



March 30, 2019

VIA ELECTONIC MAIL

John V. Kelly  
Acting Inspector General  
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, D.C 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 Makeshift Border Patrol Holding Facilities at Paso del Norte Port of Entry in El Paso, Texas.**

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, including families with small children, outside in caged detention areas and an investigation into the conditions and treatment of those detained under such circumstances.<sup>1</sup>

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<sup>1</sup> See Adolfo Flores, "It's Hell There": This Is What It's Like For Immigrants Being Held In A Pen Underneath An El Paso Bridge," BuzzFeed News, March 29, 2019, available at <https://www.buzzfeednews.com/article/adolfoflores/border-bridge-migrants-detained-camp-el-paso-texas?fbclid=IwAR2FLXFHNI6CtNRXdOWjoi6dCZNwYrciTnKmtGzagbB98mld6gVjIkiE-iU>.

Detaining migrant families outdoors, where they face severe exposure to the elements and lack adequate basic care, is an extreme and unprecedented assault on their basic human rights and a failure of CBP to meet its basic duties as a government agency. This practice must stop immediately, and the Office of Inspector General should conduct an investigation to ensure that such unconscionable acts are never authorized again.

In early March 2019, ACLU staff first observed migrants sleeping on the ground below the Paso del Norte international bridge, inside Customs and Border Protection (CBP) controlled areas. Interviews with asylum seeking families detained there reveal dangerous and abusive conditions, including prolonged exposure to low temperatures, sleep deprivation, inadequate food, no medical screening or care, and verbal and physical abuse at the hands of Border Patrol agents. 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.

The detention of migrants for multiple nights in outdoor detention pens is an unprecedented and extreme violation. Although CBP has long violated the rights of migrants in its custody, the agency's decision to detain migrants, including children, in caged dirt filled outdoor areas is an escalation of this administration's cruelty. Without immediate attention and oversight, we will continue to risk the lives of those seeking refuge in our country.

CBP leadership, which oversees both CBP Office of Field Operations and Border Patrol, claims that an increase in apprehensions has overwhelmed indoor detention facilities and has led to the current overflow of detained migrants.<sup>2</sup> While the number of arriving asylum seekers, particularly families and children, has increased from the prior year's monthly averages, the numbers remain well below historic levels. 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.<sup>3</sup> It is inconceivable that the agency does not have the resources, if appropriately allocated, to ensure humane treatment of migrants in their custody.

CBP's disastrous response to the recent increase in arrivals seriously endangers the lives of migrants. As detailed below, migrants, including young children, are being held in extreme conditions, increasing the risk of serious illness and harm. Further, these conditions reinforce Border Patrol's inability to ensure the care of individuals in their custody. These concerns have been most seriously brought to light through the deaths of three individuals in the past four months in the custody of the El Paso sector of CBP.<sup>4</sup> All migrants are entitled to assurances of safety and well-being, but CBP's current response further

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<sup>2</sup> See Michelle Mark, "Hundreds of migrants are being detained under a bridge in El Paso amid a surge of families crossing the border. Border Patrol agents say there's nowhere else to put them," Insider, March 29, 2019, available at <https://www.thisisinsider.com/migrants-detained-under-el-paso-bridge-border-patrol-surge-2019-3>.

<sup>3</sup> Chris Rickerd and Shaw Drake, "DHS's Own Statistics Show That It Is Lying About a Border-Security Crisis," American Civil Liberties Union, March 14, 2019, available at <https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/dhss-own-statistics-show-it-lying-about-border>.

<sup>4</sup> See "Mexican immigrant dies in U.S. custody, the fourth such death in recent months," El Paso Times, March 19, 2019, available at <https://www.elpasotimes.com/story/news/nation/2019/03/19/mexican-immigrant-dies-united-states-custody/3214356002/>.

underscores the agency's failure to allocate appropriate resources and adjust procedures to account for recent changes to the demographics and needs of asylum seekers.<sup>5</sup>

The conditions and treatment of migrants in the outdoor holding areas of the Paso del Norte port of entry require its immediate closure, a full investigation, and assurances such detention practices are not repeated.

### **Border Patrol Abuses in Paso del Norte Outdoor Holding Areas**

Asylum seekers, including families and children, report a range of abusive and inhumane conditions while detained outdoors at the main El Paso port of entry. These abuses run afoul of CBP's own rules, the National Standards on Transport, Escort, Detention, and Search ("TEDS") which were promulgated in 2015. The TEDS set the minimal nationwide standards governing CBP's treatment of detained individuals.<sup>6</sup> 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.<sup>7</sup>

#### *Exposure to elements and sleep deprivation:*

Families are being detained up to four days in an outdoor CBP parking lot underneath the Paso del Norte international bridge.<sup>8</sup> Several thousand people are being held in a confined area underneath the bridge where they barely have enough space to stand.<sup>9</sup> Families, including those with infant children, are not provided with any bedding, mats, or chairs. They are told to sleep on the ground, on nights in which temperatures have dropped to 37 degrees Fahrenheit, and are only given Mylar sheets, which are paper-thin and look like tin foil, as their sole protection from the elements.<sup>10</sup> In these conditions, families are exposed to extremely low temperatures throughout the night.

