



September 29, 2021

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

William A. Ferrara  
Executive Assistant Commissioner  
Office of Field Operations  
U.S. Customs and Border Protection

FROM: Dana Salvano-Dunn (b)(6)  
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SUBJECT: CBP COVID-19 Response Expert Recommendations  
Complaint Nos. 20-09-CBP-0794, 21-07-CBP-0377, and  
20-06-CBP-0482

The U.S. Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) retained an investigation related to U.S. Customs and Border Protection's (CBP) response to the COVID-19 pandemic. As part of this investigation, CRCL reviewed CBP's adherence to relevant CBP policies and procedures regarding CBP's COVID-19 response and investigated three complaints relating to CBP's COVID-19 response.

As part of the investigation, CRCL engaged the assistance of a subject-matter expert who is a board-certified physician in internal medicine and infectious disease specialist, to conduct a broad review of CBP's COVID-19 response. To assist with the review, CRCL's subject-matter expert reviewed CBP's adherence to its National Standards on Transport, Escort, Detention and Search, CBP Directive No. 2210-004, Enhanced Medical Support Efforts, December 30, 2019, U.S. Border Patrol, Implementation Plan Enhanced Medical Support Efforts, June 4, 2020, Office of Field Operations, Implementation Plan Enhanced Medical Support Efforts (undated), among other documents.<sup>1</sup>

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<sup>1</sup> A complete list of documents and information CRCL's subject-matter expert relied upon is contained in the accompanying subject-matter expert report.

CRCL's retained investigation was based on three complaints<sup>2</sup> related to CBP's response to the COVID-19 pandemic. One complaint is based on correspondence from the American Civil Liberties Union to CBP, copying CRCL, and requesting that CBP develop "evidence-based and proactive plans for the prevention and management of COVID-19 for all people in CBP custody, including port facilities and 'short-term' Border Patrol holding cells."<sup>3</sup> Another complaint alleged an unaccompanied child (UC) in CBP custody at the Imperial Beach Station from approximately March 9-16, 2021, was given a mask upon arrival and was expected to use the same mask for eight days.<sup>4</sup> The final complaint is based on a significant incident report (SIR) in which Border Patrol agents assigned to the Three Points Station arrested an individual who was treated for dehydration while in custody and later was taken to a local hospital for further treatment where he tested positive for COVID-19.<sup>5</sup>

In addition to reviewing applicable CBP policies and procedures as stated above, CRCL and its subject-matter expert conducted staff interviews as part of the investigation.

We greatly appreciated the cooperation and assistance provided by CBP leadership in the Office of the Chief Medical Officer, including Chief Medical Officer David A. Tarantino, CBP Management Inspections Division, and CBP Privacy and Diversity Office staff Joann Sazama and Gila Zawadzki.

Based on the document review and interviews, CRCL's subject-matter expert identified areas for improvement in processes and procedures to assist in the prevention and control of the spread of COVID-19 among individuals in CBP custody. The subject-matter expert's recommendations relate to measures CBP should take to develop and regularly update comprehensive COVID-19 infectious disease response plans for managing persons in the custody of the U.S. Border Patrol (USBP) and the Office of Field Operations (OFO).

Enclosed with this memorandum is the report prepared by our subject-matter expert. We have included the recommendations in the body of this memorandum and request that CBP formally concur or non-concur with these recommendations within 60 days, providing an implementation plan for all accepted recommendations.

***Recommendations:***

1. Although the CBP infection prevention and control measures used to manage the individual later transported to the hospital and found to be COVID-19 positive (Complaint No. 20-09-CBP-0794) were largely well executed, a more thorough assessment of the USBP agents who were contacts of the COVID-19 positive detainee was warranted, rather than assuming their exposures were "Low Risk" because the index case was presumed to be asymptomatic. Accordingly, CBP's Office of the Chief Medical Officer (OCMO) should review the contact tracing guidance for USBP agents exposed to COVID-19 to confirm its accordance with CBP occupational health guidance and clinical best practices.

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<sup>2</sup> The complaints included in the investigation are Complaint Nos. 20-09-CBP-0794, 21-07-CBP-0377, and 20-06-CBP-0482.

<sup>3</sup> Complaint No. 20-06-CBP-0482.

<sup>4</sup> Complaint. No. 21-07-CBP-0377.

<sup>5</sup> Complaint No. 20-09-CBP-0794.

2. Despite requests for risk management documents for Complaint No. 20-09-CBP-0794 and other complaints, none were provided. CRCL wants to ensure certain key data related to COVID-19 are evaluated. Accordingly, SIRs related to COVID-19 exposures should be evaluated as part of the CBP Medical Quality Management (MQM) program.

3. CBP's medical contractor, Loyal Source Government Services (LSGS), has not issued a comprehensive COVID-19 response plan that details regularly updated infection prevention and control guidance for managing persons in CBP custody.<sup>6</sup> CBP has largely relied on the LSGS to develop and implement COVID-19 protocols that detail infection prevention and control requirements for managing persons in CBP custody through the LSGS Medical Operations Strategic Plan (MOSP), July 2020, COVID-19 Guidance.<sup>7</sup> The LSGS MOSP COVID-19 Guidance is outdated and incomplete in multiple areas. Accordingly, CBP should require LSGS to develop and regularly update a comprehensive COVID-19 infection disease response plan for managing persons in the custody of USBP and OFO as required by the contract.

