Grande Valley (RGV) Sector. This summary is based on observations and findings resulting from the CRCL virtual investigation at McAllen, Rio Grande City, Harlingen Border Patrol Stations and the RGV Central Processing Center (CPC). Brownsville Station was originally scheduled to be included as part of the investigation; however, there was insufficient time to conduct a virtual investigation of this station. The investigation was in follow-up to a 2018 CRCL investigation that produced 24 expert recommendations, with U.S. Customs and Border Protection (CBP) concurring with 17. The virtual onsite investigation reviewed USBP's implementation of the expert's 2018 recommendations and the investigation of eight additional complaints in the area of conditions of detention. Twelve of the 2018 recommendations have been fully addressed; four have been partially addressed and eight have not been addressed. See Section VIII for the status update of the 2018 recommendations.

The majority of the eight additional complaints relate to treatment conditions between the time period of May-July 2019. In June of 2019 USBP apprehensions on the Southwest Border increased by 178% as compared to June 2018. I also participated in a virtual tour of several USBP facilities in the RGV sector, including the Donna Processing Facility (Donna) and the Temporary Outside Processing Site (TOPS) on March 17, 2021¹. I have included updated information in the appropriate areas to include my observations during the March 17, 2021 virtual tour.

The purpose of the 2021 CRCL virtual tour was to get a valuable overview into the situation on the ground in RGV and look generally into conditions and issues raised in the complaints. As CRCL's Conditions of Confinement Expert, the primary scope of my investigation includes examining instances of family separation, hold room conditions including COVID-19 precautions and sanitation, time in custody for families and unaccompanied children (UC) in the RGV sector, hygiene, food, personal property and documents, clothing access, language access, intake, staff-detainee interaction, medical screening and medical care processes and procedures, adherence to CDC Guidelines related to COVID-19, and information technology access and system interoperability and functionality. The CRCL medical expert will opine on specific medical related complaints and related conditions.

During the course of my RGV virtual onsite investigation with CRCL staff I reviewed records; interviewed USBP leadership and line staff; interviewed contract medical staff; observed intake operations; and inspected virtually hold room conditions, property storage areas, and the medical room where migrant vital signs are taken, medication is dispensed, and migrant's medical conditions and medication needs are tracked. I also reviewed USBP's e3DM

¹ This report includes observations made during the March 17, 2021 virtual tour of the RGV sector. It does not include any observations made during the March 15, 2021 tour of Weslaco Station or the Eagle Pass South Station as they were not part of the August/September 2020 CRCL investigation.

information system's technology functionality, including as it relates to UC and family separation data and tracking capability. I also discussed with station and sector leadership e3DM information technology interoperability capability between USBP stations and sectors, USBP headquarters, CBP/OFO, ERO, HSI, and HHS/ORR. Multiple telephone interviews were also conducted after the virtual onsite was completed to follow-up on operational, contracting, COVID-19 practices and protocols, and technology questions. Staff at the USBP stations, the CPC facility and sector leadership were extremely helpful throughout this process.

To examine adherence to policy through the allegations in the complaints, this investigation reviewed the CBP National Standards on Transport, Escort, Detention and Search (TEDS) in the relevant areas. that are identified below. Please note that the scope and thoroughness of this review were limited by the lack of physical onsite access due to necessary COVID-19 safety precautions. However, from the virtual onsite I found operational concerns that are identified later in this report.

PROFESSIONAL EXPERTISE

(b)(6)

II. RELEVANT STANDARDS

A. CBP Standards for Individuals in Custody

CBP's TEDS policy applies to the RGV Sector Border Patrol Stations, the CPC, Donna, and TOPS. Consequently, I relied on TEDS when looking at the specific allegations regarding conditions at the facilities. Additionally, I considered the Trafficking Victim Protection Reauthorization Act (TVPRA), the CBP Juvenile Coordinator Roles and Responsibilities dated January 2017, the Centers for Disease Control (CDC) Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, the DHS Language Access Plan dated February 28, 2012, and recognized correctional standards including those published by the American Correctional Association (ACA), the CDC Interim Guidance on Management of COVID-19 in Correctional and Detention Facilities.

FACILITY BACKGROUND AND POPULATION DEMOGRAPHICS

McAllen, Rio Grande City, Harlingen, and Brownsville stations are designated as 72-hour hold facilities by USBP. The CPC is designated as a short-term hold facility for families, UC, and single adults. It is operated by USBP with onsite ICE Enforcement and Removal Operations (ERO) staff, the National Guard and a contract medical provider.

III. REVIEW PURPOSE AND METHODOLOGY

The purpose of this review was to examine conditions and other issues raised in the complaints, as well as to identify other areas of concern regarding the operation of the facility. I was also tasked with reviewing facility policies and procedures. As part of this review, I examined a variety of documents; participated in a virtual onsite investigation in the RGV Sector on August 31-September 3, 2020, along with CRCL staff; and interviewed RGV Sector USBP, ERO, information technology personnel, sexual abuse and assault prevention and intervention staff, and medical staff during the onsite and in subsequent follow-up discussions. All staff was helpful during our investigation and I appreciate their cooperation and assistance.

