



## **SHORT-TERM DISAPPEARANCES OF MIGRANTS AND ASYLUM SEEKERS IN THE UNITED STATES**

We are a coalition of non-governmental organizations in the United States (U.S.) that represent indigent immigrants and asylum seekers at no cost. In our work, we regularly encounter cases involving persons who, for varying periods of time, are unfindable. Despite family members of these missing persons knowing that their loved ones have entered the U.S. and are likely in government custody, family members and attorneys attempting to locate them and know their condition are unable to do so. Often, these individuals are refouled to their home country or a third country without a screening of their fear that comports with human rights obligations. We, the signatories of this letter, believe that these individuals are subjected to enforced disappearance by the U.S. government in their search for protection and in violation of U.S. and international human rights and refugee law. We ask that the WGEID and CED consider the information presented here and grant us a virtual meeting with you when you are in session in September 2023 to discuss further our concerns about short-term enforced disappearances of migrants and asylum seekers in the U.S.

### **I. SHORT-TERM ENFORCED DISAPPEARANCES IN THE CONTEXT OF U.S. BORDER EXTERNALIZATION POLICIES AT THE U.S.-MEXICO BORDER**

U.S. border externalization policies that result in pushbacks to Mexico of migrants of various nationalities who were seeking entry or admission to the U.S. regularly result in enforced disappearances on Mexican soil. Human Rights First (HRF) has documented harms against persons subjected to the Remain in Mexico (also known as “Migrant Protection Protocols” or “MPP”) program and the Title 42 policy, including cases of kidnapping some of which meet the definition of enforced disappearance under the Declaration and the Convention. (1, 2).

The most common scenario of these enforced disappearances in HRF’s data involves individuals who, after being pushed back to Mexico under U.S. policies of MPP and Title 42, were detained by Mexican immigration or law enforcement agents and subsequently handed off to non-state actors who held them for ransom. (3, Appendix A.1). According to the WGEID (4), such situations constitute enforced disappearances. Similarly, in their concept note to the CED regarding enforced disappearances in the context of migration, civil society organizations noted that instances of migrants pushed back to Mexico under both MPP and Title 42 who were handed off by state actors to non-state actors as part of a kidnapping scheme constitute enforced disappearances. (5, 6).

HRF also documented many instances of individuals pushed back to Mexico under the U.S.’s MPP and Title 42 policies who were subsequently detained by Mexican law enforcement

and subjected to various abuses, including being held for ransom. (*Supra* reference 1, Appendix A.2). Further information on these cases would be needed to determine where these individuals were held or whether these detentions were properly registered, but they may also constitute enforced disappearances.

Though these two U.S. border policies are not *currently* in force, other U.S. policies now in force that restrict access to U.S. territory and asylum (7) force asylum seekers to remain waiting in Mexico where they are targets of violent harm, including enforced disappearance. (8).

## **II. SHORT-TERM ENFORCED DISAPPEARANCES IN THE CONTEXT OF CUSTOMS AND BORDER PROTECTION CUSTODY**

Customs and Border Protection (CBP) detention in the U.S. often constitutes short-term enforced disappearance. CBP regularly detains individuals upon entry into the U.S. According to CBP's standards (9), people "should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities," but along the U.S.-Mexico border, CBP often detains individuals for significantly longer periods. (10). Recently, DHS began conducting credible fear interviews (CFIs) for asylum seekers in CBP detention, in addition to in Immigration and Customs Enforcement ("ICE") detention as had historically been the case. A CFI is a screening interview that is part of the expedited removal process. If the individual does not show that there is a "significant possibility" they could establish asylum eligibility in a full hearing, they are ordered removed without the opportunity to present their case before a judge. The government has also used its asylum ban (11) to deport people during the CFI process without regard to whether they may qualify for asylum. Some asylum seekers subject to this ban are required to meet a higher screening standard than the credible fear standard to avoid deportation to their country of origin, while some nationals of Cuba, Haiti, Nicaragua, and Venezuela have *no opportunity* to share their fear of return to their home country before being returned or deported to Mexico (12), where they are at risk of onward refoulement to the country they fled and enforced disappearance in Mexico. After implementing these policies, positive CFI decisions plummeted in June 2023, raising concerns that people who would have otherwise passed their CFIs are increasingly being deported while suffering an enforced disappearance in CBP custody. (13).

The policy of conducting CFIs in CBP custody is particularly concerning, because it prolongs a person's stay in CBP custody, where there is no formal system to locate or confirm if an individual is being detained, and attorney and family visits are not permitted. Families that believe their loved one has attempted to enter the U.S. wait days without communication, continually search the ICE detainee locator to see if/when their family member is transferred to ICE custody, or await a call from the loved one once released or removed from the U.S.

Though the inability to ascertain the location of people in CBP detention has long been a human rights issue, the stakes have increased with implementation of the new policy of conducting CFIs in CBP, in addition to ICE, custody. Since the Biden administration began conducting CFIs in CBP custody, attorneys have continued to be barred from entering the facilities, encountered nearly insurmountable obstacles in representing those undergoing this process, and been prevented from obtaining documents from the government to assist their clients. (14, 15). On June 5, 2023, 112 human rights, faith-based, and immigration groups wrote (16) to the government documenting the systemic due process barriers that people undergoing this process face and urging the administration to immediately end the policy. The National Immigrant Justice Center has issued

multiple reports (17, 18) detailing how the government routinely and severely obstructs access to counsel. Media outlets including the *New York Times* (19) and the *Associated Press* (20) have also documented these egregious violations.

Successfully contacting and consulting with an attorney by phone prior to a CFI is nearly impossible and securing formal representation even more so. People in this process have reported only being permitted to make one phone call and having to choose between calling a family member or attempting to reach an attorney. Others are not able to make a phone call at all or not informed of the possibility of doing so prior to their CFI. Given this expedited timeline and the fact that people detained in CBP custody cannot receive phone calls, often making it impossible for lawyers to call them back, many people are unable to speak with a lawyer before their interviews even if they manage to make a phone call. (21). Attorneys estimated that only around 100 out of thousands have managed to secure representation in this process. (22). In response to concerns about this practice, CBP has indicated that each facility is entitled to establish its own institutional policies regarding telephone use.

If an individual in CBP custody reaches legal counsel and that lawyer enters formal notice of representation, continued attorney-client communication is nearly impossible. For instance, Americans for Immigrant Justice (AIJ) represented two Cuban asylum seekers in this process. AIJ submitted signed representation agreements for both clients to CBP and the asylum office; however, after initial consultations, CBP held the clients incommunicado for approximately ten days. Attorneys submitted information requests to CBP liaisons regarding their whereabouts and asked to speak with clients multiple times, eventually raising the issue with CBP Headquarters. Counsel was never able to confirm their clients' whereabouts and only discovered that their clients had been returned to Mexico when their clients contacted them after deportation.

Additional abuses abound in the opacity of CBP custody. Reports confirm widespread abusive, dehumanizing, and sometimes life-threatening conditions. (23, 24, 25). A Colombian woman interviewed by HRF after being jailed in CBP custody last year said: **“I never imagined having to experience humiliation, having to beg for clean water, being made fun of by officers... they laughed at us. It has been really hard. At one point, I wished I had killed myself in Colombia instead of enduring these abuses.”** (26). This year, an eight-year-old girl (27) died in CBP custody where she had been detained for over a week, during which her mother's repeated pleas to take the girl to the hospital were ignored. A CBP official acknowledged that her life would have been saved had she been treated differently (28), and an independent court monitor concluded (29) that her death was “clearly preventable.” People forced to undergo CFIs in CBP custody have also faced abysmal conditions, which in at least one instance already forced a Venezuelan person to abandon his claim for protection. (30).

Family separation often accompanies enforced disappearances in CBP custody. CBP officers have broad, largely unchecked discretion to decide how individuals will be processed and where they will be detained. Family members can be sent to different CBP centers or housed in separate areas, sent to ICE detention, or released. Adult children are separated from parents, siblings from one another, aunts, uncles, cousins from close family members, and the like. The government's narrow definition of “family units”—minor children with an adult parent or legal guardian—means the separation of family members not involving a minor child are not recorded or reported by CBP. (31). In fiscal year 2021, CBP reported 254 family separations involving minor children. (32) In 2022, CBP separated an 11-year-old boy, Felipe, from both his mother and father. (33). His parents were taken into custody by U.S. Marshals on improper entry charges, and Felipe was processed as an unaccompanied minor.

The systemic separation of family members causes widespread confusion, making it nearly impossible for detained individuals to communicate with someone in another detention center or for anyone detained in CBP custody to communicate with the outside world. Even with the assistance of family or attorneys, tracking someone in the immigration system without their A-number (government-assigned registration number for “aliens”) is difficult, and families are often separated prior to the assignment of an A-number. It can be nearly impossible to contact a family member when they are deported or released to shelter or sponsor for whom the family does not have contact information. Additionally, these separations can result in disparate results in legal cases. Frequently, one family member in the CFI process in CBP custody will receive a positive result, while another may receive a negative determination and face deportation, despite similar or analogous claims. Deportations can make these disappearances permanent.

### **III. SHORT-TERM ENFORCED DISAPPEARANCES OF MIGRANTS AND ASYLUM SEEKERS INTERDICTED AT SEA**

The U.S.’s legal framework and practices around maritime interdictions in the Florida Straits and the Caribbean Sea result in enforced disappearances. Through its maritime interdiction operations, the U.S. detains people aboard U.S. Coast Guard (USCG) ships and at an offshore detention center---with no ability for them to contact family or legal counsel or for family or legal counsel to locate or contact them, based on information available to the undersigned organizations--and summarily returns them to countries of origin, without access to the legal protections afforded to migrants, refugees, and asylum seekers.

Successive U.S. presidential administrations, supported by a 1993 U.S. Supreme Court decision, (34, 35) have attempted to deter Haitian people from accessing asylum in the U.S. through the targeted application of maritime interdictions in international waters, sparking international criticism. (36). The U.S. maintains the position that its obligations to migrants and asylum seekers are not engaged when it operates in international waters, despite human rights bodies such as the Human Rights Committee and the Inter-American Commission on Human Rights expressly stating that such practice is outside the rule of law. (37, 38)

Housed in DHS and led by the USCG, the U.S. Maritime Migrant Interdiction Operations employs “air and sea military assets” to patrol the Florida Straits and the Caribbean Sea to intercept people attempting to migrate to the U.S. by sea, primarily from Haiti and Cuba. (39, 40). As the DHS Secretary expressed regarding maritime interdictions, “any migrant intercepted at sea, regardless of their nationality, will not be permitted to enter the United States.” (41).

DHS uses USCG ships, in partnership with other military and law enforcement agencies, to intercept boats carrying people attempting to migrate to the U.S. “as far from U.S. borders as possible.” (42). Upon interception, the U.S. takes people aboard USCG ships, where, as described in a February 2023 article by a USCG leader, “[i]t is not uncommon for hundreds of migrants to be squeezed on a flight deck measuring 1,500 square feet”; where “hundreds of temporary migrants live, eat, sleep, defecate, and receive medical care in this one spot, sometimes for days on end, until repatriation can be coordinated;” and where “the situation is also often on the verge of devolving into riots” and “operations are, in no small way, akin to combat.” (43).

In this environment, DHS asserts that USCG operatives employ ‘manifestation of fear’ tests, by visually scanning people to determine whether anyone demonstrates a fear of return to their country of origin. USCG fails to ask migrants critical verbal questions, and access to counsel is not



allowed. If a USCG agent identifies a person as manifesting fear, that person can be transferred to the Migrant Operation Center located on Guantanamo Bay for a CFI.

Maritime interdictions have increased over the last five years. In fiscal year 2022, the USCG interdicted more than 12,000 Haitians and Cubans. (44, 45). Throughout this process, from being interdicted, to being visually scanned, to possibly receiving a CFI, people cannot be located by family or by legal counsel and are often denied the right to seek asylum. Most of these interactions lead to the U.S. returning and at times refouling individuals to their country of origin or a third country.

DHS's Office for Civil Rights and Civil Liberties opened an investigation in January 2023 into whether DHS policies relating to maritime interdictions diminish the civil rights and civil liberties of migrants seeking protection. (46).

### **CONCLUSION**

We ask the WGEID and CED to consider whether the above-mentioned practices constitute enforced disappearances and/or increase the risk of such human rights violations. Throughout these opaque processes in which migrants and asylum seekers are in state custody and cannot be reached, the U.S. government makes determinations about whether to afford them the right to seek asylum or deport them without further process. This raises the question as to whether enforced disappearance is coincidental or an intentional tactic to execute abusive and unlawful immigration policies.

Sincerely,

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**APPENDICES**

<b>A</b>	Natalie Cadwalader-Schultheis, <i>Examples of Enforced Disappearances from Human Rights First's Data</i> , prepared for research from completion of program requirements for certificate in Mexican Public Law & Policy at the University of Arizona and the Universidad Nacional Autónoma de México.	pp. 12-28
<b>B</b>	<i>Flores v. Garland</i> , Notice of Filing of Juvenile Care Monitor Report by Dr. Paul H. Wise, CV 85-4544-DMG-AGR, July 18, 2023, ECF No. 1352.	pp. 29-80
<b>C</b>	<i>U.S. Customs and Border Protection Family Unit Separation Guidance</i> , U.S. Customs and Border Protection, available at: <a href="https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/20-876%20-%20Family%20Unit%20Separation%20Guidance%2001082020%20%281%29_Redacted.pdf">https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/20-876%20-%20Family%20Unit%20Separation%20Guidance%2001082020%20%281%29_Redacted.pdf</a>	pp. 81-96

# APPENDIX A



## APPENDIX A.1

The data in Appendices A and B was prepared by Natalie Cadwalader-Schultheis for research conducted while completing a certificate program (*diplomado*) in Mexican Public Law and Policy in a joint program through the University of Arizona and taught by professors at the Universidad Nacional Autónoma de México (UNAM). In addition to completing coursework, the preparer was required to submit a paper (*tesina*) related to Mexican law and policy in order to receive the program completion certificate. For this paper, the preparer reviewed Human Rights First's spreadsheets of documented harms against individuals subjected to these U.S. border externalization policies in Mexico. After UNAM and University of Arizona faculty reviewed and approved the paper, the preparer was awarded her certificate for completion of the program in the spring of 2022.

Below are case examples of individuals who were sent back to Mexico as a part of the USG's Remain in Mexico and Title 42 programs. These case examples were selected based on the description for **containing *all prima facie* elements** of enforced disappearance under Mexican domestic and Inter-American and United Nations treaty definitions of enforced disappearance. This means that, if true, these would constitute enforced disappearances. The descriptions have been quoted exactly from the sources from which they were taken, though the author of this paper has emboldened words relating to state action for emphasis.

