



THE PERMANENT MISSION  
OF THE  
UNITED STATES OF AMERICA  
TO THE  
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS  
IN GENEVA

June 7, 2024

Aua Baldé  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances  
Geneva, Switzerland

Dear Chair-Rapporteur,

Please find enclosed the U.S. response to communication G/SO 217/1/USA dated March 21, 2024.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelly Billingsley".

Kelly Billingsley  
Deputy Permanent Representative  
Human Rights

## **U.S. response to communication G/SO 217/1/USA**

Thank you for your letter dated March 21, regarding the role of the U.S. Customs and Border Protection (CBP) and U.S. Coast Guard (USCG) with respect to migrants and refugees.

1. Though we are not a party to the Declaration on the Protection of All Persons from Enforced Disappearance, we nonetheless provide this response to the inquiry in order to clarify the subject policies.
2. CBP and the USCG are both components of the Department of Homeland Security (DHS). The United States denies that either of these components has engaged in conduct that amounts to enforced disappearance.

### **U.S. Customs and Border Protection (CBP)**

3. Migrants are held in CBP custody only for the period of time necessary to complete processing and either transfer them to another agency, release them, or return them to their country of origin or another country—generally for 72 hours or less. During their time in CBP custody, operational and security constraints do not allow for them to receive in-person visits from attorneys or family members. However, migrants are not held *incommunicado* while in CBP custody. Migrants may, in some locations, have access to telephones to call their families and attorneys.
4. Nor are migrants outside of the protection of the law or without rights while in CBP custody. CBP complies with all legal requirements, including but not limited to its obligations toward those in custody under the U.S. Constitution, the requirements of the Flores Settlement Agreement, the requirements of the Prison Rape Elimination Act, and applicable international human rights law and international refugee law. Additionally, CBP's National Standards on Transport, Escort, Detention, and Search (TEDS) govern CBP's interactions with detained individuals. Among other things, TEDS includes requirements related to sexual abuse and assault prevention and response; care of at-risk individuals in custody; and personal property. TEDS also contains requirements for non-discrimination, religious sensitivity, special treatment of minors, reasonable accommodations for disabled migrants, language access, and family unity. In addition, TEDS requires CBP to respect migrant rights related to searches, restraints, food and water, medical treatment, and consular contact.
5. There are current efforts in progress to update the existing Immigration and Customs Enforcement (ICE) Online Detainee Locator System (ODLS), which is an online system that can be used by family members and attorneys to locate migrants in ICE (another DHS component) custody. The update, which is expected to happen soon, will allow family and friends to search the ODLS [webpage](#) for migrants who have been in CBP custody for 48 hours or more.
6. Regarding Credible Fear interviews being conducted by United States Citizenship and Immigration Services (USCIS) asylum officers for noncitizens in CBP custody, under INA § 235(b)(1)(A)(i), certain noncitizens encountered at a Port of Entry (POE) or having recently

entered the United States between POEs, are subject to expedited removal, and may be removed from the United States without further hearing or review unless they indicate an intention to apply for asylum or express a fear of persecution or torture.

7. Noncitizens who indicate a fear of persecution or torture, a fear of return to their country, or an intent to apply for asylum, are referred to a USCIS asylum officer for a Credible Fear interview – a threshold screening for potential eligibility for asylum, statutory withholding of removal, and protection under the Convention Against Torture. USCIS asylum officers are a specially trained professional cadre dedicated to the screening of protection claims. Migrants have an opportunity to consult with any individual of their choosing during the credible fear process.
8. Regarding allegations of family separation, the DHS Office for Civil Rights and Civil Liberties has been working with CBP, as well as DHS's Family Reunification Task Force, to promote the principle of family unity in DHS immigration policies and programs. CBP's Family Unity Policy, issued December 11, 2023, provides that CBP should not separate parents or legal guardians from their minor, noncitizen children except in certain limited circumstances.
9. Regarding the tragic death of an 8-year-old girl in CBP custody in May 2023, both CBP's Office of Professional Responsibility (OPR) and the DHS Chief Medical Officer investigated this death. OPR thoroughly investigated the facts and circumstances of the matter and subsequently met with CBP senior leadership and identified potential systemic issues to be addressed by the appropriate entities. OPR has been transparent on the results of the investigation, briefing Congress, and the family, as well as releasing descriptions to the public via CBP's Accountability and Transparency site on CBP.gov.
10. Regarding allegations of poor conditions in CBP holding facilities, the DHS Office for Civil Rights and Civil Liberties as well as the DHS Office of the Inspector General (OIG) perform occasional announced and unannounced site visits to CBP facilities to monitor detention conditions. There are also other mechanisms to file a complaint about CBP detention conditions, including with the CBP Office of Professional Responsibility, which investigates allegations of professional misconduct by CBP personnel, the OIG, the DHS Office for Civil Rights and Civil Liberties, and the Office of the Immigration Detention Ombudsman.
11. The OIG receives information about all allegations of misconduct involving DHS employees, contractors, and programs. OIG investigations may result in criminal prosecutions, fines, civil monetary penalties, administrative sanctions, and personnel actions. The OIG also maintains a 24-hour complaint hotline. OIG has posters in detention facilities which provide instructions on how to report misconduct, printed in both English and Spanish.

