



May 17, 2019

VIA ELECTONIC MAIL

John V. Kelly
Acting Inspector General
U.S. Department of Homeland Security
254 Murray Lane SW
Washington, DC 20528

Cameron Quinn
Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Building 410, Mail Stop #0190
Washington, DC 20528

Matthew Klein
Assistant Commissioner for Office of Professional Responsibility
U.S. Customs and Border Protection
1300 Pennsylvania Ave. NW
Washington, DC 20229

Re: Abusive Conditions in Border Patrol Detention Facilities in the Rio Grande Border Patrol Sector

Dear Mr. Kelly, Ms. Quinn, and Mr. Klein,

The American Civil Liberties Union (ACLU) Border Rights Center and the ACLU of Texas write to demand an immediate and permanent end to Custom and Border Protection's (CBP) detention of migrants in the Rio Grande Valley sector, including families with small children, in deplorable conditions unsheltered and outdoors, and an investigation into the conditions and treatment of those detained by Border Patrol in this sector.¹

¹ See Vanessa Yurkevich and Priscilla Alvarez, "Exclusive photos reveal children sleeping on the ground at Border Patrol station," CNN, May 14, 2019, available at <https://www.cnn.com/2019/05/14/politics/border-patrol-mcallen-texas-pictures/index.html>; Noman Merchant, "Border Patrol plans 2nd Donna tent," Associated Press, May 11, 2019, available at <https://www.themonitor.com/2019/05/11/border-patrol-plans-2nd-donna-tent/>.

In early March 2019, ACLU staff began to hear accounts from migrants regarding the further deterioration of conditions in Border Patrol detention facilities across the sector. Over 120 interviews conducted by ACLU staff in the Rio Grande Valley sector with asylum seeking families reveal dangerous and abusive conditions, including the detention of thousands of migrant families outdoors, without protection from rain, heat, or the sun and zero access to showers, beds, or medical attention. This is an extreme assault on their basic human rights and a failure of CBP to meet its basic duties as a government agency.

CBP has an obligation, under its own standards, to ensure that migrants are treated humanely, with dignity, and consistent with U.S. and international laws. CBP must immediately take steps to ensure all detention facilities meet standard humane conditions and timely process all arriving migrants to limit the time they spend in CBP custody. The Office of Inspector General should conduct an investigation to ensure that such unconscionable acts are never authorized again. CBP should also ensure the on-site presence of child-welfare and medical professionals at all facilities and promptly respond to all medical concerns of those in their custody.

On March 31, 2019, we filed a similar complaint demanding immediate investigation into the detention of migrants for multiple nights in outdoor detention pens at the Paso del Norte Border Patrol detention facility in El Paso, Texas.² The conditions now documented in the Rio Grande Valley mirror many of the abuses found at that facility and demonstrate the agency's ongoing violation of detention standards, without consequence.

Without immediate attention and oversight, CBP's practices will continue to endanger the lives of those arriving at our border. The agency has the resources, if appropriately allocated, to ensure humane treatment of migrants in their custody.³

As detailed below, migrants, including young children, are being held in extreme conditions outdoors, increasing the risk of serious illness and harm. The conditions and treatment of migrants in Border Patrol custody in the Rio Grande Valley require immediate action, a full investigation, and accountability for the agency's ongoing use of abusive detention conditions.

Abuses in Border Patrol Detention Facilities in the Rio Grande Valley

Asylum seekers, including families and children, report a range of abusive and inhumane conditions while detained by Border Patrol in the Rio Grande Valley. Overall, conditions and abuses in the region, including the recent detentions in outdoor detention pens, run afoul of CBP's own rules, the National Standards on Transport, Escort, Detention, and Search (TEDS), which were promulgated in 2015. The

² ACLU Border Rights Center and ACLU of Texas, Complaint Re: Abusive Conditions in Makeshift Border Patrol Holding Facilities at Paso del Norte Port of Entry in El Paso, Texas, March 30, 2019, available at https://www.aclutx.org/sites/default/files/pdn_border_patrol_abuse_oig_complaint.pdf.

³ CBP claims that an increase in apprehensions has overwhelmed detention facilities and has led to the current increase of detained migrants held in such conditions. While the number of arriving asylum seekers, particularly families and children, has increased, the number of total arrivals remain well below historic highs. Further, the agency has more resources, including officers, than ever before. The number of Border Patrol agents grew from 9,212 agents in 2000 to 19,555 in 2018. CBP's budget has also more than doubled since 2006, growing from \$7.1 billion in 2006 to \$16.69 billion this year.

TEDS set the minimal nationwide standards governing CBP's treatment of detained individuals.⁴ Citations to the relevant TED standard or other authority for each violation are provided below.