Case examples 1-9 are sourced from Human Rights First's publicly available spreadsheet of harms that the organization documented for individuals forced to return to Mexico under the USG's Remain in Mexico program.<sup>1</sup> The columns for "Page" and "Row" correspond to the page and row of the same example sourced from Human Rights First's spreadsheet.

Case example 10 comes from an article from NBC News.<sup>2</sup> While the absence of this case example would otherwise allow for a neat dataset from a single advocacy source, the description of harm was so chilling that its inclusion captures the most horrific consequences that can result from these USG-created policies, including cases in which the disappearance may continue indefinitely.

Case examples 11-24 are sourced from Human Rights First's publicly available spreadsheet of harms that the organization documented for individuals forced to return to Mexico under the USG's Title 42 policy.<sup>3</sup> The columns for "Page" and "Row" correspond to the page and row of the same example sourced from Human Rights First's spreadsheet.

Case example 25 comes from Human Rights First's report Human Rights Stain, Public Health Farce, published in December 2022.<sup>4</sup>

### Prima Facie Cases of Enforced Disappearance

<sup>1</sup> HUMAN RIGHTS FIRST, *Publicly reported cases of violent attacks on individuals returned to Mexico under the "Migrant Protection Protocols"*, as compiled by Human Rights First, last accessed 5 Feb. 2023, <https://web.archive.org/web/20220908083215/https://www.humanrightsfirst.org/sites/default/files/PubliclyReportedMPPAttacks2.19.2021.pdf>.

<sup>2</sup> Damià Bonmatí, *Migrants Returned to Mexico Describe Horror of Kidnappings, Torture, Rape*, NBC NEWS, NOTICIAS TELEMUNDO INVESTIGA, 29 Sept. 2021, last accessed 14 Aug. 2022, <https://www.nbcnews.com/news/latino/migrants-returned-mexico-describe-horror-kidnappings-torture-rape-rcna2300>

<sup>3</sup> HUMAN RIGHTS FIRST, *Human Rights First Tracker of Reported Attacks Against Asylum Seekers and Migrants Who Are Stranded in and/or Expelled to Mexico Due to Title 42 Since January 2021*, last accessed 20 Nov. 2022, <https://humanrightsfirst.org/wp-content/uploads/2022/12/Attacks-on-Asylum-Seekers-Blocked-Expelled-or-Retained-to-Mexico-During-Biden-Administration-1.pdf>

<sup>4</sup> HUMAN RIGHTS FIRST, *Human Rights Stain, Public Health Farce*, Dec. 2022, pp. 11-12, last accessed 18 Dec. 2022, available at: <https://humanrightsfirst.org/wp-content/uploads/2022/12/HumanRightsStainPublicHealthFarce-1.pdf>

Case #	Page	Row	Remain in Mexico or Title 42?	Description
1	3	5	Remain in Mexico	“A migrant woman from Honduras was <b>kidnapped and sexually assaulted after federal police agents in the Mexican border town of Ciudad Juárez abducted her and handed her over to a criminal group</b> in the early morning hours of June 10, El Diario de Juárez reported.”
2	8	3	Remain in Mexico	“Couple from Guatemala <b>kidnapped with 12 year old child by Mexican federal police and cartel members.</b> They saw their persecutors put plastic bags over other migrants’ heads and duct tape them in place. They were abused, separated, and threatened.”
3	26	6	Remain in Mexico	“CBP officers returned a Nicaraguan political activist seeking asylum in the United States to Mexico even though <b>corrupt Mexican police officers in Reynosa had handed him over to kidnappers in mid-August.</b> He was held along with a group of about 24 other migrants – including about ten non-Spanish speaking black migrants, several other Central American migrants, and a Russian man who had been tortured by the abductors after apparently attempting to escape.”
4	28	1	Remain in Mexico	“Earlier this summer, I spoke with a twenty-year-old woman from northern Honduras named Tania. In early April, she and her fourteen-year-old sister were separated at an El Paso port of entry. Her sister was sent to a children’s shelter run by the Department of Health and Human Services and eventually placed with their mother, who lives in Boston. Tania spent six days in detention in the U.S., in a frigid holding cell known among migrants as a hielera, before Mexican immigration agents picked her up and took her back across the border, into Mexico. They dropped her off at a migrant shelter that was already full. She roamed the streets, looking for another place to stay. Her tattered clothes and accent marked her as foreign, and her race—she’s black and belongs to an indigenous community called the Garifuna—led to several episodes of public abuse. “People would shout and spit at me when I was on the street,” she said. “If I sat down somewhere, people would get up and move away.” ...Back in Mexico, she decided that it was pointless to wait any longer. She and another woman from Honduras hired a smuggler to help them cross into the U.S.

				<p><b>Neither of the women realized it at the time, but the smuggler was in league with a cadre of Mexican federal policemen. For two nights, she and the other woman were driven to different stash houses along the border. On the last night before they expected to cross, they were taken to yet another house, where there were four other women and a group of armed men, including policemen in uniforms, keeping watch. That night, one of the policeman held a gun to Tania’s head and ordered her to perform oral sex on him. ‘I could hear the other women getting beat up in the background,’ she said. Early the following morning, Tania and another woman were transported to a separate location, where they were repeatedly raped. A week passed before local authorities found them and took them to a hospital.”</b></p>
5	29	3	Remain in Mexico	<p>“Also on the bridge was Gilma, a 26-year-old Honduran asylum-seeker who was sent to Nuevo Laredo after presenting herself at the US border. Along with a group of other immigrants, she was transported to a shelter at the direction of Mexican immigration agents. <b>Along the way, the bus was stopped by federal police, Gilma said, who ordered all of the immigrants off the vehicle. Moments later the group was boarded onto trucks at gunpoint by men who took them to a large house with about 300 kidnapped immigrants.</b> When Gilma and two other women couldn't provide phone numbers for family members who could pay a ransom, some of the men took them to another room and took turns raping them, she said."While they raped us they told us they would do the same things to our children," Gilma told BuzzFeed News. "They let us go, but before they left they took photos of us and told us to never return to Nuevo Laredo." Gilma has since made her way to Matamoros where she hopes she will be safe, but is fearful of returning to Nuevo Laredo in January for her court hearing on the other side of the border.”</p>
6	38	5	Remain in Mexico	<p>“A seven-year-old Honduran girl returned by DHS to Nuevo Laredo told her asylum-seeking mother ‘Mommy, I don’t want to die’ after overhearing the men who kidnapped them discussing murdering migrants who could not pay ransom. <b>In mid-September, cartel members openly kidnapped returned asylum seekers inside the INM building in Nuevo Laredo following U.S. immigration court hearings, including the seven-year-old Honduran girl and her mother mentioned above. The woman overheard a Mexican migration officer tell the kidnappers the number of migrants returned from court that day and the men counting victims to abduct.</b> The family tried to escape in the car of local pastor, but cartel members forced the vehicle to stop a few blocks away, abducted them, and</p>

				held them in a house with some 20 other kidnapped migrants. <b>A cartel member threatened to kill the woman if she reported the kidnapping to the police and bragged ‘the man from migration gave you to us.’</b> ”
7	54	7	Remain in Mexico	“Two Cuban men who were returned to Mexico under MPP by DHS to Matamoros were <b>stopped by Mexican federal police, asked for their papers, which were confiscated, and then handed them over to kidnappers.</b> After beating them for five days, depriving them of food, and threatening to find them again, the men were released after their US -based relatives paid a ransom. The men failed their nonrefoulement interviews with USCIS asylum officers and were returned to Mexico.”
8	79	1	Remain in Mexico	“A Honduran asylum seeker who worked as an education rights activist fled with her eleven-year-old daughter after being targeted and raped for her political work. She was returned to Ciudad Juarez under MPP in July 2019. In December 2019, she and her daughter were kidnapped and taken to a house. The mother was raped by multiple men, dressed in makeup and heels, and photographed. Eventually, she and her daughter escaped and crossed between ports of entry out of fear. They were apprehended and returned to Juarez even though the mother told immigration officers what had happened to her. In January 2020, she was the victim of a second kidnapping when people broke into her home. Her daughter climbed into the stove and hid while the mother was kidnapped at gunpoint, taken to different houses, and forced to have sex with different men. They made her listen to an audio of her child saying "Hi mommy" and threatened to force her daughter into prostitution. <b>After about a week, she was brought to a large party in another house where she saw one of the police officers who had previously helped her file a police report, and realized he was connected to the kidnappers.</b> She was able to escape and took a bus back to Ciudad Juarez.”
9	88	7	Remain in Mexico	“A Cuban dentist who is seeking asylum was kidnapped from a bus on the way from Reynosa to her MPP hearing in Laredo in December 2019. <b>Mexican police officers at a check point ordered her off the bus and put her in a truck that took her to a safe house where other kidnapping victims were being held.</b> She was released after another MPP asylum seeker paid the ransom, but she missed her hearing and was ordered removed in absentia.”

10*	*Not in HRF report; Available at: <a href="#">NBC</a>		Remain in Mexico	<p>“The group heard that a fellow Honduran had fled. According to José Antonio’s account, <b>the armed guards called someone they said was a local police officer, who found the fugitive in about 20 minutes. When he was returned,</b> “they beat him, they cut off his ear and told him: ‘If you speak, if you scream, something is going to happen to you.’” The man was writhing in pain and said it hurt. At that point, one of the guards “shoots him in the head, in the forehead,” José Antonio said. They killed the Honduran migrant right there.”</p>
11	3	5	Title 42	<p>“In April 2021, CBP expelled a Honduran asylum-seeking family, including three children under the age of five, to Mexico even though they had been <b>abducted in Reynosa by Mexican police officers who sold them to a cartel.</b> While being held for ransom, a cartel member held a gun to the mother’s head and demanded phone numbers of family members to pay the ransom.”</p>
12	4	8	Title 42	<p>“Teresa, a Honduran woman, was kidnapped after DHS expelled her to Nuevo Laredo. <b>The Mexican immigration officers who received Teresa turned her over to a cartel</b> , who held her for ransom.”</p>
13	16	9	Title 42	<p>“Two Nicaraguan women reported that 23 Nicaraguan asylum seekers who had been traveling with them were kidnapped in Reynosa in July 2021. <b>Police at a checkpoint handed the group, which included the women’s partners, over to a cartel extorting family members in the United States for ransom. Some of the group remain kidnapped, while at least one of the kidnapped asylum seekers has gone missing after his family paid ransom to secure his release.</b>”</p>
14	22	9	Title 42	<p>“<b>An INM officer kidnapped and raped a Honduran asylum-seeking woman near the border in Ciudad Juarez and sold her to a cartel that held her captive.</b> Though she managed to escape, the woman has been unable to request U.S. asylum due to the Title 42 policy and remains in danger in Mexico, terrified the cartel members, who have photos of her, will find her again, according to Las Americas Immigrant Advocacy Center.”</p>
15	23	2	Title 42	<p>“<b>An INM officer in Tijuana kidnapped a Honduran family of three who had made multiple attempts to request U.S. asylum.</b> The officer offered the family a</p>

				ride then held them at gunpoint demanding money and information about U.S. family members. <b>The officer handed the family over to men who held them captive</b> , sexually abused and beat them so severely that one family member lost consciousness. They managed to escape but remain in danger in Mexico, according to Las Americas Immigrant Advocacy Center.”
16	25	6	Title 42	“Julio Ampie, who had been a political prisoner in Nicaragua, was kidnapped in Reynosa with his wife and two children in July 2021. INM had previously extorted him for \$600 in El Guasaule. <b>Mexican police entered the hotel room where they were staying in Reynosa, loaded them into a van, and brought them to a small house where there were more migrants, then sold them to a cartel for \$3,000.</b> In October 2021, 7 Nicaraguan victims, including Gerlenis Jimenez and Maria Teresa Delgadillo, were freed after \$70,000 of ransom was paid to the kidnappers. Melvin Francisco Martinez was kidnapped at the end of August 2021 and managed to escape after 10 days.”
17	27	9	Title 42	“A Central American asylum-seeking woman and her children, who were kidnapped and held for ransom for eight days in August 2021, remain in danger in Reynosa due to Title 42 restrictions on asylum at the border. <b>The woman told Human Rights First that uniformed men she believed to be Mexican police officers had forced her family off a bus and turned them over to the cartel that held them captive.</b> ”
18	31	2	Title 42	“A Honduran man blocked from seeking asylum because of Title 42 reported to the Al Otro Lado survey in January 2022 that <b>Mexican migration officials in Reynosa sold him and his wife to a cartel for \$500 each</b> and that cartel members raped his wife.”
19	31	8	Title 42	“ <b>Mexican immigration [in Nuevo Laredo] turned us over to some men who supposedly were going to help us but who instead kidnapped us.</b> They took us to a hotel of theirs, supposedly of the cartel. They called my family for a deposit of \$5,000... During this time I was held in a small house... It was horrible. In two rooms we were about 50 people with one bathroom. The rooms were about three or four meters squared. They required us to lay down like we were sleeping the whole time, not walking or stretching, because they were afraid we would run. They gave us to eat only sometimes, around one time a day a burrito. There were days when they didn’t give us anything. There were three to four armed guards at all times.”