In preparation for the onsite and completion of this report, I did the following:

- Reviewed the USCBP Juvenile Coordinator roles and responsibilities
- Reviewed Juvenile Meal Compliance Reports
- Reviewed USCBP National Standards on Transport, Escort, Detention, and Search, October 2015:
 - General Standards
 - Transport and Escort
 - Searches of Individuals
 - Secure Detention Standards
 - At-Risk Populations
 - Sexual Abuse Victimization
 - Personal Property
 - Definitions
- Reviewed prior CRCL subject matter recommendations and eight new complaints

- Reviewed the CBP September 18, 2019 corrective action plan addressing seventeen of the original 24 CRCL subject matter expert recommendations related to the previous onsite investigation conducted in 2018
- Reviewed Juvenile Meal Compliance Reports
- Reviewed CBP *Reno v. Flores Compliance Memorandum*, October 16, 2015
- Reviewed Trafficking Victim Protection Reauthorization Act
- Reviewed Title 8 Code of Federal Regulations (CFR) Parts 232, 235, 236, and 287
- Reviewed 6 CFR Part 115; 79 FR 13100 Standards to Prevent, Detect and Respond to Sexual Abuse and Assault in Confinement Facilities
- Reviewed Office of the Inspector General Report “*DHS Lacked Technology Needed to Successfully Account for Separated Migrant Families*” (November 25, 2019)
- Reviewed Assistant Inspector General Diana Shaw’s Testimony Before the Committee on the Judiciary, “Oversight of Family Separation and CBP Short Term Custody under the Trump Administration”
- Reviewed Chief USBP Memorandum, MedPAR and Pharmacy Benefits for Aliens in Border Patrol Custody (January 29, 2014)
- Reviewed Chief USBP Memorandum, Hold Rooms and Short-Term Custody (June 2, 2008)
- Reviewed CBP Directive No. 2210-004, Enhanced Medical Support Efforts
- Reviewed CBP Executive Director, Privacy and Diversity Office Memorandum, “CBP Language Access Directive” (February 25, 2019)
- Reviewed CBP Directive No. 2130-031, Roles and Responsibilities of U.S. Customs and Border Protection Office and Personnel regarding Provision of Language Access
- Reviewed relevant ACA correctional standards

During the virtual onsite at the RGV Sector Stations and the CPC on August 31-September 3, 2020, and post-visit, I did the following:

- Virtually toured and inspected the CPC
- Toured and inspected McAllen, Rio Grande City, Harlingen, and Brownsville RGV Sector Stations, which are designated as 72- hour hold facilities
- Interviewed USBP staff
- Interviewed National Guard staff
- Interviewed ERO staff
- Interviewed medical staff
- Reviewed UC and detainee files
- Reviewed TEDS
- Inspected Sexual Assault Prevention and Intervention posters
- Reviewed e3 Detention Management (e3DM) system components
- Reviewed training curriculum
- Reviewed recreation access (CPC and stations)
- Met with various USBP staff during the course of the review
- Inspected property rooms at each location

In the context of this report, a finding of “substantiated” refers to an allegation that was investigated and determined to have occurred; a finding of “not substantiated” refers to an allegation that was investigated and the investigation produced insufficient evidence to make a

final determination as to whether or not the event occurred; and a finding of “unfounded” means an allegation that was investigated and determined not to have occurred.

IV. FINDINGS PERTAINING TO CONDITIONS OF DETENTION, UCS AND FAMILIES

RGV USBP FINDINGS

Time in Custody

On September 1, 2020 there were 76 undocumented individuals held at the CPC. Thirty-nine UCs were held an average length of 42 hours; 29 adults were held an average length of 40 hours, and three FMUs were held an average length of 12 hours. McAllen Station has a total hold capacity of 382. Rio Grande City has a total hold capacity of 109; Harlingen Station has a hold capacity of 225 and had zero migrants in custody on September 2, 2020. Apprehensions in the Southwest Border had significantly declined at the time of the investigation as compared to the 178% increase of 2019 apprehensions above 2018 apprehensions.

This has changed significantly. As of mid-March 2021 the RGV Sector was 530% over design capacity due to the sector experiencing a migrant surge of single adults, families and UCs. Other Southern Border sectors were also significantly over capacity including:

- El Paso Sector 163% over capacity
- Tucson Sector 257% over capacity
- San Diego Sector 98% over capacity
- Del Rio Sector 239% over capacity
- Yuma Sector 482% over capacity

The extreme migrant surges that USBP southern border sectors are dealing with is stretching USBP resources far beyond allocated levels. USBP staff’s efforts to manage this population crisis are commendable. During a March 11, 2021 conference call with CRCL OIDO and CBP leadership, CBP advised that 900 agents have been pulled of the line to provide staffing support for the surge population. CBP is understandably concerned that pulling 900 Border Patrol Agents off the line is leaving significant gaps in and jeopardizing border security.

The significant increase in population continues to place a significant strain on RGV Sector’s available resources and staff. The sector is already utilizing fourth quarter resources due to the significant costs associated with housing the surge population due to the lack of ORR HHS capacity limitations and delays with ERO processing. The migrant surge is likely directly related to the increase in complaints received by CRCL in the RGV Sector.

(b)(5)

(b)(5)

The CPC is a retrofitted warehouse that has separate holding areas separated by chain link fence. There are contracted separate male and female shower structures with entrances directly connected to the warehouse structure. Each shower unit has 18 shower stalls. Contracted temporary toilet facilities are located inside the warehouse structure adjacent to the chain link caged holding areas. The CPC closed in October 2020 for a major renovation, which is estimated to be completed in January 2022. This closure significantly reduced the Sector’s holding capacity.