Prolonged detention, exposure to elements, and sleep deprivation:

Generally, the safety of detainees is paramount during all aspects of CBP operations and every effort must be made to promptly transfer, transport, process, release, or repatriate detainees.⁵ Many of the individuals interviewed in the Rio Grande Valley were held much longer than 72 hours,⁶ with a large number being detained for upwards of 9 days in CBP facilities throughout the region. Families reported being transferred multiple times to various facilities throughout the region before being released into the community at local shelters and bus stations.

Since early March 2019, ACLU of Texas interviews have revealed that families are being detained in CBP custody in the Rio Grande Valley for as long as nine days. As of last week, these prolonged detentions now include being held in outdoor detention pens at the McAllen Border Patrol Station for upwards of three days before being placed indoors.⁷ Over two thousand people, including families with infants and toddlers, are being held for multiple days and nights in a crowded outdoor area with very little shade from the harsh south Texas elements.⁸ One asylum seeker reported counting some 2,300 people sleeping outside.

Many reported being forced to sleep on the muddy, rocky ground, and in puddles of water during thunderstorms, which were quickly followed by extreme heat, humidity and sun exposure. Families, including those with infant children, are not provided with any bedding, mats, or chairs. They are forced to sleep on the ground outdoors, even while raining, and are only given Mylar sheets, which are paper-thin and look like tin foil, and many of which were fashioned into tarps for protection from the elements.⁹ Some families reported not even being provided with the Mylar sheets.

Families detained by Border Patrol, both in the outdoor detention pen and indoor facilities, report consistent sleep deprivation during multiple days in custody. One father with a three-year-old child reported sleeping just one hour a night for three nights while held in the outdoor detention pen due to being forced to sleep on dirt and gravel without any protection against the heavy rains that hit the region over Mother's Day weekend. Others reported Border Patrol agents calling migrants' names for processing every 15-20 minutes throughout the night, preventing prolonged sleep. Border Patrol agents would conduct checks every three hours and everyone was forced to stand and be counted. One family was held in a cell with 60 to 100 other migrants for 4 days and reported agents kicking anyone who fell asleep.

⁴ *National Standards on Transport, Escort, Detention, and Search*, U.S. Customs and Border Protection, (October 2015), <https://www.cbp.gov/sites/default/files/assets/documents/2017-Sep/CBP%20TEDS%20Policy%20Oct2015.pdf>.

⁵ *Id.* at 14.

⁶ "Detainees should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities." *Id.*

⁷ *Supra* note 1.

⁸ Capacity of holding areas may only exceed those prescribed by the operational office's policies and procedures with supervisory approval. "However, under no circumstances should the maximum occupancy rate, as set by the fire marshal, be exceeded. *Supra* note 4 at 16.

⁹ Clean bedding must be provided to juveniles and when available, clean blankets must be provided to adult detainees upon request. *Id.* at 17.

Families held in the outdoor detention pen reported that the conditions inside the “hielera” were not any better, as overcrowding was also severe. It was reported that agents “screamed at them as if they were animals,” and kicked people laying on the floor to move so more people could be placed inside the cells. Many individuals were forced to find space where they could, sleeping on and next to toilets and having their young children sleep on their chests or legs if they were able to find enough space to spread their legs. Several people reported being in severe physical pain from being forced to stand for several days due to crowding. Overall, families felt like they were being treated like animals and were terrified that there would be no end to the treatment.

Medical Concerns:

Families report that they did not receive medical examinations or treatment while being held in the outdoor detention pen.¹⁰ This is a serious issue that can lead to the development of infectious diseases, which can spread rapidly through an overcrowded detained population. Lack of medical attention can also cause existing medical conditions to worsen. In fact, several parents stated that they or their children either suffered from or developed headaches, coughs, fever, body aches, and flu-like symptoms while detained.

Migrants, including infants and children, were either ignored or denied medical attention when they requested help from Border Patrol agents. One migrant was told by a Border Patrol agent that “this is my country and I make the rules” when he denied him medical care. One father, who had already been held for three days, was told he had the option of remaining in detention and having his seven-year-old daughter taken to the hospital or being released more quickly when he asked for medical treatment for her. One mother told us that when she asked for medicine for a headache, the Border Patrol officer responded, “I have a headache too.” Another was told, “You’re not going to die from that,” when her request for cough medicine was denied.

A father was held outside for three days with his two-year-old son, who became listless with fever and chills following heaving rains. The father’s multiple requests for a doctor went unanswered for several days, he explained, “They [Border Patrol agents] wouldn’t even give us water when we asked for it. I stopped asking because they’d just ignore me.” Finally, after his son became increasingly ill and his numerous requests for medical care, they were moved into the “hielera,” where it was severely crowded and unbearably cold, further worsening his son’s condition. Only upon his insistence on receiving medical attention was his son provided with flu medication; the father was told that his insistence was the reason for the delay in his release from custody.

