- 20-RGV-070620000077 (3)
- 20-RGVRGC-071420000095 (4)
- 20-RGVRGC- 071520000097 (0)
- 20-RGVRGC-071720000102 (1)
- 20-RGVRGC-072020000105 (3)
- 20-RGVWSL-080120000069

- Alien Initial Health Interview Questionnaire. CPB Form 2500.
- Infectious Disease Plan. 2020. USBP Rio Grande Valley Sector.
- Communication Plan for COVID-19. US Customs and Border Protection. March 4, 2020.
- Order Suspending Introduction of Persons from a Country Where a Communicable Disease Exists. 42 CFR Part 71. Centers for Disease Control and Prevention (CDC). March 20, 2020.
- Updated-CDC Order Suspending Entry Communicable Disease-Processing Guidance. US Customs and Border Protection. Undated.
- CPC Pause on Musters. **(b)(6)** Email. March 30, 2020.
- Social Distancing and Masks Amongst Detainees. **(b)(6)** email. April 6, 2020.
- USBP Pocket Guide Title 42. Undated.
- Contact Tracing Guidance for US Border Patrol Supervisors. US Customs and Border Protection. Undated.
- Employee Protection-Best Practices for UAC/Detainee Influx. HRM Occupational Safety and Health Division. Undated.
- CBP Guidance for Leadership, Medical Officers and Supervisors. US Customs and Border Protection. April 9, 2020. Revised June 1, 2020.
- N-95 Respirator and PPE Glove Usage. US Customs and Border Protection. March 22, 2020.
- COVID-19 Pandemic Response Requirements. US Immigration and Customs Enforcement. April 10, 2020.
- Mandatory Use of Personal Protective Equipment. US Customs and Border Protection. May 6, 2020.
- Guidance on the Use of Face Coverings. General Services Administration (GSA). May 29, 2020.
- USBP Pocket Guide Title 42. Undated.
- COVID-19 Spread Mitigation in the Workplace. US Customs and Border Protection. June 19, 2020.
- COVID-19 Questions. E3DM Screenshot. Undated.
- Performance Based National Detention Standards 2011. US Immigration and Customs Enforcement. Revised December 2016.
- Title 8/Title 42 Recidivism Snapshot. March 20 to July 31, 2020. RGV Law Enforcement Operations.
- Rio Grande Valley Sector Detention Dashboard. US Border Patrol. September 2, 2020.
- Abusive Conditions in Border Patrol Detention Facilities in the Rio Grande Border Patrol Sector. ACLU Texas and ACLU Border Rights. May 17, 2019.
- 4 Severely Ill Migrant Toddlers Hospitalized After Lawyers Visit Border Patrol Facility. Huffington Post News Outlet. June 21, 2019.

- Deprivation of Medical Care to Children in CBP Custody. The Dilley Pro Bono Project. September 4, 2019.

Facility Descriptions and Populations

US Border Patrol operates McAllen, Rio Grande City, and Harlingen, as short-term detention facilities that primarily hold adults. The Central Processing Center in McAllen is a short-term facility that is divided into section 22K that hold adults and section 55K that holds families and unaccompanied children. Although not formally included in this review, Weslaco is designated for isolation of detainees with communicable diseases, including influenza and COVID-19. At each facility there is a small medical clinic for health care staff to perform medical evaluations and treatments.

In 2019, there was an unprecedented surge in population at Border Patrol Stations. For calendar year 2019, there were 304,672 apprehensions in the RGV sector, a 63% increase over calendar year 2018, when there were 187,269 apprehensions. During this time, detainee lengths of stay routinely exceeded 72 hours.

On March 20, 2020, in response to the Coronavirus Disease 2019 (COVID-19) Pandemic, the Director of the Center for Disease Control issued an order pursuant to Title 42 suspending persons from certain foreign countries from entering the United States. This order resulted in immediate expulsion of migrants entering the US and was reflected by a dramatic drop in apprehensions and population at the Border Patrol Stations.

For the period of 1/1/2020 to 8/28/2020, CBP reports there were 20,604 apprehensions in the RGV Sector compared to 263,649 apprehensions for the same time frame in 2019, a 92% reduction. Reduced apprehensions were reflected in reduced population counts at each Border Patrol Station at the time of the site visit. On 9/2/2020 there were a total of 176 detainees at the 8 Border Patrol Stations and 170 of these detainees were in custody less than 72 hours, with the remaining 6 in custody for greater than 72 hours.

CBP advised that in October 2020 the Central Processing Center (CPC) would be closed for renovations until January 2022. This reduced the number of available beds to CBP to process migrants in the RVG sector and would present serious challenges in the event of another migrant surge, which subsequently occurred in January 2021.

Custom and Border Protection Standards

A review of the evolution of CBP standards provides context for understanding the scope of the medical standards.

In January 2008, US Customs and Border Protection established national policy for short-term custody of persons arrested or detained at Border Patrol Stations, checkpoints and processing facilities, including the management of juveniles and unaccompanied children.[4] Policy objectives included prompt processing of detainees who were to be turned over to the US Immigration and Customs Enforcement (ICE), Office of Detention and Removal Operations (DRO), Office of Refugee Resettlement (ORR) or other federal agencies as appropriate.

Whenever possible, detainees were not to be held more than 12 hours and when detention exceeded 24 hours for unaccompanied children, and 72 hours for adults, supervisory staff were to be notified. Border Patrol Agents were to expedite processing of certain detained persons. These included pregnant women, detainees known to be on life-sustaining or life-saving medication, those who appeared ill, persons of advanced age, and unaccompanied children.

Policy guidance regarding evaluation and management of detainees with medical and public health conditions was limited to requiring medical evaluation by qualified medical personnel, isolating persons with suspected communicable disease, and use of personal protective equipment. Border Patrol Stations were to provide detainees with food, water, properly equipped restrooms and hygiene items.[5]

In 2015, CBP promulgated National Standards on Transport, Escort, Detention and Search (TEDS), which expanded policy guidance regarding management of detainees.[6] CBP policy maintained a goal of holding detainees less than 72 hours. With respect to medical issues, Border Patrol Agents were to ask detainees about, and visually inspect detainees for any sign of injury, illness or physical or mental health concerns, and question detainees about prescription medication. Observed or reported injuries or illnesses were to be communicated to a supervisor and documented in the appropriate electronic systems of record. Appropriate medical care was to be provided in a timely manner. TEDS standards also addressed:

- Medical Emergencies
- Contagious Disease
- Medication
- Non-US Prescribed Medication
- Emergency Medical Services Transfer
- Hospitalization
- Health Information Privacy
- Hygiene

[4] Hold Rooms and Short-Term Custody Policy. US Customs and Border Protection. June 2008.
[5] Hold Rooms and Short-Term Custody Policy. US Customs and Border Protection. June 2008.
[6] National Standards on Transport, Escort, Detention and Search. US Customs and Border Protection. October 2015.

TEDS standards do not address medical screening requirements and how detainees are to access health care following admission to a Border Patrol Station. This is extremely important as medical screening is a key component to the identification of detainees with medical, mental health and communicable diseases. Timely access to health care is critical to ensuring that detainees with receive timely and appropriate treatment for their serious medical needs.

CBP recognizes that the migrant population endures "physically demanding and poor living conditions that adversely affect their health and well-being and pose increased public health concern upon apprehension and processing."[7] CBP recognized that with few exceptions Border Patrol Agents are not medically trained to screen for, and treat medical and public health concerns, and identified the need for health care professionals to provide medical care at Border Patrol Stations and Points of Entry (POE).

In 2015, CBP issued a Statement of Work (SOW) for CBP Border Patrol Station First Aid Units (BPSFAUs). This solicitation for a medical contractor included administrative requirements, logistics support, medical screening, evaluation and treatment, reporting tasks and program management support. Medical operations included a health interview, medical evaluation and assessment, public health screening, triage and to provide limited treatment for low acuity medical complaints at Border Patrol Stations and Points of Entry. Health care positions included physicians, nurse practitioners, physician assistants, emergency medical technicians and certified nursing assistants. Registered nurses and licensed practical nurses were not included in the staffing matrix. The SOW job descriptions require all employees to document all detainee contacts. Contractors were to conduct a staffing assessment to determine appropriate staffing levels and logistical requirements.

In 2015, CBP awarded Loyal Source Government Services (LSGS) a one-year contract with 4 option periods. Following a staffing assessment, LSGS staffed each Border Patrol Station with a medical provider (e.g., nurse practitioner or physician assistant) and a Certified Nurse or Medical Assistant or Emergency Medical Technician (EMT) 24 hours a day, 7 days a week. A supervising physician is on-call 24 hours a day, 7 days a week. This staffing pattern provides access to a medical provider licensed to diagnose and treat serious medical conditions.

Following the unprecedented border surge in spring and summer 2019, on December 30, 2019 CBP issued a new directive to enhance medical support efforts to persons in CBP custody along the Southwest Border.[8] The directive applied to steady state, surge, and crisis operations; and anticipated additional support would be required for major surge and crisis operations. It supplemented existing local and national policies, including the TEDS Standards. The directive includes a 3-phase approach. In the first phase, USBP agents and OFO officers are to observe and identify potential medical issues for all persons in custody and advise them to alert CBP or medical personnel of medical issues. Persons identified with medical issues are to receive a

[7] Statement of Work. United States Border Protection First Aid Units. Customs and Border Protection. 2015.
[8] Enhanced Medical Support Efforts. US Customs and Border Protection. Directive No-2210-004. December 30, 2019.

health interview, medical assessment, or be referred to the local health system for evaluation.[9] The second phase requires that USBP/OFO ensure that a health interview is conducted on, at a minimum, all individuals in custody under age 18, utilizing CBP form 2500. The third phase, *"subject to availability of resources and operational requirements,"* USBP/OFO will ensure a medical assessment is "conducted on, at a minimum," the following categories of detainees:

- All tender age children (ages 12 and under)
- Any person who has a positive (mandatory referral) response on the CBP form
- Any other person in custody with a known or reported medical concern.[10]

The enhanced screening directive is concerning because it does not require that health care personnel conduct and document medical screening/interview for all detainees in custody. This does not permit CBP to establish the baseline medical, mental health and public health condition of each detainee brought into custody at a Border Patrol Station.

It is also a concern that the performance of a secondary medical assessment on persons with a known or reported medical concern or who has a positive medical screening is subject to availability of resources and operational requirements, as the failure to perform secondary medical assessments with detainees with a positive medical screen increases the risk of adverse patient outcomes, including hospitalizations and death.[11]

Executive Summary

My review shows systemic issues in the provision of medical care to unaccompanied children and other detainees. This is primarily due to lack of adequate medical standards, policies, and health care processes that ensure that detainees receive timely diagnosis and treatment of their serious medical conditions.

The 2015 TEDS Standards were developed with the expectation that unaccompanied children would be screened, processed and transferred from Border Patrol Stations within 12 hours of arrival, and adults within 72 hours. Therefore, medical services were limited to identifying medically high-risk detainees, providing first aid, emergency services, and isolating detainees with suspected communicable diseases.

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[9] Enhanced Medical Support Efforts. US Customs and Border Protection. Directive No-2210-004. December 30, 2019. Page 4.

[10] Enhanced Medical Support Efforts. US Customs and Border Protection. Directive No-2210-004. December 30, 2019. Page 5.

[11] Following the deaths of two migrant children in December 2018, in September 2019, the House of Representatives passed HR 3525, The US Border Patrol Medical Screening Standards Act, which would require a licensed medical professional to conduct an in-person screening for all persons apprehended by CBP and to implement an electronic health record system that can be accessed by all DHS components operating at US borders. This legislation did not pass the US Senate and did not become law.

However, the surge in migrants entering the Rio Grande Valley Sector in the spring and summer of 2019 created an unprecedented demand for services, including medical care. Existing standards and directives did not provide the infrastructure necessary to assure adequate medical care to unaccompanied children and adult detainees. In addition, since early 2020, the COVID-19 pandemic has intensified the demand for medical care and public health measures.

There are key health care processes that that need to be improved or created to establish an adequate health care infrastructure to meet the serious health care needs of the migrant population. These processes include the following:

Medical Screening

Although CBP has developed a Health Interview Questionnaire (CBP 2500 form), there is no requirement that medical staff document the results of screening onto the CBP 2500 form and enter the results of screening into the medical record or the CBP e3 Detention Module (e3DM). Medical screening is not even documented when detainees transfer to Weslaco for medical isolation following diagnosis of influenza and COVID-19. This does not enable CBP to establish the baseline medical condition of the detainee upon arrival at a Border Patrol Station. When adverse events occur (e.g., hospitalizations, deaths), it is unknown whether the detainee showed signs and symptoms at intake or not. This was the case in one of the complaints investigated for this report.[12]

Access to Care

There is no system for accessing medical care for detainees other than to make requests of Border Patrol Agents or other custody staff. In 2019, detainees reported attempting to obtain medical care for their ill children and being denied by custody staff.[13] Medical records of unaccompanied children reviewed for this report showed that children had been ill for several days prior to receiving medical evaluation and treatment, raising questions about whether access to care was delayed by custody staff or health care staff was overwhelmed by the increased demand for services. An access to care system needs to be established which permits detainees to submit written requests for care directly to health care staff.

Medication Administration

The system to administer and document medications is inadequate. There are no medication administration records in the medical record to show that detainees receive all doses of prescribed medications, including antibiotics and Tamiflu. Medical providers document administration of some medications onto progress notes, but this does not include all prescribed doses. In some cases, failure to administer medications may have contributed to the worsening condition and hospitalization of unaccompanied children.[14]

Quality of Medical Evaluations

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[12] 19-10-CBP-0497.

[13] (b)(6) and (b)(6) complaints.

[14] Cases No: 20-01-CBP-0024 and 202005071.

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 systems, physical examinations, and monitoring plans. Of concern is that some providers use an Emergency Medical Treatment Record (EMTR) form with normal physical findings pre-printed onto the form, and do not document a contemporaneous examination. This can lead to documentation errors and falsification of medical records.

Medical Treatment and Authority

TEDS standards state that once a detainee is at a medical facility, medical practitioners make all medical decisions which may include release or fitness for travel. In actual practice, CBP transfers and/or deports detainees that have not been cleared for travel by medical providers.[15] This includes detainees with COVID-19 who have not completed medical isolation at Weslaco who are being expelled pursuant to Title 42. The expulsion of detainees with COVID-19 presents a public health risk as well as ethical and humanitarian concerns. It is notable that the Title 42 Order "does not apply where a designated customs officer of DHS determines, based upon the totality of circumstances, including consideration of significant law enforcement, officer and public safety, humanitarian and public health interests, that the Order should not be applied to a specific person otherwise subject to the order."[16] CBP can make a positive contribution to public health by deferring Title 42 expulsions until detainees with COVID-19 are no longer contagious.

Hygiene

TEDS Standards do not ensure adequate access to hygiene items. With respect to restrooms, the standards state: "when operationally feasible, soap may be made available." This does not meet any standard of basic hygiene and becomes more important in the era of COVID-19, as hand-washing is key to reducing transmission of infection. During the virtual on-site tour, we observed that a housing unit bathroom did not contain soap or a waste container to dispose of paper towels, sanitary napkins or other refuse.

In conclusion, I believe that modifications to the current standards and directives, along with infrastructure support will reduce the risk of adverse medical events, including hospitalizations and deaths among detainees, as well as reduce transmission of COVID-19 and other communicable diseases in CBP and the community as well.

The remainder of the report focuses on specific findings and recommendations.

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[15] Dr. (b)(6) LSGS Supervising Physician says that medical providers make recommendations to CBP regarding clearance for travel but CBP makes the final determination as to whether a detainee will travel. Cases of detainees that were not cleared for travel but deported are found in the Management of Detainees with COVID-19 section of this report.

[16] CDC Order 42 CFR 71. March 20, 2020.

Findings

Medical Care Provided to Unaccompanied Children

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.[17] CRCL initiated an investigation. Subsequently, a CBP Task Force Agent from the Office of Professional Responsibility collected documentation and interviewed witnesses, completing a report in October 2020. In January 2021, CRCL requested that I review medical records and related documents regarding medical care provided to the children identified in the complaint.[18]

My review showed serious lapses related to medical screening, evaluation and monitoring of children in CBP custody. In my opinion these lapses are due to the lack of an adequate health care infrastructure to provide timely and appropriate care to detainees at Border Patrol Stations. Below, I have provided a brief synopsis of the chronology of each case followed by a summary of lapses in care that contributed to the need for hospitalization.

Complaint No: 19-10-CBP-0510

On 6/1/2019 at 06:40 Border Patrol Agents apprehended **(b)(6)** age 17, and her daughter, **(b)(6)**, age 16 months. They were transported to the McAllen Border Patrol Station. The Subject Activity Log (SAL) indicates that medical screening was completed but it is not documented.

On 6/2/2019 at 10:55 **(b)(6)** and her mother were transported to the RGV CPC, arriving at 11:22. There is no documentation that medical screening was performed.

On 6/4/2019 at 14:34 a nurse practitioner (NP) saw **(b)(6)** for new onset fever. The NP did not document interviewing the child's mother to obtain her medical history and other symptoms such as audible wheezing, nausea, vomiting or diarrhea. Weight=23 lbs. Temp=102.1°F, BP=Not measured, pulse=181/minute, respirations=23/minute, oxygen saturation=97%. A rapid test was positive for Influenza A. The NP did not document a physical examination for the child.[19] The NP diagnosed **(b)(6)** with influenza A and ordered Tamiflu 6 mg/ml 5 ml twice daily for 5 days. The NP administered a dose of Motrin, Tylenol and Tamiflu. The NP did not document a monitoring plan.

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[17] 4 Severely Ill Migrant Toddlers Hospitalized After Lawyers Visit Border Patrol Facility. Huffington Post News Outlet. June 21, 2019.

[18] In addition, in September 2019, The Dilley Pro Bono Project filed a complaint regarding conditions of confinement, including medical care at Border Patrol Stations in June and July 2019.

[19] The Emergency Medical Treatment Record (EMTR) had normal physical examination findings preprinted onto the form. Having normal physical findings printed onto the form may result documentation errors regarding physical findings and falsification of medical records.

The child's temperature was not checked again for the next 20 hours that she was at the CPC.

On 6/5/2019 at 11:40 the child and her mother were transferred from RVG to Weslaco for medical isolation, arriving at 15:28. There is no documentation that Weslaco medical staff screened the child and her mother upon arrival.

Following transfer to Weslaco, (b)(6) reported that a Border Patrol Agent instructed her to remove (b)(6) clothing that was not replaced with other clothing for the child. She reported that her child's condition worsened after her clothes were removed. [20]

On 6/5/2019 at 21:10 a physician assistant (PA) saw the child for medication administration. Temp=100.9° F, BP=Not measured, Pulse=Not measured, Respirations=Not measured. Oxygen saturation=Not measured. The Emergency Medical Treatment Record (EMTR) contained normal physical findings that were pre-printed onto the form. The PA documented that the mother administered Tamiflu and Ibuprofen to the child. The PA did not document a monitoring plan to reevaluate the child.

On 6/6/2019 at 07:13 the Subject Activity Log (SAL) notes that Tamiflu 5 ml was given "as needed". It is unclear whether the documentation on the SAL means that (b)(6) was given Tamiflu at that time, since she was receiving Tamiflu from the medical provider.

On 6/6/2019 at 08:00 a medical provider documented that the patient was seen for medication administration for influenza. Temp=100.7° F, BP=Not measured, Pulse=Strong, rate not measured, Respirations=Regular, rate not measured. Oxygen saturation=Not measured. Normal physical exam (PE) findings were preprinted onto the form. The provider documented that the mother administered Tamiflu to the child.