Two temporary facilities have been erected to assist with capacity and processing needs, Donna and TOPS.

During the period of extreme migrant population surge levels in June 2019, the McAllen, Rio Grande City, and Harlingen Stations significantly exceeded hold room occupancy capacity. The CPC population was also above design intent. None of the hold rooms appeared to exceed occupancy levels during the virtual onsite investigation conducted on August 31-September 3, 2020; however, during the virtual tour on March 17, 2021 the hold room occupancy levels again far exceeded design capacity. The hold time during the 2019 surge and again during the 2021 surge far exceed the 72-hour TEDS and TVPA limits. HHS/ORR does not have the bed capacity to be able to transfer the approximately 550 UCs received daily in the RGV sector. USBP can process UC cases in an average of 26 hours; however, the average time in custody for a UC in mid-March was 116 hours due to ORR HHS's lack of adequate bed space. ORR HHS only had the capacity to accept 253 UCs daily. The Donna facility consists of two soft-sided tents to increase UC holding capacity. The temporary capacity is designed for 250 UCs; however, there were as of March 17, 2021 approximately 3000 UCs housed in the two soft sided tents.

Recommendations:

- (b)(5)
- USBP should continue to work with, ERO and HHS ORR to develop strategies to reduce surge populations as quickly as possible in RGV and other southern border sectors.

Environmental Conditions and Adherence to CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities

Detention facility operations across the nation have been significantly impacted by the novel coronavirus (COVID-19) pandemic. Quick action had to be taken in March 2020 to protect the lives of individuals who were detained in prisons, jails, and detention centers. Correctional and detention systems had to quickly update policies, practices and obtain a significant amount of personal protective equipment (PPE), materials, and supplies to protect their staff, detainees, and facility operations. The CDC issued guidance that continues to be updated as additional information is known about COVID-19.

The CPC, Donna, McAllen, Rio Grande City, and Harlingen Stations janitorial services are provided by GSA, the lessor or a contract janitorial service. Based on discussions with RGV Sector contract staff and General Services Agency staff responsible for leases and contract janitorial, I have found the facilities to be in compliance with CDC guidelines related to COVID-19 cleaning recommendations: (b)(5)

(b)(5)

(b)(5) I have found the facilities to be in non-compliance with CDC Guidelines related to social distancing. The hold rooms due to the current surge far exceed Fire Marshal capacity levels. CBP also cannot comply with CDC's recommended six feet social distancing guidelines in hold rooms and intake areas due to current population levels.

In both the station hold rooms and at the CPC adequate bed capacity was available for UC, FMUs and single adults during the August/September onsite; however, due to the surge numbers adequate capacity does not exist for undocumented individuals being processed in the RGV Sector. Everyone in the hold rooms and at the CPC during the investigation was provided a silver mylar blanket. When the hold rooms are overcrowded beyond capacity levels there is not enough floor space to provide all migrants with mats, because the mats are substantial and take up a lot of room. This was also the condition during the complaint period of June 2019. The playpens that were being used for infants and toddlers in the CPC and later in Donna are commendable and were observed to be clean and sanitary.

(b)(5)

Recommendations:

- **(b)(5)**
- Due to extreme overcrowding at RGV sector facilities, social distancing in compliance with CDC guidelines cannot be accomplished at this time. CBP should comply with CDC Guidelines for social distancing when ERO and HHS ORR can increase bed capacity and USBP can reduce population levels and transfer individuals in custody within the 72-hour requirement.

(b)(5)

• (b)(5)

Personal Hygiene, Clothing and Property

Numerous complaints were received by CRCL related to the lack of personal hygiene items and clothing. The investigation team virtually observed an adequate supply of personal hygiene items at the RGV stations, CPC and in March at Donna, including toothbrushes, toothpaste, soap, female sanitary supplies, diapers, diaper wipes, deodorant, and shampoo. Also observed was an adequate supply of adult and children's clothing and shoes at each facility. During the 2019 surge period, adequate hygiene resources were not consistently available due to the significant numbers of undocumented individuals in custody. This condition has been ameliorated.

One of the eight complaints received was a UC's backpack with personal clothing had not been returned upon his exit from the CPC.² I reviewed the UC's I-213 and no property was logged in with the UC. The facility had no record of the UC bringing any property into the facility. An additional complaint alleged that a FMU was not provided dry clothing upon entry to the CPC in 2019.³ The surge and lack of adequate supplies in 2019 could have resulted in temporarily dry clothing not being available for exchange; however during the virtual 2020 investigation and the virtual tour of the McAllen, Donna and TOPS RGV sector facilities, adequate clothing was available when needed for undocumented individuals entering the facilities with wet clothing. Washers and dryers are also available at Donna for any undocumented individual's clothing that needs to be washed and/or dried.

Recommendations:

- None

Food and Water

One allegation was there was insufficient and poor-quality food, such as a cheese sandwich fed to migrants three times per day. I did not find that any of the stations had an inadequate amount of food nor where migrants were fed cheese sandwiches three times daily. Each station and the CPC had multiple options for obtaining food as of the August/September 2020 virtual onsite. A new procurement system was implemented since the 2018 investigation. The stations, CPC, Donna and TOPS can utilize a blanket purchase requisition food procurement method⁴. The stations, Donna and TOPS also have a procurement card that can be used to procure food. Food was also one of the major complaints during the 2019 surge period.