20	31	9	Title 42	“Statement of an asylum seeker who was pregnant and sick when Border Patrol expelled her to Tamaulipas where the <b>Mexican police turned her over to the cartel</b> . The cartel kidnapped her for 20 days during which she and her unborn baby nearly died.”
21	34	8	Title 42	“Irene, a Salvadoran asylum seeker, was kidnapped and raped with her 9-year-old daughter in Ciudad Juárez in spring 2022 along with 15 other Central American migrants. <b>When Mexican municipal police arrived at the house where the family was being held captive for more than a month, Irene thought she was being rescued. Instead, police transported the family to another house, where the same organized criminal group continued to hold them captive.</b> After a month in captivity, Irene and her daughter managed to escape the kidnapers and cross the border to seek U.S. asylum. DHS expelled them back to Ciudad Juárez under Title 42, where they were kidnapped for a second time.”
22	35	10	Title 42	“ <b>Coahuila state police kidnapped a Honduran asylum seeker in Piedras Negras in March 2022 and turned him over to an organized criminal group</b> that held him captive for 15 days. His family were forced to sell their house to pay the \$15,000 ransom. The man told Human Rights First that police had also stolen his money and cell phone in a separate incident after the kidnapping.”
23	36	6	Title 42	Under Title 42, Border Patrol also expels families directly into the hands of criminal groups. Mari*, her husband and her 2 sons, ages 7 and 9, fled Guatemala after her husband was beaten and threatened for his refusal to join the gang. Mari and her family tried to enter the US through Nuevo Laredo, Mexico, but were deported. Once in Mexico, <b>the INM (National Migration Institute of Mexico) said they would take them to a shelter, but instead, turned them over directly to the cartel, los Zetas.</b> Mari and her family were kidnapped and held hostage by los Zetas for 3 months, where they faced physical torture. They watched others who tried to escape be killed and were only able to leave after paying an extortion.
24	38	1	Title 42	In October 2022, <b>Mexican police turned over Jenny, a Venezuelan woman, and other migrants to a cartel</b> that abducted and forced Jeny into labor . Police had stopped Jeny and other migrants near Ciudad Juárez and

				turned them over to the cartel, which demanded ransom payment for their freedom. Because Jeny was unable to pay due to several previous extortions, the cartel forced her to cook and clean—an experience she describes as “hell,” explaining that she feared she would be killed.
25	See, Human Rights First’s Human Rights Stain, Public Health Farce, p. 12	Title 42		<b>Juárez police sexually assaulted a Honduran mother and her four-year-old daughter after the family was blocked from seeking protection in Ciudad Juárez in August 2022, then turned them over to cartel members</b> who held the family captive for 22 days, raped the mother in front of the daughter, and physically attacked the daughter. The mother reported the incident to Al Otro Lado.



## APPENDIX A.2

Below are case examples of individuals who were sent back to Mexico as a part of the USG’s Remain in Mexico and Title 42 programs. These case examples were selected based on the description for **containing *some* prima facie elements** of enforced disappearance under Mexican domestic and Inter-American and United Nations treaty definitions of enforced disappearance. Because I believe that the US lawyers and journalists documenting these cases were not assessing whether someone may have been a victim of enforced disappearance at the time of data-gathering, I believe that it’s possible, with more information, that many of these examples could be cases of enforced disappearance if more information were known. In the far right columns, I have added specific information that, if known, would help in making a determination as to whether the instance constitutes an enforced disappearance. The descriptions have been quoted exactly from the sources from which they were taken, though the author of this paper has emboldened words relating to state action for emphasis.

Case examples 26-44 are sourced from Human Rights First’s publicly available spreadsheet of harms that the organization documented for individuals forced to return to Mexico under the USG’s Remain in Mexico program.<sup>5</sup> The columns for “Page” and “Row” correspond to the page and row of the same example sourced from Human Rights First’s spreadsheet.

Case examples 45-54 are sourced from Human Rights First’s publicly available spreadsheet of harms that the organization documented for individuals forced to return to Mexico under the USG’s Title 42 policy.<sup>6</sup> The columns for “Page” and “Row” correspond to the page and row of the same example sourced from Human Rights First’s spreadsheet.

Cases Containing Indications of Enforced Disappearance					
Case #	Page	Row	Remain in Mexico or Title 42?	Description	Additional Information Needed
26	8	5	Remain in Mexico	“A Honduran woman who DHS returned to Ciudad Juárez was reportedly <b>kidnapped in June by a group of men in federal police uniforms</b> and repeatedly sexually assaulted. According to her attorney, Linda Rivas of Las Americas Immigrant Advocacy Center in El Paso, the woman is part of the Afro-Caribbean Garifuna minority and was vulnerable to targeting in Mexico because of her race, gender and nationality.”	Interviewers should clarify where the person was detained and if the detention was properly registered.
27	13	2			

<sup>5</sup> HUMAN RIGHTS FIRST, *Publicly reported cases of violent attacks on individuals returned to Mexico under the “Migrant Protection Protocols”*, as compiled by Human Rights First, last accessed 5 Feb. 2023, <https://web.archive.org/web/20220908083215/https://www.humanrightsfirst.org/sites/default/files/PubliclyReportedMPPAttacks2.19.2021.pdf>.

<sup>6</sup> HUMAN RIGHTS FIRST, *Human Rights First Tracker of Reported Attacks Against Asylum Seekers and Migrants Who Are Stranded in and/or Expelled to Mexico Due to Title 42 Since January 2021*, last accessed 20 Nov. 2022, <https://humanrightsfirst.org/wp-content/uploads/2022/12/Attacks-on-Asylum-Seekers-Blocked-Expelled-or-Retuned-to-Mexico-During-Biden-Administration-1.pdf>

			Remain in Mexico	“Even though Danilo explained to a CBP officer that he had escaped from armed men attempting to kidnap him, he was returned to Mexico through MPP without a fear screening. In late May, Danilo placed his name on the wait ‘list’ in Reynosa to seek asylum at the U.S. port of entry. While searching for a shelter, two armed men hunted Danilo and another asylum seeker throughout Reynosa trying to kidnap them. A Good Samaritan hid the two in a car trunk and spirited them to another part of town, but the kidnapers found them. Danilo managed to escape and hid in a shelter for 40 days. <b>Danilo had previously been abducted by Mexican police officers who demanded a \$1,500 payment from his family to release him.</b> In early July, as CBP severely reduced the number of people permitted to ask for asylum at the port of entry, Danilo crossed the border in desperation to request protection. CBP did not refer Danilo for a fear screening despite his attempts to express his fear: ‘I explained what had happened in Mexico, but [the CBP officer] insisted that I had to return to Mexico.’”	Interviewers should clarify where the person was detained and if the detention was properly registered.
28	18	5	Remain in Mexico	“A Salvadoran father wept while his little girl slept in his lap. He was kidnapped with others while traveling to court via bus. <b>The police cars he thought were there to help them instead kidnapped the group.</b> He was released because he had no money. The others remain missing.”	Interviewers should clarify where the person was detained and if the detention was properly registered.
29	25	2	Remain in Mexico	“A Central American family with three children were <b>abducted by men wearing Mexican police uniforms</b> after being returned by DHS to Ciudad Juárez in August. An attorney assisting the family reported that photos sent with ransom demands to the family’s relatives in the United States showed the family in what appeared to be a government office.”	Interviewers should clarify whether the detention was properly registered.
30	25	3	Remain in Mexico	“A Guatemalan family with two children were <b>kidnapped for ransom by men in Mexican federal police uniforms</b> after DHS returned them to Ciudad Juárez in July under MPP. The family told an immigration attorney that the kidnapers tortured some of the migrants held with them, duct-taping plastic bags over their heads to suffocate them. They and others managed to escape when their abductors unexpectedly left. However, the family later saw the same men who had kidnapped them near the shelter where they were hiding.”	Interviewers should clarify where the person was detained and if the detention was properly registered. Interviewers should also clarify whether these were actually law enforcement officials or merely non-state actors dressed as law enforcement. Lastly, interviewers should ask whether law enforcement handed these individuals over to non-state actors.

31	26	5	Remain in Mexico	<p>“A Honduran asylum seeker and his 9-year-old son were expelled to Matamoros without a fear screening even though the man explained to CBP officers that <b>he and his son had been kidnapped and that he was subsequently tortured by Mexican law enforcement officers in Tamaulipas</b> who burned him with lit cigarettes. The man showed Human Rights First researchers several small circular scars on his stomach that appeared consistent with his account. He said a CBP officer threatened to separate him from his son if he persisted in insisting that he feared return to Mexico.”</p>	<p>Interviewers should clarify whether the “kidnapping” and torture events were related. Where did these events occur? Was there coordination between state and non-state actors? Were detentions properly registered?</p>
32	45	4	Remain in Mexico	<p>“DHS returned a Salvadoran asylum seeker, her husband, and three young children to Mexico in October even though they had been <b>kidnapped and threatened by Mexican federal police</b> in Ciudad Juárez. The officers brought the family to what appeared to be a police station, demanded ransom from the woman’s family in the United States saying that they ‘would never see them again,’ if they failed to pay, and even threatened to take away the woman’s children and put them up for adoption.”</p>	<p>Interviewers should confirm whether the detention was properly registered.</p>
33	47	2	Remain in Mexico	<p>“A Cuban asylum-seeking client of Kenna Giffen, an immigration attorney working with asylum seekers returned to Matamoros, told Giffen that <b>Mexican police had entered a church in Reynosa sheltering migrants and demanded money. The police detained those who refused to pay from the church.</b>”</p>	<p>Interviewers should clarify where the person was detained and if the detention was properly registered. Additionally, did law enforcement hand the individuals over to non-state actors?</p>
34	48	1	Remain in Mexico	<p>“An asylum seeker from El Salvador and his six-year-old son who were <b>kidnapped, robbed, and extorted multiple times, including by Mexican police</b>, were returned by DHS to Mexico after failing to pass an MPP fear screening, according to their attorney Constance Wannamaker. Though the family’s account was deemed credible, as indicated by the interview worksheet, the asylum officer found that they did not meet the standard to establish a more likely than not probability of harm in Mexico.”</p>	<p>Interviewers should clarify, in the instance(s) in which law enforcement was involved, where were the individuals detained and if the detentions were properly registered. Additionally, did law enforcement hand the individuals over to non-state actors?</p>
35	65	3	Remain in Mexico	<p>““Gloria and her husband and three children said they have been hiding out at a migrant shelter since July. <b>She said they arrived there after they were kidnapped and extorted by Mexican federal police.</b> They had traveled over 2,000 miles from El Salvador to get to the US border and seek asylum. But a controversial Trump administration policy called the</p>	<p>Additionally, did law enforcement hand the individuals over to non-state actors?</p>

				Migrant Protections Protocol (MPP) is forcing them to wait in Mexico instead of the US for their asylum hearings, even though Gloria told us she is in danger because of what happened to her in Ciudad Juárez.”	
36	69	2	Remain in Mexico	“In the camp two Cuban men say they were also abducted in Monterrey, held for days, and beaten until relatives in the United States paid \$4,000 each. <b>They claim the kidnappers were the police.</b> ”	Interviewers should clarify where the person was detained and if the detention was properly registered.
37	78	2	Remain in Mexico	“After seven of his family members were killed in Honduras, Francisco, who is being identified by a pseudonym because he doesn’t want to draw unwanted attention to his case, fled for his life. He traveled by boat, bus, and tractor trailer across two countries. <b>He said he was kidnapped and raped by Mexican police.</b> He was extorted by an immigration agent. And he was sent by the US government to live in this squalid camp in Matamoros for months.”	Interviewers should clarify where the person was detained and if the detention was properly registered.
38	82	3	Remain in Mexico	“Cuban asylum seekers who are cousins were <b>detained by Mexican authorities in or near Tijuana for around five months</b> starting in June or July 2019. They were physically harmed, denied medical care, given food with cockroaches, and not allowed to speak with relatives. There, they met another Cuban asylum seeker who is afro-latina. When they were released, immigration officers drove the three of them to a dark alley and beat them up, threatening to kill them if they went to the police. Both cousins had been beaten by government authorities in Cuba for their political activity.”	Interviewers should clarify where the person was detained and if the detention was properly registered.
39	87	5	Remain in Mexico	“An asylum seeker returned to Mexico under MPP was <b>detained in November 2020 in Tijuana by people he believes were Mexican police officers</b> who threatened to/attempted to execute him.”	Interviewers should clarify where the person was detained and if the detention was properly registered.
40	88	5	Remain in Mexico	“A Cuban asylum seeker was <b>kidnapped by the Mexican police in Juarez in June 2020.</b> They beat her and orally raped her. After she was released, she immediately crossed between ports of entry, visibly injured, in the hope of protection. When she was apprehended, she begged U.S. immigration officials for medical attention and a fear interview. She was denied both and returned to Juarez, according to an immigration attorney who represents clients in MPP.”	Interviewers should clarify where the person was detained and if the detention was properly registered.
41	89	4			

			Remain in Mexico	<p>“An LGBT Honduran asylum-seeker returned to Ciudad Juarez under MPP in April 2019 was <b>kidnapped in June 2019 by four men addressed in police and military uniforms</b>. She was sexually assaulted, a friend was raped in front of her, and she was forced to watch someone else be executed. She escaped with help from other kidnapping victims and broke her foot while jumping a fence. She was removed from MPP in July 2019 after expressing fear during her second master calendar hearing but was detained at El Paso Processing Center. She underwent surgery for her injuries while in detention and has been using crutches since and also survived COVID-19 after ICE denied her humanitarian parole request. In August 2020, she was granted asylum and released from detention.”</p>	<p>Interviewers should clarify where the person was detained and if the detention was properly registered. Interviewers should also clarify whether law enforcement handed her over to non-state actors. Additionally, were the individuals actually law enforcement or non-state actors dressed in law enforcement uniforms?</p>
42	90	2	Remain in Mexico	<p>“Erika, otra migrante proveniente de Ecuador, indicó que, luego de ser detenida en EUA, fue devuelta a Nuevo Laredo arribando también casi a la medianoche. Una mujer que estaba en su grupo decidió caminar hacia un hotel que, según le informaron, era cercano. <b>Al solo avanzar unas cuadras Erika presenció cómo dos hombres se acercaron en un vehículo y la forzaron a entrar. Todo sucedió frente a la vigilancia de los agentes migratorios mexicanos.</b>”</p>	<p>Interviewers and researchers should ask more questions about potential coordination or acquiescence between law enforcement and non-state actors.</p>
43	90	3	Remain in Mexico	<p>“Salvadorian mother (Fany), husband, and 2 children were <b>kidnapped by supposed Mexican police officers in Ciudad Juarez</b> before being returned to Mexico under MPP.”</p>	<p>Interviewers should clarify where the person was detained and if the detention was properly registered.</p>
44	95	7	Remain in Mexico	<p>“A Cuban asylum seeker and her fiancée, who were returned by DHS to Nuevo Laredo by DHS, were <b>threatened with arrest and deportation by four Mexican officials because their MPP Mexican permits had expired. The officers demanded 1000 pesos each to let them go</b>. They reported the incident but are going to move for fear of retaliation.”</p>	<p>Interviewers should clarify where the person was detained and if the detention was properly registered.</p>
45	6	9	Title 42	<p>"Griselda a 23-year-old woman traveling with her 5-year-old daughter left Guatemala where she was extorted by gangs that demanded part of her paycheck for allowing her to work at a grocery store. She refused. They threatened to kidnap her young daughter. . . . In Mexico, she encountered the very same thing she was running away from. <b>She said she was kidnapped by cartel gangs posing as police</b> and was given three days to pay \$6,000 or they threatened</p>	<p>Because law enforcement handing victims over to non-state actors is such a common scenario, interviewers should clarify whether these were only non-state actors or whether they were a combination of state and non-state actors working together.</p>