On 6/6/2019 at 13:00 Temp=99.3°

On 6/6/2019 at 13:25 the physician assistant saw the patient for medication administration. Temp=98.9° F, BP=Not measured, Pulse=140/minute, Respirations=Not measured. Oxygen saturation=99%. Preprinted physical findings and treatment plan. The PA documented that the mother administered Tamiflu to the child. This was the second dose that day.

On 6/6/2019 at 19:24 the SAL reflects that medical staff was administering Tamiflu starting at 1900.

On 6/6/2019 at 20:13 the physician assistant saw the patient for medication administration. Temp=97.8° F, BP=Not measured, Pulse=138/minute, Respirations=Regular, rate not measured. Oxygen saturation=99%. Preprinted physical findings and treatment of Rest and hydration,

[20] Significant Incident Report. (b)(6) HHS/ORR. July 15, 2019.

respiratory precautions in place, hand hygiene. The PA documented that no showers were available at Weslaco. He documented that the mother administered Tamiflu to the child. This was at least the third dose of Tamiflu administered that day and constituted a medication error.

From 6/7 to 6/9/2019 a medical provider did not see the child for evaluation and to administer Tamiflu which was to be given twice daily from 6/5 to 6/10/19. This is a medication error.

On 6/10/2010 at 13:30 a NP saw the patient for medication administration. Temp=100.2° F, BP=Not measured, Pulse=Not measured, Respirations=Not measured, Oxygen saturation=Not measured. Preprinted physical findings and treatment of rest and hydration, respiratory precautions in place, hand hygiene. The NP documented that the mother administered Tamiflu to the child. No plan to monitor the child.

During 6/10 to 6/12/2019 the Subject Activity Log documents that medical staff was administering Tamiflu on the housing unit. However, there is no documentation of who was administering medication and whether it was given to (b)(6) [21]

On 6/12/2019 at 04:12 a medical provider saw the patient for fever. Temp=100.7° F, pulse=12/minute (sic), respirations=22/minute. Oxygen saturation=Not measured. Tympanic membranes red. No wheezing. The provider administered ibuprofen for fever.

On 6/12/2019 at 09:56 the mother and her child were transferred from Weslaco back to the CPC arriving at 10:41. At 11:48 medical screening was noted to have been completed. The patient had a fever of 100.7° F 8 hours earlier but there is no documentation that medical staff rechecked the child's temperature.

On 6/12 and 6/13/2019, a medical provider did not evaluate the patient.

On 6/14/2010 at 01:33 a nurse practitioner saw the patient for fever, productive cough and vomiting x 1 day. Weight=23 lbs. Temp=101.4° F, BP=Not measured, Pulse=110/minute, Respirations=20/minute. Oxygen saturation=Not measured. Flu negative. The diagnosis was bilateral ear infections and the provider ordered Amoxicillin 5 ml twice daily x 10 days. Tylenol and Ibuprofen were administered. There was no plan to clinically monitor the child. Staff documented administering the first dose of amoxicillin 13 hours later.

On 6/14/2019 at 14:45 a NP saw the patient for medication administration for follow-up of fever and ear infections. Weight=Not measured. Temp=100.8° F, BP=Not measured, Pulse=Not measured, Respirations=18/minute. Oxygen saturation=Not measured. The NP did not perform any examination or meaningful assessment. The NP administered Amoxicillin at 14:45. No plan to monitor the patient.

[21] Her Tamiflu prescription ended on 6/9/2019 and should not have been given thereafter.

On 6/15/2019 at 00:08 a NP saw the patient for complaints of fever. She noted the patient had conjunctivitis and otitis media and was prescribed amoxicillin. Weight=Not measured, Temp=103° F, BP=Not measured, Pulse=Not measured, Respirations=Not measured. Oxygen saturation=Not measured. The NP performed a physical examination with normal findings except for bilateral conjunctivitis and otitis media (ear infection). At 00:10 she administered Motrin, Tylenol, amoxicillin, and erythromycin ointment to both eyes. At 00:10 a repeat Temp=102.0 F°.

On 6/15/2019 at 08:16 another nurse practitioner saw the patient noting that per the mother, the child had fever x 3 days and emesis (vomiting) with no improvement on antibiotics. Weight=Not measured, Temp=103.5° F, BP=Not measured, Pulse=Not measured, Respirations=Not measured. Oxygen saturation=Not measured. Alert, responds to verbal command, PERL. Refer to ER. At 08:31 the NP notified the Border Patrol. Ice Packs applied to child.

A Border Patrol Agent was dispatched to transport the child and her mother to McAllen Hospital. At 09:33 a BPA documented on the SAL that the child was temporarily booked out to the hospital.

On 6/15/2019 at 11:30 the hospital notified CBP that the child had pneumonia, was sedated and would need to be transported to the neonatal intensive care unit (NICU) at the Edinburg Children's Hospital. It was determined that the child's condition was critical and would need Extracorporeal Membrane Oxygenation (ECMO) Treatment. **(b)(6)** and her mother were life-flighted to University Hospital in San Antonio.

On 6/29/2019 at 06:51 the child was permanently booked out of CBP custody. As of 7/15/2019 **(b)(6)** was still hospitalized in the Pediatric Intensive Care Unit (PICU) at University Hospital.

Summary: This case shows that medical staff did not adequately perform and document medical screening, medical evaluations, and monitoring of **(b)(6)** This resulted in her deterioration until she was critically ill with pneumonia. Specific issues include the following:

- There is no documentation of medical screening results for **(b)(6)** or her mother at McAllen, CPC, or Weslaco.
- On 6/4/2019 when **(b)(6)** presented with a fever of 102.1° F and tested positive for influenza, the nurse practitioner did not perform and adequate evaluation by performing a review of systems and independent physical examination
- Medical providers did not monitor her or reevaluate her during the 20 hours she remained at the CPC pending transfer to Weslaco.
- Upon arrival at Weslaco, there is no documentation that medical staff evaluated **(b)(6)**
- At Weslaco, medical providers saw **(b)(6)** primarily to provide supervision of medication administration by **(b)(6)** mother. However, even when **(b)(6)** demonstrated a fever, providers did not perform adequate assessments including performing a review of systems (from her mother), taking vital signs (except

temperature), conducting an independent physical examination to determine if her condition was worsening, or document a plan to clinically monitor (b)(6)

- From 6/7 to 6/9/2019 Weslaco medical providers did not monitor, medically evaluate, or administer Tamiflu to (b)(6)
- On 6/10/2019, a nurse practitioner saw (b)(6) who had a fever of 100.1°F. The nurse practitioner did not measure other vital signs, perform any clinical evaluation or document a plan to monitor her.
- Although designated as an isolation/quarantine facility to house detainees with communicable diseases, no showers are available to detainees to maintain their personal hygiene and reduce the risk of transmitting infections.
- On 6/12/2019 (b)(6) was transferred from Weslaco back to the CPC. Even though she had a fever of 100.1°F eight hours earlier, there is no documentation that medical screening was performed, and medical providers did not evaluate her on the day of her return.
- On 6/14/2019 a medical provider diagnosed (b)(6) with an ear infection and prescribed antibiotics. Her mother reported that she had been having fever and vomiting for 3 days, indicating that the child was ill at the time of arrival at the CPC, but had not been evaluated or monitored.
- On 6/15/2019 a medical provider saw (b)(6) for a fever of 103.5° F. No other vital signs were measured. She was transported to the hospital where she was determined to be critically ill with pneumonia. She was life-flighted to Children's Hospital in San Antonio.

Complaint No: 20-01-CBP-0024

On 5/27/2019 at 23:00 Border Patrol Agents apprehended (b)(6), age 16 and her niece, (b)(6) age 2 years. At 23:50 they were transported to the Central Processing Center (CPC) in McAllen, Texas. On 5/28/2019 at 01:40 a nurse practitioner medically screened both detainees.

On 5/29/2019 at 19:42 a nurse practitioner evaluated (b)(6) who presented with cough, fever and rash on both arms. She tested positive for influenza A and was prescribed Tamiflu. The nurse practitioner prescribed prophylactic Tamiflu for her aunt, Ms. (b)(6).

On 5/30/2019 at 02:18 (b)(6) and Ms. (b)(6) were transported to Weslaco BPS for isolation. There is no documentation that Weslaco medical staff screened them upon arrival.

On 5/30 and 5/31/2019, the Subject Activity Log (SAL) indicates that medical staff were on the floor administering medication, but there is no documentation indicating that (b)(6) received Tamiflu.

Two days after arrival, on 6/1/2019 a nurse practitioner evaluated (b)(6) who had a fever of 101.7° F. The nurse practitioner did not measure any other vital signs. Despite her fever, medical staff did not monitor (b)(6) again for the next 24 hours.[22]

On 6/2/2019 at 20:15 (b)(6) had a fever. Temp= 100.7° F. No other vital signs were measured.[23]

On 6/3/2019, she was afebrile.

On 6/4/2019 a nurse practitioner did not evaluate her.

On 6/5/2019 at 02:36 CBP staff transported (b)(6) and her aunt back to the CPC. CPC medical providers did not medically evaluate (b)(6) upon her return from Weslaco.

On 6/5/2019 at 21:44, almost 20 hours later, staff note that (b)(6) was not on the medication list but would be added.

A medical provider did not evaluate (b)(6) for 7 days.

On 6/12/2019 at 13:27, a nurse practitioner saw (b)(6) for cough, fussiness and fever for 4 to 5 days. She had a fever of 102° F. The nurse practitioner treated her for a bilateral ear infection with antibiotics.

On 6/13/2019 there is no documentation that medical staff monitored (b)(6) condition. There are no medication administration records or other documentation showing that (b)(6) received all doses of amoxicillin for her ear infections.

On 6/14/2019 at 09:58 (b)(6) was sent to McAllen Medical Center (MMC) and returned at 13:15. There is no clinical note as to why she was sent to the hospital. At 14:00 she was transported to Edinburg Children Hospital (ECH). There is no clinical note regarding why she was transported to a different hospital and who was involved in the clinical decision-making.[24]

At Edinburg Children's Hospital she was admitted and treated for bronchiolitis, fever, hypoxia, and acute respiratory distress.

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[22] Nurse practitioners reported that children's temperature should be monitored every 2-3 hours. CBP Report of Investigation of (b)(6) Case No. 202002717. Page 8.

[23] Weslaco medical providers used an Emergency Treatment Medical Record (ETMR) that contained pre-filled normal physical examination findings in the progress note. In other words, physical examination findings were documented as normal before the medical provider evaluated the patient. This may lead to falsification of medical records in the event that the provider does not complete an examination or if physical findings are different than normal findings printed on the form. At CPC, the ETMR form used by nurse practitioners did not have pre-filled normal physical examination findings.

[24] According to the investigation, Dr. (b)(6) of Loyal Source Governmental Services made the decision, but there is no documentation of consultation with Dr. (b)(6) and rationale for the decision in the medical record.

On 6/18/2019 discharged back to the CPC with a prescription for prednisolone 12 mg twice daily for 3 days. A nurse practitioner wrote that the prescription was not covered but did not document an alternate plan and there is no documentation that (b)(6) received any medication following discharge from the hospital.

On 6/19/2019 she was transferred to ORR.

Summary: This case shows that (b)(6) did not receive timely medical care. Specific issues include the following:

- CPC Medical providers documented medical screening for Ms. (b)(6) and (b)(6) (b)(6) upon being taken into custody establishing their baseline condition, but medical screening was not performed when she was ill and transferred to Weslaco for medical isolation.
- At Weslaco, nurse practitioners did not medically evaluate (b)(6) for 2 days after her arrival, and evaluations were limited to taking her temperature and administering Tamiflu with no monitoring plans.
- Medical record documentation does not reflect that she received all doses of Tamiflu or amoxicillin, and if so, who administered the medication to her and at what time.
- CPC medical providers did not medically evaluate her upon transfer from Weslaco and not until she presented 7 days later with fever of 102°.
- Medical providers did not document (b)(6) condition when she was transported to the hospital nor the decision to send her back to the hospital.
- Following hospital discharge, the nurse practitioner noted that discharge medications were not covered, but did not document an alternate plan.
- Weslaco Border Patrol Station provides quarantine and isolation for detainees with suspected or known communicable diseases. However, no showers were available to detainees at this facility. Lack of access to showers deprives detainees of the means to provide for their basic hygiene and increases the risk of disease transmission to other detainees and staff.

Complaint No: 20-01-CBP-0025

On 6/10/2019 at 02:00 Border Patrol Agents apprehended (b)(6) and her daughter (b)(6) age 2, and transported them to RGV CPC in McAllen Texas.

On 6/10/2019 at 16:46, 14 hours later, the Subject Activity Log (SAL) documented that medical screening was completed. On 6/10/2019 at an undocumented time, (b)(6) Certified Nurse Assistant (CNA) completed a Health Screening for (b)(6) and (b)(6) The medical screens for mother and child were negative.

On 6/15/2019 (b)(6) was referred to a physician for evaluation, however there is no clinical documentation of what prompted the referral.

On 6/15/2019 at 13:25 (b)(6) MD evaluated (b)(6) at the Ursula Detention Center (CPC). She noted that (b)(6) had been detained for 5 days. Her mother reported her daughter had congestion and cough for 2 days, with wheezing the night before. She had a history of a previous illness with wheezing resulting in nebulizer treatment. The physician documented that they had no soap to wash their hands and only one opportunity to shower in 5 days. The physician observed the child was in mild to moderate respiratory distress. Temp=100.8° F, pulse=160/minute, respirations=48/minute and oxygen saturation=92%. Lungs: CTAB/rhonchi/diffuse expiratory wheezes, moderate intercostal retractions. Plan: Likely acute bronchiolitis versus infantile asthma. Low grade fever with moderate respiratory distress. May need albuterol treatment to improve. Needs medical assessment now and frequent reassessment to assure her respiratory status does not deteriorate.

On 6/15/2019 at 14:30 a NP evaluated the patient. She did not acknowledge the medical evaluation by Dr. (b)(6) The NP noted (b)(6) had a cough x 3 days, and "never requested medical". Eating well. She noted the child was febrile, wheezing, and had intercostal retractions. Temp=101° F. Oxygen saturation=90% on RA (room air). No blood pressure, pulse or respirations were documented. Assessment: Bronchiolitis/fever. Her influenza test=negative. Plan: To hospital for evaluation. At 14:40 the patient was given Tylenol.

On 6/15/2019 at 14:45 staff notified EMS who arrived at 14:50 and departed at 15:00 with a CBPO escort.[25]

On 6/15/2019 at 18:16 she was discharged from HCA Rio Grande Regional Hospital with bronchiolitis. The diagnosis did not include influenza. Discharge medications included an albuterol nebulizer every 4 hours as needed for wheezing, and follow-up with a primary care provider in 2 days. She was medically cleared for detention.

At 19:30 the NP saw her for influenza exposure and medication administration. She did not reference the hospital diagnosis of bronchiolitis. The NP did not conduct an assessment, other than to take her temperature=99.5°F. She did not auscultate her lungs to determine if a nebulizer treatment was indicated. She ordered Tamiflu twice daily, prednisone twice daily and changed the albuterol order from every 4 hours as needed to twice daily. She administered Tamiflu to the patient. She did not document a plan to monitor the patient. On 6/15/2019 at 20:14 (b)(6) (b)(6) was placed on isolation status.

On 6/16/2019 at 01:47 (b)(6) was transported from the CPC to Weslaco arriving at 02:35. At 02:42 the SAL notes that staff awaited medical clearance. There is no documentation that health care staff medically screened and evaluated (b)(6) upon arrival at Weslaco.

[25] Case No: 20-01-CBP-0025.Investigation report.

On 6/17/2021 there is no documentation that (b)(6) was evaluated or monitored by Weslaco medical providers for wheezing and the need for albuterol treatments.

On 6/18/2019 at 11:15, the SAL notes that everyone in cell 196 was checked for fever and administered medications if needed. An undated log lists the name of the detainees and records temperature and other vital signs. (b)(6) temperature was 100.9°F, pulse=120/minute and oxygen saturation=96%. There is no documentation that she was referred to a medical provider for evaluation and a medical provider did not see her for 8 hours.

On 6/18/2019 and 6/19/2019 nurse practitioners saw (b)(6) and checked her temperature and administered Tamiflu. No other clinical evaluation was performed including an evaluation for wheezing. She was not administered an albuterol treatment at any time during detention at Weslaco.

On 6/21/2019 at 05:35 (b)(6) and her mother were transported to the CPC arriving at 07:34. At 09:40 the SAL notes that medical screening was completed. There is no documentation of the screening.

On 6/21/2019 at 15:00 a NP saw the patient for croupy cough. The patient was fussy with rhonchi without (intercostal) retractions. Temp=98° F, BP=Not measured, pulse=128/minute, respirations=22/minute, oxygen saturation=94%. Weight=19 lbs. Her diagnosis was bronchiolitis and croup. Plan was to give fluids and infection control. She ordered prednisone twice daily x 5 days and albuterol via nebulizer four times daily as needed for one week. Follow-up in PM for medication administration.

On 6/21/2019 at 15:30 (b)(6) was booked out of the facility.

Summary: This case shows that health care staff did not consistently perform adequate screening, evaluation and monitoring for (b)(6). Specific issues include the following:

- At the CPC, according to the Subject Activity Log, medical screening was not performed for (b)(6) or (b)(6) for more than 14 hours after their arrival. The medical screening findings were documented in the medical record.
- On 6/15/2010 at 13:35 (b)(6) MD saw (b)(6) who had symptoms for the preceding two days and was in mild to moderate respiratory distress. This raises questions about her ability to access to care prior to being seen by the physician.
- Dr. (b)(6) recommended an immediate medical assessment, however over an hour elapsed before a nurse practitioner saw the patient and initiated emergency medical services (EMS) for respiratory distress resulting in transfer to the hospital at 15:00.
- Dr. (b)(6) noted the patient and her mother had no access to soap and had one opportunity to shower in 5 days.
- Following transfer to Weslaco on 6/16/2019, there is no documentation that health care staff medically screened (b)(6) upon arrival. Given that detainees

transferred to Weslaco are referred for medical isolation for communicable diseases, it is particularly important to document their medical condition upon arrival.

- The Emergency Medical Treatment Report (EMTR) used by some Weslaco nurse practitioners has normal physical examination findings that have been preprinted onto the form and are not documented by the provider at each encounter. This can result in documentation errors and falsification of physical examination findings.
- Although she had just been discharged from the hospital, Weslaco medical staff did not medically evaluate her upon arrival and for 2 days thereafter.
- On 6/18/2019, Weslaco medical providers did not medically evaluate (b)(6) (b)(6) for 8 hours after she had a fever of 100.9° F. At that time, the physician assistant performed no meaningful medical evaluation, including an evaluation of her lungs to determine if she needed albuterol treatments.
- In this record, the assessments of nurse practitioners and physician assistants at the CPC and Weslaco are generally inadequate, lacking a pertinent medical history, review of systems, vital signs, oxygen saturation, weights, and physical examinations. Treatment plans do not include plans for monitoring the patient.
- Upon return to RGV CPC, medical staff did not document medical screening. When a nurse practitioner saw her later that day, she still had symptoms of bronchiolitis and croup. It is highly unlikely that if performed well, the intake medical screening would have been normal and not required immediate referral to a provider.

Case No: 20200507[26]

On 6/2/2019 at 17:20 Border Patrol Agents (BPA) apprehended (b)(6) age 17, and her son (b)(6) age 18 months. BPA transported them to the RGV CPC in McAllen, Texas.