² CRCL Complaint No. 19-10-CBP-0551

³ CRCL Complaint No. 19-12-CBP-0732

⁴During the March 17, 2021 tour facility administrators reported the new procurement method was providing the quantities of food necessary to address the migrant surge population. It should be noted that Harlingen Station is currently being used for COVID-19 isolation cases

McAllen, Rio Grande City and Donna and TOPS currently order food prepared and delivered. Three hot meals are ordered daily by these facilities when migrants are present. Harlingen is the exception and at the time of the 2020 investigation was routinely providing migrants with two cold meals and one hot meal daily. The cold meal is routinely bologna sandwiches and the hot meal is routinely a Hot Pocket. At the time of the virtual investigation in August/September 2020 Harlingen did not utilize the blanket purchase requisition method to obtain food from an authorized vendor. Snacks, milk, formula, juice are also provided for minors and are easily accessible at each location. There also appeared to be adequate food quantities available for the current population numbers.

Recommendations:

- Harlingen Station should utilize the newly issued purchase requisition food acquisition method to improve the quality and consistency of food provided.

UCs - HHS ORR and USBP

(b)(5)

In the Donna facility, lights can be dimmed during sleeping hours which resolves a concern made in previous complaints about other facilities. The Donna facility construction includes an outside recreation yard that allows for outside recreation periods of 15 – 30 minutes, weather permitting. Donna also utilizes barcoded bracelets which can be scanned for population counts which reduces the need to wake sleeping children up for late night population counts⁵ and track the provision of amenities, including showers, meals, medical services, recreation access in E3DM. This is a best practice that could be implemented across sectors. Due to not being

⁵ CRCL Complaint No. 19-12-CBP-0671

physically onsite to interview minors and pull records, I was unable to determine if UC Notices to Appear (NTAs), were automatically being stamped if the subject refused to sign.⁶

USBP advised during conversations on March 17, 2021, that FEMA and HHS ORR are in the process of activating temporary shelter beds for UCs in Midland and Dallas, Texas which should reduce the UC population in the RGV sector when the shelter beds become available.

Recommendations:

- **(b)(5)**
- Particularly vulnerable children including tender age UC's, children with medical needs (including at severe COVID-19 risk), disability, mental health (including at risk of self-harm, children who speak rare languages, LGBTQIA youth, or other special needs should be prioritized for transfer to HHS ORR custody.
- USBP should increase outdoor recreation time up to 1 hour daily when staffing and overcrowding levels permit.

Information Technology

The data system interoperability challenges among federal partners have been resolved. The Unified Immigration Portal (UIP) now electronically links USBP headquarters, CBP/OFO, ERO, HSI, and HHS/ORR which facilitates the transfer of data relate to adults, UCs and FMUs. Additionally, standardized reports are now available for the sector and field offices to effectively track information related to adults, UCs, FMUs, time in custody, and daily operations. Significant system information technology improvements have been made which greatly assists CBP with managing the surge population. The multi-agency team that completed the UIP upgrades to provide the electronic linkages between agencies should be commended for their successful effort which aides in the processing, accuracy of information, timeliness of information transfer, bed capacity projections and tracking of undocumented individuals of all ages.

At the Donna facility the lack of adequate computer terminals for processing the volume of cases received daily is slowing down the processing of cases.

Recommendations:

- USBP should provide additional computer terminals for USBP staff to reduce case processing times.

Health Screening and Medical Operations

The medical expert will provide recommendations regarding undocumented individual processing which includes a medical intake assessment at the RGV Sector Stations and, when operational, the CPC. The medical intake for adults is cursory, where medical intake for juveniles consists of more individualized screening. One continuing concern from the previous onsite investigation in 2018 was the failure of medical staff to protect confidential medical information

⁶ CRCL Compliant No. 19-12-CBP-0671

of undocumented individuals. In the medical room where vitals are taken at the CPC, McAllen and Rio Grande City stations, white boards containing confidential, sensitive medical information for adult and juvenile migrants was in open view, which violates the Health Insurance Portability and Accountability Act (HIPAA) medical information privacy laws. During the prior investigation I previously addressed the lack of confidentiality related to confidential medical information in full view of the white boards located in the medical room. See Section VII., item number 18.

Recommendations:

- (b)(5)

Staff-Detainee Communication

One of the allegations made in the complaints was migrants were subjected to verbal abuse and threats. As these complaints were made by migrants who are no longer at the facility and the staff who allegedly were verbally abusive and made threats to the migrants were not specifically identified, this complaint could not be investigated.⁷ I was unable to interview any migrants during the virtual interview and therefore cannot opine related to any complaints of verbal abuse or threats by staff or contractors. During the virtual onsite I did not observe any inappropriate conduct by any USBP, other staff or contractors. During interviews on March 17, 2021 USBP staff appeared to be very concerned with the health and welfare of all migrants in their custody.

Recommendations:

- None

V. SUMMARY OF NEW RECOMMENDATIONS

- (b)(5)
- USBP should continue to work with ERO and HHS ORR to develop strategies to reduce surge populations as quickly as possible in the RGV and other southern border sectors.
- (b)(5)
- Due to extreme overcrowding levels at RGV sector facilities, social distancing in compliance with CDC guidelines cannot be accomplished at this time. CBP should comply with CDC Guidelines for social distancing when ERO and HHS ORR can increase bed capacity and USBP can reduce population levels and transfer individuals in custody within the 72-hour requirement.