				to kill her. Her family back in Guatemala had to scramble to get the money to free her."	
46	28	4	Title 42	<p>“A Nicaraguan asylum seeker, who had been kidnapped and held for ransom in Mexico after being expelled there under Title 42, did not pass an RMX non-refoulment interview and was returned to Ciudad Juarez by CBP in December 2021. The man told the asylum officer conducting the fear interview that he had been kidnapped near the border after being expelled by DHS under Title 2, held captive for eight days, and denied food for more than 2 hours until his family paid a \$3,000 ransom. "They said, 'If you don't pay, we'll kill you,' he told Human Rights First. Mexican police had also twice extorted the man. <b>On one occasion, the Mexican police officers, who extorted and threatened him and other migrants on a bus, abducted two migrant girls.</b>”</p>	Interviewers should clarify whether there were indications that non-state actors were involved in the abduction of the two girls.
47	28	9	Title 42	<p>“A Honduran man who came through KBI two weeks ago had passed through a city in the Mexican border state of Coahuila and was renting a room with other Honduran migrants when <b>Mexican police entered their room and attempted to capture them. He managed to escape through a window, but one of his companions was taken.</b>”</p>	Interviewers should clarify whether there were indications that non-state actors were involved in the abduction of the companion.
48	29	1	Title 42	<p>“Manuel,* a Nicaraguan man fleeing political persecution, was <b>kidnapped by Mexican police officers</b> in two different cities while traversing the country. He was held in a police station for over 24 hours until the police received a \$500 USD ransom payment from his family. With no regard for the fact that Manuel suffered two separate kidnappings by Mexican authorities, CBP expelled him back to Mexico without ever screening him for fear of return.”</p>	Interviewers should clarify whether the detention was properly registered.
49	31	3	Title 42	<p>“In late January 2022, a Haitian woman in Matamoros reported to Al Otro Lado that Mexican police threatened to kill her and her five-year-old daughter, beat her husband, and stole the family’s money. <b>The police left the wounded man on the street and dumped the woman and her daughter in another city at night.</b>”</p>	Interviewers should clarify where the woman was detained and if the detention was properly registered.
50	31	4	Title 42	<p>“A Black transgender asylum seeker reported through the Al Otro Lado survey in late January 2022 that</p>	Interviewers should clarify whether the detention was properly registered.



				<b>Mexican police officers beat, robbed, and raped him, and jailed him for three days without food.”</b>	
51	31	5	Title 42	“Asylum seekers from the Afro-Honduran Garifuna ethnic group reported to the Al Otro Lado survey <b>multiple incidents of kidnappings and racist attacks by Mexican police</b> while stranded in Mexico due to Title 42 including, a Garifuna Honduran man who recounted that he was nearly kidnapped in Piedras Negras and that police had attacked and racially abused him.”	The wording makes it unclear whether the kidnappings were also by law enforcement. Interviewers should clarify who conducted the kidnappings, whether non-state actors were involved, where detentions occurred, and whether detentions were registered.
52	33	6	Title 42	“An asylum-seeking woman from Guatemala and her six-year-old son were <b>kidnapped by police</b> in Ciudad Juárez who held them at gunpoint and sexually abused the woman. The family reported to Al Otro Lado in March 2022 that they remain stranded there unable to seek asylum due to Title 42, according to Al Otro Lado.”	Interviewers should clarify where the person was detained and if the detention was properly registered.
53	35	7	Title 42	“ <b>Coahuila state police kidnapped a Honduran asylum-seeking woman, her husband, and their young daughter</b> in Piedras Negras in May 2022 while they were blocked from seeking U.S. asylum due to Title 42. The woman reported to Human Rights First that police held her family captive for three days with 15 other migrants and demanded an \$800 ransom.”	Interviewers should clarify where the person was detained and if the detention was properly registered.
54	37	10	Title 42	'Flavio', un venezolano de 33 años de edad, quien fue liberado durante la madrugada de ayer después de que su familia pagó un rescate a sus secuestradores, narró que antes de llegar a la estación de camiones en donde serían dejados, ya dentro de la ciudad, el camión en el que viajaba fue detenido por un grupo de hombres armados...Eran unas 50 personas las que detuvieron, era el camión completo”, relató. Dijo que en el camión de turismo viajaban sólo migrantes, quienes al ser privados de la libertad fueron separados, y él fue trasladado a una casa, junto a un grupo de personas en donde antes de ser liberado vio llegar a otro grupo de cuatro migrantes secuestrados de Ecuador y Cuba. (54)...“Veníamos de Ciudad de México, en una guagua, en un camión, y cuando llegamos a Ciudad Juárez, <b>después de que pasamos la revisión de Migración, en el segundo semáforo, estaba lloviendo esa noche, y se montaron dos jóvenes armados, pararon el camión en el que veníamos y pararon la guagua y había siete vehículos abajo</b>	This raises questions about potential coordination between non-state actors and Mexican immigration agents. Interviewers and researchers would need to determine whether there are other facts available to provide state facilitation or acquiescence of abductio’s by non-state actors.

			<b>esperando.</b> Le quitaron el teléfono a todo el que venía, madres con sus hijos, su esposo, venían como tres o cuatro familias con niños pequeños y les quitaron los teléfonos, les quitaron el dinero que tenían y los obligaron a bajar del bus y a montarse en los vehículos que tenían ellos abajo”, narró otra mujer migrante.	
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# APPENDIX B

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10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
12

13 JENNY LISETTE FLORES, *et al.*,

14 Plaintiffs,

15 v.

16 MERRICK B. GARLAND,  
17 Attorney General of the United  
18 States, *et al.*,

19 Defendants.

CASE NO. CV 85-4544-DMG (AGR<sub>x</sub>)

**NOTICE OF FILING OF  
JUVENILE CARE MONITOR  
REPORT BY DR. PAUL H. WISE**

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In accordance with the Court’s Orders, Dr. Paul H. Wise submits the attached Juvenile Care Monitor Report.

These assessments are required by the provisions of a recent settlement agreement approved by the Court on July 29, 2022 [Doc.# 1278] (the Settlement) which mandates many new and specific custodial conditions and procedures for immigrant children in federal custody. The Settlement also established the Juvenile Care Monitor (JCM) position to access CBP compliance with the provisions of the Settlement.

DATED: July 18, 2023

Respectfully submitted,  
  
Andrea Sheridan Ordin  
STRUMWASSER & WOOCHELL LLP  
  
By  /s/ Andrea Sheridan Ordin   
Andrea Sheridan Ordin  
  
*Legal Advisor to Juvenile Care Monitor  
Dr. Paul H. Wise*

**JUVENILE CARE MONITOR REPORT**  
**July 2023**

**Submitted by Paul H. Wise, MD, MPH**

**Juvenile Care Monitor**

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## GLOSSARY

BP Border Patrol  
CBP Customs and Border Protection  
CPC Central Processing Center  
FSA Flores Settlement Agreement  
HRL Harlingen Texas Border Patrol Station  
JCM Juvenile Care Monitor  
JPF Juvenile Priority Facility  
OPR Office of Professional Responsibility  
ORR Office of Refugee Resettlement  
RGV Rio Grande Valley  
SCD Sickle Cell Disease  
SSF Soft-sided Facility  
TIC Time-in-Custody

## **I. SUMMARY**

This report presents the evaluation and recommendations of the Juvenile Care Monitor who is charged with conducting independent assessments of custodial conditions for children held in Customs and Border Protection (CBP) facilities in the Rio Grande Valley (RGV) and El Paso sectors. These assessments are required by the provisions of a settlement agreement approved by the Court on July 29, 2022 [Doc. # 1278] (the Settlement) which mandates many new and specific custodial conditions and procedures for immigrant children in federal custody. The Settlement also established the Juvenile Care Monitor (JCM) position to assess CBP compliance with the provisions of the Settlement. This report covers the period of January through May 2023.

This report also includes an assessment of the circumstances associated with the death of an 8-year-old girl, ADRA\*, while in the Border Patrol station in Harlingen, Texas on May 17, 2023. This assessment was conducted as part of the JCM monitoring responsibilities, with a specific focus on the implications for CBP compliance with the requirements of the Settlement.

The JCM conducts a variety of monitoring activities. This report has drawn upon site visits to CBP facilities, interviews with children and families in CBP custody, interviews with unaccompanied children (UCs) in shelters run by the Office of Refugee Resettlement (ORR), the Department of Health and Human Services, and the analysis of data provided by CBP on custodial operations involving UCs and children in families.

\*Only initials are used in this report

While the JCM examines all Settlement requirements and reports all concerns related to Settlement compliance, the primary focus of the JCM has been on those requirements and concerns that have the greatest potential consequences for the health and well-being of children in CBP custody. All concerns related to Settlement compliance or other custodial issues generated by interviews or observations during site visits were immediately conveyed to CBP and remedial action monitored.

The Settlement mandates a full range of custodial requirements, many of which CBP has met. However, important concerns related to Settlement compliance remain and require remediation or purposeful review. The Settlement also requires that children and families in custody be provided with certain visual, written, or verbal notice of their legal rights and expected elements of custodial care. A summary of the Settlement components assessed in this report are presented below:

- **Juvenile Priority Facilities.** A fundamental provision in the Settlement is the designation of specific facilities in each sector to house and process UCs and families. These Juvenile Priority Facilities (JPFs), often designated Central Processing Centers (CPCs), have been established in both the RGV and El Paso sectors. However, there have been recent changes in the locations and physical plants of the JPFs in both sectors, changes that will require ongoing monitoring and evaluation.

- **Time in custody and overcrowding.** In both sectors, UCs continue to be regularly transferred to ORR care within the required 72 hours, most within 48 hours. Children in families, however, experienced a wider range of times in custody, some remaining in facilities for up to 14 days. The previous JCM report documented substantial overcrowding in family holding areas in El Paso. However, this overcrowding has been largely resolved after families were transferred to a new, soft-sided facility (SSF) with greater available space. This has proven to be a major improvement in custodial conditions for children in families in the El Paso sector.
- **Warmth, garments, and sleep.** The Settlement requires that CBP ensure that the holding environments maintain a temperature between 69 and 83 degrees, provide clean and warm garments to children in custody, and that the holding conditions are conducive to adequate sleep. CBP has met the ambient temperature requirements outlined in the Settlement. However, the availability of extra garments for children who feel cold varied for children in families. The sleep environment remains problematic as light dimming capabilities also varied in the different facilities. All children were provided with a sleeping mat and mylar blanket.
- **Nutrition.** The Settlement requires the provision of water and age-appropriate meals and snacks that meet their daily nutritional needs. CBP has met many of these requirements but not all. Water was readily available upon apprehension, in the JPFs and during transport. Snacks were available at all times in the JPFs. Two hot meals and one cold meal were provided each day. Infant formula and toddler foods were available in the JPFs. The quality of and satisfaction with the provided food varied considerably and will require continued monitoring. The primary deficiency continues to be



the provision of adult meals to young children. This was documented in the prior JCM report as well and does not comply with the requirement that CBP provide age-appropriate food to all children in custody.

- **Hygiene and sanitation.** The Settlement outlines a series of hygiene and sanitation requirements for all children entering CBP custody. CBP has generally met this Settlement requirement. The prior JCM report documented that shower requirements were generally met for UCs. However, it also noted that in overcrowded settings, children in families had highly variable access to showers during prolonged stays. The alleviation of overcrowding of families in the El Paso sector has been associated with improved access to showers. Sanitation in the JPFs continues to meet the requirements of the Settlement.
- **Caregivers.** The Settlement requires that CBP develop a “caregiver” program directed at providing a variety of direct custodial services to children in CBP custody. CBP has recently expanded the number of caregivers in the JPFs and has deployed them in all the UC holding areas, an important enhancement. Site visits have confirmed that caregivers are providing supervision of UCs and are facilitating child-friendly activities in the UC holding pods. Caregivers have also been deployed in isolation facilities and units when UCs or families are present. Site visits during this reporting period found no caregivers deployed in family holding areas, despite the fact that children in families may be experiencing prolonged times-in-custody. CBP reports making efforts to place caregivers in family holding areas, an enhancement that would help meet the activity and psychological needs of all children in custody.

- **Child-appropriate environment.** The Settlement requires that children be treated with dignity, respect, and in recognition of their particular vulnerabilities. CBP has generally met this Settlement requirement. Children interviewed during all CBP and ORR site visits reported that they felt safe in CBP custody. There were no reports of physical or verbal abuse by CBP personnel or by other children in custody. All JPF holding areas had televisions playing informational and entertainment videos. The RGV JPF has added child-friendly activities, including books, toys, and art materials, in the UC holding pods, all supervised by caregivers. The El Paso JPF has long maintained these activities in the UC holding pods. However, during the site visits, no caregivers or child-friendly activities were noted in the family holding pods, an important deficiency. The recent shift of the RGV JPF to the Ursula location eliminated outdoor recreation areas for children.
- **Medical Care and implications of a child death in custody.** The requirements of the Settlement mandate that the JCM assess both the structure and the performance of the CBP medical system for children in custody. CBP has established the required medical infrastructure, including around-the-clock medical services in the JPFs and most other main CBP stations in the two sectors. However, the prior JCM report identified a series of concerns regarding the quality of medical services and the adequacy of coordination and accountability practices, practices that all high-quality medical systems require. These concerns continued to characterize the CBP medical system during this current reporting period, concerns that provide the systemic context for the tragic death of a child in CBP custody in the RGV. This report concludes that the death of this child in custody was clearly preventable. Moreover, this report examines the circumstances of this

death and their critical implications for the CBP medical system and its compliance with the Settlement's requirements.

### **Overall Assessment of Child Well-Being in CBP custody**

The Settlement mandates a large number of specific custodial and procedural requirements. CBP has met many of these requirements. Important improvements have been implemented over this reporting period, particularly in the alleviation of overcrowding and the enhanced deployment of caregivers. However, there also remain areas of custodial services that are not in compliance with the Settlement and require improvement, some urgently, such as the quality and accountability of the contracted medical system for children in CBP custody.

The Settlement also requires a series of legal notices be provided to older UCs and parents or legal guardians of children in families in custody. The display of the required poster depicting the requisite custodial and procedural conditions while in CBP custody has been met. However, a comprehensive assessment of the actual provision of these legal notices is required. This report does not include such an assessment; rather, a full assessment of compliance with the legal notice requirements of the Settlement will be provided in a separate report that reflects legal guidance from both plaintiffs and defendants.

