



Homeland
Security

November 26, 2019

MEMORANDUM FOR: Mark A. Morgan
Acting Commissioner
U.S. Customs and Border Protection

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(b)(6)

FROM: Cameron P. Quinn
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SUBJECT: Yuma Border Patrol Station
19-08-CBP-0455
19-09-CBP-0465
19-09-CBP-0466
19-09-CBP-0468
19-08-CBP-0470
19-08-CBP-0472
19-09-CBP-0474
19-09-CBP-0475
19-09-CBP-0476
19-09-CBP-0478
19-09-CBP-0480
19-09-CBP-0481
19-09-CBP-0483

Imperial Beach Border Patrol Station
19-09-CBP-0452

Casa Grande Border Patrol Station
19-09-CBP-0451

Welton Border Patrol Station
19-09-CBP-0456

Tucson Border Patrol Station
19-09-CBP-0453

Clint Border Patrol Station
19-09-CBP-0460
19-09-CBP-0461
19-09-CBP-0462
19-08-CBP-0464

Rio Grande Valley Centralized Processing Center
19-09-CBP-0458
19-09-CBP-0459

Between May 1 and July 31, 2019, the U.S. Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL) received 677 allegations that U.S. Customs and Border Protection (CBP) violated the civil rights and civil liberties of unaccompanied alien children (UAC) in CBP custody. This number of allegations corresponded with the increase in UAC apprehensions at the Southwest border.

The allegations included various issues: length of time in custody; hold room area conditions and capacity; access to medical and mental health care; care of particularly vulnerable UAC populations; language access during processing; provision of snacks, meals, clothing, and personal necessities; hygiene and sanitation; sleeping conditions; personal privacy; telephone access; privileges in exchange for cleaning duties; behavior management; disciplinary measures; and the role and conduct of contractors.

For the purposes of this investigation, CRCL is focused on allegations that U.S. Border Patrol (USBP) routinely held UAC longer than 72 hours, and often for a week or longer, before transferring them to the custody to the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR). This issue undergirds the additional claims as the other allegations are heightened by detention which exceeds the 72-hour requirement, such as those allegations related to inadequate hold room conditions, lack of shower access, language access, and inadequate medical care.¹

CRCL has opened the complaints for investigation that best exemplify time in custody allegations and has organized them below according to location and a brief overview by subject matter. The selected complaints were all referred to CRCL by ORR. Each complaint summarized below highlights potential problems and inconsistencies with the current process.

¹ The complainants allege overcrowding in hold room areas, sometimes preventing minors from lying down, or requiring that they sleep on a floor without bedding. The complainants also allege that UAC are occasionally given privileges or snacks in exchange for chores, and further allege that UAC are disciplined, or threatened with discipline, for poor behavior. Some complaints include allegations regarding vulnerable UAC populations, including pregnant minors or those under 10 years of age.

The purpose of this memorandum is to notify you of the above-referenced complaints and describe the allegations, as well as inform you that CRCL has retained the complaints for a policy and process investigation. This investigation reviews CBP policies, procedures and training that are applicable to time in custody issues, including duration, conditions of detention, and the general care of UAC in CBP custody.

COMPLAINTS

Yuma Border Patrol Station

Complaint Number: 19-09-CBP-0455

Primary Alleged Issues: overcrowding; phone access; hygiene.

On May 31, 2019, CRCL received an allegation that USBP held UAC (b)(6) (b)(6), who was 11 years old, for seven days. She stated that for two nights she slept sitting up because there was no place to lie down, and that for three nights she slept in the restroom due to lack of space. She stated she was not offered a shower or a phone call. According to EARM, USBP apprehended the UAC on May 20, 2019 and transferred custody to ORR on May 27, 2019.

Complaint Number: 19-09-CBP-0465

Primary Alleged Issue: denied access to meal.

On June 3, 2019, CRCL received an allegation that USBP held UAC (b)(6) (b)(6), who was 13 years old, for approximately five days. The UAC alleged that after returning from the restroom one evening, the doors to obtain food were closed and he was told that he chose the bathroom instead of eating. He alleged that he was not provided with food until the following morning. According to EARM, USBP apprehended the UAC on May 24, 2019 and transferred custody to ORR on May 29, 2019.

Complaint Number: 19-09-CBP-0466

Primary Alleged Issues: improperly cooked food; lack of food variety; overcrowding; phone access.

On June 5, 2019, CRCL received an allegation that USBP held UAC (b)(6) (b)(6) who was 17 years old, for eight days. The UAC alleged that during his time in custody he was often served frozen food, consisting of hamburgers or burritos. The UAC further alleged that he often slept on the floor and/or by the toilet due to overcrowding, and that UACs took turns sleeping on the floor. He alleged that he was provided with a blanket, however the blanket was sometimes gone when he returned from dinner. He alleged that he was never provided with a phone call. According to EARM, USBP apprehended the UAC on May 27, 2019 and transferred custody to ORR on June 5, 2019.

Complaint Number: 19-09-CBP-0468

Primary Alleged Issues: sleeping conditions; overcrowding; recreation.