Further, hygienic necessities were ignored.¹¹ Families were not allowed to shower or provided with clean, dry clothing throughout their detention; one father, who was detained for a total of seven days,

¹⁰ “Officers/Agents have a responsibility to safeguard detainees during a search. If there is any observed or reported indication that the detainee is injured or in any way may require medical treatment, appropriate medical care must be provided or sought in a timely manner.” *Id.* at 9. Upon a person’s detention, Border Patrol agents must ask detainees about, and visually inspect for any sign of injury, illness, or physical or mental health concerns and question the detainee about any prescription medications. *Id.* at 14.

¹¹ “If restrooms are not available in the secure area, supervisors must ensure that an officer/agent is within visible or audible range of the secure area to allow detainees to access restrooms upon request.” *Id.* at 16. “All facilities or hold rooms used to hold detainees must be regularly and professionally cleaned and sanitized. *Id.* at 16.

told us, "I'm embarrassed to say it, but they didn't let us shower the whole time we were there, not even the women and children."¹²

Food and Water:

Persons interviewed by the ACLU reported being fed insufficient quantities and low-quality food in both the outdoor detention pen and the indoor facilities. In the outdoor detention pen, several persons reported being fed a single cheese sandwich three times a day at 8:00 a.m., 12:00 p.m., and 12:00 a.m. regardless of their age¹³ or any dietary/religious restrictions.¹⁴ Parents reported that Border Patrol agents forced them to wake their sleeping children when food was served at 12:00 a.m., otherwise the child would not receive any food. None of the parents interviewed stated their children were offered a snack or other food accommodation.¹⁵ More troubling, access to water access was limited in the outdoor detention pen. Migrants reported requesting water for themselves and their sick children, with their requests being either denied or ignored.¹⁶ Several people we interviewed stated they suffered from hunger due to insufficient food, as well as nausea from being forced to eat the same low-quality food for as many as nine days. Further, requests for more food were ignored by Border Patrol agents.¹⁷

Verbal Abuse and Threats:

Since early March 2019, families, including adults and children we spoke to, reported feeling fearful, humiliated, and dehumanized while detained by Border Patrol agents. For example, one family held in the "hielera" reported Border Patrol agents sitting outside their detention cell eating pizza and taunting them, saying "Don't you wish you could have some?" Another mother, with her six-year-old child, reported guards banging their batons aggressively on the floor next to where they were laying down to scare and intimidate them. Several migrants, including a ten-year-old girl, identified one specific agent that would throw items at them, including blankets at their faces and bottles of water to the floor, forcing them to pick it up. Agents reportedly made fun of one man's speech impediment and held him with his ten-year-old son for seven days.

Agents also threaten people with deportation or family separation. One mother reported agents forcing her to recite the national anthem of her country to prove her citizenship, threatening to separate her

¹² "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." *Id.* at 17. If a detainee is approaching 72 hours in detention, Border Patrol agents will make reasonable efforts to provide showers, soap, and a clean towel to detainees. *Id.*

"Reasonable efforts will be made to provide showers, soap, and a clean towel to juveniles who are approaching 48 hours in detention." *Id.* at 22.

¹³ "Officers/Agents will consider the best interest of the juvenile at all decision points beginning at the first encounter and continuing through processing, detention, transfer, or repatriation." *Id.* at 4.

¹⁴ "Officers/Agents should remain cognizant of a detainee's religious or other dietary restrictions." *Id.* at 18.

¹⁵ "Juveniles and pregnant detainees will be offered a snack upon arrival and a meal at least every six hours thereafter, at regularly scheduled meal times. At least two of those meals will be hot. Juveniles and pregnant or nursing detainees must have regular access to snacks, milk, and juice." *Id.* at 22.

¹⁶ "Functioning drinking fountains or clean drinking water along with clean drinking cups must always be available to detainees." *Id.* at 18.

¹⁷ Adult detainees will be provided with snacks between regularly scheduled meals and border patrol agents may grant additional requests for snack or food before the next food service. *Id.* at 18.

from her daughter, claiming her identity documents were false, and that she would be deported to her country where the gangs would kill her.

//

CBP is violating its own standards in placing migrants in the Rio Grande Valley in atrocious conditions that violate standards of treatment. Further, these conditions do not reflect the fundamental values to which the United States aspires. Every day that this continues, CBP is putting people's lives at serious risk of harm.

We request an immediate end to these practices and demand a full investigation.

Sincerely,

Shaw Drake
Policy Counsel
Border Rights Center
American Civil Liberties Union of Texas

Rochelle Garza
Staff Attorney
American Civil Liberties Union of Texas