The situation on the border is inherently dynamic. However, compliance with the provisions of the Settlement is a constant requirement. Changes in immigration policies and the forces that drive unauthorized migration generate crescendos and decrescendos of apprehensions, which, in turn, confront CBP with a constantly evolving challenge to its holding capacity and systems of custodial services. Consequently, the conditions in CBP facilities should not be considered static or

fixed; rather, they will always be contingent on CBP's ability to respond to the dynamic character of the border and its legal and humanitarian demands.

It is important to appreciate, therefore, both the substantial burden on CBP to constantly respond to changing circumstances as well as the unwavering mandate to monitor CBP's performance in meeting the requirements of the Settlement.

## **II. THE CBP SETTLEMENT AND JUVENILE CARE MONITOR**

On July 29, 2022, the Court granted final approval of a settlement that resolved a motion to enforce compliance with the Flores Settlement Agreement (FSA) regarding conditions and standards at CBP facilities in the Rio Grande Valley and El Paso sectors along the Southwest Border. The Settlement is a lengthy and complex document that specifies a large number of specific custodial requirements. The Settlement was the result of nearly three years of mediation between the Plaintiffs and Defendants and overseen by the Special Master, Ms. Andrea Ordin, and informed by the Special Expert, Dr. Paul H. Wise, both appointed by the Court.

The FSA, established in 1997, contains the broad mandate that immigrant children be housed in "safe and sanitary" conditions with particular regard for the vulnerability of minors. The July 2022 Settlement articulates a series of specific custodial requirements, including the designation of "Juvenile Priority Facilities," to which minors must be transferred within 48 hours of arrival at any other CBP facility within the sector.

The Settlement established the role of a court-appointed Juvenile Care Monitor, with a mandate and authority to monitor CBP's compliance with the provisions of the Settlement in the RGV and El Paso sectors. On August 3, 2022, Dr. Paul H. Wise was appointed the Juvenile Care Monitor for a 16-month term. Prior to his appointment as the JCM, Dr. Wise served since July 2019 as the Special Expert working with the Special Master (Ms. Andrea Ordin) to provide the Court with independent assessments of custodial conditions in CBP facilities in the RGV and El Paso sectors. Under the provisions of the Settlement, the JCM has access to CBP documents and records, may conduct announced and unannounced visits to CBP facilities in the RGV and El Paso sectors, may conduct interviews with class members and accompanying adult family members, and may conduct interviews with CBP employees and the employees of its contractors.

It is standard JCM policy that any and all concerns related to Settlement compliance or other custodial issues observed during site visits are immediately conveyed to CBP. In addition, the JCM also analyzes data from CBP in order to determine whether CBP is in compliance with the terms of the Settlement, including time in custody and whether there is overcrowding at CBP JPFs, as defined in the Settlement.

It is important to note that throughout this reporting period the JCM has been given full access to CBP facilities and relevant data and has been treated at all times with professionalism and courtesy by CBP leadership and operational personnel in the RGV and El Paso sectors.

### **III. MONITORING ACTIVITIES AND DATA ANALYSIS**

The JCM conducts a variety of monitoring activities. This report has drawn upon 3 sources of information: site visits and interviews in CBP facilities; interviews at facilities run by the Office of Refugee Resettlement, Health and Human Services, (ORR) with UCs regarding their experiences in CBP custody; and CBP data on apprehensions and custodial operations of juveniles in custody.

#### **III.A. Site Visits**

##### **CBP Facilities**

Between January 1 and May 31, 2023, 8 site visits were conducted at CBP facilities. These site visits were both announced and unannounced visits, in which the JCM had full access to all sections of all facilities providing care for children. In addition, the JCM had full freedom to conduct interviews away from CBP personnel with both children and parents in custody. The dates and location of the site visits to CBP facilities were as follows:

- CBP El Paso
  - February 2-3
  - March 17-18
  - April 25-27
  
- CBP Rio Grande Valley
  - February 14\*
  - March 11-12
  - April 23-24
  - May 21-26
  - May 31\*

\*Site visit conducted by Dr. Cristel Escalona

## **ORR Facility**

Interviews with UCs were conducted during one visit to the Influx Care Facility at Ft. Bliss, Texas on April 26. The interviews were conducted with both boys and girls of varying ages between 12 and 17. The interviews were held in private settings without ORR staff present and focused on their experiences in CBP custody.

## **III.B. CBP Data Analysis**

CBP provided monthly reports on the number of UCs apprehended as well as the number of family unit encounters (includes all individuals in the family, including both adults and minors). These data are presented for the reporting period in Table 1. CBP also provides data on children who are held in custody for longer than 72 hours. These are presented in Table 2.

CBP data as well as site visit interviews have documented that it is rare that UCs are held in CBP custody for more than 72 hours. When the 72-hour limit is surpassed, it is almost always due to special circumstances, such as a child initially reporting that they are over 18 years old or for a protracted medical issue. Children in families, however, are routinely held for more than 72 hours. The variation in extended time in custody for families reflects differences in removal policies and home country demographics, the census in CBP facilities, and local processing capabilities, among other factors. The termination of the Title-42 policy and the institution of new removal policies for families and single adults could result in more protracted time in custody for families. This concern will require close monitoring, particularly for its potential impact on overcrowding.

**Table 1. Total Apprehensions by Month and Demographic Group, Nationwide**

	<b>JANUARY</b>	<b>FEBRUARY</b>	<b>MARCH</b>	<b>APRIL</b>	<b>MAY</b>
<b>INDIVIDUALS IN FAMILY UNITS</b>	25,829	25,644	33,269	46,514	44,900
<b>UNACCOMPANIED CHILDREN</b>	9,034	10,419	11,853	11,064	9,548

**Table 2. Children with Time in Custody (TIC) Greater than 3 Days (72 Hours), Nationwide Children in Families**

	<b>JANUARY</b>	<b>FEBRUARY</b>	<b>MARCH</b>	<b>APRIL</b>	<b>MAY</b>
<b>3-5 DAYS</b>	191	106	486	643	580
<b>6-7 DAYS</b>	28	19	191	326	212
<b>8-14 DAYS</b>	7	6	114	243	68
<b>&gt;14 DAYS</b>	0	0	2	38	1
<b>TOTAL</b>	226	131	793	1250	861

**Unaccompanied Children**

	<b>JANUARY</b>	<b>FEBRUARY</b>	<b>MARCH</b>	<b>APRIL</b>	<b>MAY</b>
<b>3-5 DAYS</b>	1	2	3	1	12
<b>6-7 DAYS</b>	4	0	2	0	4
<b>8-14 DAYS</b>	1	0	0	1	3
<b>&gt;14 DAYS</b>	0	1	1	5	1
<b>TOTAL</b>	6	3	6	7	20



## **IV. CONDITIONS AT CBP FACILITIES**

### **IV.A. Facility Designation**

In compliance with the Settlement, CBP has created Juvenile Priority Facilities (JPFs) in both the Rio Grande Valley and El Paso sectors. These have often been designated Central Processing Centers (CPCs) which are the primary sites within the sectors for holding UCs and families in custody. UCs and families apprehended in locations relatively distant from the CPCs may be initially held in CBP stations until transfer to the CPCs can be arranged. Interviews with UCs and families apprehended at locations distant from the CPCs reported transfer to the CPC within 48 hours, mostly within 24 hours.

### **Prior Report Assessment**

The prior report documented that the soft-sided facility located in Donna, Texas (Donna Facility) served as the CPC in the RGV sector. The prior report noted that the CPC in the El Paso sector was located in a hard-sided facility which was experiencing considerable overcrowding in the family holding pods. Because of this overcrowding, the holding pod dedicated to UCs was a single pod separated into boys' and girls' sections by a temporary barrier. Families were held with adult males and females (parents) in the same pods.

### **Current Observations**

In the RGV sector, the Donna Facility served as the JPF for most of this reporting period. However, in late May, the JPF was moved to the renovated "Ursula" location. This facility had previously been used to house single adults. However, at the end of this reporting period both UCs and families were being housed at the Ursula location. The Ursula facility is a hard-walled building with a processing

area comprised of interview desks, a medical intake unit, and temporary holding cells. The larger holding area is comprised of 20 pods, separated into 4 holding areas which share a central atrium. Each holding area has a central atrium which includes an elevated platform that serves as a watchtower, snacks, water, and for UC areas, activities such as coloring books and toys. There is no use of chain-link fence in the holding areas.

In the El Paso sector, CBP opened a new soft-sided facility (SSF) in January 2023, which became the JPF for families in the sector. This facility is comprised of a large central processing area and multiple holding pods. Families in the new SSF were separated by parent gender. During most of this reporting period, UCs continued to be housed in the hard-sided, CPC facility with each gender provided with a full holding pod. However, recently UCs were moved to the SSF location as well.

### **Assessment**

In the RGV, the shift of the JPF to the Ursula location provides some important environmental and logistical improvements. However, the fixed physical plant of the Ursula facility could prove problematic if the number of UC or family apprehensions increase in the sector.

### **Recommendation**

The potential for overcrowding in the Ursula facility requires close monitoring. In addition to the prospect of exceeding the maximum occupancy of holding pods in the Ursula facility, any need to begin using BP stations or other facilities to hold UCs or families on a regular basis would challenge the Settlement requirement for designating Juvenile Priority Facilities to hold children in each sector.

## **IV.B. Overcrowding**

Overcrowding is the custodial condition with the greatest potential to undermine the quality of care provided children in CBP custody. The Settlement defines overcrowding as “a level of occupancy that exceeds the physical space required to maintain a safe and sanitary environment for each individual in custody.”

### **Prior Assessment and Recommendations**

The prior report documented significant overcrowding of family holding areas in the El Paso JPF. This overcrowding was associated with “highly deficient” custodial conditions, including problems with cleanliness, hygiene, medical care, and caregiver coverage. In response, the prior report recommended immediate efforts to reduce the number of families being held in the El Paso JPF. UCs, although not overcrowded, were being held in a single pod with a temporary barrier separating boys and girls.

The JPF in the RGV sector was not observed to be overcrowded during the prior reporting period.

### **Current Observations**

In the RGV, both data and site visit observation did not suggest overcrowding in the Donna JPF. In El Paso, the transfer of families to the SSF alleviated the significant overcrowding observed at the former location. During most of this reporting period, UCs in El Paso were held in the hard-walled CPC. The transfer of families to the SSF permitted CBP to expand the holding area for UCs, such that each gender was housed in their own pod. Direct observations and

interviews with UCs confirmed that the number of UCs held in the CPC did not approach the maximum occupancies of the assigned pods.

Direct observations and interviews during this reporting periods with families held in the SSF documented no overcrowding and that the number of individuals in families held in the assigned pods did not approach the maximum occupancy levels.

### **Assessment**

Direct observations and interviews with UCs and families in the El Paso CPC and new SSF documented that the overcrowding observed during the prior reporting period was not present during the site visits. Ongoing monitoring of census data for the El Paso and RGV Juvenile Priority Facilities between site visits suggested that this level occupancy was maintained during the reporting period. This represented a major improvement in the custodial conditions observed in the El Paso sector.

### **Recommendations**

The occupancy levels in both the RGV and El Paso sectors can vary from day-to-day. Because overcrowding represents a major determinant of custodial conditions, occupancy levels will continue to require close monitoring via occupancy data tracking and site visits.

#### **IV.C. Nutrition**

The Settlement requires that CBP ensure that children have access to age-appropriate meals and snacks that meet their daily nutritional needs. Water and adequate hydration are also mandated by the Settlement.

#### **Prior Assessment and Recommendations**

CBP has generally met the nutrition requirements of the Settlement. Water was readily available upon apprehension, in the JPFs, and during transport. Snacks were available at all times in the JPFs. Two hot meals and one cold meal were provided each day. Infant formula and toddler foods were available in the JPFs. The primary concern had been that children 2-5 years of age were being provided with adult foods only. The primary recommendation was that young children should be offered age-appropriate food.

#### **Current Observations**

Site visits and interviews with families and UCs documented that water and snacks were always available from soon after apprehension through their time in CBP custody. During all site visits to both the JPFs and other sector BP stations, infant formula, bottled water, and mixing instructions were available. Toddler packets of pureed fruits and vegetables were also available at the JPFs. Reports regarding the quality of the food, however, varied considerably. During times of high census, there were several reports of hot meals being served at room temperature. In addition, some UCs reported that the taste was not acceptable and that they had relied primarily on snacks and fruit for their food intake.

Beyond food quality, the primary concern was the continued practice of providing young children with adult meals. No change regarding young-child food offerings has been implemented since the last report.

### **Assessment**

CBP has met many of the nutritional provisions in the Settlement. Water and snacks have been provided to families and UCs throughout their stays in CBP custody. Three meals per day have also been provided, although the quality appears to vary, particularly when the census is high. The continued failure to provide young children with age-appropriate food remains noncompliant with the nutritional requirements outlined in the Settlement.

### **Recommendations**

Young children should be provided with age-appropriate food during their custody in the JPFs. CBP should explore the options available to add these offerings to their existing meal contracts in these facilities. The quality of food offerings will require continued monitoring.

### **IV.D. Temperature and Garments**

The Settlement requires the maintenance of a temperature range no less than 69° Fahrenheit and no more than 83° Fahrenheit inside CBP holding facilities in the RGV and El Paso sectors.

### **Prior Assessment and Recommendations**

The prior report found that thermometers had been installed in all the pods holding families and children in the JPFs. During all site visits, the temperatures were found to fall within the required range. However, while temperatures in holding areas were observed to be in the range required by the Settlement, some children reported feeling cold. Prior recommendations included reassessing the lower limit of 69° as well as ensuring the availability of additional clothing, including sweatshirts, jackets, and hats. Also, laundering services in the El Paso CPC was considered inadequate during the prior reporting period.

### **Current Observations**

Site visits documented that all holding pods had functioning thermometers that registered temperatures that fell within the required range. Despite pod temperatures recorded within the prescribed range, UCs and family members often noted feeling cold during their time in the JPFs and stations.

The Settlement also requires that CBP facilities maintain a stock of clothing in a variety of sizes that can be distributed to UCs and children in families. Site visits to the JPFs observed UCs being provided with sweatpants, t-shirts, sweatshirts, socks, and footwear. These were generally provided at their first shower, usually within 12 hours after apprehension. Beanies can assist in keeping infants and young children warm, but these were observed to be in use only irregularly in family holding pods. Caregivers in the UC holding areas helped ensure that adequate garments were provided. However, in the family holding areas, parents were not well informed that extra garments for children were available. Mylar blankets were distributed to all UCs and family members. Replacement blankets were available upon request for those that were ripped or soiled. The shift of

families and UCs to the new SSF in El Paso provided new laundering capabilities which remedied the lack of such services in the prior CPC.