### **U.S. Coast Guard (USCG)**

12. The U.S. government strongly discourages people from taking dangerous journeys by sea. The U.S. interdiction mission prioritizes safety, and is intended to prevent death and injuries, as well as encourage humane migration management with access to protection for

those in need. Irregular maritime migration is dangerous, and often deadly, particularly on unseaworthy or overloaded vessels.

13. Irregular maritime migration journeys are almost always fraught with hazards and inhumane conditions. The vessels used in these journeys are predominantly in poor, unseaworthy condition and often overcrowded. When these vessels are at sea, subject to variable weather conditions, the overcrowded vessels become unstable and may result in the vessel capsizing leaving migrants in the water, often without life preservers or other safety equipment. These types of events can happen before rescue authorities encounter these vessels at sea, highlighting the perils associated with irregular maritime migration.
14. One example of the perils of irregular maritime migration happened on July 24, 2022, when 17 Haitian migrants tragically died at sea after a boat capsized off the Bahamas on its way to the United States. The USCG rescued 25 passengers, but up to 60 were believed to have been on board, many of whom were missing.
15. The U.S. military is generally not involved in regular maritime interdiction operations or migrant detention. Rather, the USCG is statutorily required to perform the migrant interdiction mission pursuant to 6 U.S.C. § 468, and further directed by Exec. Order No. 12807, Exec. Order No. 13276, and P.D.D. 9. The USCG interdicts migrants of many nationalities in the southeast maritime approaches to the United States, although Cuban and Haitian migrants remain the top two nationalities.
16. Migrants who are interdicted at sea are generally expeditiously repatriated to their countries of origin or departure. However, if an interdicted migrant manifests a fear of return to their country of origin, departure, or last habitual residence, the migrant will be referred to USCIS for a credible fear screening.
17. Should USCIS determine that the migrant established a credible fear of persecution or torture, the migrant is voluntarily transferred to the Migrant Operations Center (MOC) at Naval Station Guantanamo Bay, Cuba, which is administered by Immigration and Customs Enforcement (ICE) and the U.S. Department of State. At the MOC, USCIS conducts a well-founded fear interview and assesses the migrant's claim. If USCIS determines that the migrant established a well-founded fear of persecution or likelihood of torture, the migrant is generally resettled in a third country through a process managed by the U.S. Department of State. Consistent with Executive Order 13276, the Department of State is responsible for caring for persons in need of protection at the MOC while it finds a third country for resettlement.
18. Interdicted migrants are generally not kept on board USCG ships for more than several days. During this time, they have access to food and water, shower and sanitation facilities, and basic medical care. While migrant access to telephones is operationally limited on board USCG ships, migrants who are transferred to the MOC do have access to telephones and are permitted to call attorneys or family members. They are not held *incommunicado*.

19. The USCG is subject to oversight by DHS entities including the DHS Office of the Inspector General (OIG) and the DHS Office for Civil Rights and Civil Liberties (CRCL).
20. CRCL maintains liaisons to the task force that manages migrant interdiction operations in the Caribbean. The liaisons provide guidance on civil rights and civil liberties concerns, monitor conditions, including Department activities, and facilitate information sharing.
21. In addition to CRCL, Members of the U.S. Congress, as well as other organizations, including the United Nations High Commissioner for Refugees, have visited USCG facilities.

### **Migrant Protection Protocols (MPP) and Title 42**

22. On October 29, 2021, the Secretary of Homeland Security issued a memorandum terminating MPP. After substantial litigation requiring DHS to re-implement MPP in good faith for a time, the U.S. Supreme Court held on June 30, 2022, that the Secretary of Homeland Security had the statutory authority to terminate MPP and the program was subsequently ended. Any reinstatement of MPP or similar program will require the willingness of the Government of Mexico to accept the return of noncitizens pursuant to INA § 235(b)(2)(C).
23. On May 11, 2023, the Centers for Disease Control and Prevention (CDC) terminated the use of the Title 42 Public Health Order when the Secretary of Health and Human Services lifted the declaration of COVID-19 as a Public Health Emergency. Prior to that date, the Title 42 Order remained in effect by court order. DHS led a more than 18-month long planning effort to prepare for the end of the Title 42 Public Health Order and the return to Title 8 processing for all noncitizens encountered at U.S. points of entry.