On 6/3/2019 at 14:55, about 23.5 hours following arrival, CPC staff documented that medical screening was completed.

On 6/5/2019 at 08:14, a nurse practitioner saw the patient for medication administration and bilateral otitis media. Apparently, the child was already prescribed amoxicillin but it's unclear when. The mother reported (b)(6) had been coughing for 15 days. Temp=98.0 F., BP=Not measured, Pulse=130's/minute, resp=24/minute. Plan to continue antibiotics.

On 6/5/2019 at 13:18 the same NP saw the patient again for medication administration and bilateral otitis media. The mother reported (b)(6) had been coughing for 15 days. Temp=99.5 F., BP=not measured, Pulse=not measured, resp=not measured. Oxygen saturation=Not measured. Given Tylenol.

[26] Department of Homeland Security. Customs and Border Protection. Report of Investigation. Case No. 202005071.

From 6/6 through 6/9/2019, there was no documentation that the child was given Amoxicillin.

On 6/8/2019 at 21:30 the child was diagnosed with influenza. There is no documentation in the medical record of the clinical evaluation and testing of the patient.

On 6/10/2019 at 20:00, a nurse practitioner saw (b)(6) for medication administration. Preprinted normal physical findings were on the form. Temp=99.6° F. No other vital signs. Given Amoxicillin.

On 6/11/2019 at 20:00, the same nurse practitioner saw (b)(6) for medication administration. Preprinted physical findings were on the form. Temp=99.6° F. No other vital signs were measured. Given Amoxicillin.

On 6/13/2019 at 21:47 there is a EMTR with the name of the nurse practitioner printed on the form however the handwriting is different from the previous notes by the same NP. The NP saw the patient for medication administration. Preprinted physical findings have been entered into the note. Temp=100.8°F, BP=Not measured, pulse=Not Measured, Respirations=18/minute, Oxygen Saturation=Not measured. Ears not examined. Diagnosis, URI and AOM (ear infection). Plan: Hydrate, remove sweater, give Amoxicillin and Tylenol, RTC *illegible.*

On 6/14/2019 at 17:05, according to an investigation, CPC medical staff decided to transport (b)(6) to the hospital with high fever. There is no documentation in the medical record of a medical evaluation prior to sending the child to the hospital.

On 6/14/2019 at 17:45 (b)(6) and his mother were booked out of the CPC and transported to Edinburg Children's Hospital for evaluation and treatment. (b)(6) was admitted to the hospital for further evaluation. He was diagnosed with influenza.

On 6/17/2019 he was discharged from the hospital with orders for Tamiflu 6 mg daily for 7 days, Omnicef 125 ml daily for 7 days and Prednisolone 15 mg daily for 3 days and follow-up in 2-4 days. He was cleared for travel.

On 6/17/2019 at 16:04 he was transported to Weslaco arriving at 17:05. There is no documentation that medical staff medically screened the child and his mother.

On 6/18/2019 staff conducted temperature checks of detainees in different cells (181-197)

On 6/18/19 at 19:23 a physician assistant saw the patient for medication administration. Temp=97.5°F. No review of systems. No vital signs besides temperature. He administered Tamiflu but not prednisolone and Omnicef prescribed at the time of hospital discharge.

On 6/19/2019 at an undocumented time, a nurse practitioner saw the patient. Temp=97.8 F. The NP administered Tamiflu and Ceftin, but not prednisolone.

On 6/19/2019 at 19:23 the physician assistant saw the patient for medication administration. No review of systems. No vital signs besides temperature. Temp=98.5 °F. The PA administered Tamiflu but not Ceftin and prednisolone.

On 6/20/2019 at 18:51 (b)(6) and (b)(6) were booked out of Weslaco and transferred to ORR custody.

Summary: This case demonstrated problems similar to those described in previous cases. Specific concerns include:

- Documentation on the Subject Activity Log reflects that (b)(6) age 17, and her son (b)(6) age 18 months were not medically screened upon arrival at the CPC, and not for almost 24 hours. The results of the medical screening are not documented.
- On 6/8/2019, medical providers did not document the medical evaluation during which (b)(6) was diagnosed with influenza.
- There is no documentation of when and how (b)(6) obtained access to care and was diagnosed with otitis media.
- Medical providers did not perform adequate medical evaluations, including a review of systems, complete vital signs, pertinent clinical findings. Plans of care do not include plans to monitor the patient.
- On 6/14/2019 there is no documentation of the medical evaluation that resulted in (b)(6) (b)(6) being transported to the hospital with high fever.
- Documentation shows that the patient did not receive ordered doses of Amoxicillin at RGV CPC nor Ceftin and prednisolone at Weslaco.

Prevention, Screening and Management of COVID-19

In late 2019, an unusual cluster of cases of pneumonia resulting in a number of deaths was identified in China. Subsequently, the cause of this outbreak was identified as a novel coronavirus that became known as Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2). The disease it causes is known as COVID-19. As this is a new coronavirus, there is no pre-existing immunity in the population and due to its highly infectious nature, the virus has spread rapidly around the globe. As of April 14, 2021, in the United States, there have been more than 32 million cases and 575,000 deaths. As of April 6, 2021 there have been more than 390,000 cases in US correctional institutions and 2,500 deaths reported among inmates. There have been more than 108,000 cases and 198 deaths among correctional staff. In the RGV Sector, as of June 2020 there were 49 confirmed cases among staff with over 200 in quarantine.[27]

[27] COVID-19 Spread Mitigation in the Workplace. US Customs and Border Protection. June 19, 2020.

Detention facilities, including Border Patrol Stations, face significant challenges controlling the spread of highly infectious pathogens such as COVID-19. Factors contributing to disease transmission include crowded housing units, shared lavatories, limited medical and isolation resources, daily entry and exit of staff members and visitors, continual introduction of detained persons, and transport of detained persons in multi-person vehicles for court-related, medical, or security reasons. Given these challenges, it is important that detention facilities have operational plans in place to prevent, screen, and manage cases of COVID-19 in their institutions. In March 2020 the Centers for Disease Control and Prevention published CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities. CDC has periodically revised its guidance with the most recent update on February 18, 2021.

The section below describes measures taken by CBP to prevent, screen and manage COVID-19 cases, and conditions of confinement that either increases or mitigates risks of COVID-19 transmission and disease outbreaks at Border Patrol Stations. I also reviewed medical care provided to detainees with COVID-19.

Operational Preparedness

In January 2020 CBP Rio Grande Valley Sector Headquarters published its Infectious Disease Plan 2020 to provide guidance for US Border Patrol sectors and Stations to prepare for, respond to and recover from infectious disease and pandemic events. The Plan addressed pandemic preparation, prevention, mitigation, response and recovery.

Over the course of 2020, CBP has continued to publish additional and/or revised guidance and directives including mandatory use of personal protective equipment (N-95 Respirator and gloves) for staff, screening detainees for COVID-19 symptoms, masking symptomatic detainees, social distancing, quarantine and isolation of COVID-19 suspects or cases, and consultation with medical professionals. CBP is to be commended for their proactive approach to COVID-19.

Prevention

Detention facilities can prevent introduction of SARS CoV-2 and reduce transmission within the facility by implementing use of face masks and social distancing, reinforcing good hygiene practices among detainees and staff, and intensifying cleaning/disinfection practices. Implementation of SARS-CoV-2 testing can identify asymptomatic patients and prevent exposure to other staff and detainees.

In March 2020 CBP RVG sector implemented mandatory N-95 respirators and PPE glove usage when conducting duties that placed them in close contact with detainees. This was an early and proactive response to the pandemic. However, over the following months, Serious Incident Reports involving detainee COVID-19 cases showed that field agents did not consistently comply with wearing of PPE, requiring Border Patrol Agents to quarantine at home.

In April 2020, the CPC implemented social distancing and provision of masks to detainees.[28] During the virtual tour, the population of Border Patrol Stations was low, however at the CPC, I observed that detainees were not required to socially distance. This was discussed with CPC staff who directed the detainees to socially distance.

I was not able to fully evaluate compliance with detainees being provided masks at the time of apprehension. Serious Incident Reports related to apprehensions of detainees with COVID-19 symptoms do not include whether Border Patrol Agents provided masks to detainees.

By June 2020, RGV sector was experiencing increases in COVID-19 exposures and confirmed cases among employees, with 203 employees in isolation and 49 confirmed cases. Some of these cases were not employment related. CBP implemented mandatory N95 masks during musters and at any gathering of 2 or more people as well as encouraging safe practices when off duty. During the virtual on-site visit, I observed CBP agents not wearing masks when in small groups.

With respect to sanitation and disinfection, at the time of the site visit, housing areas were not being routinely disinfected throughout the day. Following our visit, in October 2020, CBP made amendments to janitorial services to require disinfection of all high-touch surfaces including doorknobs and light fixtures, etc. This is very positive and disinfection practices should be performed throughout the day at each facility.

Since the virtual site visit, COVID-19 vaccines have become widely available in the United States and is a critical tool in reducing infections, hospitalizations and deaths.

Screening and Identification of COVID-19 Cases

Border Patrol Agents screen and identify migrants with COVID-19 symptoms in the field who may never be taken to a Border Patrol Station. In two serious cases, BPA's identified migrants with COVID-19 symptoms and activated EMS who transported the detainees to the hospital where they later died.[29] In these two cases, Border Patrol Agents took appropriate action to provide timely medical care to detainees with signs of a serious medical condition.

Upon arrival at Border Patrol Stations, health care staff conduct medical screening in the Sally Port. It begins with a temperature measurement followed by screening questions.

The Initial Health Interview Questionnaire (CBP 2500) form includes non-specific questions that also apply to COVID-19 including subjective fever, cough, difficulty breathing, nausea, vomiting and diarrhea. **(b)(5)**

(b)(5)

[28] Social Distancing and Masks amongst Detainees. Email from **(b)(6)** April 2, 2020.
[29] 20-RGVRGC-072020000105 (3) and 20-RGV-070620000077 (3)

(b)(5)

Staff reported that when detainees are identified with COVID-19 symptoms they are referred immediately to the local hospital for testing. This was supported by review of COVID-19 related Serious Incident Reports.

Management of Detainees with COVID-19

Once detainees test positive for COVID-19, they are usually transferred within 24-hours to Weslaco Border Patrol Station which has been designated to house detainees with communicable diseases such as influenza, chicken pox and COIVD-19. I reviewed SIRs and medical record of detainees transported.

A concern is that detainees with COVID-19 are being deported when they are still infectious and not cleared for travel by medical providers. Dr. (b)(6) LSGS Supervising Physician says that medical providers make recommendations to CBP regarding clearance for travel but CBP makes the final determination as to whether a detainee will travel. [30,31]

The CDC Order Suspending Introduction of Persons from A Country Where a Communicable Disease Exists includes supplemental information that states:

> *The US Department of Homeland Security is implementing the Order. The Order also does not apply where a designated customs officer of DHS determines, based upon the totality of circumstances, including consideration of significant law enforcement, officer and public safety, humanitarian and public health interests, that the Order should not be applied to a specific person otherwise subject to the order.*[32]

(b)(5)

I reviewed the medical care of detainees with COVID-19. The care provided is summarized below.

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[30] Report of Investigation. 202002717. Page 14.

[31] During the investigation, Dr (b)(6) was asked if he was aware of instances where Border Patrol did not agree with LSGS recommendations. He replied that he received phone calls occasionally but most of the time the recommendations are followed. However, the review shows that detainees are routinely being deported when not cleared for travel.

[32] CDC Order 42 CFR 71. March 24, 2020.

SIR 20-RGVBRP-070820000039 (2).

This 22-year-old detainee was housed at Cameron County Jail where he was serving a Title 8 sentence since February 2020.[33] His medical history included pulmonary tuberculosis diagnosed in February 2020. On 2/24/2020 he was prescribed Rifampin, PZA, Ethambutol, Levofloxacin and aspirin.

On 7/1/2020 the detainee tested positive for COVID-19. On 7/8/2020 the US Marshals contacted Brownsville BPS to pick up the detainee and transport him to Weslaco. A nurse practitioner saw him on the day of arrival noting his TB diagnosis but did not note the duration of therapy. The nurse practitioner ordered TB medications but there is no documentation that he received the medication at Weslaco. On 7/17/2020 the detainee was transported to the Hidalgo Port of Entry and deported.

Summary: The detainee served an appropriate time in medical isolation for COVID-19. He was diagnosed with pulmonary tuberculosis in February 2020 at Cameron County where treatment was initiated. Upon transfer to Weslaco, the NP did not document duration of therapy which is typically 6-9 months and there is no documentation that the patient received TB medications at Weslaco. There was no discharge planning to provide continuity of medication. This is a public health concern as the patient, if incompletely treated, is at risk of developing drug resistant tuberculosis.

SIR 20-RGVRGC-081520000106 (1)

This 20-year-old Honduran woman was apprehended on 8/15/2020 at 02:38 and booked into Brownsville Border Patrol Station at 03:58. There is no documentation of medical screening at that time. At 07:38 she was transported to RGV CPC.

At 09:30 the SAL notes that a CBP 2500 was completed.

On 8/15/2020 at 09:11 a loyal source physician assistant documented that the patient was 9 months pregnant and denied pain, discharge, and bleeding. + fetal movement. Denied cough, sore throat and difficulty breathing. VS normal. Cervix was 1-2 cm dilated. Refer to ER.

At 10:15 am CPC medical staff notified a BPA that the subject was pregnant and experiencing abdominal pain and may be in labor. Medical personnel recommended that she be transported to the hospital.

[33] 20-RGVBRP-070820000039 (2)

On 8/15/2020 at 11:15 am the patient was evaluated at McAllen Medical Center (MMC). She was 1 cm dilated. Urinalysis showed blood in her urine and urine culture was ordered. The physician ordered prenatal vitamins with folic acid. No apparent follow-up on urine culture.

On 8/16/2020 at 01:30 a Weslaco nurse practitioner evaluated the patient noting that she was 9 months pregnant and COVID-19 positive. She denied cough, congestion, fever and headache or any other COVID-19 symptoms. She denied abdominal pain, contractions, bleeding and discharge. + fetal movement. She received prenatal care in her country and denied a history of medical problems. The patient was afebrile and 99% oxygen saturation. The plan was to start medical isolation with full PPE, monitor and treat symptoms, encourage hydration, notify medical staff for COVID-19 symptoms or vaginal bleeding or no fetal movement. She was not cleared for travel.

At 05:00 her temperature was 97.4°F. She was not screened for worsening COVID-19 symptoms. No other vital signs including oxygen saturation.

At 0800 her temp=97.1° F, pulse=84/minute, oxygen saturation=98%. No COVID-19 symptom screen.

At 11:15 a nurse practitioner noted that the patient was being transferred out. Although the patient was contagious, the nurse practitioner cleared the patient for travel by ground.

At 12:34 the CBP Subject Activity Log noted that the patient's vital signs were checked. This was not recorded in the medical record).

At 16:00 her temp=97.5° F, pulse=93/minute, oxygen saturation=99%. No COVID-19 symptom screen.

At 19:28 the CBP Subject Activity Log noted that the patient was permanently booked out. According to the SIR she was released on order of recognizance to an address in Grenada California.

Comment: While at Weslaco, the patient was not screened for worsening COVID-19 symptoms following an initial evaluation. The patient was initially not cleared for travel, but hours later was cleared for travel prior to completion of 14-day medical isolation. This presents a risk of transmission to staff, detainees and the community. There was no documentation of method of travel and precautions taken to prevent transmission during travel.

SIR 20-RGV BRP-072020000042

This 34-year-old detainee was apprehended on 7/19/2020. BPA paramedic found he had a right ankle and low back injury. EMS transported him to Valley Regional Medical Center where he was diagnosed with a right ankle, s/p closed reduction, and back fracture. He tested positive for

COVID-19. He was placed in a long leg cast with instructions to keep his cast dry and follow-up with an orthopedist for definitive therapy.

On 7/22/2020 at 2100 a Weslaco nurse practitioner (NP) saw the patient as a new arrival. The detainee denied COVID-19 symptoms and had a right long leg cast and back immobilizer. Temp=100.4° F. Other vital signs normal. Azithromycin 500 mg daily x 3 days, Dexamethasone 10 mg daily x 10 days and hydrocodone x one dose, and to monitor. Medically cleared for travel.

On 7/23/2020 the nurse practitioner monitored the patient's temperature and performed a limited COVID-19 review of systems at midnight, 0430 and 0800. The NP administered prescribed medications to the patient. On 7/23/2020 the nurse practitioner cleared the patient for transfer. On an unspecified date he was transported to Port Isabel Detention Center and removed on 9/4/2020.

Summary: The nurse practitioner performed a limited COVID-19 review of systems (e.g., respiratory difficulty). This detainee was deported prior to completion of a 14-day isolation. There was no discharge planning regarding orthopedic follow-up for his closed fractured leg.

SIR 20-RGVFLF-081920000079

This 30-year-old man from El Salvador was apprehended on 8/18/2020 at 1630. He was traveling alone but transported with 12 other subjects to Falfurrias Border Patrol. The SIR noted that BPAs were wearing an N-95 mask and gloves and considered low-risk; however, field agents were not wearing PPE and were treated as a high-risk exposure. Agents were advised to monitor their health and report and changes to their supervisor.

Following medical screening, the detainee was sent to McAllen Heart Hospital where he was admitted for weakness, vomiting, diarrhea, dehydration, acute kidney injury, rhabdomyolysis, and elevated troponin (heart enzyme). He tested positive for COVID-19. On 8/19/2020 he was discharged from the hospital and on an unknown date transferred to Weslaco.

On 8/21/2019 at 15:00 a nurse practitioner performed a thorough evaluation and ordered discharge medications. The detainee was not cleared for travel. Providers monitored him every 4 hours through 8/21/2019. There are no medical records after 8/21/2019.

There are discrepant dates for his disposition. According to a spreadsheet provided on 8/21/2020 he was expelled under Title 42. The SIR indicates that on 8/23/2020 he was booked into Port Isabel Detention Center, where he remained in custody.

Comment: Border Patrol Agents in the field were not wearing PPE. There was no documentation that detainees were given masks prior to van transport. The detainee was transferred prior to completion of 14- day isolation.

Recommendations:

1. (b)(5)
2. (b)(5)
3. (b)(5)

2015 National Standards on Transport, Escort, Detention and Search Compliance

I reviewed applicable medical standards for the 2015 TEDS Standards for this report. My findings are described below.

Medical Screening

2015 TEDS Standard: The standards do not specifically address medical screening of detainees, but state that "Officers/Agents must be alert to medical symptoms such as coughing, fever, diarrhea, rashes or emaciation, in addition to obvious wounds, injuries, cuts, bruising or bleeding, heat related injury or illness and dehydration. Any observed or reported injury or illness must be reported, and appropriate medical care must be provided or sought in a timely manner.

Other Directives: The Enhanced Medical Screening Directive does not require a documented Initial Health Interview Questionnaire (CBP 2500 form) for every detainee in custody.

Findings: Currently, neither the TEDS Standards nor Enhanced Medical Support Efforts Directive require a structured documented medical screening on every detainee. This does not permit CBP to establish the baseline medical, mental health and public health condition of each detainee brought into custody at a Border Patrol Station.

It is also a concern that the performance of a secondary medical assessment on persons with a known or reported medical concern or who have a positive medical screening is subject to availability of resources and operational requirements. This may result in lack of treatment for detainees with serious medical conditions increases the risk of adverse patient outcomes, including hospitalizations and death.