### **Assessment**

The Juvenile Priority Facilities are currently in compliance with the temperature, mat, and blanket requirements of the CBP Settlement. However, many children often felt cold at the lower end of the allowable temperature range. The Settlement requirement that external clothing be available to provide adequate warmth is being met for UCs. However, compliance with this requirement for children in families was highly variable. The lack of parental awareness of the availability of additional garments led to children feeling cold for long periods of time while in custody.

### **Recommendations**

There is no reason that children should report feeling cold for extended periods of time while in CBP custody. If the lower acceptable temperature limit is not raised, then greater efforts should be made to have additional clothing available and to ensure that parents are informed that additional garments are available if needed. Given the reports of children feeling cold, continued monitoring of the temperature and garment availability provisions is warranted.

### **IV.E. Sleep**

The Settlement requires that CBP make efforts to create custodial conditions that are compatible with adequate sleep.



### **Prior Assessment and Recommendations**

During the prior reporting period, sleep conditions were generally adequate and met the requirements of the Settlement. However, an important exception was the experience of families in overcrowding holding pods in the El Paso CPC. The primary recommendation was to reduce overcrowding.

### **Current Observations**

Site visits documented that all UCs and individuals in families had received a mat and mylar blanket. In the current Juvenile Priority Facilities there is minimal ability to dim the overhead lights.

### **Assessment**

Conditions conducive to sleep are a crucial contributor to child well-being. CBP is meeting the sleep requirements of providing a mat and mylar blanket. It is important to note that the alleviation of overcrowding greatly improved sleeping conditions, particularly for families in the El Paso sector. However, as noted in the previous section, the mylar blanket alone may not provide sufficient warmth to support adequate sleep. Additional garments or warmer blankets will be necessary for many children in custody. In addition, the capability to dim lights at night also remains inadequate.

### **Recommendations**

Continued monitoring of overcrowding remains important in meeting the sleep requirements of the Settlement. Efforts to enhance warmth and the technical ability to dim lights at night should also be pursued.

#### **IV.F. Hygiene and Sanitation**

The CBP Settlement outlines a series of hygiene and sanitation requirements for all children entering CBP custody. Showers are to be provided soon after arrival at the JPF and again at 48-hour intervals. Toothbrushes should be provided daily and also upon request.

#### **Prior Assessment and Recommendations**

Inadequate hygiene and sanitation conditions, such as irregular showering and toothbrushing opportunities were noted in overcrowded family holding areas. Recommendations included the fundamental challenge of reducing overcrowding as well as enhanced efforts to provide regular showers and toothbrushes.

#### **Current Observations**

During site visits, the pods and the sanitation areas were generally clean and well supplied. Interviews with families and UCs suggested that showers were generally made available according to the schedule outlined in the Settlement. Caregivers facilitated the availability of toothbrushes to UCs on a daily basis. However, families were given access to toothbrushes only during showering opportunities.

#### **Assessment**

The hygiene and sanitation conditions for UCs and families in custody generally met the requirements outlined in the Settlement. The alleviation of overcrowding has greatly improved the hygienic conditions in the family holding areas. However, the current practice of providing toothbrushes to

families only during shower opportunities is not compliant with the provisions of the Settlement.

### **Recommendation**

The deployment of caregivers in family holding areas should facilitate the daily provision of toothbrushing opportunities for families, a required custodial element of the Settlement. The hygiene and sanitation conditions will continue to be monitored, particularly given the changes in JPF locations in both the RGV and El Paso sectors.

## **V. CAREGIVERS**

The CBP Settlement requires that CBP develop a “caregiver” program directed at providing a variety of direct custodial care services to children in CBP custody.

### **Prior Assessment and Recommendations**

During the prior reporting period, caregivers in the RGV JPF were confined to the shower and nursery (the area for UCs less than 6 years of age) areas only. In El Paso, caregivers were active in the UC pods but not in the family holding pods. More broadly, the number of caregivers deployed in the JPFs was insufficient to meet the needs of children in custody. The primary recommendation was to increase the number of caregivers in order to ensure that they can better provide basic assistance with hygiene, trauma-informed care, and child-friendly activities. In addition, it was recommended that CBP deploy caregivers in all pods holding children, including those holding families.

### **Current Observations**

The number of caregivers in both sectors has been increased substantially. In the RGV JPF, caregivers are now deployed in the UC holding pods, an important advance in providing trauma-informed care. Both male and female caregivers were available on all shifts. However, during the site visits, caregivers were not involved with the care of children in families, except for assisting with showers and laundry. In the El Paso JPF, caregivers have long been active in the UC holding pods and continue to provide important support services for these children. During this reporting period, caregivers were not deployed in family holding areas in either sector. Caregivers were placed in isolation facilities whenever UCs or families were transferred to these locations. In addition, a new group of contracted personnel, called “porters”, have been deployed in the El Paso SSF. They are positioned at the entrances of the holding pods and assist with services such as meal preparation and the allocation of basic necessities.

### **Assessment**

CBP has made considerable progress in expanding the number and contribution of caregivers in the JPF’s. Site visits and interviews with UCs confirmed that the caregivers have been actively engaged in supervising activities and identifying children in distress. The placement of caregivers in isolation facilities is also an important development. CBP reports that it is continuing efforts to increase the number of caregivers in facilities holding children and expects to have caregivers consistently positioned in family holding areas. This would correct an important deficiency in custodial care and will be monitored closely.

## **Recommendations**

The number of caregivers should be increased. While the UC areas should be the highest priority for caregiver coverage, family holding areas also require caregiver services, particularly given the longer times-in-custody experienced by families.

## **VI. TRAUMA-INFORMED CARE AND CHILD-APPROPRIATE ENVIRONMENT**

The Settlement mandates that the JPFs implement care strategies that attend to the emotional and psychological challenges that migrant children confront, particularly when they are separated from their parents, families, and home communities. Recognizing the potential that children in CBP care may have experienced trauma in their home communities, on their journey, and while in custody, the Settlement calls upon CBP to make efforts to foster reassurance, resilience, and psychological well-being. (See Section VII.7.D.7 and Section VII.3.B.8 in the Settlement).

### **Prior Assessment and Recommendations**

CBP has met the Settlement requirement of providing a safe environment for children in the JPFs. CBP and contracted personnel have also received training in trauma-informed care. However, inadequate numbers of caregiving personnel, overcrowding, variation in holding children with a trusted adult, and the lack of child-friendly amenities and activities have seriously constrained the ability of CBP to provide adequate trauma-informed care and a child-appropriate environment. Recommendations included that there be a comprehensive reassessment of the current CBP capabilities to provide trauma-informed care and

a child-friendly environment. Also, the holding practices for children apprehended with a trusted adult require review. While family holding policies can be complex and necessarily varied based on JPF census and physical layout, they should be examined with attention to the mitigation of emotional and psychological trauma, particularly among young children.

### **Current Observations**

Interviews with UCs both in CBP custody and in ORR facilities revealed that they had been treated professionally by CBP personnel in the RGV or El Paso sectors. None of the UCs interviewed in the CBP and ORR facilities reported being verbally or physically abused by CBP personnel in the RGV or El Paso sectors.

The addition of caregivers to the UC holding pods in the RGV JPF was an important improvement in the provision of trauma-informed care. Site visits documented that the caregivers were supervising the use of coloring books and games for young children and card and board games for older UCs. The caregivers were also directly involved in caring for the very young, tender-aged UCs. However, during this reporting period, caregivers were not observed to be providing services to children in families in either sector except for assistance with showering. Televisions were working in the holding areas during site visits. The programs being played included an informational video regarding food and other amenities as well as children's programs in UC holding areas.

The shift of the JPF from the Donna Facility to the Ursula Facility has eliminated the capacity for outdoor recreation. As noted earlier, child-friendly materials and

activities were only available in the UC holding pods where caregivers were present.

There is likely no greater contributor to the well-being of children in custody than holding them together with a parent or trusted adult. Children are not routinely separated from parents or legal guardians when taken into CBP custody.

Separation can occur on rare occasions when initial CBP vetting reveals that a parent or legal guardian poses a potential threat to the child. During their time in CBP custody, families are generally held in the same area. However, the gender segregation policies in both the RGV and El Paso JPFs have meant that children in 2-parent families may be held in a separate room from one of the parents.

Although there is a general policy to permit some level of visitation by the separated parent, there appears to be great variation in how often this actually happens.

### **Assessment**

CBP has met some of the basic requirements outlined in the Settlement regarding trauma-informed care and a child-appropriate environment. The caregivers operating in the UC holding areas have proven to be a very positive influence on the UC experience in CBP custody. However, the continued lack of caregivers and child-friendly materials and activities in the family holding areas remained a prominent deficiency, particularly given the longer times-in-custody for families during this reporting period. Outdoor recreation opportunities have been eliminated in the RGV facility. This raises concerns for children in families being held for protracted periods of time. The holding pods have no windows to the outside world and the confinement of children to these rooms for multiple days does not attend to the special vulnerabilities and needs of children. This in turn,

can effectively undermine other efforts to provide a trauma-informed, child-friendly environment. More broadly, there is little coordination among the different elements of the trauma-informed care efforts in CBP facilities.

### **Recommendations**

There is an opportunity for a more comprehensive and coordinated trauma-informed care program. The development of the Child Welfare Specialist Program within the Office of Health Security, DHS, could provide the technical guidance and coordination needed to strengthen the existing program. Continued increases in the number of caregivers could provide the critical personnel needed to implement a more robust trauma-informed care program.

## **VII. ENHANCED MEDICAL SUPPORT**

The Settlement requires a robust medical care system for juveniles in CBP custody. CBP has addressed this requirement by deploying contracted medical teams in the RGV and El Paso JPFs and any other facilities housing children. These teams include an advanced medical practitioner (either a nurse practitioner or physician assistant) and 2-3 medical support personnel, usually medical assistants or emergency medical technicians. These teams are required to be present 24 hours a day, 7 days a week. The JPFs are usually staffed by at least 3 medical teams. Isolation facilities that are holding minors are also required to have on-site medical teams at all times. In addition to the on-site medical teams, supervising physicians, including a pediatrician, are assigned in each sector to provide on-call consultation, clinical protocol development, and quality assurance reviews.



## **Prior Assessment and Recommendations**

The prior report noted that CBP has deployed a medical infrastructure that generally complies with the requirements of the Settlement. However, there were a series of concerns regarding the quality and consistency of the medical care provided. These concerns included:

- Variation in the thoroughness with which acute and chronic conditions are identified, documented, or required consultation with on-call physicians;
- The procedures for conveying medical information regarding children with chronic problems to BP personnel and how BP integrates this information into custodial and disposition decision-making;
- There was inconsistent conveyance of relevant medical information to BP agents responsible for custodial care and disposition, including release. There was also variation in how medical information was conveyed to ORR, including that for UCs with serious chronic conditions or disabilities;
- At times of high census, medical teams had decided to confine medical assessments to children under 12 years of age. Even children with a clear chronic condition or disability were, at times, excluded from the standard medical assessment protocol;
- There was some variation in the practices regarding the confiscation and replacement of appropriate medication to children in CBP custody or upon transfer or release;
- Failure to conduct repeat medical assessments on children held for 5 days or more. This is required in the Settlement and is intended to ensure that any deterioration in a child's medical status will be detected while in custody;

- Current medical protocols do not include regular assessment of children in their holding pods, including those with a known medical condition;
- In isolation facilities there was a lack of adequate medical supervision and surveillance, particularly when the census was high;
- Caregivers were not being deployed in isolation facilities when a UC or family is being held at that location;
- Based on interviews with parents after release and observation of release procedures and documentation in the CPCs, the provision of medical documentation to parents regarding the care their children received while in CBP custody was highly variable;
- The quality assurance program appeared to be profoundly inadequate as it was not clear how the systems of care were being assessed, including protocols for children with serious chronic disorders or children who develop acute conditions or deteriorate in CBP custody. There did not appear to be any review of the conveyance of medical information to BP personnel, supervisory physicians, to ORR, or to parents in families.

### **Current Observations**

Initial health intake interviews appear to be consistently performed on all individuals before entering the holding areas in the JPFs. These interviews are directed at identifying any acute or chronic medical condition and the presence of a contagious condition, including symptoms of Covid-19. The interviews are conducted in association with a cursory examination of skin for evidence of rashes consistent with a contagious condition. Direct observation during all visits and interviews with UCs, family members, medical staff and CBP agents confirmed that these are being conducted on all individuals entering the JPFs and visited BP

stations. Appropriate treatment and washing and showering facilities were available for individuals identified with scabies or lice.

During the current reporting period, all UCs and children in families received medical assessments by an advanced medical practitioner (a nurse practitioner or physician assistant). Direct observation during all site visits and interviews with UCs, family members, medical staff and CBP agents also confirmed that repeat assessments for children after 5 days in custody were also being conducted on all children. These two observations address deficiencies noted in the prior JCM report and represent important improvements in the medical care provided children in CBP custody.

Surveillance policies for children in the holding pods remained minimal for most of this reporting period. However, during the most recent site visits, medical personnel were observed visiting the holding pods in order to check on children at elevated medical risk and ask caregivers if they were concerned with the status of any child. If these medical visits to the holding pods are sustained, this would represent an important enhancement in the medical monitoring of children in custody.

Site visits and interviews with medical personnel suggested that there was considerable variation in how children with serious chronic disorders are managed by medical personnel. There appeared to be no protocol to guide when consultation with an on-call physician was required. There was also no standard practice for informing responsible BP personnel that a child at elevated medical risk had entered custody.

Observation and interviews with children and families suggested that there was greater consistency in the administration of medications to children in custody. This remains a critical issue that requires continued close monitoring and ongoing communication with medical providers at ORR.

During site visits, the inspection of travel or release documents suggested that there remains considerable variation in the medical documentation that accompanies children when they leave CBP custody. The summary medical form for UCs was appropriately complete on a majority but not all children as they were being transferred to ORR. Parents were not observed to be provided with documentation of the medical assessments or treatments their children received while in CBP custody.

#### **VII.A. The Death of ADRA**

On May 17, 2023, ADRA, an 8-year-old girl, suffered a cardiac arrest while in the Border Patrol station in Harlingen, Texas and was declared deceased upon arrival at Valley Baptist Medical Center, a local hospital. The primary investigation of the death, like all deaths in CBP custody, was undertaken by CBP's Office of Professional Responsibility (OPR) in association with local law enforcement and medical examiner.