- Required tasks pertaining to infectious diseases include early identification, isolation, quarantine, treatment, exposure risk assessment (contact tracing), prophylaxis, infection control measures, appropriate reporting to county health, and other public health support as appropriate.
- The contractor is required to develop and implement infectious disease protocols in coordination with the CBP OCMO (Contract for Enhanced Medical Support Statement of Work (SOW) Section 3.1.4). The plan should be developed in consultation with public health experts who can provide guidance on adapting COVID-19 response recommendations to the unique mission of the USBP. The plans should also be developed with the input and approval of the CBP OCMO. *See also* USBP Implementation Plan Enhanced Medical Support Efforts Directive, June 4, 2020, and OFO Implementation Plan Enhanced Medical Support Efforts (undated). Similarly, CBP should require LSGS (the contractor at medical priority facilities (MPFs)), to develop and regularly update infectious disease response plans that address future public health threats from emerging infectious diseases.

4. In Complaint No. 21-07-CBP-0377, CRCL noted that CBP did not provide any written documentation indicating that the UC in CBP custody was provided a face mask upon arrest or booking into Imperial Beach Station (IMB). However, CBP officials reported to CRCL

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<sup>6</sup> DHS's Pandemic and Emerging Disease Plan (undated) provides a departmental framework for responding to emerging infectious diseases but does not detail specific responses for managing the unique health threats of COVID-19. The CBP COVID-19 pandemic response guidance largely focuses on worker safety, including the use of engineering and administrative controls and PPE recommendations.

<sup>7</sup> The MOSP provides infection control guidance that includes in part: occupational health guidance for LSGS workers; a statement that surgical masks are provided to all detained persons upon first contact with CBP; direction for the isolation of confirmed or suspected COVID-19 cases as per CDC guidelines; guidance that COVID-19 testing can be considered on a case-by-case basis in consultation with local health departments; and COVID-19 reporting requirements to appropriate authorities. *See* MOSP, pp. 145-160.

that IMB routinely provides face masks to persons in their custody and that face masks can be replaced upon request. Furthermore, the CDC does not have specific recommendations for how often to replace face masks. Accordingly, CBP should require LSGS to develop a COVID-19 infectious disease response plan that provides guidance on the provision of face masks to persons in CBP custody, including indications for mask replacement, e.g., soiling. The guidance should be issued in coordination with the CBP OCMO as required by the contract per the SOW, Section 3.1.4.<sup>8</sup>

5. In Complaint No. 20-06-CBP-0482, CRCL noted that CBP has not implemented a robust MQM program at the national level as outlined in its USBP and OFO Implementation Plans Enhanced Medical Support Efforts. Accordingly, CBP should implement a more structured MQM program at the national level that includes regularly scheduled quality assurance/performance improvement committee meetings that engage key stakeholders and document program findings, recommendations, and continuous quality improvement. The MQM oversight team should determine the priority performance measures and consider management of the COVID-19 pandemic and related risk management concerns as among those program priorities.

6. In Complaint No. 20-06-CBP-0482, CRCL noted that the CBP MQM program does not include a national quality assurance/performance improvement committee with *documented* minutes that meets regularly with key stakeholders, e.g., CBP Chief Medical Officer, National LSGS Medical Director, and National LSGS Patient Safety and Quality Manager. According to CBP, quality management concerns, instead, are reported and evaluated through regular verbal briefings between the medical contractor and the CBP OCMO. Accordingly, CBP should consult with DHS legal counsel on balancing the need for MQM program documentation with the risk management concerns related to disclosure of sensitive information.

7. In Complaint No. 20-06-CBP-0482, CRCL noted that the CBP national MQM program does not include documented reviews of quality improvement activities required of the medical contractor, e.g., review of performance measure data, metrics, and dashboard data that relate directly to the quality of patient care. Accordingly, the national CBP MQM program should evaluate performance measures and dashboard data related to enhanced medical care at MPFs to help drive continuous quality improvement of health care services by the medical contractor. Evaluated metrics should measure critical elements of the medical contractor's infection prevention and control plan for COVID-19.

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<sup>8</sup> Per the SOW, the core functions of the [Medical Unit] include: public health/infectious disease support, including early identification, isolation, quarantine, treatment, exposure risk assessment (contact tracing), prophylaxis, infection control measures..." and Section 3.5.7, "The Quality Assurance and Patient Safety Risk Management Plan shall describe how the contractor will monitor, lower, and manage patient safety risk. ... The plan shall include sub-sections to include but not limited to Infectious Disease Response Plans (to include Flu Response Plan); Quarantine and Isolation; Respiratory Protection Plan. The plan shall be developed by the contractor, in coordination with the CBP CMO.").

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It is CRCL's statutory role to advise department leadership and personnel about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions and implementation of those decisions. We look forward to working with CBP to determine the best way to resolve these concerns. We request that CBP provide a response to CRCL 60 days whether it concurs or non-concurs with these recommendations. If you concur, please include an action plan. You can send your response by email to (b)(6). If you have any questions, please contact Senior Policy Advisor (b)(6) by telephone at (b)(6) 7 or by email at (b)(6).

Enclosure

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