(b)(5)

[34] CDC Interim Guidance for SARS Co-V-2 Testing in Correctional and Detention Facilities. March 17, 2021 or updated versions.

(b)(5)

(b)(5) Detainees with negative responses to verbal screening receive no further evaluation and detainees with positive responses are to be referred to a nurse practitioner or physician assistant for further evaluation.

It is important to document the condition of the detainee at the time of arrival to establish the detainee's baseline medical condition. This enables medical staff to determine whether the detainee's condition has changed since arrival, and to be able to document whether necessary follow-up medical care has been implemented. Medical screening needs to be timely scanned into a central repository that can be accessed by other Border Patrol Station medical staff should the detainee transfer. The following case illustrates the importance of documenting medical screening.

Complaint No: 19-10-CBP-0497

Mr. Manuel Guillen Landaverde was a 43-year-old man who was apprehended with his 10-year-old daughter and transported to RVG on 6/23/2019 and died on 6/29/2019. There is no documentation that medical screening was performed upon his arrival.

On 6/26/2019 he had a seizure and was transported to the hospital where he was treated and discharged back to the CPC.

On 6/29/2019 he collapsed in the housing unit and became pulseless. Medical staff responded and resuscitated him, and he was transported to the hospital where he died. An autopsy report showed he died of pulmonary thromboemboli (PE) from a left lower extremity deep vein thrombosis (DVT). The medical examiner also reported that he had a history of seizure disorder. It is unknown whether he had symptoms of DVT (e.g., leg swelling or pain) or pulmonary embolism (e.g., shortness of breath) prior to his death, or whether his death was preventable. However, a baseline medical screening might have revealed his seizure disorder and DVT/PE symptoms that would have enabled medical intervention and possibly prevented his hospitalization and/or death.[37]

Recommendations:

1. Licensed health care staff should conduct medical screening upon arrival in a setting that provides auditory and visual privacy for all detainees brought to a Border Patrol Station.
2. (b)(5)

[35] Some staff use an index card containing the 13 questions to prompt the questions, but do not document the responses.
[36] Complaint Number 20-01-CBP-0024. CBP Investigation interview of Edith Trevino NP.
[37] Complaint Number 19-10-CBP-0497.

3. (b)(5)
4. Staff should refer detainees with positive medical screening responses to a medical provider for evaluation and treatment in accordance with the urgency of the complaint.
5. When detainees transfer to another Border Patrol Station, medical screening should be performed and documented.

Privacy

2015 TEDS Standard: The standards state that "Efforts should be taken to ensure that all assessments are conducted in a way that provides detainees the greatest level of privacy possible".

Findings: Observation of medical screening during the virtual on-site tour showed that medical staff interviewed detainees in close proximity to one another providing no auditory privacy.

(b)(5)

Recommendations:

- CBP should establish a policy and procedure that provides adequate auditory and visual privacy for detainees during medical screening.
- (b)(5)
- (b)(5)

Emergency Situations During Transport

2015 TEDS Standard: State if a detainee becomes unconscious or unresponsive during transport, officers and agents will immediately request emergency services (EMS) and render aid. In addition, if a detainee becomes ill or injured, if deemed appropriate, emergency medical services must be notified.[38]

Findings: My review of Serious Incident Reports and related medical records shows that field Border Patrol Agents appropriately contact emergency medical services to transport detainees to the hospital.[39]

[38] 2015 TEDS Standards. Section 2.9 Page 7.
[39] 20-RGVRGC-072020000105 (3) and 20-RGV-070620000077 (3)

Recommendations: None

Contagious Disease

2015 TEDS Standard: If an officer/agent suspects or detainee reports that a detainee may have a contagious disease, the detainee should be separated whenever operationally feasible, and all other appropriate precautions must be taken and all required notifications made, according to the operational office's policies and procedures.

Findings: This review did not include observation of initial actions taken by Border Patrol Agents and Officers at apprehension when a detainee is suspected of having a communicable disease, including whether detainees are provided masks.

Review of Serious Incident Reports (SIRS) show that Border Patrol Agents appropriately transport detainees with COVID-19 symptoms to a hospital for testing prior to transport to a Border Patrol Station. There is no documentation on SIRS that BPA provide detainees masks upon apprehension. SIRS also showed that Agents in the field did not consistently wear personal protective equipment resulting in the need to quarantine at home. [40]

(b)(5)

Recommendations:

- CBP needs to enforce policies requiring BPA to provide masks to detainees upon apprehension.
- CBP needs to enforce consistent use of personal protective equipment by Border Patrol Agents and Officers.
- (b)(5)

[40] 20-RGVFLF-081920000079.

Medication

2015 TEDS Standard: Except for life saving emergency care which they feel comfortable rendering, officers and agents will not administer medications unless they are qualified emergency medical technicians or paramedics rendering care. Medication prescribed in the US, validated by a medical professional or in the detainee's possession during general processing…, must be self-administered under the supervision of an officer/agent. If a detainee is unable to self-administer their medications due to age or disability, officer/agents may assist the detainee. All detainee refusals of prescribed medication or medical assistance must be noted in the appropriate electronic system(s) of record.

Other Standards/Policies: The Medical Services Statement of Work (SOW), *Appendix D, Protocols for Handling and Storage of Medications* state that medications will be stored in the detainee's property. Border Patrol Agents (BPA) are to retrieve the medication from the detainee's property and dispense the medication to the detainee. The BPA is to fill out the Medication Log located in the property room.[41]

Findings: (b)(5)

(b)(5)

- (b)(5)

Recommendations:

1. (b)(5)

[41] Medical Services Statement of Work. Appendix D. Protocol for Handling and Storage of Medication.
[42] Case No: 19-10-CBP-0510.

(b)(5)

2. (b)(5)

Emergency Medical Services Transfer

2015 TEDS Standard: If a detainee is transferred by emergency services for further medical treatment, at least one officer/agent shall escort or follow the emergency vehicle and remain with the detainee until medical authorities determine whether the situation will require hospitalization or continued medical care.

Findings: This standard was not fully evaluated during the virtual site visit. However, Serious Incident Reports (SIRS) reflect that Border Patrol Agents monitor the status of detainees when hospitalized.

Recommendations: None

Hospitalization

2015 TEDS Standard: If the detainee is hospitalized, officers/agents will follow their operational office's policies and procedures. They will document the hospitalization in the appropriate electronic system(s) of record. At a minimum, the discharge summary, treatment plans, and prescribed medications from any medical evaluation should accompany the detainee upon transfer or repatriation.

Finding: This review shows that following hospitalization, a discharge summary that summarizes diagnosis, treatment and follow-up recommendations are obtained and placed in the medical record, enabling medical providers to provide continuity of care.

Recommendations: None

Health Information Privacy

2015 TEDS Standard: A detainee's private health/medical information must be protected and disseminated only to those personnel with a legitimate need to know, according to the operational office's policies and procedures.

Findings: (b)(5)

(b)(5)

Recommendations:

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

Hygiene

2015 TEDS Standard: Detainees must be provided with basic personal hygiene items, consistent with short term detention and safety and security needs. Families with small children will also have access to diapers and baby wipes. Reasonable efforts will be made to provide showers, soap and a clean towel to detainees approaching 72 hours. Detainees using the restrooms will have access to toiletry items, such as toilet paper and sanitary napkins. When operationally feasible, soap may be made available.

Findings: (b)(5)

(b)(5)

(b)(5) During this site visit, we found that some Border Patrol Station housing unit bathrooms did not contain soap, paper towels, and a trash can to dispose of waste.

Showers should be available at each Border Patrol Station and were available at the CPC during the virtual on-site tour. However, records show that Weslaco Border Patrol Station, which is used as a quarantine and isolation facility, did not provide access to showers to detainees in Spring and Summer of 2019.[43]

Recommendations: (b)(5)

(b)(5)

[43] Weslaco was not part of this virtual on-site visit and the status of shower availability at this time is unknown.

- (b)(5)

Other Recommendations

Access to Care

1. (b)(5)
2. (b)(5)
3. A licensed medical provider (registered nurse or higher) should triage requests and schedule follow-up in accordance with the urgency of the complaint.
4. CBP/LSGS need to develop a system for tracking follow-up of monitoring appointments, medications and treatments.

Medical Evaluations and Monitoring

1. (b)(5)
2. 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. Treatment plans need to include medical monitoring appropriate to their medical condition.
3. 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.

Conditions of Detention Expert Report
on
CBP Tucson Sector

Prepared by:
(b)(6)
Williamsport, Ohio

I. INTRODUCTION

The Office for Civil Rights and Civil Liberties (CRCL) conducted an onsite investigation to review U.S. Customs and Border Protection's (CBP) general adherence to relevant CBP and sector policies and procedures regarding short-term custody in the Tucson Sector. CRCL conducted onsite investigations from complaints arising at the Tucson Coordination Center, and the Brian A. Terry, Nogales, Casa Grande and Ajo Border Patrol Stations. CRCL did not visit the Casa Grande or Ajo Stations; a visit to the Tucson Soft-Sided Structure was conducted instead and provided an opportunity to evaluate the conditions where Family Units and unaccompanied children were being held.

The complaint allegations included: inferior hold room conditions, such as time in custody, insufficient health screening and medical care and protocols for the prevention of the spread of infectious diseases; insufficient language access; failure to provide outdoor recreation; overcrowded hold rooms; failure to provide telephone calls to unaccompanied children; and failure to return personal property upon departure from the CBP facility.

II. EXPERT QUALIFICATIONS

(b)(6)

(b)(6)

III. RELEVANT STANDARDS AND METHODS OF REVIEW

A. CBP NATIONAL STANDARDS

The CBP National Standards on Transport, Escort, Detention, and Search (October 2015) (TEDS) apply to the Tucson Sector stations and processes. CRCL relied on these standards, documents provided by CBP, and the onsite review of operations to assess the specific allegations.

B. PROFESSIONAL BEST PRACTICES

For issues not specifically addressed by TEDS, recommendations were made based on my correctional experience, best correctional practices, and recognized correctional standards, including those published by the American Correctional Association.

C. METHODS OF REVIEW

In advance of the onsite investigation, I reviewed documents provided by CRCL. During the investigation, I participated in tours of the facilities, including hold rooms; reviewed documents; and interviewed staff. This investigation did not involve interviews with individuals in custody.

In addition to case specific documents related to complaints in the retention memo, I reviewed the following documents, among others:

1. DHS Language Access Plan, February 28, 2012
2. CBP Language Access Plan, November 18, 2016
    a. Establishes language access policy and creates a system to provide meaningful access to agency programs and activities to people with limited English proficiency.
3. CBP Supplementary Language Access Plan, February 7, 2020
    a. Supplements the Language Access Plan and sets forth the standards, principles, and guidelines that CBP will use to provide, and improve, meaningful access for

[1] *S.H. v. Stickrath*, Case No. 2:04-cv-1206 (S.D. Ohio).
[2] *Nunez v. City of New York*, Case 1:11-cv-05845 (LTS) (JCF) (S.D.N.Y.).

persons with limited English proficiency to the agency's programs and activities.

4. CBP Directive No. 2130-031 - Roles and Responsibilities of U.S. Customs and Border Protection Offices and Personnel Regarding Provision of Language Access

    a. Defines the roles and responsibilities of CBP personnel in providing limited English proficient (LEP) persons with meaningful access to the agency's programs and activities.

5. Language Access FAQs

    a. Provides information in a question and answer format regarding language access policy and procedure.

6. Protocol for Identifying Limited English Proficient Persons and Providing Language Services

    a. Provides assistance in identification of limited English proficient persons and program office specific information on how to access language services.

7. Effective Communication with Persons who are Limited English Proficient - Working with Contract Interpreters

    a. Provides advice and tips for working with external contract language assistance providers.

8. I Speak Language Identification Poster

    a. Assists literate individuals who are not proficient in English to identify a preferred language.

9. I Speak Language Identification Pocket Guide

    a. A quick ready reference pocket guide to assist literate individuals who are not proficient in English to identify a preferred language. Includes selected indigenous languages of Mexico.

10. I Speak Indigenous Language Identification Poster

    a. Assists in identifying the primary language of an individual from Mexico or Central or South American who is not proficient in English or Spanish.

11. Indigenous Language Identification Tool

    a. Provides an audio and visual platform to assist CBP employees in identifying the primary language spoken by indigenous speakers from Mexico, Central or South America, the Caribbean, Ethiopia, and Eritrea who are not proficient in other languages.

12. Tucson Coordination Center Holding Facility Compliance Evaluation – July 17, 2021

13. CBP-EMR-PMO-Placement-20210526

14. CBP-EMR-PMO-Fact Sheet

15. CBP-APIP-Placement

16. CBP-RFP-Soft-Sided Structure

17. TEDS 2015

18. CBP Personal Effects Internal Operating Procedures (issued April 22, 2021)

IV. RETENTION MEMO COMPLAINTS – SUMMARIES, ANALYSES, AND FINDINGS[3]

In this section of the report the complaints from the Retention Memo will be listed and discussed. The information relied upon and the findings associated with each complaint will be provided as it relates to conditions of detention.

A. Complaint No. 21-01-CBP-0064 – Language Access, and Personal Property and Effects

1. Summary: (b)(5),(b)(7)(E) (b)(5),(b)(7)(E) (b)(5),(b)(7)(E). The unaccompanied child alleged that he speaks Q'eqchi and was not offered an interpreter. The unaccompanied child also alleged that he had a black and red backpack, cell phone, personal documents, and clothing that were not returned to him.

2. Analysis: All the stations visited by CRCL had "I Speak" posters prominently displayed. All Border Patrol agents CRCL spoke with consistently referenced access to telephonic interpretation services 24 hours per day, seven days per week for individuals in custody. Q'eqchi is an indigenous language that does not appear on the "I Speak" poster and interpretation and translation services may not be readily available or easy to find, but there are processes which should be used to identify this need and to provide language access. Although the TCC reported that interpretation services were not available for approximately one month, no information was provided specifying in

[3] The following definitions relate to the "findings" for the allegations in the conditions-related complaints:

- "Substantiated" describes an allegation that was investigated and determined to have occurred substantially as alleged;
- "Partially Substantiated" describes an allegation that was investigated and determined to have some basis for the complaint but not enough to establish the events as exactly as those described in the complaint;
- "Unsubstantiated" describes an allegation that was investigated and there was insufficient evidence to determine whether the allegation occurred; and
- "Unfounded" describes an allegation that was investigated and determined not to have occurred as alleged.

which month that lack of availability occurred. There is nothing in the file about this unaccompanied child's request or need for interpretation services in Q'eqchi. That lack of documentation could indicate that CBP was either unaware of the language access need or perhaps did not document the request. This lack of documentation was similar to findings with the other complaints across a variety of issues.

CRCL observed that telephones in Border Patrol stations are available for individuals in custody to access interpretation services. At the Brian A. Terry Station, the Indigenous Language Identification Poster was fastened to the desk in front of the phone. Staff and individuals in custody had access to the codes to use for interpretation services. Those codes were available at all the locations but may not have been readily available for individuals in custody to see or use without staff assistance. CRCL observed that CBP does not consistently document an individual's use of the phones for interpretation services.

CBP's electronic system of record, e3 Detention Module (e3DM), did not reflect any information regarding this unaccompanied child's personal property. CBP personnel told CRCL that they do not itemize personal property. Individuals in custody fill out Form I-77, listing their personal property. The bar code from that tag is scanned into CBP's e3DM. A portion of the tag is given to the individual in custody, a corresponding portion is attached to the individual's hardcopy file, and a portion is given to the transportation staff for use when the individual is transferred or released. Starting in October 2015,[4] TEDS required an individual's property which was not deemed to be contraband to be safeguarded, itemized, and documented in e3DM. More recently, in April 2021, CBP issued internal operating procedures describing when an itemized inventory of personal property may be conducted and memorialized in the electronic system of record.[5]

3. Findings: This unaccompanied child's allegation about CBP's failure to provide interpretation services is partially substantiated based upon CBP's self-report that interpretation services were not available for a one-month span of time. While it is unknown if this interruption of services occurred while this individual was in custody at TCC, it raises the possibility the individual in custody was not able to have the services provided when he needed them as an indigenous language speaker. The documentation also did not show the unaccompanied child had been identified as a person who spoke an indigenous language nor was the *I Speak Indigenous Language Identification Poster* developed by DHS CRCL posted at the TCC near the telephone during CRCL's onsite. This language access issue should have been identified during the initial interactions with the individual.[6]

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[4] TEDS October 2015, Sections 7.1 – 7.4, pp. 26 – 27.
[5] CBP Personal Effects Internal Operating Procedures, issued April 22, 2021.
[6] CBP, "*Protocol for Identifying LEP Persons and Providing Language Services"* Step 2. Determine the language spoken by the LEP person., October 2017, p. 1.

This unaccompanied child's allegation about CBP's failure to return his personal property is partially substantiated because CBP did not have a record of the I-77 form, nor did they have a system to validate what possessions were processed for each individual in custody at the time these allegations arose.

B. Complaint No. 19-09-CBP-0453 – Access to the Outdoors

1. Summary: (b)(5),(b)(7)(E) (b)(5),(b)(7)(E) The correspondence alleged that during her seven days in CBP custody, this unaccompanied child had no access to the outdoors.

2. Analysis: Based upon observation and self-reporting by the TCC staff, access to the outdoors for unaccompanied children is not operationally feasible at the TCC. While there is no CBP standard requiring the provision of access to the outdoors, TEDS Section 5.1 identifies juveniles and unaccompanied children as at-risk individuals and Section 5.6 requires the placement of at-risk individuals in the least restrictive setting appropriate to their age, and special needs, provided that such setting is consistent with the need to ensure the safety and security of the individual and others.

These provisions in TEDS are consistent with generally accepted practice for juvenile confinement and out-of-cell time, although not required under TEDS, is one measure of a least restrictive environment. CRCL observed that the soft-sided facility in Tucson, operational since April 28, 2021, has an outdoor, separate play area, that we were told is typical for a soft-sided facility for unaccompanied children.

3. Finding: The allegation about the unaccompanied child's lack of access to the outdoors while she was held at the TCC is substantiated, but should no longer occur.

C. Complaint Number: 21-06-CBP-0343 – Telephone Call Access

1. Summary: (b)(5),(b)(7)(E) (b)(5),(b)(7)(E) The correspondence alleged that during his six days in CBP custody, this unaccompanied child was not provided the opportunity to make a telephone call.

2. Analysis: There were no entries in e3DM documenting that this unaccompanied child made a personal telephone call or that the TCC staff called the consulate.

3. Finding: The allegation is partially substantiated because the record leaves open the possibility that the unaccompanied child was permitted to make a telephone call but it was not documented in e3DM or elsewhere.

D. Complaint Number: 21-05-CBP-0222 – Personal Property and Effects and Language Access

1. Summary: (b)(5),(b)(7)(E) (b)(5),(b)(7)(E) The correspondence alleged that after this child was apprehended, he temporarily gave his eyeglasses to the Border Patrol agent when he was taking off his sweater, but the glasses were not returned to him. This unaccompanied child alleges that, at the TCC, he wanted to ask for his glasses back, but he was not sure who to ask because, according to him, it did not appear that any of the Border Patrol agents spoke Spanish. The correspondence alleged this unaccompanied child was transferred to ORR custody without receiving his glasses back.

2. Analysis: There is nothing in the records relevant to this allegation and the TCC staff CRCL spoke with had no recollection or knowledge of this allegation.

Based on information in the documents provided and statements by Border Patrol agents, they are required to achieve proficiency in speaking Spanish as part of their academy training.