The primary objective of this assessment of the death of ADRA was to identify and address urgently the systemic procedures and policies that proved catastrophically inadequate to prevent the deterioration in ADRA's condition and ultimately, her tragic death. In this manner, the central concern of this assessment was less focused on identifying individual culpability than on any failures of the CBP medical and custodial systems and the urgent steps required to ensure that these

failures never again result in preventable harm or death. The information essential for this assessment was provided by the public reports of OPR, CBP, and interviews as part of JCM monitoring activities both before and after ADRA's death. This JCM report did not conduct independent interviews of the Border Patrol personnel or medical providers directly involved with the care of ADRA during her time in CBP custody. The basic information regarding ADRA's time in CBP custody is summarized below.

**Timeline: ADRA in CBP Custody\***

May 9, 2023, 9:34 PM, a family group consisting of two parents (an adult female mother and adult male father) and three children (aged 8, 13, and 14) were taken into U.S. Border Patrol custody as part of a larger group of 47 non-citizens approximately eight tenths of a mile southeast of the Gateway International Port of Entry in Brownsville, TX. Shortly thereafter, the group was moved approximately 0.4 miles east to the CBP-operated Camp Monument Staging Area where they awaited transportation to the Donna CPC.

May 10, 2023, 7:50 AM, the family of five arrived at the Donna Facility and moved through various stages of intake and in-processing over the next four hours. At 12:20 PM, the eight-year-old was medically assessed, did not complain of any acute illnesses or injuries, but the family did report a medical history including the chronic conditions of sickle cell anemia and heart disease. After completing the medical assessment, the mother, the fourteen-year-old adolescent, and the eight-year-old girl were escorted to their housing pod.

May 14, 2023, at 4:11 PM, the eight-year-old girl voiced complaints of abdominal pain, nasal congestion, and cough and was seen within an hour by contract medical staff. The child had a temperature of 101.8 degrees Fahrenheit; an influenza test was positive for Influenza A and negative for Influenza B. Medical personnel provided the girl with acetaminophen, ibuprofen, and Oseltamivir (Tamiflu), as well as Ondansetron (Zofran). Based on agency protocols, the entire family was transferred to the U.S. Border Patrol Station in Harlingen, TX (HRL), which was designated for cases requiring medical isolation for individuals diagnosed with or closely exposed to communicable diseases.

May 14, 2023, 5:09 PM, the family departed for the Harlingen Border Patrol Station (HRL) and arrived one hour later. At 7:13 PM on May 14, 2023, CBP records indicate the eight-year-old girl was medically assessed by CBP-contracted medical personnel immediately upon her arrival at HRL.

May 17, 2023, the eight-year-old girl and her mother came to the HRL medical unit at least three times. During the first visit, records indicate that the child complained of vomiting and was administered Ondansetron (Zofran) and instructed to hydrate and return if needed. During the second visit, the child complained of a stomachache. CBP contracted medical personnel annotated that she was stable and instructed the mother to follow-up if needed. CBP records indicate that a third visit took place at approximately 1:55 PM, during which the mother was carrying the girl who appeared to be having a seizure, after which records indicate the child became unresponsive. CBP-contracted medical personnel subsequently began to administer CPR and summoned emergency medical services.

May 17, 2023, at approximately 2:07 PM, South Texas Emergency Care (STEC) emergency medical services arrived at HRL and took over lifesaving. The girl and her mother were transported to the Valley Baptist Medical Center in Harlingen, TX, where the girl was declared deceased by medical personnel at that facility at 2:50 PM.

\*Abstracted from OPR, CBP information

### **Apprehension and Transport to the Donna Processing Facility**

CBP agents are responsible for identifying and addressing all acute medical emergencies in the field. This includes administering appropriate first-line care and seeking emergency medical assistance from local health systems if required. The prior report found that this aspect of the CBP medical system functioned well and met the requirements of the Settlement.

Review of the circumstances associated with ADRA's apprehension and initial hours in custody did not raise any substantial issues as she was reportedly without acute symptoms or family concerns. However, the time between apprehension and transport to the Donna Facility (approximately 9 hours) was prolonged due the location of the apprehension (Brownsville, approximately 1 hour driving time to the Donna Facility) and the relatively large number of families and UCs apprehended in this location and requiring transport on May 9<sup>th</sup>. The Camp Monument location in Brownsville was constructed by BP to provide secured shelter and basic facilities and supplies for the temporary holding of apprehended individuals and families awaiting transport to formal CBP facilities.

### **Medical Assessment at the Donna Facility**

Approximately 5 hours after arrival at the Donna Facility, ADRA was assessed by contracted medical providers in the medical intake unit. At that time, ADRA's underlying conditions of Sickle Cell Disease (SCD) and a history of surgery to repair a congenital heart defect were documented in the electronic medical record (EMR) system. Documents pertaining to ADRA's conditions and history of illness and therapy were shown to the medical personnel by ADRA's mother at this time.

Sickle Cell Disease (SCD) is a genetic disorder that affects the stability of red blood cells. This can result in chronic anemia, painful occlusion of blood vessels, acute injury to the lungs, bones, and brain, such as strokes, as well as long-term damage to the eyes and kidneys. Significantly, SCD can damage the spleen which renders the affected children highly vulnerable to serious infections. Children are often prescribed medication to address some of these potential complications. There was no documentation that the medical provider who conducted the initial medical assessment at the Donna CPC consulted with the on-call physician. There was also no documentation that the presence of a child at greatly elevated medical risk had had been conveyed to BP agents responsible for custodial care at the Donna Facility or those making decisions regarding disposition, including removal or release.

### **Medical Illness Assessment**

Approximately 5 days after entry into the Donna Facility, ADRA was brought to the medical unit responsible for assessing and treating illness among individuals being held in the facility. The child had fever, respiratory symptoms and abdominal pain. A test for Influenza was positive for Influenza A. The child was started on medication for influenza as well as for reducing fever and discomfort.



The standard protocol for individuals who test positive for influenza while in custody is to transfer them to a designated “isolation” facility or holding pod. This is to help reduce the risk of rapid spread of viral or other contagious illnesses within the facility’s general population. At the time of ADRA’s diagnosis of influenza, the Harlingen, Texas Border Patrol Station was the designated isolation station for the RGV sector.

There was no documentation that the health provider who evaluated ADRA’s acute illness with influenza consulted an on-call physician. There was also no documentation that a transfer to a local health facility was contemplated.

### **Care in the Harlingen Border Patrol Station**

ADRA was evaluated by medical staff upon her entry into the facility, an assessment that was documented in the EMR. There was no documented consultation with an on-call physician. It appears that the medical monitoring of ADRA’s condition was not augmented in response to her elevated medical risk. Medical staff do not routinely enter the holding cells to assess vital signs or other indicators of clinical deterioration. A caregiver was present at the station but there was no documentation of any specific service rendered.

The record shows that ADRA’s condition worsened on day 6 of custody, day 2 in the Harlingen Station. The following day, May 17<sup>th</sup>, the record documented that ADRA’s mother repeatedly reported that her daughter’s condition was deteriorating and that she needed to be transported immediately to a local hospital. Despite the mother’s pleas, no transfer to a local health facility was initiated. Only after

ADRA lost consciousness and suffered an apparent cardiac arrest was an ambulance called.

## **VII.B. Assessment**

Based on the currently available information, the death of ADRA was a preventable tragedy that resulted from a series of failures in the CBP medical and custodial systems for children. The proximate cause was poor clinical decision-making by the health providers responsible for her care in the Harlingen BP Station on the day of ADRA's death. However, this report is focused on the systemic failures that *permitted* poor clinical decision-making by several health providers to result in a child's death. These failures occurred at multiple levels and should not be viewed as rare anomalies but rather as systemic weaknesses that if not remedied, are likely to result in future harm to children in CBP custody.

All information suggests that the systems operating during apprehension generally conformed to the requirements of the Settlement. However, the routine use of temporary holding areas before transport to the Donna facility, the sector's designated JPF, could prove problematic. The use of these temporary holding locations should be confined to situations in which immediate transport to the JPF is not possible. The week of May 9<sup>th</sup> saw large numbers of apprehensions in the Brownsville area resulting in transportation delays and the need to stand-up the Camp Monument location. Although CBP had deployed some medical staff to the Camp Monument site to address any acute issues, it is not clear if information related to ADRA's underlying condition was conveyed to BP or contracted personnel at the time of apprehension or while at the Camp Monument location. However, ADRA was in her usual state of health without acute problems upon

apprehension and did not appear to require any medical intervention at the Camp Monument site or during transport to the Donna Facility.

ADRA received a medical assessment relatively soon after the family entered the Donna facility. During the assessment, the child's medical history and examination were documented in the EMR. This conforms to the medical assessment protocol required by the Settlement.

The lack of physician consultation for a young child with SCD highlights the apparent lack of an appropriate protocol for assessing the custodial and medical requirements for children at elevated medical risk who are being held in CBP facilities. Although ADRA was not experiencing any acute problems upon entry to the Donna facility, the need for enhanced concern regarding any change in medical status could have been discussed with an on-call physician and entered into the EMR. This could have guided the decision-making of medical providers, including the need for transfer to a health facility, on subsequent shifts and in the Harlingen BP Station.

The apparent failure to notify BP personnel regarding the entry into the Donna facility of a child at elevated medical risk is also a breach of essential communication. BP is ultimately responsible for the well-being of all individuals in custody and the presence of a child at elevated medical risk would seem to be an important issue to convey to the appropriate BP personnel. Although there is no provision in the Settlement that requires BP to consider a child's medical status as part of disposition decisions, it would seem important for BP to be aware of the presence of a child at elevated medical risk, particularly if removal procedures imply a relatively lengthy stay in custody.

The medical system at the Donna Facility operated effectively in identifying that ADRA had acquired influenza and in administering the indicated medication. However, there appeared to be little appreciation of the elevated risk of serious complications associated with SCD. The failure to consult a physician or a local health facility for more extensive testing, treatment, or precautions raises fundamental concerns regarding the ability of the CBP medical system to care appropriately for children at elevated medical risk.

The events in the Harlingen Station resulting in ADRA's death raise a series of other profound concerns regarding not only the direct care she received but also the custodial and medical systems that failed to prevent ADRA's clinical deterioration and death. The admission of a young child with SCD and a fever to the Harlingen Station should have triggered a close consultation with an on-call pediatrician or an evaluation at a local hospital with expertise in pediatric specialty care. It is not clear what ongoing monitoring procedures were utilized to ensure that any worsening of ADRA's condition would be recognized. In addition, it is not clear whether the health providers responsible for ADRA's care on May 17<sup>th</sup> were aware of her underlying SCD. There was no documentation that they had reviewed her medical record or had been advised by a coworker of this high-risk condition.

This report can make no judgment as to the reasons why the health providers responsible for ADRA's care in the Harlingen Station were so reluctant to transfer ADRA to a local hospital. However, JCM interviews with contracted health providers in other locations and at other times over this reporting period have reported that BP personnel have, on occasion, questioned a medical provider's decision to transfer a patient to a local hospital, stressing the drain on BP manpower associated with escorting families or children to outside facilities. To

emphasize, this report includes no information that this issue played any role in influencing the decision-making associated with ADRA's care. Rather, this issue is noted here as a more general concern regarding potential transfers of ill individuals to local health facilities. BP concerns regarding transfers of individuals to local health facilities are understandable; but to confront medical personnel with these concerns when a transfer is being contemplated is both inappropriate and dangerous. The decision to transfer an ill individual to a local health facility should be based on medical criteria alone as determined by the appropriate medical personnel.

### **VII.C. Recommendations**

The recommendations outlined below are directed at improved CBP compliance with the custodial and medical provisions of the Settlement. (These recommendations were conveyed to the CBP Office of the Chief Medical Officer on May 26). These recommendations are first directed at immediate actions that address the systemic failures that could lead to additional instances of significant harm to children in CBP custody. Additional recommendations that address more general arenas of custodial and medical services are also presented below. The recommendations for immediate action are based on 3 general strategies:

- The reduction of medical risk in CBP facilities;
- Enhanced pediatric consultation and monitoring of children at elevated medical risk while in CBP custody;
- Improved conveyance of medical information among CBP personnel, contracted health providers, and subsequent medical providers.

**The reduction of medical risk in CBP facilities.** The most effective, immediate step to prevent adverse child outcomes in CBP custody is to reduce the clinical burden on the CBP medical system by expediting the transfer of children at elevated medical risk out of CBP custody. UCs are almost always transferred to ORR care within 72 hours, most within 48 hours. However, families are experiencing protracted times in custody. When families have a child at elevated medical risk, the burden on CBP medical systems is significantly enhanced. Factors determining a family's time in custody are complex. However, the presence of a child at elevated medical risk should be made known to BP personnel so that this issue can be considered in determining immigration pathways with different time-in-custody implications. The ability to reduce the level of medical risk among the juvenile population in CBP custody has three requirements:

- **The identification of children at elevated medical risk.** The accurate identification of children at elevated medical risk during the initial intake screening and medical assessment is essential. The definition of what conditions convey a significantly elevated medical risk should not be left to the discretion of any given health provider. Rather, a basic protocol should be developed and implemented urgently that defines elevated medical risk and provides a list of diagnoses that are considered to confer elevated risk. This protocol would include a requirement that the medical provider consult with a pediatric advisor for each child who meets, or could possibly meet, the criteria defining elevated medical risk.
- **Alerting CBP personnel of the presence of a child at increased medical risk.** It is essential that medical providers convey information regarding

each child at increased medical risk to appropriate CBP personnel. The conveyance of this information should be a central component of the medical protocol concerning children at increased medical risk.

- **CBP disposition decisions regarding children at increased medical risk.**

Ultimately, the reduction of medical risk in CBP facilities will require the expedited transfer of children at increased medical risk out of CBP custody. Decisions regarding disposition, including removal or release, can be complex and ultimately relate to broader immigration policies. However, protracted stays by families with a child at elevated medical risk increases the burden on CBP to ensure the child's health and well-being. Only children medically cleared for travel should be moved out of CBP custody. No child should leave CBP custody if acutely ill or medically unstable.