⁷ CRCL Complaint No. 19-12-CBP-0724

- (b)(5)
- (b)(5)
- Harlingen Station should utilize the newly issued purchase requisition food acquisition method to improve the quality and consistency of food provided.
- (b)(5)
- Particularly vulnerable children including tender age UC's, children with medical (including at severe COVID-19 risk), disability, mental health (including at risk of self-harm, children who speak rare languages, LGBTQIA youth, or other special needs should be prioritized for transfer to HHS ORR custody on a priority basis.
- USBP should increase outdoor recreation time up to 1 hour daily when staffing and overcrowding levels permit.
- USBP should provide additional computer terminals for USBP staff to reduce case processing times.

VI. SUMMARY OF THE STATUS OF PRIOR 2018 RECOMMENDATIONS

Significant progress has been accomplished by CBP in correcting the identified deficiencies and implementing my previous expert recommendations.⁸ This is especially significant considering the populations surge that CBP is experiencing.

1. Identify an outside recreation area at the CPC to give children and adults one hour minimum of recreation each day, five days per week, for the duration of their detention.
 - Not corrected at time of investigation; however, during a March 17, 2021 virtual tour of RGV CBP identified an outdoor recreational yard had been created and 15-30-minute outdoor recreation periods were provided to detained individuals.

Partially corrected

2.

(b)(5)

⁸ CPC recommendation updates are included despite its temporary closure for reference when the CPC is reopened which is estimated to be in January 2022.

○ (b)(5)

3. Provide regular access to milk for pregnant and nursing mothers and juveniles at the CPC to comply with TEDS §5.6 (At a minimum milk should be provided at breakfast, lunch and dinner.)

Corrected

4. Re-configure the CPC internal cells with material that increases the visibility and monitoring ability, and reduces the risk for sexual victimization of UC or family members to comply with TEDS Hold Room Monitoring §4.6 which requires direct supervision and control of detainees must be maintained at facilities that do not have direct secure areas

- CPC is being renovated and new facility is anticipated to be operational January 2022. The temporary facility uses see through plastic which corrects the visibility issue.

This recommendation will be permanently corrected when the new CPC facility activates.

5.

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(b)(5)

⁹ It is important to note that sufficient ORR HHS bed capacity is beyond CBP's control.

8.

(b)(5)

9. Create a mandatory list of training classes that CBP staff temporarily assigned to the BP and contract staff must attend.

Corrected

10. Designate a staff member responsible for ensuring that all mandatory training is completed by USBP and contract staff.

Corrected

11. Create a mandatory orientation program for new CPC personnel. Provide a written class curriculum that all new staff must attend to increase knowledge of applicable policy and TEDS mandates.

Corrected

12. Provide sexual abuse and assault prevention and intervention training to all USBP, National Guard and contract staff and document the training has been completed.

Corrected

13. Conduct an audit of the CPC and RGV Section Stations and ensure that USBP's PREA accountability program is in full compliance with Subpart B at the CPC (and RGV Sector Stations).

- Audit conducted

Partially corrected

14. Ensure policies are consistently followed throughout the sector.

Corrected

15. Provide and document training to USBP Agents and G4S staff on the mandate to transport unaccompanied migrant children in the safest manner possible which includes the use of child safety seats during transports to comply with Texas State law and TEDS Transport, §5.4.

Corrected

16.

(b)(5)

17. Inspect intake and screening areas at the CPC and RGV Sector Stations and install privacy screens so interviews that are conducted with UC's family members and adult detainees that are sitting next to one another or are in close proximity can occur in private with the USBP agent who is conducting the intake interview. This will improve the accuracy of the intake interviews and increase the likelihood of detainees reporting any safety or victimization concerns they may have during intake.
- An onsite investigation is needed to determine if all the intake and screening areas have sufficient privacy screens in place. CBP's September 2018 corrective action plan identified that privacy screens have been installed in medical isolation areas.

Partially corrected

18. Inspect medical intake and screening areas at the CPC and RGV sector stations and improve privacy so confidential conversations with medical screening personnel can occur and detainees can disclose disability or medical conditions/concerns in a private setting.
- An onsite investigation is needed to determine if all the intake and screening areas have sufficient privacy screens in place. CBP's September 2018 CAP identified that privacy screens have been installed in medical isolation areas.

Partially corrected

19. Provide USBP and contractor personnel at the CPC and RGV Sector Stations with training to identify indigenous language speakers.

Corrected per the CBP September 2018 CAP

20. (b)(5)

21. (b)(5)

22. Conduct a visual audit of the language access posters and notices at the CPC and RGV Sector Stations and replace those that are worn or missing.

Corrected

23. Create a policy consolidation Section in e3DM where all policies that apply to the CPC, pertaining to UC and families, are maintained to ensure that USBP Agents are aware of applicable policy requirements and can complete their duties as required.

Corrected

24. USBP should diagnosis and correct the software issue in the e3DM to ensure family members are not unduly separated or inappropriately remain separated when reunification for removal or release is approved.