3. Findings: The allegation about CBP's failure to return his glasses is partially substantiated because CBP did not have a system to validate that the glasses were taken and returned.

The allegation about Border Patrol agents not speaking Spanish is unsubstantiated.

E. Complaint Number: 21-05-CBP-0242 – Telephone Call Access

1. Summary: (b)(5),(b)(7)(E) (b)(5),(b)(7)(E) During that time, on November 6-7, CBP transported the unaccompanied child for a return flight to Guatemala, but the flight was cancelled. The correspondence alleged that the unaccompanied child was not provided the opportunity to make a telephone call.

2. Analysis: The records indicate that the unaccompanied child was received at the TCC on November 3, 2020, and staff made a phone call to the consulate but did not receive an answer. There were no other documented attempts to contact the consulate or to provide the unaccompanied child with a phone call.

3. Finding: The allegation is partially substantiated because the record leaves open the question of whether the unaccompanied child was or was not permitted to make a telephone call and, if so, it may not have been documented in e3DM or elsewhere.

F. Complaint Number: 21-05-CBP-0265 – Telephone Call Access

1. Summary: (b)(5),(b)(7)(E) (b)(5),(b)(7)(E) The

correspondence alleged that the unaccompanied child was not provided the opportunity to make a telephone call.

2. Analysis: There were no entries in e3DM documenting that this unaccompanied child made a personal telephone call, but there were notations in e3DM that the TCC staff had called the consulate twice.

3. Finding: The allegation is partially substantiated because the record leaves open the question of whether the unaccompanied child was or was not permitted to make a telephone call and, if so, it may not have been documented in e3DM or elsewhere.

G. Complaint Number: 001547-21-CBP – Telephone Call Access

1. Summary: (b)(5),(b)(7)(E) (b)(5),(b)(7)(E) (b)(5),(b)(7)(E). The correspondence alleged that the unaccompanied child was not provided the opportunity to make a telephone call.

2. Analysis: The records show that on March 3, 2021, a Border Patrol agent contacted the consulate on-behalf of the unaccompanied child. While this call does not constitute a personal call, it does indicate that a call was made to the consulate.

3. Finding: The allegation is partially substantiated because the record leaves open the question of whether the unaccompanied child was or was not permitted to make a telephone call and, if so, it may not have been documented in e3DM or elsewhere.

H. Complaint Number: 21-06-CBP-0277 – Hold Room Conditions

1. Summary: (b)(5),(b)(7)(E) (b)(5),(b)(7)(E). The unaccompanied child alleged that he was held in an overcrowded hold room.

2. Analysis: CRCL did not conduct an onsite investigation of the Casa Grande Station.

3. Finding: CRCL made no determination about this allegation.

I. Complaint Number: 21-07-CBP-0356 – Telephone Call Access

1. Summary: (b)(5),(b)(7)(E) (b)(5),(b)(7)(E). The correspondence alleged that during his four days in CBP custody, this unaccompanied child was not allowed to contact his family or his sponsor.

2. Analysis: No documentation was provided to substantiate that a phone call was provided to this unaccompanied child or that the consulate was called on his behalf.

3. Finding: The allegation is partially substantiated because the record leaves open the question of whether the unaccompanied child was or was not permitted to make a telephone call and, if so, it may not have been documented in e3DM or elsewhere.

J. Complaint Number: 21-07-CBP-0378 – Telephone Call Access

1. Summary: (b)(5),(b)(7)(E)
(b)(5),(b)(7)(E)
In addition, the I-213 summary states that the unaccompanied child "was given the opportunity to speak to his mother and father on February 26, 2021 at approximately 20:29. Two attempts were made to contact [the unaccompanied child's mother and father]. The number that was provided for his mother, a male answered the phone and stated we had the wrong number. The phone number that was provided for his father failed to go through."

2. Analysis: The I-213 summary mentioned above indicates that two phone call attempts were made by the staff to contact the unaccompanied child's family. One of those calls resulted in a failed call and the other in a man who answered the phone telling the callers that they had a wrong number. Although further documentation of these calls was not found in the e3DM system, the I-213 shows that two calls were placed on the unaccompanied child's behalf.

3. Finding: The allegation is partially substantiated because although the record indicates that two telephone calls were placed on the unaccompanied child's behalf, he was unable to successfully speak with his family.

V. RECOMMENDATIONS

The recommendations listed here are based upon the analyses and findings of the complaints, the onsite observations, staff overviews and their responses to CRCL's questions, and documentation review.

Recommendation 1. Language Access - CRCL observed that CBP did not document when professional interpretation services were unavailable at the TCC when CBP self-reported that interpretation services were not available for a one-month span of time and CBP did not find an alternative during that period. CRCL also observed that the TCC did not display the *I Speak Indigenous Language Identification Poster* developed by DHS CRCL. Therefore, CRCL recommends that CBP use the information and resources provided at OC Language Access – FAQs (dhs.gov) and in its Supplementary Language Access Plan (dated February 7, 2020). These resources encourage the display of the *I Speak Indigenous Language Identification Poster* developed by DHS CRCL.[7] CRCL also recommends that CBP use the *CBP Protocol for Identifying LEP Persons and Providing Language Services* which states: "CBP employees can identify the primary language spoken or understood by the LEP individual:

[7] CBP, "*Supplementary Language Access Plan*", February 7, 2020, p. 6.

A. When the LEP individual self-identifies their primary language;

B. When the LEP person's companion or an available document indicates their primary language;

C. Use of a contract language service provider; and/or

D. Through use of the following job aids to assist individuals who are not proficient in English to identify their primary language: the "I Speak" poster, the "Habla?" poster for indigenous language, the "I Speak" pocket guide or booklet, and the Indigenous Language Identification Tool."[8]

[TEDS 1.7 and CBP Supplementary Language Access Plan, page 6, CBP Protocol for Identifying LEP Persons and Providing Services]

Recommendation 2. Personal Property and Effects - CRCL observed that in a number of cases, CBP did not provide an itemized inventory of the individual's personal property. The USBP Internal Operating Procedure, Personal Effects, Section 6.5.1. states: "Inventory of personal effects is performed in the presence of the detainee and with the presence of at least two BPAs, when operationally feasible. No itemized inventory of personal effects is needed unless at the discretion of the BPA, detainee, or supervisor (e.g., items of significant value)." Therefore, CRCL recommends that an itemized inventory of personal property items of significant value, (b)(5) be (b)(5) conducted (b)(5) (b)(5) (b)(5) **[TEDS 4.5, 5.3, 7.1, 7.2, 7.3, USBP Internal Operating Procedure, Personal Effects, Sections 6.1. and 6.5.1, dated April 15, 2021]**

Recommendation 3. Telephone Call Access - CRCL received numerous allegations that unaccompanied children did not receive proper access to the telephone. While onsite, CRCL observed that USBP does not consistently document in e3DM when unaccompanied children receive telephone access, and we are concerned that not all unaccompanied children are able to successfully contact a family member, guardian, or sponsor while in custody. Therefore, CRCL recommends that USBP consistently document an unaccompanied child's telephone usage in e3DM, the electronic system of record. **[TEDS 4.9]**

Recommendation 4. Shower Monitoring - CRCL observed that same-gender monitoring of the shower process at the soft-sided facility is not always operationally feasible and creates a situation for potential concerns if an individual in custody does not follow the agent's instructions or accuses an agent of voyeurism. Therefore, CRCL recommends that CBP consider expediting hiring under the "Shower Monitor and Caregiver Services" provision of the Statement of Work for Soft-Sided Facilities along the Southwest Border (Section 4.18.2) to provide same-gender observers on a more consistent basis. **[TEDS 4.3, 4.6, 4.15, 5.4, 5.5, 5.6]**

[8] CBP, "*Protocol for Identifying LEP Persons and Providing Language Services"* Step 2. Determine the language spoken by the LEP person., October 2017, p. 1.

Recommendation 5. Personal Property and Effects - CRCL observed that at the TCC CBP stored personal property on open shelving in the Sally Port area, not in a secure location. We understand that space limitations necessitate this practice. Therefore, when possible, CRCL recommends that the TCC store personal property "in a secure area with limited access" per the CBP Personal Effects Internal Operating Procedures, Section 6.6.1. (issued April 22, 2021). **[TEDS 7.2]**

Recommendation 6.	(b)(5)
(b)(5)	

VI. SUMMARY COMMENTS

This observer found the CBP staff to be professional and well versed in their policies and procedures. They expressed and demonstrated ownership of their challenges and solutions. It was evident that they have implemented a variety of processes to address the changing dynamics and growth of the migrant population held in CBP custody, and we encourage that approach to address the findings and recommendations of this report.

The comments and findings of this report were based upon the conditions known at the time of the onsite investigation. If surge conditions recur and result in significant changes to the numbers and length of time of individuals in custody these issues will likely become particularly acute.

Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

December 17, 2021

MEMORANDUM FOR: Raul L. Ortiz
Chief
U.S. Border Patrol
U.S. Customs and Border Protection

Tony L. Barker
Acting Deputy Chief
U.S. Border Patrol
U.S. Customs and Border Protection

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

William P. McKenney (b)(6)
Deputy Director, Compliance Branch
Office for Civil Rights and Civil Liberties

SUBJECT: Tucson Sector Onsite Investigation
CRCL Complaint Nos. 21-01-CBP-0064, 21-06-CBP-0278, 21-06-CBP-0290, 19-09-CBP-0453, 21-06-CBP-0343, 21-05-CBP-0222, 21-05-CBP-0242, 21-05-CBP-0265, 21-06-CBP-0324, 21-01-CBP-0061, 20-09-CBP-0794, 001547-21-CBP, 21-06-CBP-0277, 21-07-CBP-0356, and 21-07-CBP-0378

The U.S. Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) conducted an onsite investigation of select locations throughout the Tucson Border Patrol Sector from August 3-5, 2021. CRCL's onsite investigated complaints arising from the Tucson Coordination Center (TCC) and the Brian A. Terry (Naco), Nogales, Casa Grande, and Ajo Stations. CRCL visited the first three locations listed during the onsite. CRCL also had the opportunity to walk through the soft-sided facility, with a current capacity of approximately 500 unaccompanied children, located near the TCC. The purpose of the onsite investigation was to follow-up on CRCL's previous investigations in the Tucson Sector (in March 2008, February and August 2010, and May 2015). This onsite had two purposes. First, CRCL reviewed USBP's implementation of previous informal verbal recommendations provided by CRCL following its most recent onsite investigation in the Tucson Sector in May 2015. Second, CRCL investigated recent complaints related to U.S. Customs and Border Protection's (CBP's) general adherence to relevant CBP policies and

procedures regarding short-term custody within these aforementioned Border Patrol stations in the Tucson Sector.

As part of the investigation, CRCL engaged the assistance of subject-matter experts in the areas of conditions of detention and medical care in detention facilities to conduct a broad review of conditions and medical issues at the above-referenced CBP facilities. To assist with the review, the experts reviewed the stations' adherence to CBP National Standards on Transport, Escort, Detention, and Search (TEDS) (October 2015), DHS Language Access Plan (February 28, 2012), CBP Language Access Plan (November 18, 2016), CBP Supplementary Language Access Plan (February 7, 2020), CBP Directive No. 2130-031, Roles and Responsibilities of U.S. Customs and Border Protection Officers and Personnel Regarding Provision of Language Access (December 4, 2018), COVID-19, CBP Guidance for Leadership, Medical Officers, and Supervisors (multiple iterations), CBP Statement of Work for Medical Unit Facilities, CBP Directive No. 2210-004, Enhanced Medical Support Efforts, issued January 14, 2020, U.S. Border Patrol Implementation Plan for Enhanced Medical Support Efforts, issued June 4, 2020, and CBP Personal Effects Internal Operating Procedures, issued April 22, 2021 in the relevant areas.

CRCL's two subject-matter experts identified recommendations following their visits to the facilities, based upon staff interviews, visual observations, and a review of documents that included policies, procedures, training materials, and files of individuals in custody. On August 5, 2021, as part of the onsite closing discussions, CRCL and the two subject-matter experts discussed our findings with several members of the CBP Tucson Sector leadership team and the CBP Privacy and Diversity Office (PDO). Following the visit, on August 31, 2021, CRCL provided CBP with written informal preliminary findings and recommendations.

We greatly appreciated the cooperation and assistance provided by CBP leadership in Tucson, including Acting Patrol Agent in Charge (b)(6),(b)(7)(C), (b)(6),(b)(7)(C) from the Office of the Chief Medical Officer, (b)(6),(b)(7)(C) from the CBP Office of Chief Counsel, and CBP PDO staff (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C)

Enclosed with this memorandum are the reports prepared by our subject-matter experts. The experts have provided both Tucson 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 Tucson Border Patrol Sector:

Tucson Sector-wide Recommendations

Recommendation 1. Personal Property and Effects[1] **-** CRCL observed that in a number of cases, CBP did not provide an itemized inventory of the individual's personal property. The USBP Internal

[1] On September 8, 2021, CRCL issued a recommendations memorandum to CBP including six recommendations regarding the proper procedures and practices for documenting, storing, transferring, and returning (to them or to a third party) the personal property of individuals in CBP custody. CRCL is awaiting CBP's response to the recommendations memorandum. CRCL will provide a copy of this memorandum as a courtesy if CBP requests a copy.

Operating Procedure, Personal Effects, Section 6.5.1. states: "Inventory of personal effects is performed in the presence of the detainee and with the presence of at least two BPAs, when operationally feasible. No itemized inventory of personal effects is needed unless at the discretion of the BPA, detainee, or supervisor (e.g., items of significant value)." Therefore, CRCL recommends that an itemized inventory of personal property items of significant value, (b)(5) (b)(5) be (b)(5) conducted (b)(5) (b)(5)

Recommendation 2. Telephone Call Access – CRCL received numerous allegations that unaccompanied children did not receive proper access to the telephone. While onsite, CRCL observed that USBP does not consistently document in e3DM when unaccompanied children receive telephone access, and we are concerned that not all unaccompanied children are able to successfully contact a family member, guardian, or sponsor while in custody. Therefore, CRCL recommends that USBP consistently document an unaccompanied child's telephone usage in e3DM, the electronic system of record.

Recommendation 3. (b)(5)

(b)(5)

Recommendation 4. Medical Professional Staffing - The contractor (Loyal Source Government Services (LSGS)) reported challenges to CRCL related to understaffing resulting from a backlog of qualified applicants held up in DHS background check procedures. The USBP Implementation Plan for Enhanced Medical Support Efforts (June 4, 2020) has Surge and Crisis-level Medical Support (Annex X., pp. 15-16) provisions that could be used to prioritize background checks of medical professionals. In non-surge, non-crisis situations, the implementation plan (Section III.E.2.v., p. 3) states that USBP shall have contracted medical support staff at medical priority facilities along the Southwest Border. Therefore, CBP should prioritize increasing essential resources by expediting background checks for medical professionals recruited to meet the emerging and critical medical needs related to Enhanced Medical Support Efforts program at medical priority facilities along the Southwest Border.

Recommendation 5. Food - The stations we visited were constrained by a very limited supply of ready-to-eat snack food and meal options requiring minimal preparation and easy storage. All meals consist of a pre-made burritos warmed on a warmer with basic additional items including rice and fruit cups. USBP provides infant food items and baby formula for very young children. (Only the soft-sided facility provides a wider range of food choices). While these meals do provide adequate nutrition for a short detention period, the lack of at least a second meal option in the stations and the lack of better options for young children frequently leads to either food refusal or digestion problems, according to the medical contractor. Children arriving at Border Patrol stations are often nutritionally at risk and their health can decline quickly if their diet is not palatable or tolerated.

(b)(5)

(b)(5)

(b)(5) Reassessments of the nutritional effectiveness and tolerance of available meals should be made periodically.

Recommendation 6. COVID-19[2] **-** Our on-site investigation occurred roughly 18 months into a global COVID-19 pandemic and during the surge of the highly contagious Delta variant. Compliance with the mask requirements by both Border Patrol agents and individuals in custody was very high during our on-site investigation. USBP's short-term custody operations, with high volumes of individuals in custody and rapid turnover, combined with minimal medical contract services, have resulted in routine testing, cohorting, isolation, and quarantine not consistently occurring.[3] According to USBP, most individuals in USBP custody are tested for COVID-19 (not by USBP) upon exiting the Border Patrol stations en route to other detention facilities, HHS, or deportation. However, results of those outgoing tests are not typically shared with the Border Patrol station for contact tracing or other mitigation of those who may have been exposed, whether USBP personnel or other individuals in USBP custody.

Also, the medical contractor does not have a comprehensive COVID-19 infection prevention and control plan. Therefore, CBP should require the medical contractor at medical priority facilities[4] to develop and regularly update a comprehensive COVID-19 infection prevention and control plan for managing persons in CBP custody. The plan should be developed in consultation with public health experts who can provide guidance on adapting COVID-19 response recommendations to the unique law enforcement mission of the CBP. The plan should include guidance on contact tracing of persons in CBP custody who are high-risk close contacts of persons with known or suspected COVID-19. Public health and infectious disease management guidance should be issued under the "medical direction and oversight of" the CBP Chief Medical Officer as required by CBP policy and the LSGS contract.[5]

Recommendation 7. (b)(5)

(b)(5)

[2] On September 29, 2021, CRCL issued an expert recommendation cover memo and underlying expert report related to CBP's COVID-19 response. CRCL is awaiting CBP's response to those recommendations. CRCL will provide a copy of this expert recommendation cover memo and underlying expert report as a courtesy if CBP requests a copy.
[3] Prior cases of known positive COVID infections in individuals in CBP custody did lead to contact tracing and quarantining, at least among USBP staff, according to records reviewed on site.
[4] Medical priority facilities have been identified "using operational risk management methodology for enhanced medical support along the southwest border." *See* U.S. Border Patrol Implementation Plan for Enhanced Medical Support Efforts, issued June 4, 2020, Standard Operating Procedure Annex I, p. 6.
[5] *See* U.S. Border Patrol Implementation Plan for Enhanced Medical Support Efforts, issued June 4, 2020, Standard Operating Procedure Annex VIII, p. 14. In addition, under the *Contract for Enhanced Medical Support Statement of Work* (SOW), the medical contractor (LSGS) is required to develop and implement infectious disease protocols in coordination with the CBP Chief Medical Officer (SOW Section 3.1.4).
[6] *See* CBP Directive No. 2210-004, Enhanced Medical Support Efforts, issued January 14, 2020, and U.S. Border Patrol Implementation Plan for Enhanced Medical Support Efforts, issued June 4, 2020.

(b)(5)

TCC and Naco and Nogales Stations Recommendation

Recommendation 8. Medical Space - The Enhanced Medical Support Efforts program at medical priority facilities along the Southwest Border is a new function that was not anticipated when the existing brick and mortar facilities were designed and constructed. CRCL observed that existing medical space has been improvised out of limited existing space in the Border Patrol stations. Those spaces do not provide for adequate privacy, hygiene (i.e., no sinks in the rooms), or exam and desk space. Comparable detention standards (see citations) call for adequate space and equipment for medical examination and treatment "in private." (See 2019 DHS National Detention Standards, 4.3 II. B and National Commission on Correctional Health Care (NCCHC), Standards for Health Services in Jails, J-D-03). Therefore, CBP should collaborate with the CBP Chief Medical Officer and LSGS to determine building designs and modifications to remodel or build appropriate medical space to accommodate the new functions of the Enhanced Medical Support Efforts program at medical priority facilities along the Southwest Border. Modifications to the medical space must adequately support the Enhanced Medical Support Efforts program at medical priority facilities along the Southwest Border and should be made as soon as possible. NCCHC Compliance indicators for J-D-03 provide a good list of components to consider, but accommodations for privacy - both visual and auditory, exam space and table, desk space and a sink are essential.