**Enhanced pediatric consultation and monitoring of children at elevated medical risk while in CBP custody.** Although efforts to reduce levels of medical risk in CBP facilities is a fundamental strategy, there is also a need to strengthen the medical monitoring of children at elevated medical risk while they are in CBP custody. This enhanced monitoring would have four components:

- **Consultation with pediatric advisor.** All children identified at the initial medical assessment as being at increased medical risk should be discussed with a pediatric advisor. A list of medical conditions or clinical criteria should be developed urgently that would require a pediatric consultation. This list would not be exhaustive; any condition that raises concerns regarding enhanced risk should also lead to a consultation. Consultation can help guide the management and monitoring requirements related to the

child's medical issues. All consultations with the pediatric advisor should be documented in the medical record.

- **Placement and monitoring of child status in isolation facilities.** All children at elevated medical risk who are being considered for transfer to an isolation facility should be discussed first with a pediatric consultant. All children placed in isolation facilities must receive enhanced medical monitoring, including regular assessment of vital signs and other indicators of clinical status. Any deterioration in a child's condition should prompt immediate transfer to a local medical facility or consultation with a pediatric advisor, or both. All monitoring interactions should be documented in the medical record.
- **Monitoring child status in holding pods.** All children at elevated medical risk should be assessed at least once per shift. This could be conducted by medical personnel visiting the child in the holding pod. However, when appropriate, the children could be brought to the medical area for assessment. All monitoring interactions should be documented in the medical record.
- **Strengthened procedures for referral to local medical facilities.** Contracted health providers should be empowered to refer children to local health facilities whenever they feel it is medically indicated. Although referral to local health facilities can place significant logistical burdens on BP staff and financial resources, it is essential that the decision to refer a sick child to an outside medical facility is based solely on medical considerations, considerations determined by responsible medical personnel.



A clear statement emphasizing this policy should be circulated urgently to all medical providers and responsible BP operators. In addition, a consultation with a pediatric advisor is also indicated whenever referral to a local medical facility is being considered. All urgent referrals should proceed expeditiously without the need for consultation. However, when there is any question regarding referral, the pediatric advisor should be consulted.

**Disciplined conveyance of medical information among health providers.**

Adequate medical care for children at elevated medical risk depends upon the disciplined conveyance of medical information among the multiple health providers responsible for patient care. This requirement for disciplined communication relates to providers deployed in all CBP facilities, including all isolation units, as well as those who may provide care subsequent to release. The commitment to enhanced communication relates to seven domains:

- **Disciplined communication among health providers in CBP facilities.**

Reports on the management and monitoring of children at elevated medical risk should be communicated formally at each provider shift change. These communication practices are a well-recognized component of the standard of care expected in all high-quality medical systems. These communication practices should also be conducted in all isolation units to ensure that all health providers are knowledgeable about the conditions and status of all ill children and those at elevated medical risk.

- **Ensuring hospital records are conveyed to CBP medical personnel.** It is the standard of care that documentation of the evaluation and treatment of any referred patient be transmitted back to the referring medical provider.

However, there is wide variation in what information a local health facility conveys back to CBP medical personnel after a referral evaluation or even an admission has been completed. Agreements should be developed to ensure that relevant documentation of any hospital evaluation, therapy, or admission be conveyed to CBP medical personnel.

- **Conveyance of medical information to the Office of Refugee Resettlement (ORR).** For all UCs, relevant medical information regarding any diagnoses, medication, or other developments in CBP custody should be documented and conveyed to ORR. This remains an outstanding issue as the accurate conveyance of medical information to ORR remains highly variable.
- **Medical information should be provided to a child’s parent or guardian.** For all children at elevated medical risk, parents or guardians should be provided with medical summary sheets that include diagnoses, medications, and other pertinent medical information prior to transfer out of CBP custody.
- **Medical referrals should be made for children at elevated medical risk in families being released into the United States.** Standard medical practice requires that patients in need of continued care be referred to appropriate follow-up services. Children who are medically stable but have special medical needs and are part of families scheduled for release into the United States would benefit from a referral to a facilitating NGO or medical facility in their US destination. This referral capability would help ensure that children at elevated medical risk do not deteriorate soon after release from CBP custody.

- **Major improvement in medical quality assurance program.** There is an urgent need to greatly improve the quality assurance program utilized by the medical contractor and CBP medical oversight. Relevant metrics and datasets should be developed expeditiously which can assess the proper functioning of the medical systems identified in this and the prior JCM report as needing urgent reform. High priority should be given to data on hospital admissions of children referred from CBP facilities, data that were requested by the JCM 4 months ago but have yet to be received.
- **Notification of rights.** A comprehensive assessment of CBP practices regarding the notification of rights is required. Although not a medical issue per se, it is not clear what practical recourse is available for older children or parents when custodial or medical practices are considered to be acutely jeopardizing the health of children in CBP custody. The Settlement outlines a series of notice of rights requirements. However, greater clarity is required to fully understand how these rights could potentially be exercised in acute situations.

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**CERTIFICATE OF SERVICE**

Case No. CV 85-4544- DMG (AGRx)

I am a citizen of the United States. My business address is 250 Sixth Street, Suite 205, Santa Monica, California 90401 . I am over the age of 18 years, and not a party to the within action.

I hereby certify that on July 18, 2023, I electronically filed the following documents with the Clerk of the Court for the United States District Court, Eastern District of California by using the CM/ECF system:

**NOTICE OF FILING OF JUVENILE CARE MONITOR REPORT BY DR. PAUL H. WISE**

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the United States the foregoing is true and correct. Executed on July 18, 2023, at Los Angeles, California.



Jeff Thomson

# APPENDIX C


DRT 130/8.5



**U.S. Customs and  
Border Protection**

JAN 10 2020

MEMORANDUM FOR: Division Chiefs  
Headquarter Staff  
Patrol Agents in Charge  
Deputy Patrol Agents in Charge  
Del Rio Sector

FROM:  Raul Ortiz **(b) (6), (b) (7)(C)**  
Chief Patrol Agent  
Del Rio Sector

SUBJECT: U.S. Border Patrol Family Unit Separation Guidance

The attached memorandum *U.S. Border Patrol Family Unit Separation Guidance* from Chief Carla L. Provost dated January 7, 2020, provides guidance to all Border Patrol Agents (BPA's) on the policies, conditions, authorities, and requirements necessary to effect a family unit separation for aliens that are in U.S. Border Patrol custody.

Additionally, this guidance provides instructions on how to properly document a family unit separation within e3, the system of record.

If you have any questions, please contact Assistant Chief Patrol Agent **(b) (6), (b) (7)(C)** at **(b) (7)(C)** **(b) (6), (b) (7)(C)**

Attachments

HQBOR 130-8.5-C



**U.S. Customs and  
Border Protection**

**JAN 07 2020**

MEMORANDUM FOR: All Chief Patrol Agents  
All Directorate Chiefs

FROM: *fa* Carla L. Provoost (b) (6)  
Chief  
U.S. Border Patrol

SUBJECT: U.S. Border Patrol Family Unit Separation Guidance

This memorandum provides guidance to all Border Patrol Agents (BPAs) regarding the policies, conditions, authorities, and requirements necessary to effect a family unit separation for aliens that are in U.S. Border Patrol (USBP) custody. Additionally, this guidance provides instructions on how to properly document a family unit separation within e3, the system of record.

The following are USBP definitions of a family unit, family group, and fraudulent family unit:

- **Family Unit**—A group of two or more aliens consisting of a minor or minors accompanied by his/her/their adult parent(s) or legal guardian(s).<sup>1</sup>
- **Family Group**—Related detainees (e.g., brother and sister, aunt, and nephew) that need to travel together who are non-United States citizens and do not meet the definition of a Family Unit.
  - For the purpose of this memorandum, a parent/legal guardian who is under the age of 18, traveling with his/her minor child are to be recorded in e3 as a Family Group.
  - BPAs are reminded that all Unaccompanied Alien Children (UAC), even those part of a family group, must be transferred to the custody of the Department of Health and Human Services (HHS).
- **Fraudulent Family Unit**—A group of aliens that present themselves to meet the definition of a family unit to deceive the government, but through further investigation, it is revealed that the group does not meet one or more criteria of the family unit definition.

On June 27, 2018, then U.S. Customs and Border Protection (CBP) Commissioner Kevin K. McAleenan issued a memorandum titled *Interim Guidance on Preliminary Injunction in Ms. L. v. ICE*. The memorandum outlined the reasons under which USBP could separate a family unit consistent with the preliminary injunction issued by the court.

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<sup>1</sup> See 8 CFR 236.3(b)(7)



As outlined in this memorandum, parents/legal guardians may be separated from their child for the following reasons.

- Referral of a parent/legal guardian for prosecution of a felony:
  - This includes parents/legal guardians referred for prosecution by CBP, and also includes those parents/legal guardians who are transferred to another jurisdiction on an extraditable warrant.
- Parent/legal guardian presents a danger to the child.
- The parent/legal guardian has a criminal conviction(s) for violent misdemeanors or felonies.
  - Any questions about what constitutes a violent misdemeanor or felony should be referred to the local Office of Chief Counsel (OCC).
  - A parent/legal guardian who has been arrested, but not convicted, may not be separated based solely on that arrest.
  - A parent/legal guardian may not be separated based solely on the fact that he/she have had prior removals.
- The parent/legal guardian has a communicable disease.
  - Prior to separation, local OCC should be contacted and the communicable disease should be clearly documented in the system of record.

If a parent/legal guardian has an urgent medical need that requires hospitalization, it may be appropriate to refer the child to HHS pending the parent/legal guardian's medical treatment. All such separations should be thoroughly documented in e3 and the HHS portal. BPAs should work with HHS to attempt to facilitate local placement for the child, if possible.

Similarly, if a parent/legal guardian is being held as a material witness, it may be appropriate to refer the child to HHS pending the parent/legal guardian's time in criminal custody. All such separations should be thoroughly documented in e3 and the HHS portal, and BPAs should work with HHS to attempt to facilitate local placement for the child, if possible

There may also be circumstances where U.S. Immigration and Customs Enforcement's (ICE) Enforcement and Removal Operations (ERO), consistent with their internal policies, will not accept a family unit for detention at a family residential center, due to a parent's criminal history or other public safety concerns (e.g., gang affiliation). In those instances, BPAs may separate a family unit based on the parent's gang affiliation, criminal history or other public safety concern, and should document all communications with ICE ERO.

The preliminary injunction applies to one and two-parent families. Accordingly, if at the time of apprehension, BPAs encounter a family unit where both parents are present, USBP may not separate the child from either parent, unless the specific criteria listed above is present and articulated in accordance with this directive.



## U.S. Border Patrol Family Unit Separation Guidance

Page 3

If BPAs encounter a family unit consisting of an adult parent or a parent who is under the age of 18, and their minor child, the agents must refer the parent who is under the age of 18 to HHS as a UAC. Agents should exercise discretion, on a case by case basis and in consultation with OCC, to determine whether the minor child should remain with the adult parent or with the UAC parent.

Consistent with the Commissioner's memorandum, the sector Chief Patrol Agent has the authority to approve all separations. This authority may not be delegated below the Watch Commander position.

Data integrity in all reporting is of paramount importance. Accordingly, all family units and family groups must be properly linked in the e3 family panel. Further, it is imperative that all cases of family separations by USBP are documented in e3 and clearly articulated in the narrative for each family member. This documentation must include the reason for separation, the name and title of the official authorizing the separation, and a thorough description of the factors supporting this decision.

The e3 system has been updated to provide reasons for the separation that are consistent with the CBP Commissioner's June 27, 2018, guidance memo.

### Separations:

- FMEW Family Member-Extraditable Warrant
- FMGA Family Member-Gang Affiliation
- FMH Family Member-Hospitalized
- FMCH Family Member-Criminal History
- FMPO Family Member-Prosecuted
- FMMW Family Member-Material Witness
- FMCD Family Member-Communicable Disease
- FMUP – Family Member-Presents danger to the child/Unfit Parent

In accordance with the Trafficking Victims Protection Reauthorization Act, all UAC must be transferred to the custody of HHS. In instances where a family separation results in a UAC, HHS will be notified that there has been a separation and the following information must be relayed to them at the time of placement:

- Name, A#, date of birth of parent/legal guardian
- Location and/or agency where the parent/legal guardian will be manifested to
- Reason for separation using only the above descriptions

Agents are reminded to adhere to the requirements outlined in the Memorandum of Agreement between HHS and the Department of Homeland Security, dated April 13, 2018.

Staff may direct all questions related to this directive to Assistant Chief (b) (6), (b) (7)(C) at

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

Attachments



# Cancelling a Family Unit Number

Updated: November 5, 2019

## Search for the Family Unit

(b) (7)(E)

Search for the Family Unit by  
Event #, FIN #, A#, or FMU#.

(b) (7)(E)

The Family Unit Number  
is listed next to each  
Subject in the event.

Press Delete to cancel  
the Family Unit Number.





## Identify a Reason

(b) (7)(E)

Select the option from the dropdown that most closely matches the reason for cancelling the Family Unit number.

(b) (7)(E)

Enter the approving official and press "OK."



\*\*USBPHQ provides statistics to other agencies and Congress. Please be mindful when selecting a reason for deletion. \*\*

## Cancelled Family Unit Number

(b) (7)(E)

The Family Unit Number has been cancelled.

The FMU # has been removed and the formerly accompanied child is now labeled as an UAC.

# Enforcement Systems Division





# Separating a Family Unit



Updated: November 12, 2019

## Search for the Family Unit

(b) (7)(E)

Search for the Family Unit by  
Event #, FIN #, A#, or FMU#.

The Family Unit Number is  
listed next to each Subject in  
the event.

(b) (7)(E)

The green links next to the  
family roles indicate  
whether a family is linked or  
separated.

Green – Linked  
Red – Separated





## Separation

(b) (7)(E)

- Separate a member of the family by clicking the green link. The remainder of the family will remain in tact.

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If you separate the lead member of the family, you will need to either reassign the lead to a different member, or separate all adult members in order to save the change.



## Reasons for Separation

Use the drop down menu to specify a reason for separation

- FMEW – Family Member – Extraditable Warran
- FMPO – Family Member - Prosecuted
- FMGA – Family Member – Gang Affiliation
- FMMW – Family Member – Material Witness
- FMH – Family Member – Hospitalized
- FMCD – Family Member – Communicable Disease
- FMCH – Family Member – Criminal History
- FMUP – Family Member – Presents Danger to the Child/Unfit Parent

(b) (7) (E)



\*\*USBPHQ provides statistics to agencies and Congress. Please be mindful when selecting a reason for separation. \*\*

## Separated Family Unit

(b) (7)(E)

The family members who have been separated will be listed as "separated" under the FMU number.

To rejoin members, click the red link to turn it green. The lead must be rejoined to rejoin any other members.

Click "Save" to save changes made.





# Enforcement Systems Division