Families report that Border Patrol agents wake them every three hours and force them to stand for prolonged periods, preventing migrants, including children, from sleeping for more than short periods of time for multiple nights.

#### *Verbal and Physical Abuse:*

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<sup>5</sup> See Adolfo Flores, "A Record Number Of Migrant Families Are Showing Up At The US–Mexico Border," BuzzFeed News, March 5, 2019, available at <https://www.buzzfeednews.com/article/adolfoflores/record-migrant-families-border-immigration-increase>; see also Dara Lind, "Why border crossings are at an 11-year high, explained in 500 words," Vox, March 6, 2019, available at <https://www.vox.com/2019/3/6/18253444/border-statistics-illegal-immigration-trump>.

<sup>6</sup> *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>.

<sup>7</sup> *Id.* at 14.

<sup>8</sup> Detainees should generally not be held for longer than 72 hours in CBP holding facilities and every effort must be made to hold detainees for the least amount of time required for their processing, transfer, release, or repatriation as appropriate and as operationally feasible. *Id.* at 14.

<sup>9</sup> 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. *Id.* at 16.

<sup>10</sup> Clean bedding must be provided to juveniles and when available, clean blankets must be provided to adult detainees upon request. *Id.* at 17.

Generally, the families we spoke with reported feeling unsafe, scared, and depressed while detained by Border Patrol agents. For example, in the middle of the night on March 13, 2019, asylum seekers reported being sprayed with water from water bottles by one Border Patrol agent. When families asked why the agent was spraying them the agent responded, "Because I can."

Migrants reported that people cry over the conditions they and their children face in the outdoor holding areas. As one person interviewed by ACLU staff stated, "I felt like a cockroach." Families report verbal abuse by Border Patrol agents including the use of slurs such as "pendeja" and "burra" meaning "asshole" and "dumbass." Mothers were also verbally abused when they asked for more food or clean clothing for their children. They were told that they were responsible for their children's suffering because they decided to come to the United States.

One agent told a pregnant migrant, "Porque no pariste tu pinche hijo en tu país, me cuesta \$25,000 al año mantener a tu pinchi hijo," meaning "why didn't you have your fucking child in your own country? It costs me \$25,000 a year to support your fucking child."

#### *Medical Concerns:*

Families report that they did not receive medical examinations when they are detained in this outdoor holding area.<sup>11</sup> This is a serious issue that can lead to the development of infectious disease such as measles and chicken pox, which can spread rapidly through an overcrowded detained population. Lack of medical attention can also cause existing medical conditions to worsen. In fact, one person interviewed by ACLU staff stated that Border Patrol agents threw out the medication she carried for her four-month-old child and did not provide her with any treatment for her child's fever. Migrants reported developing fever, nausea, and coughing while being held in this outside area. Yet, these migrants, including infants and children, are also denied medical treatment by Border Patrol agents.

Several thousand people are forced to share four to six temporary restrooms that are often filthy and foul smelling.<sup>12</sup> They are denied soap to wash their hands after using the restroom and have no access to showers or other hygiene products.<sup>13</sup> People we spoke with reported being reprimanded by Border

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<sup>11</sup> "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 persons detention, Border Patrol agents must 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.

<sup>12</sup> 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.

<sup>13</sup> "Detainees must be provided with basic personal hygiene items, consistent with short term detention and safety and security needs." *Id.* at 17.

Families with small children will also have access to diapers and baby wipes. 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.*

Patrol agents for asking for basic necessities, such as toilet paper. Due to the large number of people placed in such a small area, families were forced to sleep on the ground right next to the restrooms, where there is toilet paper littered on the ground. These unsanitary conditions may lead to serious health issues for migrants detained by CBP.

*Food and Water:*

All of the families interviewed by the ACLU reported being fed the same low-quality and inadequate amount of food. They reported receiving only one ham-and-cheese sandwich per person, three times a day, regardless of age<sup>14</sup> or any dietary/religious restrictions.<sup>15</sup> The only dietary accommodation children received was a packet of juice with their sandwich.<sup>16</sup> Water access is reportedly limited to sinks near temporary restroom facilities.<sup>17</sup> Several people we interviewed stated they were always hungry and would be admonished by Border Patrol agents when they requested more food.<sup>18</sup> Parents reported Border Patrol agents taking and throwing away food they attempted to ration for their children in-between meal times.

CBP is violating its own standards in placing migrants in El Paso in atrocious conditions that violate standards of treatment and our fundamental values. Further, these conditions do not reflect the fundamental values the United States aspires to. Every day that this continues, CBP is putting people's lives at serious risk of harm. We request an immediate end to this practice and a full investigation into this practice.

Sincerely,

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

**Bernardo Rafael Cruz**  
Immigrants' Rights Fellow  
American Civil Liberties Union of Texas

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"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.

<sup>14</sup> "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.

<sup>15</sup> "Officers/Agents should remain cognizant of a detainee's religious or other dietary restrictions." *Id.* at 18.

<sup>16</sup> "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.

<sup>17</sup> "Functioning drinking fountains or clean drinking water along with clean drinking cups must always be available to detainees." *Id.* at 18.

<sup>18</sup> 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.