Corrected



Homeland
Security

July 7, 2021

MEMORANDUM FOR: Rodney S. Scott
Chief
U.S. Border Patrol
U.S. Customs and Border Protection

Raul L. Ortiz
Deputy Chief
U.S. Border Patrol
U.S. Customs and Border Protection

FROM: Peter E. Mina (b)(6)
Deputy Officer for Programs and Compliance
Office for Civil Rights and Civil Liberties

Dana Salvano-Dunn (b)(6)
Director, Compliance Branch
Office for Civil Rights and Civil Liberties

SUBJECT: Rio Grande Valley Sector Virtual Onsite Investigation
CRCL Complaint Nos. 19-08-CBP-0345, 19-08-CBP-0358,
19-10-CBP-0497, 19-10-CBP-0551, 19-12-CBP-0671,
19-12-CBP-0724, 19-12-CBP-0732, and 19-11-CBP-0748

The U.S. Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL) conducted a virtual onsite investigation in the Rio Grande Valley (RGV) Sector between August 31 and September 4, 2020.¹ CRCL reviewed the RGV Central Processing Center (CPC) and the U.S. Border Patrol (USBP) stations in McAllen, Rio Grande City, and Harlingen, Texas. CRCL previously conducted onsite investigations in the RGV Sector in July 2014 and July 2018, which resulted in twenty-four expert recommendations² and a subsequent request by U.S. Customs and Border Protection (CBP) that CRCL revisit the sector to observe the changes that have occurred since CRCL's last visit.

During the investigation, CRCL reviewed USBP's implementation of CRCL's previous recommendations from 2018 as well as an additional eight complaints opened since the July 2018 onsite investigation. In addition, due to the influx of Unaccompanied Children (UC) to the

¹ Due to COVID-19 safety precautions, the investigation was conducted virtually.

² In September 2019, CBP concurred with seventeen of the recommendations and provided an action plan addressing their implementation.

~~Protected by the Deliberative Process Privilege~~

RGV Sector beginning in January 2021, CRCL conducted a limited review of the conditions for UC at RGV in March 2021 to account for recent changes.

As part of the 2020 review, CRCL engaged the assistance of two subject-matter experts in the areas of medical care and conditions of detention. The experts identified recommendations after conducting staff interviews, direct (virtual) observation, and a review of documents that included policies, procedures, training materials, and detainee files. At the close of the onsite investigation, CRCL and the subject-matter experts discussed their findings with several members of the RGV Sector leadership team and the CBP Privacy and Diversity Office (PDO). CRCL greatly appreciates the cooperation and assistance provided by CBP leadership in the RGV Sector and PDO before and during our visit.

Additionally, CRCL was afforded the opportunity to attend a virtual tour of certain RGV Sector locations led by the CBP Office of Professional Responsibility (OPR) in March 2021. CRCL virtually visited the Weslaco and Eagle Pass South stations, the Donna Facility, and the Temporary Outside Processing Facility (TOPS). Although not officially part of the onsite investigation, this tour allowed CRCL and our conditions of detention subject-matter expert to observe the conditions faced by USBP related to the recent surge of migrants at the southwest border at that time.

Enclosed with this memorandum are the reports prepared by our subject-matter experts. We have included the recommendations in the body of this memorandum and request that CBP formally concur or non-concur with these recommendations within 60 days, providing an implementation plan for all accepted recommendations. Included in our conditions of detention report are additional recommendations based on observations made during the virtual tour of the facilities toured in March 2021. Given that the 2021 recommendations were related to a tour and not a full investigation, we are presenting them for your awareness and consideration.

Conditions of Detention Expert Findings

CRCL's conditions of detention expert made the following findings and recommendations during the August/September 2020 onsite investigation of the Rio Grande Valley Border Patrol Sector, and the following observations during the March 2021 virtual tour:

Time in Custody:

The expert found that during the period of extreme migrant population surge levels in June 2019, the McAllen, Rio Grande City, and Harlingen Stations significantly exceeded hold room occupancy capacity, although none of the hold rooms appeared to exceed occupancy levels during the onsite investigation in 2020. (b)(5)

(b)(5)

1.

(b)(5)

(b)(5)

2. USBP should continue to work with Immigration and Customs Enforcement, Enforcement and Removal Operations (ERO) and Department of Health and Human Services, Office of Refugee Resettlement (ORR) to develop strategies to reduce surge populations as quickly as possible in the RGV and other southern border sectors.

The expert noted that occupancy levels far exceeded capacity during the 2021 migrant surge, and she extends these recommendations to the Donna Facility.

Environmental Conditions and Adherence to CDC Interim Guidance on Management of COVID-19 in Correctional and Detention Facilities:

(b)(5)

3.

(b)(5)

The expert found the facilities to be in non-compliance with CDC Guidelines related to social distancing.

4. Due to extreme overcrowding at RGV sector facilities, social distancing in compliance with CDC guidelines cannot be accomplished at this time. (b)(5)

(b)(5)

(b)(5)

5.

(b)(5)

The expert noted that CBP staff were continuously wearing masks, however, overcrowding may make it impossible for staff to ensure adults and children are adhering to the requirement to wear masks.

The expert extended the above COVID-19 related recommendations to the Donna Facility, based on her observations during the March 2021 virtual tour.

Food and Water:

The expert noted that none of the facilities had inadequate amounts of food, but Harlingen Station was routinely providing individuals with two cold meals and one hot meal daily. At the time of the virtual investigation, Harlingen Station did not utilize the blanket purchase requisition method to obtain food from an authorized vendor.³

6. Harlingen Station should utilize the newly issued purchase requisition food acquisition method to improve the quality and consistency of food provided.

Unaccompanied Children:

(b)(5)

7.

(b)(5)

8. Particularly vulnerable children including tender age UC, children with medical needs (including those at severe COVID-19 risk), children with disabilities, and children with mental health concerns (including at risk of self-harm, children who speak rare languages, LGBTQIA youth, or other special needs) should be prioritized for transfer to HHS ORR custody.
9. USBP should increase outdoor recreation time up to 1 hour daily when staffing and occupancy levels permit.