TCC Recommendations

Recommendation 9. Language Access - CRCL observed that CBP did not document when professional interpretation services were unavailable at the TCC when CBP self-reported that interpretation services were not available for a one-month span of time and CBP did not find an alternative during that period. CRCL also observed that the TCC did not display the *I Speak Indigenous Language Identification Poster* developed by DHS CRCL near the telephone at the TCC. Therefore, CRCL recommends that CBP use the information and resources provided at OC Language Access – FAQs (dhs.gov) and in its Supplementary Language Access Plan (dated February 7, 2020). These resources encourage the display of the *I Speak Indigenous Language Identification Poster* developed by DHS CRCL (and it would make sense to display it near the telephone).[7] CRCL also recommends that CBP use the *CBP Protocol for Identifying LEP Persons and Providing Language Services* which states: "CBP employees can identify the primary language spoken or understood by the LEP individual:

A. When the LEP individual self-identifies their primary language;

B. When the LEP person's companion or an available document indicates their primary language;

C. Use of a contract language service provider; and/or

[7] CBP Supplementary Language Access Plan, February 7, 2020, p. 6.

D. Through use of the following job aids to assist individuals who are not proficient in English to identify their primary language: the "I Speak" poster, the "Habla?" poster for indigenous language, the "I Speak" pocket guide or booklet, and the Indigenous Language Identification Tool."[8]

Recommendation 10. Personal Property and Effects - CRCL observed that at the TCC CBP stored personal property on open shelving in the Sally Port area at the TCC, not in a secure location. We understand that space limitations necessitate this practice. Therefore, when possible, CRCL recommends that the TCC store personal property "in a secure area with limited access" per the CBP Personal Effects Internal Operating Procedures, Section 6.6.1. (issued April 22, 2021).

Recommendation 11. Confidentiality (Priority 1) - The default practice at the TCC facility is that medical exams are conducted with an agent present in the room. At the TCC, medication lists are posted on a white board visible through windows outside the medical office. Medical privacy and confidentiality are fundamental rights that must be accommodated "to the maximum extent possible" even in detention settings (see DHS National Detention Standards, 4.3 II. B and P, and NCCHC, Standards for Health Services in Jails, J-A-07, for example). (b)(5)

(b)(5)

Soft-sided Facility near the TCC Recommendation

Recommendation 12. Shower Monitoring - CRCL observed that same-gender monitoring of the shower process at the soft-sided facility is not always operationally feasible and creates a situation for potential concerns if an individual in custody does not follow the agent's instructions or accuses an agent of voyeurism. Therefore, CRCL recommends that CBP expedite hiring under the "Shower Monitor and Caregiver Services" provision of the Statement of Work for Soft-Sided Facilities along the Southwest Border (Section 4.18.2) to provide same-gender observers on a more consistent basis.

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 Senior Policy Advisor (b)(6) by telephone at (b)(6) or by email at (b)(6)

[8] CBP Protocol for Identifying LEP Persons and Providing Language Services, Step 2. Determine the language spoken by the LEP person., October 2017, p. 1.

Copy to:

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CRCL On-site Investigation Report

Medical Care

Customs and Border Protection
Tucson Sector

August 2-5, 2021

(b)(6) MD, FACP

~~Protected by the Deliberative Process Privilege~~

Introduction

This report responds to a request by the Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) to review and comment on the medical care provided to individuals in the custody of Customs and Border Protection (CBP) in the Tucson Sector. My opinions are based on the materials provided and reviewed in advance and during the on-site investigation of the facilities on August 2-5, 2021. Facilities inspected included the Tucson Coordination Center (TCC), the Brian A. Terry Station, Nogales Station, and the soft-sided facility in Tucson. The Enhanced Medical Support Efforts Program is staffed by a contractor, Loyal Source Government Service, at all of the facilities we visited. My opinions are expressed to a reasonable degree of medical certainty. Tucson Sector CBP and contract personnel were most pleasant and cooperative during the investigation.

Expert Qualifications

1.

2.

3.

(b)(6)

4.

~~*Protected by the Deliberative Process Privilege*~~

5.

(b)(6)

6.

Methods of Review

In advance of the on-site investigation, I reviewed documents provided by CRCL. During the investigation, I participated in tours of the facilities including hold rooms and the medical clinic; reviewed documents and medical records; and interviewed staff. This investigation did not involve interviews with individuals in custody.

In addition to case specific documents related to complaints in the retention memo, I reviewed the following documents among others:

1. CBP National Standards on Transport, Escort, Detention, and Search, October 2015
2. CBP Job Hazards Analyses and PPE Assessments: Exposure to SARS-CoV-2 (multiple iterations)
3. COVID-19, CBP Guidance for Leadership, Medical Officers, and Supervisors (multiple iterations)
4. CBP Statement of Work for Medical Unit Facilities
5. U.S. Border Patrol, Implementation Plan for Enhanced Medical Support Efforts, issued June 4, 2020
6. Office of Field Operations, Implementation Plan for Enhanced Medical Support Efforts (undated)
7. Management Assurance Review Protocol for Enhanced Medical Support, February 2021, CBP Management Inspections Division
8. CBP Management Inspections, Directive No. 1420-009C, December 7, 2020
9. CBP Memorandum on Interim Infectious Disease Guidelines, October 18, 2005 issued from Chief, USBP to all Sector Chief Patrol Agents
10. Interview of CBP Chief Medical Officer, Dr. David A. Tarantino
11. Significant incident reports, medical records, and CBP documents related to Complaints submitted to CRCL
12. Centers for Disease Control and Prevention Guidance on COVID-19
13. U.S. Pandemic and Emerging Infectious Diseases Plan (PEID Plan) Undated
14. CBP Tucson Sector, Operational Exposure and Response Risk Mitigation Procedure, Novel Coronavirus (COVID-19) Interim Guidance, April 21, 2020

Overview

In response to a perceived need for additional medical support for CBP detention operations, CBP has launched an Enhanced Medical Support Efforts program that involves placing mid-level medical practitioners at Border Patrol stations (those designated as medical priority facilities) along the Southwest border[1] to provide basic on-site assessment, triage, and care. The contract for the Tucson Sector is staffed by Loyal Source Government Services (LSGS).

While the medical program is relatively new, contract medical staff were present on-site at all facilities visited. According to interviews with key personnel on-site, staffing is not yet at target for these medical programs at medical priority facilities owing to delays on background clearances required for deployment of new staff.

Basic medical screening involving a standardized medical screening form administered by licensed medical personnel, triage and when necessary referral for outside care, basic medical care on-site, and access to medications were observed at all sites. The medical programs also have basic stock of commonly used medications and supplies on-hand.

U.S. Border Patrol's (USBP) medical program has also only recently launched a basic electronic medical record that was being used in the facilities visited.

Findings

The medical contractor, LSGS, had staff deployed at all facilities visited. Medical staff consist of mid-level health-care professionals (Nurse Practitioners and Physicians Assistants) who are backed up by remote supervising and on-call physicians. Medical staff are available to screen new arrivals using a standard screening form (Form 2500) and they subsequently perform an intake history and exam on a standardized form. They have a stock of basic medical supplies and basic medications on-site and are able to write prescriptions that are typically filled locally within 4-6 hours. Prior to on-site medical staffing, many individuals in custody were sent to local emergency rooms just to get prescriptions for their chronic or acute medical conditions. This new Enhanced Medical Support Efforts program has resulted in a dramatic decrease in emergency room trips from the Border Patrol stations. The medical staff are also able to address, triage, and treat simple acute medical conditions that develop during an individual's time in detention. In discussions with CBP and LSGS contractors on-site, it was revealed that staffing of this new medical operation was below the target staffing level owing to a backlog in background checks for newly recruited staff.

Initial basic medical screening takes place in the Sally Port of the facilities, but all subsequent care including a more complete medical intake and ongoing care take place in designated medical space. In all cases except the soft-sided facility, medical space was adapted from

[1] U.S. Border Patrol, Implementation Plan for Enhanced Medical Efforts Directive, issued June 4, 2020, p. 3.

existing space in Border Patrol stations that were not originally designed to serve as medical space. Consequently, medical space in the Border Patrol stations we visited frequently lacked basic elements of medical space including a sink, proper exam table, proper desk and workspace for health professionals, and visual and auditory privacy for the medical interview and/or exam.

The medical operation is a relatively new element to these Border Patrol stations. CBP expressed appreciation for the presence of the medical contractor and viewed the program as a valuable asset to the work of CBP. At the same time, Border Patrol agents have not historically worked with a medical operation within the station and are not always fully aware of the medical confidentiality standards that apply to medical interviews and exams. Much of the medical work is done with a Border Patrol agent present in the room. (b)(5)

(b)(5)

Food is provided by a local contractor, and food options are constrained by the lack of kitchen resources or a full dietary program. Foods must be easy to store and prepare and locally available. At the same time, the stations are increasingly detaining families with small children.

(b)(5)

While COVID-19 is well documented within the Tucson Sector, COVID testing and vaccination are not part of the medical program. Some testing is performed by another agency prior to transfer or release, but those results are not shared back with CBP for purposes of contact tracing or even basic surveillance regarding prevalence. Border Patrol agents were near full compliance with basic hygiene and mask wearing during our inspection.

There appeared to be no comprehensive COVID-19 plan for CBP in the Tucson Sector at the time of our investigation. CBP did provide COVID-19 related documents (including COVID-19, CBP Guidance for Leadership, Medical Officers, and Supervisors and CBP Job Hazards Analyses and PPE Assessments: Exposure to SARS-CoV-2 multiple iterations – these documents mostly focusing on workforce protection and management) and made reference to CDC guidelines, but over a year and a half into the global pandemic, there did not appear to be a comprehensive COVID-19 plan covering individuals in custody and Border Patrol agents.

(b)(5)

Retention Memo Complaints Reviewed

1. **21-06-CBP-0278** involved an allegation of inadequate medical care for diarrhea in a three-year-old unaccompanied minor during a 13-day detention at the TCC. This complaint is partially substantiated in that facility records show that the child was identified as being sick on intake to the facility and evaluated by medical, but there were no documented follow up visits with the child for the remainder of the detention period. It is noted that this incident

occurred before the Enhanced Medical Support Efforts program had deployed the current contractor and before the electronic medical record system had been deployed.

2. **21-06-CBP-0290** involved an allegation of failure to provide access to medical to a 16-year-old unaccompanied minor held at the TCC who allegedly suffered injuries from a cactus spine prior to apprehension. A June 5, 2019 medical screening form completed at the TCC does not note any injury or complaint of injury; the exam described the child's skin as warm and dry. No injuries or wounds are noted. This complaint is not substantiated.

3. **21-01-CBP-0061** alleged that an unnamed adult in CBP custody who appeared ill was transported from Brian A. Terry Station to a local hospital where he tested positive for COVID-19 after which he was processed for removal and expelled through the Douglas Port of Entry. Documents provided state that Mexican Immigration officials at the Douglas Port of Entry were advised of the COVID-19- positive status of this individual. The facts alleged in the complaint are sustained and emphasize the need for a CBP-specific COVID-19 plan including screening, isolation, quarantine, testing, and education elements.

4. **20-09-CBP-0794** alleged that an adult held in CBP custody at Nogales Station was processed and given a COVID test and then processed for removal and expelled before the test result, allegedly positive, was returned. The facts alleged in the complaint are sustained and emphasize the need for a CBP-specific COVID-19 plan including screening, isolation, quarantine, testing, and education elements.

5. **21-06-CBP-0343** alleged that a 17-year-old unaccompanied minor was informed that he had been exposed to a confirmed case of COVID-19 and he was quarantined with eight other individuals. Documentation provided does not provide any information regarding exposure to COVID-19 or quarantine. The facts alleged in the complaint emphasize the need for a CBP-specific COVID-19 plan including screening, isolation, quarantine, testing, and education elements.

6. **21-06-CBP-0324** involved the death of an individual in custody who was apprehended on September 30, 2020, treated in the field for dehydration and, when he refused referral to an emergency room, was transported to the TCC for further processing. On arrival to the TCC, medical personnel determined that the individual required further treatment and referred him to a local hospital where he ultimately died from organ failure secondary to dehydration. Review of the Significant Incident Report documents timely and appropriate care.

Medical Recommendations for the Tucson Sector

The Enhanced Medical Efforts Support program has been deployed in the three Border Patrol stations (TCC, Brian A. Terry, and Nogales) and the Tucson soft-sided facility with near full-time integrated presence of contract medical personnel including nursing and mid-level medical providers supported by on-call physicians. This program is expanding, and it has been well-coordinated with existing CBP operations at those stations. As the Enhanced Medical Support Efforts program is new, there are no DHS standards yet, so recommendations will reference the USBP Implementation Plan for Enhanced Medical Support Efforts, issued June 4, 2020, and

refer to other well-established detention health standards for context and reference.

With the understanding that this is a new initiative still in relatively early deployment, I offer the following findings and recommendations:

1. **Medical professional staffing:** The contractor (LSGS) reported challenges to CRCL related to understaffing resulting from a backlog of qualified applicants held up in DHS background check procedures. The USBP Implementation Plan for Enhanced Medical Support Efforts (June 4, 2020) has Surge and Crisis-level Medical Support (Annex X., pp. 15-16) provisions that could be used to prioritize background checks of medical professionals. In non-surge, non-crisis situations, the implementation plan (Section III.E.2.v., p. 3) states that USBP shall have contracted medical support staff at medical priority facilities along the Southwest Border.

   PERFORMANCE does not meet the USBP Implementation Plan for Enhanced Medical Support Efforts goals regarding necessary staffing for the medical priority facilities along the Southwest Border nor the combined surge in arrivals and ongoing public health crisis demands.

   Recommendation: CBP should prioritize increasing essential resources by expediting background checks for medical professionals recruited to meet the emerging and critical medical needs related to Enhanced Medical Support Efforts program at medical priority facilities along the Southwest Border.

2. **Medical Space:** The Enhanced Medical Support Efforts program at medical priority facilities along the Southwest Border is a new function that was not anticipated when the existing brick and mortar facilities were designed and constructed. CRCL observed that existing medical space has been improvised out of limited existing space in the Border Patrol stations. Those spaces do not provide for adequate privacy, hygiene (i.e., no sinks in the rooms), or exam and desk space. Comparable detention standards (see citations) call for adequate space and equipment for medical examination and treatment "in private." (See 2019 DHS National Detention Standards, 4.3 II. B and National Commission on Correctional Health Care (NCCHC), Standards for Health Services in Jails, J-D-03).

   PERFORMANCE the existing medical space at the TCC and Brian A. Terry and Nogales Stations do not meet reasonable (detention) standards for adequate design and equipment within the medical space.

   Recommendation: CBP should collaborate with the CBP Chief Medical Officer and LSGS to determine building designs and modifications to remodel or build appropriate medical space to accommodate the new functions of the Enhanced Medical Support Efforts program at medical priority facilities along the Southwest Border. Modifications to the medical space must adequately support the Enhanced

Medical Support Efforts program at medical priority facilities along the Southwest Border and should be made as soon as possible. NCCHC Compliance indicators for J-D-03 provide a good list of components to consider, but accommodations for privacy - both visual and auditory, exam space and table, desk space and a sink are essential.

3. **Confidentiality:** The default practice in the TCC facility is that medical exams are conducted with an agent present in the room. (b)(5)

(b)(5)

(b)(5)

Recommendation (Priority 1): (b)(5)
(b)(5)
(b)(5) **Border Patrol agents should only be present** (b)(5) **when**
(b)(5)
(b)(5) **it is absolutely necessary, based on reasonable safety concerns.**

4. **Food:** The stations we visited were constrained by a very limited supply of ready-to-eat snack food and meal options requiring minimal preparation and easy storage. All meals consist of a pre-made burritos warmed on a warmer with basic additional items including rice and fruit cups. USBP provides infant food items and baby formula for the children. (Only the soft-sided facility provides a wider range of food choices). (b)(5)

(b)(5)

(b)(5) Children arriving at Border Patrol stations are often nutritionally at risk and their health can decline quickly if their diet is not palatable or tolerated.

(b)(5)

Recommendation: The goal of food provision is to provide nutritionally adequate and appealing food within the constraints of the facility, food contractor, and local market limitations. (b)(5)

(b)(5)

(b)(5) **Reassessments of the nutritional effectiveness and tolerance of available meals should be made periodically.**

5. **COVID-19:** Our on-site investigation occurred roughly 18 months into a global COVID-19 pandemic and during the surge of the highly contagious Delta variant. Compliance with the mask requirements by both Border Patrol agents and individuals in custody was very high during our on-site investigation. Prior cases of known positive COVID infections in individuals in CBP custody did lead to contact tracing and quarantining, at least among USBP staff, according to records reviewed on site. USBP's short-term custody operations, with high volumes of individuals in custody and rapid turnover, combined with minimal medical contract services, have resulted in routine testing, cohorting, isolation, and quarantine not consistently occurring. According to USBP, most individuals in USBP custody are tested for COVID-19 (not by USBP) upon exiting the Border Patrol stations en route to other detention facilities, HHS, or deportation. However, results of those outgoing tests are not typically shared with the Border Patrol station for contact tracing or other mitigation of those who may have been exposed, whether USBP personnel or other individuals in USBP custody. The medical contractor does not have a comprehensive COVID-19 infection prevention and control plan.

   PERFORMANCE does not meet CBP Guidance for Leadership, Medical Officers, and Supervisors nor best practices in COVID-19 mitigation in detention facilities (See CDC Guidance for Detention and Correctional Facilities).

   Recommendation: CBP should require the medical contractor at medical priority facilities to develop and regularly update a comprehensive COVID-19 infection prevention and control plan for managing persons in CBP custody. The plan should be developed in consultation with public health experts who can provide guidance on adapting COVID-19 response recommendations to the unique law enforcement mission of the CBP. The plan should include guidance on contact tracing of persons in CBP custody who are high-risk close contacts of persons with known or suspected COVID-19. Public health and infectious disease management guidance should be issued under the "medical direction and oversight of" the CBP Chief Medical Officer as required by CBP policy and the LSGS contract.[2]

6. (b)(5)

Recommendation: (b)(5)

(b)(5)

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[2] *See* U.S. Border Patrol Implementation Plan for Enhanced Medical Support Efforts, issued June 4, 2020, Standard Operating Procedure Annex VIII, p. 14. In addition, under the *Contract for Enhanced Medical Support Statement of Work* (SOW), the medical contractor (LSGS) is required to develop and implement infectious disease protocols in coordination with the CBP Chief Medical Officer (SOW Section 3.1.4).

[3] *See* CBP Directive No. 2210-004, Enhanced Medical Support Efforts, issued January 14, 2020, and U.S. Border Patrol Implementation Plan for Enhanced Medical Support Efforts, issued June 4, 2020.

(b)(5)

These corrective measures will require monitoring to ensure they adequately address these necessary medical enhancements.

REPORT FOR THE U. S. DEPARTMENT OF HOMELAND SECURITY

OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES

CONDITIONS OF DETENTION EXPERT'S REPORT

February 11-14, 2020

Investigation regarding

YUMA BORDER PATROL STATION

Yuma, Arizona

Complaints reviewed in this report include the following:

CRCL Complaint No.