On June 5, 2019, CRCL received an allegation that USBP held UAC (b)(6) (b)(6), who was 15 years old, for six days. The UAC alleged that he was in a room with approximately 100 people, and that he slept on the floor without a blanket or pillow. He also alleged a lack of privacy when using the restroom as the stall was four feet tall. The UAC further alleged that he and other individuals were sometimes taken out of the holding area to eat and go outside. According to EARM, USBP apprehended the UAC on May 28, 2019 and transferred custody to

ORR on June 5, 2019.

Complaint Number: 19-09-CBP-0470

Primary Alleged Issues: lack of meal variety; hygiene; sleeping conditions.

On May 30, 2019, CRCL received an allegation that USBP held UAC (b)(6) (b)(6), who was 15 years old, for approximately 22 days.² The UAC alleged that he was not able to brush his teeth or take a shower during his time in custody. He further alleged receiving either a bean burrito or a hamburger for meals. The UAC alleged that, due to overcrowding, he slept on the floor as there were not enough mattresses. According to EARM, USBP apprehended the UAC on May 18, 2019 and transferred custody to ORR on May 30, 2019.

Complaint Number: 19-09-CBP-0472

Primary Alleged Issues: hygiene; phone access.

On May 30, 2019, CRCL received an allegation that USBP held UAC (b)(6) (b)(6), who was 16 years old, for 14 days. The UAC alleged that, during her 14-day detention, she did not have shower access and was not permitted to make a phone call. According to EARM, USBP apprehended the UAC on May 15, 2019 and transferred custody to ORR on May 29, 2019.

Complaint Number: 19-09-CBP-0474

Primary Alleged Issues: sleeping conditions; hygiene; cleaning duties.

On June 12, 2019, CRCL received an allegation that USBP held UAC (b)(6) (b)(6), who was 16 years old, for 18 days. The UAC alleged that she and her son slept on the floor with a blanket.³ She alleged that she was provided with a shower on her 15th day in detention. The UAC further alleged that she was provided with extra juice in exchange for assisting with cleaning duties. According to EARM, USBP apprehended the UAC on May 25, 2019 and transferred custody to ORR on June 11, 2019.

Complaint Number: 19-09-CBP-0475

Primary Alleged Issues: no snacks provided; phone access; hygiene.

On June 3, 2019, CRCL received an allegation that USBP held UAC (b)(6) (b)(6), who was 15 years old, for 10 days. The UAC alleged that he did not shower for 10 days as there were no showers available. He further alleged that he was allowed one, two-minute phone call, but that calls to Guatemala were not allowed. The UAC indicated that he was not provided with snacks. According to EARM, USBP apprehended the UAC on May 21, 2019 and transferred custody to ORR on May 31, 2019.

Complaint Numbers: 19-09-CBP-0476, 19-09-CBP-0478, and 19-09-CBP-0480⁴

Primary Alleged Issue: language access.

On June 10, 2019, CRCL received an allegation that USBP held UAC (b)(6) (b)(6) who was 16 years old, for seven days. According to EARM, USBP apprehended the UAC on May 30, 2019 and transferred custody to ORR on June 7, 2019. The I-213 narrative indicates that the

² The ORR correspondence says the UAC was detained for 22 days. However, EARM records indicate that it was 12 days.

³ There is no indication in her Form I-213 that she was travelling with her son.

⁴ These complaints arise out of the same general set of circumstances and are included under the same subheading.

UAC's native language is Punjabi and that he speaks only a little English. It appears that interactions between the UAC and USBP were conducted in English.

On June 10, 2019, CRCL received an allegation that USBP held UAC (b)(6) (b)(6), who was 17 years old, for seven days. According to EARM, USBP apprehended the UAC on May 30, 2019 and transferred custody to ORR on June 7, 2019. The I-213 narrative indicates that the UAC's native language is Punjabi and that he speaks only a little English. It appears that interactions between the UAC and USBP were conducted in English.

On June 10, 2019, CRCL received an allegation that USBP held UAC (b)(6) (b)(6), who was 17 years old, for seven days. According to EARM, USBP apprehended the UAC on May 30, 2019 and transferred custody to ORR on June 8, 2019. The I-213 narrative indicates that the UAC's native language is Punjabi and that he speaks only a little English. It appears that interactions between the UAC and USBP were conducted in English.

Complaint Number: 19-09-CBP-0481

Primary Alleged Issue: cleaning duties; lack of food variety.

On June 11, 2019, CRCL received an allegation that USBP held UAC (b)(6) (b)(6) who was 16 years old, for nine days. The UAC alleged that a CBP official⁵ told detainees that if they did not clean the bathroom, their cases would take longer to process. She further alleged being served a hamburger for all three meals. According to EARM, USBP apprehended the UAC on June 1, 2019 and transferred custody to ORR on June 10, 2019.

Complaint Number: 19-09-CBP-0483

Primary Alleged Issue: punishment.