Information Technology:

The expert found that data system interoperability challenges among federal partners have been resolved, and significant system information technology improvements have been made which greatly assists CBP with managing surge populations. However, with respect to the Donna

³ As noted in the expert report, a new procurement system has been implemented since the 2018 onsite investigation, and the stations can utilize a blanket purchase requisition food procurement method. McAllen, Rio Grande City, Donna and TOPS currently order three hot meals prepared and delivered when migrants are present, but Harlingen did not utilize this method at the time of the follow-up visit in 2020.

Facility, the lack of adequate computer terminals for processing the volume of cases received daily is slowing down the processing of cases.

10. USBP should provide additional computer terminals for USBP staff to reduce case processing times.

Medical Care Expert Findings

CRCL's medical care expert made the following findings and recommendations related to the August/September 2020 onsite investigation of the Rio Grande Valley Border Patrol Sector:

Medical Screening:

The expert found that neither TEDS nor the Enhanced Medical Support Efforts Directive require a structured documented medical screening of every detainee. She noted that it is important to document the condition of the detainee at the time of arrival to establish the detainee's baseline medical condition, and that medical screening information should be timely scanned into a central repository that can be accessed by other Border Patrol Station medical staff should the detainee be transferred.

11. Licensed health care staff should conduct a medical screening upon arrival in a setting that provides auditory and visual privacy for all detainees brought to a Border Patrol Station.

12. (b)(5)

13. (b)(5)

14. Staff should refer detainees with positive medical screening responses to a medical provider for evaluation and treatment in accordance with the urgency of the need.

15. When detainees transfer to another Border Patrol Station, medical screening should be performed and documented.

Privacy and Health Information Privacy:

The expert observed that medical staff interviewed detainees in close proximity to one another, providing no auditory privacy (b)(5)

(b)(5)

16. CBP should establish a policy and procedure that provides adequate auditory and visual privacy for detainees during medical screening.

17. (b)(5)

18. (b)(5)

19. (b)(5)

Contagious Disease:

The expert's review of Serious Incident Reports (SIRs) showed that Border Patrol Agents in the field did not consistently wear personal protective equipment, resulting in the need to quarantine at home. She noted that there was no documentation that agents provide detainees with masks upon apprehension.

20. CBP needs to enforce policies requiring Border Patrol Agents to provide masks to detainees upon apprehension.⁵

21. CBP needs to enforce consistent use of personal protective equipment by Border Patrol Agents.

22. (b)(5)

Medication:

(b)(5)

23. (b)(5)

⁴ As described in the expert's report, CBP awarded a contract to Loyal Source Government Services to staff each Border Patrol Station with medical providers and an on-call supervising physician.

⁵ CRCL appreciates that policies regarding the distribution of masks have evolved since the onsite investigation, and CBP recently informed us in response to a complaint involving Imperial Beach Station that detainees are provided masks upon apprehension.

(b)(5)

24.

(b)(5)

Hygiene:

(b)(5)

(b)(5) Access to soap is essential for personal hygiene and prevention of communicable diseases.

25.

(b)(5)

Access to Medical Care:

The expert made the following additional recommendations related to access to care:

26.

(b)(5)

27.

(b)(5)

28. A licensed medical provider (registered nurse or higher) should triage requests for medical care and schedule follow-up in accordance with the urgency of the complaint.

29. CBP/LSGS need to develop a system for tracking follow-up of monitoring appointments, medications and treatments needed while in CBP custody.

Medical Evaluations and Monitoring:

The expert found that the quality of provider medical evaluations was highly variable, with some providers documenting excellent clinical evaluations and others failing to perform adequate medical histories, vital signs, review of symptoms, physical examinations, and monitoring plans.

(b)(5)

The expert made the following additional recommendations related to medical evaluations and monitoring:

30.

(b)(5)

31. Medical providers need to document the history of the presenting complaint, review of systems, vital signs and a pertinent physical examination at each clinical encounter.

32. Treatment plans need to include medical monitoring appropriate to their medical condition.

33. Medical providers need to document all clinical encounters, including those that result in transport to the hospital. If the medical provider is unable to document the encounter at the time of hospital transport, the medical provider should document a progress note as soon as possible thereafter and include any consultations or notifications of supervising physicians.

The complete expert reports are enclosed.

It is CRCL's statutory role to advise Department leadership and personnel about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions and implementation of those decisions. We look forward to working with CBP to determine the best way to resolve these concerns. We request that CBP provide a response to CRCL within 60 days whether it concurs or non-concurs with these recommendations. If you concur, please include an action plan. You can send your response via email. If you have any questions, please contact Senior Policy Advisor (b)(6) at (b)(6) or by email at

(b)(6)

Copy to:

Lise Clavel
Chief of Staff
U.S. Customs and Border Protection

(b)(6),(b)(7)(C)

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**U.S. DEPARTMENT OF HOMELAND SECURITY
OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES**

**MEDICAL EXPERT'S REPORT
of
Investigation Regarding
Rio Grande Valley Sector Border Patrol and Central
Processing Center, Texas
August 31 to September 4, 2020**

Submitted May 14, 2021

(b)(6)

FNP-BC

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Introduction

In July 2018, the U.S. Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL) conducted an onsite investigation at Border Patrol Stations in the Rio Grande Valley (RGV) Sector. CRCL enlisted the assistance of an expert in conditions of detention and provided CBP with an expert report and recommendations, many which were adopted by CBP.¹ The investigation did not include a review of medical care.