19-04-CBP-0137, 19-06-CBP-0757, 19-06-CBP-0758, 19-06-CBP-0759, 19-07-CBP-0760, 19-07-CBP-0761, 19-08-CBP-0762, 19-08-CBP-0764, 19-08-CBP-0766, 19-08-CBP-0472, 19-09-CBP-0475, 19-09-CBP-0767, 19-09-CBP-0421, 19-09-CBP-0398, 19-09-CBP-0516, 19-09-CBP-0768, 19-09-CBP-0483, 19-09-CBP-0481, 19-09-CBP-0474, 19-09-CBP-0769, 19-10-CBP-0770, 19-10-CBP-0773, 19-10-CBP-0771, 19-09-CBP-0774, 19-12-CBP-0776 and 20-02-CBP-0135

Prepared by:

(b)(6) MAS

Rocklin, CA

July 23, 2020

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YUMA BORDER PATROL STATION

I. PURPOSE AND SUMMARY OF INVESTIGATION

The U.S. Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) conducted a February 11-13, 2020 onsite investigation at the United States Border Patrol (USBP) Yuma Station (Yuma Station) and the station's soft-sided facilities that were constructed in June 2019 to address the influx of illegal entries in the Yuma, Arizona region. The investigation was based on 26 complaints that were deemed representative of issues identified in 432 complaints that were received by CRCL in FY19. The 432 complaints represented over a 600 percent increase from 71 complaints that CRCL received in FY17. The purpose of this CRCL investigation was not to investigate each of the 26 complaint allegations; rather, the investigation looked more generally into conditions and other issues raised in the representative complaints. As CRCL's Conditions of Confinement Expert, the primary scope of my investigation included family separation, hold room conditions and time in custody for families and unaccompanied alien children (UAC) at the Yuma facilities; however, I additionally reviewed property, health intake screening and medical care processes and procedures, record-keeping, telephone access, personal property, and information technology access and system functionality. Neither the scope of the investigation nor my findings include the San Luis Port of Entry (POE) [1], which we also toured during the onsite, on February 13.

During the course of my investigation with CRCL staff I reviewed records; interviewed USBP leadership and line staff; interviewed contract medical staff; observed intake operations; inspected hold room conditions and property storage areas; and inspected the medical room where alien vital signs are taken, medication is managed and administered, and aliens' medical conditions and medication needs are tracked. I also viewed USBP's "e3 Detention Module" (e3) information system's technology functionality, including as it relates to UAC and family separation information and tracking capability. I also conducted several post site conference calls with USBP Headquarters (HQ) staff, to discuss the e3 information technology interoperability capability between USBP sectors and stations, USBP HQ leadership, U.S. Customs and Border Protection Office of Field Operations (CBP OFO), ICE Enforcement and Removal Operations (ERO), and the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR). I appreciated the cooperation and assistance provided by Yuma USBP staff and contract medical staff at the Yuma Station and the soft-sided facilities during the onsite.

To examine the complaint allegations, this investigation focused on Yuma USBP's adherence to the CBP National Standards on Transport, Escort, Detention and Search (TEDS, 2015). Through this review, I found operational deficiencies related to some complaint allegations. Accordingly, this report contains observations and recommendations to address the identified deficiencies in relation to TEDS requirements, my correctional experience, and recognized correctional standards including those published by the American Correctional Association (ACA).

[1] Complaint 20-02-CBP-0135 relates to the Port of Entry which is not part of this Report.

II. PROFESSIONAL EXPERTISE

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III. RELEVANT STANDARDS, POLICIES, DIRECTIVES AND MEMORANDUM

The TEDS standards currently apply to the Yuma USBP station and the soft-sided facilities. The facilities were covered by these standards during the entire period relevant to this investigation. Consequently, I relied on TEDS when looking at the specific allegations regarding facility conditions and operations. Additionally, I considered the Trafficking Victims Protection Reauthorization Act (TVPRA); CBP Juvenile Coordinator Roles and Responsibilities (January 2017); the Department of Homeland Security Language Access Plan (February 28, 2012); USBP Memorandum, "MedPAR and Pharmacy Benefits for Aliens in Border Patrol Custody" (January 29, 2014); USBP Memorandum, "Hold Rooms and Short-Term Custody" (June 02, 2008); CBP Directive No. 2210-004, "Enhanced Medical Support Efforts"(December 30, 2019); CBP Executive Director Memorandum, Privacy and Diversity Office, "CBP Language Access Directive" (February

25, 2019); and, CBP Directive No. 2130-031," Roles and Responsibilities of U.S. Customs and Border Protection Office and Personnel regarding Provision of Language Access" (December 4, 2018).

IV. FACILITY BACKGROUND AND POPULATION DEMOGRAPHICS

The Yuma Station and soft-sided facilities are in the USBP Yuma Sector, in Yuma, Arizona, and are under the jurisdiction of the USBP. The Yuma Station is designated as a 72 hour-holding facility.

V. REVIEW PURPOSE AND METHODOLOGY

The purpose of this onsite was to examine the specific complaint allegations, as well as to identify other potential areas of concern in facility operations. I was also tasked with reviewing facility policies and procedures. As part of this review, I examined a variety of documents prior to and during the onsite; along with CRCL staff, I observed operations when onsite at the Yuma Station and soft-sided facility on February 11-12, 2020; and I interviewed the Yuma staff and leadership, and contract medical staff. With assistance from CBP HQ staff in Washington, DC, I also conducted several post site conference calls with USBP HQ staff, CBP OFO, ERO, and HHS ORR, to discuss the e3 information technology interoperability capability between USBP sectors and stations and these agencies.

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

- Reviewed 26[2] CRCL complaints alleging inferior conditions of confinement and inappropriate family separations
- Reviewed TEDS (2015):
    - General Standards
    - Transport and Escort
    - Searches of Individuals
    - Secure Detention Standards
    - At-Risk Populations
    - Sexual Abuse Victimization
    - Personal Property
    - Definitions
- 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 "

[2] *Complaint 20-02-CBO-0135 relates to the Port of Entry which is not part of this Report.*

- Reviewed USCBP *Reno v. Flores* Compliance Memorandum (October 16, 2015)
- Reviewed Trafficking Victim Protection Reauthorization Act
- 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 02, 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

While at the Yuma USBP Station and soft-sided facilities on February 11-12, 2020, and post-onsite, I did the following:

- Toured and inspected the Yuma Station, which is designated as a 72 hour-holding facility, and the soft-sided facilities
- Interviewed USBP staff
- Interviewed contract medical staff
- Reviewed UAC and alien files (electronically)
- Reviewed TEDS
- Inspected Sexual Assault Prevention and Intervention posters
- Reviewed e3 system components
- Reviewed training curriculum
- Reviewed recreation access (station and soft-side facilities)
- Met with various USBP staff during the course of the review
- Inspected property rooms at each location
- Conducted telephonic interviews (onsite and post) related to information technology system e3 interoperability with HHS/ORR.

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" refers to an allegation that was investigated and determined not to have occurred.

VI. SUMMARY OF FINDINGS

TIME IN CUSTODY

On February 11, 2020 there were 233 aliens in custody at the Yuma Station and soft-sided facilities. There were 34 single adults, 195 members of family units (FMUA), and 4 unaccompanied alien children (UAC). 19 single adult aliens (56%) were in USBP custody over 72 hours. One adult alien was in custody over 240 hours. 150 FMUA members (77%) were in

custody over 72 hours. 33 FMUAs (17%) were in custody over 240 hours. 3 of the UACs (75%) in custody had been there over 240 hours. Approximately 74% of all aliens in custody on February 11 had exceeded the 72-hour hold limitation.

The time-in-custody increases are significant, given that Yuma Sector apprehensions decreased from 4,619 in January 2019 to 560 in January 2020: an 87% reduction. In May 2019, USBP processed a record number of aliens at the Yuma Station (14,000). The significant increase placed a strain on their available resources and staff, and very likely is directly related to the significant increase in complaints received by CRCL involving the Yuma Station and soft-sided facilities from 71 complaints in FY17, to over 432 in FY19. It is my expert opinion that USBP personnel and contract staff at the Yuma Station were doing their best to accommodate the limited space, as well as the feeding, clothing, and hygiene needs created by the extreme increase in the alien population in custody at these facilities. The Yuma Station has eight hold rooms, which have not been rated for occupant capacity by the Fire Marshal. The station also has three isolation rooms that can be used for holding aliens. (All three were empty during the CRCL investigation.) There are also three interview rooms. The soft-sided facilities, which added four separate alien housing structures and two separate male and female shower structures, each with 18 shower stalls, was not activated until the end of June 2019, which was when the alien population began decreasing.

Based on complaints and discussions with staff while onsite, during the period of extreme alien population levels in 2019, the Yuma Station would have significantly exceeded hold room occupancy capacity if the capacity had been established. While none of the hold rooms appeared to exceed occupancy capacity (if the capacity had been established) during the 2020 Yuma onsite investigation, 74% of the single adult, FMUA, and UAC populations in custody at the two Yuma facilities had exceeded 72-hour holds according to the records I reviewed. These 72-hour hold facilities are not designed for long-term custody. The extensive periods of time that aliens remain in custody at these facilities creates significant problems for the USBP personnel responsible for operating the two facilities. When aliens remain in hold rooms for periods of time beyond short processing (48-72 hours) constitutional conditions of confinement as well as other legal and policy violations arise.

The Yuma Station's and the soft-sided facilities' lengthy hold times are not related to processing time. Moreover, excessive time in custody is not due to USBP neglect. Rather, the two most significant factors contributing to the excessive hold times at the two Yuma facilities are HHS/ORR's limited placement capacity, and additional time added when aliens claim asylum and must undergo the processes and procedures required by The Prompt Asylum Claim Review (PACR) program. As a result of those two factors, Yuma USBP has been forced to accept the circumstances, which includes excessive amounts of time in custody.

FINDINGS

- Yuma has violated the Time in Custody hold time restrictions for juvenile and adult aliens is **substantiated**.

RECOMMENDATIONS

- (b)(5)
- (b)(5)
- (b)(5)
- Yuma USBP should ensure that aliens (b)(5) (b)(5) be moved (b)(5) where appropriate bedding can be provided to ensure compliance with TEDS requirements.

ENVIRONMENTAL CONDITIONS

The CRCL complaints include allegations that, during surge periods, the Yuma Station hold rooms were overcrowded and dirty, that showers were not readily available, and that all aliens, including families and UAC had to sleep on the cement ground at times with only a mylar blanket. During the CRCL onsite, Yuma Station leadership confirmed that the number of adults and children in custody during the surge often far exceeded the number that should be housed in the hold rooms and would exceed room capacity levels had the capacity been established. The General Services Administration (GSA) is responsible for the Station's and soft-sided facility's maintenance via a janitorial contract. (b)(5)

(b)(5)

Neither the station hold rooms or the soft-sided structure contained any form of beds. FMUAs and UAC in the soft-sided structure were observed to have sleeping mats and a silver mylar blanket for sleeping on the floor. Single adults in the station's hold rooms were observed with only mylar blankets. When the hold rooms are overcrowded beyond capacity there is not enough floor space to provide aliens with sleeping mats because the mats take up substantial space. However, a court recently found that it is unacceptable not to provide appropriate bedding when aliens are detained over 48 hours.

During the onsite, we observed that the playpens being used for infants and toddlers in the soft-sided facility were extremely dirty and obviously not being cleaned or sanitized. Further, the playpens were not designed for industrial or day care use as the cloth covers could not be removed for necessary daily washing and sanitizing; therefore, presenting a health risk to the infants and toddlers in custody. Additionally, the tables holding snacks also had used baby bottles sitting on them that contained baby formula or milk. The length of time those bottles had been sitting there was unknown which poses an additional health danger. Moreover, the bottles were easily accessible to the numerous children who were freely playing and moving around the area and thus presenting further serious health risks.

COMPLAINT FINDINGS

- Based on onsite staff interviews confirming reported alien surge numbers and conditions during the surge, complaints alleging that hold rooms were severely overcrowded, exposing aliens to unsafe conditions is **substantiated.**
- **(b)(5)**

NEW FINDINGS:

- Play Pens used for young infants and toddlers were dirty, and in need of replacement with a model that can be cleaned and sanitized regularly.

RECOMMENDATIONS

- The Yuma Sector should have the Fire Marshal determine and approve alien occupancy numbers in both the station holding rooms and the soft-sided facilities. Those approved occupancy levels should be posted and easily viewable to the station's leadership and agents. Under no circumstances should the maximum occupancy rate, as set by the fire marshal, be exceeded as mandated by TEDS standards.
- To prevent unsanitary conditions and the spread of contagious diseases that could be deadly, occupancy numbers in the hold rooms and soft-sided structure should not exceed the approved capacity.
- **(b)(5)**
- To prevent children from spreading germs and protect them from illness, Yuma USBP should replace the existing playpens with appropriate equipment that can be easily cleaned and sanitized. Cleaning and sanitization should occur daily and when needed, in compliance with TEDS requirements.
- To prevent children from spreading germs and protect them from illnesses, USBP personnel should take necessary precautions to ensure that used bottles with milk or formula will not be accessible to other mothers and children in custody.

PERSONAL HYGIENE AND CLOTHING

The complaints alleged a lack of personal hygiene and clothing supplies during the surge period. Reportedly, Yuma USBP had difficulty keeping an adequate supply of personal hygiene items and clothing to support the needs of the constant surge populations. Commonly, supplies of various items would run out, but USBP personnel staff continually made trips to local stores to procure or replenish the needed items; on occasion, multiple trips were made throughout the day. While onsite the investigation team observed an adequate supply of personal hygiene items at the Yuma Station and soft sided facilities, including: toothbrushes, tooth paste, soap, female sanitary supplies, diapers, diaper wipes, deodorant, and shampoo. Also observed was an adequate supply of adult and children's clothing and shoes in different sizes at each facility.

FINDINGS

- Complaints alleging that hygiene resources and clothing supplies were not consistently available due to the significant numbers of aliens in custody during the 2019 surge is **substantiated.**

RECOMMENDATIONS

- USBP should develop an emergency contingency plan that addresses the need for additional personal hygiene and clothing suppliers in the event of a surge when the population numbers exceed the resources available from local suppliers. This will better ensure the detained population has the personal hygiene supplies and clothing necessary to support basic human needs in compliance with TEDS requirements.

FOOD

The investigated complaints alleged insufficient food supplies during the surge period. The Yuma USBP staff confirmed that adequate food resources were not available at times due to the significant number of aliens being apprehended and detained. Yuma was scrambling during this period to ensure adequate food was being provided. Reportedly, Yuma agents were constantly picking up huge fast food orders within the Yuma community, which was sometimes exceeding the fast food restaurants' abilities to provide it. At the time of the onsite investigation, food contracts were in place to support the detainee population at the Yuma station and soft-sided facilities. The food contractors are currently providing daily breakfast and dinner, which are hot meals, and a sack lunch. Snacks, formula and juice are also provided for minors and were observed to be easily accessible. In summary, there currently appears to be adequate food quantities available for the alien population numbers.

FINDINGS

- The allegations that Yuma USBP did not have an adequate supply of food available to feed the number of aliens during the surge period is **substantiated.**

RECOMMENDATIONS

- Yuma Sector leadership should develop an emergency contingency plan that includes additional food contractors in the event of another surge that strains the current food contractor's supply capabilities to ensure compliance with TEDS standards.

UAC EXCESSIVE HOLD TIMES

While onsite, we learned that Yuma USBP's hold times for UACs is dependent on HHS/ORR bed availability. The excessive hold times alleged in numerous complaints involving UACs in custody at Yuma was reportedly due to the lack of ORR beds during the 2019 influx; however, we learned during the onsite that ORR's UAC placement designation processes continue to impact excessive UAC holds. USBP makes an initial UAC placement request to ORR, which creates a record of the date and time the request was made. The records I reviewed while onsite at Yuma demonstrate that USBP's UAC placement requests are timely being made and submitted electronically through the ORR portal. According to Yuma USBP, who explained the process onsite, ORR intake specialists review and process the placement requests that arrive through the portal. However, USBP also reported that ORR's placement assignments, for any UAC other than 14-17-year-old males, will most likely experience a delay due to ORR's limited shelter options. For instance, Yuma personnel explained that pregnant UACs will commonly experience significant placement delays due the ORR's extremely limited shelter options available to meet a pregnant minor's specific needs, including pre-natal care. Yuma personnel stated that such individual cases are treated in an ad hoc manner and there is not a specific procedure established for USBP to work with ORR on special cases. Limited ORR bed availability for UACs reportedly impacts all USBP sectors.

FINDINGS

- Some UAC remain detained at the Yuma Station for longer than 72 hours, in violation of the TVPRA, and TEDS standards. The lack of ORR bed space available for UACs causes delays in in USBP's ability to transfer custody to ORR, which results in Yuma hold times that exceed TEDs mandates. The allegations that lack of ORR UAC bed availability creates excessive holding times in Yuma USBP custody are **substantiated.**

RECOMMENDATIONS

- USBP and DHS HQ should work with HHS/ORR to ensure UAC bed/placement capacity and shelter options are expanded and readily available during high apprehension seasons, to diminish the excessive hold times that are commonly occurring in Yuma. Retaining UAC and families beyond 72 hours is a violation of the TVPRA and TEDS requirements and can expose USBP and DHS to litigation.

INFORMATION TECHNOLOGY

There are five information technology systems utilized for managing and tracking aliens. The e3 system has separate modules that allow USBP to capture detained biographic data

apprehension data, biometric data, track detention status and prosecution referral information. OFO utilizes the SIGMA information system to process inadmissible applicants for admission into the United States. ERO's EARM case management system records custody decisions, detention, and removal specifics in an alien's personal detention record. The Enforcement Integrated Database (EID) is a shared data repository for storing law enforcement information from CBP's e3 and SIGMA systems and ICE's EARM system on aliens apprehended and detained, as well as family units and family separations. The Unaccompanied Alien Children (UAC) Portal is the HHS/ORR database which tracks information related to juveniles in ORR's custody. These systems are not fully integrated, nor do they have full interoperability. This is a critical deficit which can result in the failure to accurately record and track family units (FMUAs) and family groups which can lead to family separations and family reunification failures.

While onsite, CRCL staff and I interviewed the Special Operations Supervisor (SOS) at length. He identified several issues with e3. The problems include: 1) Lack of sufficient bandwidth to support the data systems used which creates processing delays and contribute to input errors. Current entry transactions can take up to 1 ½ minutes which should take seconds. The SOS reported that a data project is currently in process to increase the bandwidth which should resolve the data processing time. 2) e3 does not have the capability to allow users to go back in history. This can be important to conditions of confinement allegations. One example is found in a conditions of confinement allegation that hold rooms were overcrowded. The e3 history could provide data to exactly determine how many aliens were held in the specific hold room compared to the authorized capacity, demonstrating the e3 history can be essential to the investigation, while the lack of that history can place the USBP at risk of litigation. 4) Each supervisor on each shift completes an amenity (facility) report and logs the results in the e3 system. The supervisors must manually record status checks of temperatures and other standardized items and then record the results into the e3. A significant time-saver would be to issue tablets that were electronically linked to e3, that could be uploaded, which would eliminate the two-step manual recording process. During heavy processing times this could save valuable staff time and increase the data accuracy by eliminating human error potential when supervisors transfer the manual data into the e3. 5)

When FMUAs and family groups, transfer from OFO into USBP custody, SIGMA lacks interoperability with e3 to electronically transfer the OFO data. This creates the potential to lose critical family linkage information and can result in unnecessary family separations. 6) If the family information is not entered or entered incorrectly on the parent or child's I-213, the family linkage is also not accurate which can further result in family separations. 7) EARM also does not auto populate family member data from e3 which can also cause errors in family linkage information.