Since the 2018 visit, Customs and Border Protection (CBP) experienced an unprecedented surge in unaccompanied children and families in the spring and summer of 2019 that presented numerous challenges for CBP. CRCL received allegations related to inadequate conditions of confinement and medical care.

In June 2019, attorneys visiting US Border Patrol (USBP) Centralized Processing Center (CPC) in McAllen, Texas observed four minors under the age of 3 with teenage mothers or guardians who appeared extremely ill with flu-like symptoms and were not receiving medical attention.² In February 2020, CRCL initiated an investigation into the care of these four children. My review of their medical care is incorporated into this report.

In addition, the arrival of the Coronavirus Disease 2019 (COVID-19) pandemic presented unprecedented challenges to detention centers throughout the US, including the RVG Sector. This review includes an evaluation of CBP's response to COVID-19 and medical care of detainees with COVID-19.

In March 2020, CRCL notified CBP that it would conduct a follow-up on-site investigation in the Rio Grande Valley Sector to review care and treatment of detainees in custody. The investigation includes allegations from the American Civil Liberties Union and other civil rights organizations that received complaints in the spring and summer of 2019.

Due to the COVID-19 pandemic, the onsite visit was delayed and changed to a virtual site visit, which was conducted August 31 to September 3, 2020. I was accompanied during the site visit by (b)(6) and (b)(6) of CRCL, and (b)(6) MAS, detention expert. My sincere thanks to Customs and Border Protection staff for their assistance in conducting this review.

¹ Conditions of Detention Expert's Report. Investigation regarding Rio Grande Valley Sector Border Patrol Stations and Central Processing Center, Texas. Wendy Still MAS. November 13, 2018.

² 4 Severely Ill Migrant Toddlers Hospitalized After Lawyers Visit Border Patrol Facility. Huffington Post News Outlet. June 21, 2019.

Qualifications

(b)(6)

Review Methodology

To conduct this review, I requested and reviewed documents before and after the site visit, and conducted an onsite virtual tour of each of the Border Patrol Stations selected for this review,³ including medical clinics and housing units. I observed the intake and medical screening process. CBP staff were cooperative and answered questions during the tour. However, I was not permitted by Loyal Source Government Services (LSGS) counsel to interview medical staff without counsel present, and not in real time during each of the Border Patrol Station tours. All interviews with medical staff were conducted on the last day of the virtual site visit. This limited my ability to interact with staff while observing health care processes. The tour did not include confidential interviews of detainees. I also conducted a follow-up interview with (b)(6) MD, LSGS CEO and Medical Director.

I reviewed the following documents and materials for this report:

³ The investigation included reviews of the Central Processing Center (CPC), McAllen Border Patrol Station (McAllen), Rio Grande City Border Patrol Station (Rio Grande City) and Harlingen Border Patrol Station (Harlingen). Brownsville Border Patrol Station was originally scheduled to be included in the virtual investigation but was excluded due to insufficient time. Weslaco was not formally included in this review but findings from medical record reviews were included in this report.

- Rio Grande Valley Sector Onsite Investigation and Retention Letter. March 10, 2020.
- 2008 Hold Room and Short-Term Custody Policy. US Customs and Border Protection.
- 2015 National Standards on Transport, Escort, Detention, and Search (TEDS).
- DHS CRCL Investigation Regarding Rio Grande Valley Sector Border Patrol Stations and Central Processing Center, Texas. July 16-18, 2018. Wendy S. Still. November 2018
- CBP response to DHS CRCL Subject Matter Expert Recommendations Regarding the Rio Grande Valley Sector Border Patrol Stations and Action Plan. September 19, 2019.
- Enhanced Medical Support Efforts. CBP Directive No. 2210-004. December 30, 2019.
- Unaccompanied Children Investigations
 - 19-10-CBP-0510
 - 20-01-CBP-0024
 - 20-01-CBP-0025
 - 202005071
- Retention Letter Complaints
 - 19-08-CBP-0358
 - 19-10-CBP-0497
 - 19-10-CBP-0551
 - 19-12-CBP-0671
 - 19-12-CBP-0724
 - 19-12-CBP-0732
 - 19-11-CBP-0748
- COVID-19 Serious Incident Reports and Medical Records
 - 20-RGVBRP-070820000039 (2)
 - 20-RGVBRP-071720000041 (0)
 - 20-RGV BRP-072020000042
 - 20-RGVBRP-073020000044
 - 20-RGVBRP-090220000047 (1)
 - 20-RGVFLF-080420000073 (1)
 - 20-RGVFLF-081920000079
 - 20-FLF-082120000080 (2)
 - 20-RGVFTB-071620000045 (0)
 - 20-RGVFTB-072720000047 (3)
 - 20-RGVFTB-080520000050
 - 20-RGVFTB-082120000051 (1)
 - 20-RGVHRL-080220000032 (1)
 - 20-RGVKIN-072620000043 (3)
 - 20-RGVMCS-070820000090
 - 20-RGVMCS-070920000092
 - 20-RVGMCS-071020000096
 - 20-RGVMCS-072320000109
 - 20_RGVMCS-080620000124 (1)
 - 20-RGVMCS-080620000125
 - 20-RGVRGC-050820000049 (11)