FINDINGS

- The processing of adult aliens, family groups, FMUAs and UACs, is delayed and negatively impacted due to a lack of appropriate interoperability between e3, EARM, SIGMA, EID, and the UAC Portal. This not only jeopardizes the accuracy of alien data, but it potentially puts children at risk of separation from parents or legal guardians and can

delay or prevent family reunification. Therefore, the allegations regarding delayed processing are **substantiate**d.

- Processing is also negatively impacted because the data bandwidth is not sufficient to support the data network needs of the Yuma Station and soft-sided facilities, which also creates case processing delays as well as impact data accuracy. Therefore, those allegations of processing delays are further **substantiated** by this finding.

RECOMMENDATIONS

- USBP HQ should complete the project to increase the data bandwidth at the Yuma Station, which will improve processing times and increase the accuracy of data input. Decreasing data input and processing time is critical to the efficient operation of the Yuma Sector as a whole, and especially during high apprehension periods.
- DHS HQ should work with HHS HQ to develop and implement a Unified Immigration Portal that ensures adequate and effective interoperability between e3, SIGMA, EARM, EID and the UAC portal. This will improve the accuracy and timeliness of shared data between departments regarding FMUAs, family groups, and UACs. The interoperability will also reduce the duplication of entry of biographical and case data between the departments which will increase staff efficiency and improve the quality of the data.
- USBP data system interfaces and data linkages are an important requirement. Creating these will provide field and HQ staff easily accessible reports and can be shared between agencies and data systems, which will allow for effective information tracking related to UACs, FMUAs, time in custody, and daily operations.
- USBP HQ should create standardized dashboards to assist management in all USBP Sectors to track time in custody, FMUA and UAC population numbers, and other needed operational indicators. This will greatly improve quality control options and allow for sector comparisons and oversight.
- Yuma Sector leadership should ensure staff working at the Yuma Station and soft-sided facilities have tablet and smart phone applications available that interface with e3. This will improve the efficiency and accuracy of collected data relevant to daily operations and critical alien detention information.

HEALTH SCREENING AND MEDICAL OPERATIONS

Alien processing includes a medical intake assessment at the Yuma Station. The medical intake for adults is cursory, where medical intake for juveniles consists of more individualized screening. However, I found the contract Family Nurse Practitioner was pre-recording screening outcome data to expedite her health screenings. This could easily create false screening results and should cease immediately. Also, in the medical room where vital signs are taken, white boards containing confidential, sensitive medical information for adult and juvenile aliens was in open view, which violates the Health Insurance Portability and Accountability Act (HIPAA) medical information privacy laws. Medical staff have created a color-coded wristband system that identifies aliens with serious health concerns, aliens taking medications, and aliens who are pregnant. This is highlighted as a best practice and should be considered for use at all other USBP 72-hour holding facilities.

NEW FINDINGS

- The medical screening process conducted by the medical contractor for adult and juvenile aliens is cursory and does not provide an adequate physical condition assessment which can put aliens' health and safety at risk.
- The Nurse Practitioner pre-records juvenile medical conditions on the minor health assessment form prior to the health assessment being conducted which jeopardizes the accuracy of the health screening.

RECOMMENDATIONS

- Yuma Sector and Station leadership should improve the current cursory medical intake screening process for adults and juveniles. A standard medical intake screening tool should be developed and consistently utilized to ensure adults and juveniles are consistently and adequately screened during intake for health, safety and contagious diseases to protect the health and safety of aliens in custody as well as USBP personnel in compliance with TEDS requirements.
- The medical contract provider should ensure the Juvenile medical intake assessments are not be pre-recorded. Each juvenile should be individually assessed, and the results of each assessment should be recorded at the time the medical screening takes place to ensure that the youth's medical condition is accurately recorded in compliance with TEDS requirements.
- The medical contractor should ensure the medical room white boards containing aliens' medical information is sufficiently covered to protect the alien's confidential medical information, in compliance with HIPAA and TEDS medical privacy requirements.

SUMMARY OF RECOMMENDATIONS

- (b)(5)
- (b)(5)
- (b)(5)
- Yuma USBP should ensure that aliens (b)(5) (b)(5) be moved (b)(5) where appropriate bedding can be provided to ensure compliance with TEDS, Bedding §4.12, Detention §5.6.

- The Yuma Sector should have the Fire Marshal determine and approve alien occupancy numbers in both the station holding rooms and the soft-sided facilities. Those approved occupancy levels should be posted and easily viewable to the station's leadership and agents as. Under no circumstances should the maximum occupancy rate, as set by the fire marshal, be exceeded as mandated by TEDS, Hold Room Standards §4.7.
- To prevent unsanitary conditions and the spread of contagious diseases that could be deadly, occupancy numbers of aliens held in the Yuma Station hold rooms and soft-sided structure should not exceed the approved capacity as mandated by TEDS, Detention §5.6.
- (b)(5)
- To prevent children from spreading germs and protect aliens in custody and USBP staff them from illness, Yuma USBP should replace the existing playpens with appropriate equipment that can be easily cleaned and sanitized. Cleaning and sanitization should occur daily and when needed, in compliance with TEDS, Hold Room Standards §4.7.
- To prevent children from spreading germs and protect them from illnesses, USBP personnel should take necessary precautions to ensure that used bottles with milk or formula will not be accessible to other mothers and children in the family holding areas, in compliance with TEDS, Hold Room Standards §4.7, Food and Beverage §4.13, Hold Room Standards §4.7, Detention §5.6.
- USBP should develop an emergency contingency plan that addresses the need for additional personal hygiene and clothing suppliers in the event of a surge when the population numbers exceed the resources available from local suppliers. This will better ensure the detained population has the personal hygiene supplies and clothing necessary to support basic human needs in compliance with TEDS, Hygiene §4.11.
- Yuma Sector leadership should develop a food emergency contingency plan that includes additional food contractors in the event a surge population exceeds the current food contractor's supply to ensure compliance with TEDS, Food and Beverage §4.13.
- USBP and DHS HQ should work with HHS/ORR to ensure UAC bed/placement capacity and shelter options are expanded and readily available during high apprehension seasons, to diminish the excessive hold times that are commonly occurring in Yuma. Retaining UAC and families beyond 72 hours is a violation of the TVPRA, and TEDS Duration of Detention §4.1, which can expose USBP and DHS to litigation.
- Yuma Sector and Station leadership should improve the current cursory medical intake screening process for adults and juveniles. A standard medical intake screening tool should be developed and utilized to ensure adults and juveniles are consistently and adequately screened for health, safety and contagious diseases to protect the health and safety of aliens in custody as well as USBP personnel in compliance with TEDS,

General Detention Procedures §4.3, Electronic System(s) of Record §4.5, Documentation §5.3, Detention §5.6.

- The contract medical provider should ensure the Juvenile medical intake assessments are not be pre-recorded. Each juvenile should be individually assessed, and the results of each assessment should be recorded at the time the medical screening takes place to ensure that the youth's medical condition is accurately recorded in compliance with TEDS, Medical Treatment and Authority at a Medical Facility §3.11, General Detention Procedures §4.3, Electronic System(s) of Record §4.5, Documentation §5.3.
- The medical contractor should ensure the medical room white boards containing aliens' medical information is sufficiently covered to protect the alien's confidential medical information, in compliance with HIPAA and TEDS, Medical §4.10.
- USBP HQ should complete the project to increase the data bandwidth at the Yuma Station, which will improve processing times and increase the accuracy of data input. Decreasing data input and processing time is critical to the efficient operation of the Yuma Sector as a whole, and especially during high apprehension periods. Addressing this will better ensure USBP's compliance with TEDS, Electronic System(s) of Record §4.5, Detention §5.6.
- USBP HQ should create standardized dashboards to assist management in all USBP Sectors to track time in custody, FMUA and UAC population numbers, and other needed operational indicators. This will greatly improve quality control options and allow for sector comparisons and oversight, and better ensure USBP compliance with various areas in TEDS, including Electronic System(s) of Record §4.5.
- Yuma Sector leadership should ensure staff working at the Yuma Station and soft-sided facilities have tablet and smart phone applications available that interface with e3. This will improve the efficiency and accuracy of collected data relevant to daily operations and critical alien detention information as required by TEDS, Electronic System(s) of Record §4.5.
- USBP data system interfaces and data linkages are an important requirement. Creating these will provide field and HQ staff easily accessible reports and can be shared between agencies and data systems, which will allow for effective information tracking related to UACs, FMUAs, time in custody, and daily operations, including those requirements found in several areas in TEDS.
- DHS HQ should work with HHS HQ to develop and implement a Unified Immigration Portal that ensures adequate and effective interoperability between e3, SIGMA, EARM, EID and the UAC portal. This will improve the accuracy and timeliness of shared data between departments regarding FMUAs, family groups, and UACs. The interoperability will also reduce the duplication of entry of biographical and case data between the departments which will increase staff efficiency and improve the quality of the data.

Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

August 21, 2020

MEMORANDUM FOR: Rodney S. Scott
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: Yuma Investigation
Complaint Nos. 19-04-CBP-0137, 19-06-CBP-0757, 19-06-CBP-0758, 19-06-CBP-0759, 19-07-CBP-0760, 19-07-CBP-0761, 19-08-CBP-0762, 19-08-CBP-0764, 19-08-CBP-0766, 19-08-CBP-0472, 19-09-CBP-0475, 19-09-CBP-0767, 19-09-CBP-0421, 19-09-CBP-0398, 19-09-CBP-0516, 19-09-CBP-0768, 19-09-CBP-0483, 19-09-CBP-0481, 19-09-CBP-0474, 19-09-CBP-0769, 19-10-CBP-0770, 19-10-CBP-0773, 19-10-CBP-0771, 19-09-CBP-0774, 19-12-CBP-0776, and 20-02-CBP-0135

The U.S. Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) is conducting an investigation into conditions of detention for individuals in the custody of U.S. Customs and Border Protection (CBP) at the U.S. Border Patrol (USBP) Station in Yuma, Arizona. CRCL's onsite investigation occurred on February 11-13, 2020, in response to complaints received between October 2018 and October 2019 alleging civil rights and civil liberties violations in medical care and conditions of detention, at the Yuma Station and soft-sided facilities. Additionally, CRCL reviewed allegations that families were inappropriately separated, that detainees spent excessive amounts of time in hold rooms, and that detainees were subjected to physical and verbal abuse.

We greatly appreciated the cooperation and assistance provided by the Yuma Station leadership and management personnel and CBP Headquarters staff before and during the onsite investigation, as well as after the onsite for follow-up needs. As part of the onsite, CRCL engaged the assistance of a subject-matter expert consultant in corrections. As a result of USBP leadership and personnel interviews, document and record reviews, and direct observation, CRCL and the subject-matter expert identified concerns regarding medical care, conditions of

detention, environmental health and safety, and information systems technology and functionality.

On February 13, 2020, as part of the out-briefing for Yuma USBP, CRCL and the subject-matter expert discussed the most concerning findings with Yuma Station leadership and management personnel, and personnel from CBP Headquarters Custody Support and Compliance Division, Privacy and Diversity Office (PDO) who were also present. During the discussion, the subject-matter expert also provided verbal recommendations to address some of the identified concerns. An email summary of those, which CRCL sent to CBP shortly following the onsite, is attached here. Also enclosed with this memorandum is the report prepared by our subject-matter expert, which contains formal recommendations. These recommendations are summarized below to assist CBP in understanding and dissemination. CRCL requests that CBP formally concur or non-concur with the recommendations and provide an action plan for all accepted recommendations within 60 days.

Recommendations

Time in Custody

1. Due to CRCL's February 11 onsite observation that 74% of aliens in custody had been there beyond 72 hours,[1] Yuma USBP should fully utilize e3's 72-hour alert capabilities to ensure the swift identification of aliens in custody at the station and soft-sided facilities who are at the 72-hour mark or beyond, and take all necessary measures to move the aliens out of USBP custody as required by TEDS, Duration of Detention §4.1, Detention §5.6.

2. Yuma USBP, in a collaborative effort with ICE must develop strategies and procedures including and improved transport times to ICE detention facilities to decrease hold times for aliens to under 72 hours as required by TEDS, Duration of Detention §4.1. To the extent possible, USBP should collaborate with HHS to expand HHS' UAC bed space.[2]

3. While onsite, CRCL learned that, especially during influx periods, ICE may experience delays in transporting adult aliens from USBP facilities, due to ICE's own bed space limitations caused by an influx, which can prolongate time in USBP custody. USBP relayed that communications about transport between ICE and USBP could be improved for transport and custody planning. Therefore, it is recommended that USBP, in a collaborative effort with ICE, should develop an efficient system of communication and swift transport of aliens in USBP custody to ICE detention facilities with sufficient bed capacity. This will further USBP compliance with TEDS, Duration of Detention §4.1.

[1] The time-in-custody increases found during the February 2020 onsite are significant, given that Yuma Sector apprehensions decreased from 4,619 in January 2019 to 560 in January 2020: an 87% reduction. On February 11, 2020 there were 19 single adult aliens (56%) in Yuma USBP custody over 72 hours. One adult alien was in custody over 240 hours. 150 FMUA members (77%) were in custody over 72 hours. 33 FMUAs (17%) were in custody over 240 hours. 3 of the 4 UACs (75%) in custody had been there over 240 hours.

[2] CRCL understands that CBP does not have jurisdiction to require HHS participation, however, we suggest that an attempt to collaborate with HHS to accomplish this need would benefit USBP in terms of adherence to their own policies as well as Flores requirements.

4. Yuma USBP should ensure that aliens (b)(5) (b)(5) be moved (b)(5) where appropriate bedding can be provided to ensure compliance with TEDS, Bedding §4.12, Detention §5.6.

5. USBP and DHS HQ should work with HHS/ORR to ensure UAC bed/placement capacity and shelter options are expanded and readily available during high apprehension seasons, to diminish the excessive hold times that are commonly occurring in Yuma. Retaining UAC and families beyond 72 hours is a violation of the TVPRA, and TEDS Duration of Detention §4.1, which can expose USBP and DHS to litigation.

Hold Room Conditions

6. The Yuma Sector should have the Fire Marshal determine and approve alien occupancy numbers in both the station holding rooms and the soft-sided facilities. Those approved occupancy levels should be posted and easily viewable to the station's leadership and agents. Under no circumstances should the maximum occupancy rate, as set by the fire marshal, be exceeded as mandated by TEDS, Hold Room Standards §4.7.

7. To prevent unsanitary conditions and the spread of contagious diseases that could be deadly, occupancy numbers of aliens held in the Yuma Station hold rooms and soft-sided structure should not exceed the approved capacity as mandated by TEDS, Detention §5.6.

8. (b)(5)

9. To prevent children from spreading germs and protect aliens in custody and USBP staff them from illness, Yuma USBP should replace the existing playpens with appropriate equipment that can be easily cleaned and sanitized. Cleaning and sanitization should occur daily and when needed, in compliance with TEDS, Hold Room Standards §4.7.

10. When onsite, used baby bottles were observed sitting on tables and other areas that were accessible to other children. To prevent children from spreading germs and protect them from illnesses, USBP personnel should take necessary precautions to ensure that used bottles with milk or formula will not be accessible to other mothers and children in the family holding areas, in compliance with TEDS, Hold Room Standards §4.7, Food and Beverage §4.13, Hold Room Standards §4.7, Detention §5.6.

11. USBP should develop an emergency contingency plan that addresses the need for additional personal hygiene and clothing suppliers in the event of a surge when the population numbers exceed the resources available from local suppliers. This will better ensure the detained population has the personal hygiene supplies and clothing necessary to support basic human needs in compliance with TEDS, Hygiene §4.11.

12. Yuma Sector leadership should develop a food emergency contingency plan that includes additional food contractors in the event a surge population exceeds the current food contractor's supply to ensure compliance with TEDS, Food and Beverage §4.13.

Health Screening and Medical Care

13. Onsite, the medical intake for adults was observed to be cursory, where medical intake for juveniles consisted of more individualized screening. However, we also found the contract Family Nurse Practitioner was pre-recording screening outcome data to expedite health screenings, which could easily create false screening results. Accordingly, Yuma USBP leadership should ensure this process does not continue for both adults and minors. CBP's medical intake screening form (2500) should be consistently utilized to *individually* screen both adults and juveniles, to ensure the their health and safety from contagious diseases, as well as to protect the health of USBP personnel, in compliance with TEDS, General Detention Procedures §4.3, Electronic System(s) of Record §4.5, Documentation §5.3, Detention §5.6, and CBP Directive No. 2210-004 (December 30, 2019).

14. The contract medical provider should ensure the Juvenile medical intake assessment forms are not pre-filled in with standard language. Each juvenile should be individually assessed, and the results of each assessment should be recorded at the time in which the medical screening takes place to ensure that the minor's medical condition is accurately recorded in compliance with TEDS, Medical Treatment and Authority at a Medical Facility §3.11, General Detention Procedures §4.3, Electronic System(s) of Record §4.5, Documentation §5.3, and CBP Directive No. 2210-004 (December 30, 2019).

15. The medical contractor should ensure the medical room white boards displaying aliens' medical information is sufficiently covered when necessary to protect the alien's confidential medical information, in compliance with HIPAA and TEDS, Medical §4.10.

Technology and Information Sharing

16. USBP HQ should complete the project to increase the data bandwidth at the Yuma Station, which will improve processing times and increase the accuracy of data input. Decreasing data input and processing time is critical to the efficient operation of the Yuma Sector as a whole, and especially during high apprehension periods. Addressing this will better ensure USBP's compliance with TEDS, Electronic System(s) of Record §4.5, Detention §5.6.

17. USBP HQ should create standardized dashboards to assist management in all USBP Sectors to track time in custody, FMUA and UAC population numbers, and other needed

operational indicators. This will greatly improve quality control options and allow for sector comparisons and oversight, and better ensure USBP compliance with various areas in TEDS, including Electronic System(s) of Record §4.5.

18. Yuma Sector leadership should ensure staff working at the Yuma Station and soft-sided facilities have tablet and smart phone applications available that interface with e3. This will improve the efficiency and accuracy of collected data relevant to daily operations and critical alien detention information as required by TEDS, General Detention Procedures §4.3, Electronic System(s) of Record §4.5, Documentation §5.3, Detention §5.6, CBP Directive No. 2210-004 (December 30, 2019).

19. USBP data system interfaces and data linkages are an important requirement that provides field and HQ staff easily accessible reports. These can be shared between agencies and data systems, which will allow for effective information tracking related to UACs, FMUAs, time in custody, and other daily operations that are required in various TEDS standards, including, Searches of Individuals §3.0, Duration of Detention §4.1, General Detention Procedures §4.3, Medical §4.10, Hygiene §4.11, Food and Beverage §4.13, Electronic System(s) of Record §4.5, At-Risk Populations §5.0, Sexual Abuse Victimization §6.0.

20. USBP should request assistance from DHS HQ to collaborate with HHS HQ, to develop and implement an effective Unified Immigration Portal that would provide adequate and effective interoperability between e3, SIGMA, EARM, EID and the UAC portal.[3] This will improve the accuracy and timeliness of shared data between departments regarding FMUAs, family groups, and UACs. The interoperability will also reduce duplication of biographical and case data entry among the departments and agencies, which will also improve DHS and HHS staff efficiency as well as data quality.

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 complaints. You may send your response and action plan by email. If you have any questions, please contact CRCL Compliance Deputy Director, William McKenney by telephone at (b)(6) or by email at (b)(6)

Enclosure

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[3] Id. 2.

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