On June 11, 2019, CRCL received an allegation that USBP held UAC (b)(6) (b)(6) who was 15 years old, for nine days. The UAC alleged that she and the other detainees were threatened constantly by the officers and alleged that she was placed in "el congelador" (freezer) twice as punishment for misbehaving. She further alleged that if one person misbehaved, the whole group was punished in this way. According to EARM, USBP apprehended the UAC on June 1, 2019 and transferred custody to ORR on June 10, 2019.

Imperial Beach Border Patrol Station Complaints

Complaint Number: 19-09-CBP-0452

Primary Alleged Issues: hygiene.

On June 12, 2019, CRCL received an allegation that USBP held UAC (b)(6) (b)(6), who was 17 years old, for 13 days. The UAC alleged that she was unable to shower during detention and was not given clean underpants despite requesting them. The UAC further alleged that she developed a rash on her buttocks because she did not wear underpants for 15 days. According to EARM, USBP apprehended the UAC on May 29, 2019 and transferred custody to ORR on June 11, 2019.

⁵ The UAC provided the last name of the official during her initial intake with ORR.

Casa Grande Border Patrol Station Complaints

Complaint Number: 19-09-CBP-0451

Primary Alleged Issue: medical and mental health care.

On June 10, 2019, CRCL received an allegation that USBP held UAC (b)(6) (b)(6), who was 10 years old, for 11 days. She alleged that she contracted chickenpox while in custody and was placed in isolation. The UAC further alleged that during her time in isolation, she felt extremely unwell, sad and overwhelmed from being in custody and away from her mother, and that she had brief thoughts about “being dead to stop her suffering.” According to EARM, USBP apprehended the UAC on May 25, 2019 and transferred custody to ORR on June 6, 2019.

Welton Border Patrol Station Complaints

Complaint Number: 19-09-CBP-0456

Primary Alleged Issues: hygiene; phone access.

On June 19, 2019, CRCL received an allegation that USBP held UAC (b)(6) (b)(6), who was 17 years old, for 10 days. The UAC alleged that he was not permitted to shower or to make a phone call. According to EARM, USBP apprehended the UAC on June 10, 2019, and transferred custody to ORR on June 17, 2019.

Tucson Border Patrol Station Complaints

Complaint Number: 19-09-CBP-0453

Primary Alleged Issues: conditions of detention; recreation.

On June 12, 2019, CRCL received an allegation that USBP held UAC (b)(6) (b)(6) who was 10 years old, for seven days. The UAC alleged that during her detention, she did not know the time of day as there were no clocks, no windows, and no access to the outdoors. According to EARM, USBP apprehended the UAC on June 4, 2019 and transferred custody to ORR on June 10, 2019.

Clint Border Patrol Station Complaints

Complaint Number: 19-09-CBP-0460

Primary Alleged Issue: verbal abuse.

On May 15, 2019, CRCL received an allegation that USBP held (b)(6) (b)(6), who was 17 years old, for 14 days. The UAC alleged that while in custody, officials in a “black uniform” made threats and were verbally abusive towards him. Specifically, he alleged that officials accused him of lying, threatened that he would go to jail, and that his father would be deported. The UAC further alleged that officials threatened him with physical harm and that he had to sign “Miranda Rights.” According to EARM, USBP apprehended the UAC on April 23, 2019 and transferred custody to ORR on May 8, 2019.

Complaint Number: 19-09-CBP-0461

Primary Alleged Issues: verbal threats and intimidation; hygiene.

On June 3, 2019, CRCL received an allegation that USBP held UAC (b)(6) (b)(6) who was 15 years old, for 10 days, and further that a CBP official was

verbally abusive towards her. The UAC alleged that on June 1, 2019, a CBP official⁶ walked into the female section with a metal bar and threatened to hit them and send them to the hospital, further threatening that he could make it so they never left custody. Later that day, she alleged that the same official grabbed her by the arm and told her to get out of the restroom, telling her that the officials made the rules. She further alleged that he threatened that he could make it so she never left custody and never received phone calls. The UAC alleged that it was pointless to report the incidents to officials wearing blue uniforms, as only officials wearing green uniforms can take action. The UAC claimed that when she tried to report the incidents, the official prevented her from making a report. The UAC alleged that she received one shower during her detention. According to EARM, USBP apprehended the UAC on May 24, 2019 and transferred custody to ORR on June 3, 2019.

Complaint Number: 19-09-CBP-0462

Primary Alleged Issues: cleaning duties.

On June 10, 2019, CRCL received an allegation that USBP held UAC (b)(6) (b)(6)

, who was 13 years old, for 11 days. The UAC alleged that he was provided with extra phone calls in exchange for assisting with cleaning duties. He alleged that he assisted with picking up trash, sweeping, mopping, and cleaning mats with Clorox wipes. He alleged that he was provided with a total of three phone calls. According to EARM, USBP apprehended the UAC on May 24, 2019 and transferred custody to ORR on June 3, 2019.

Complaint Number: 19-09-CBP-0464

Primary Alleged Issue: pregnancy/vulnerable population.

On June 11, 2019, CRCL received an allegation that USBP held UAC (b)(6)

(b)(6), who was 17 years old, for 11 days. According to EARM, USBP apprehended the UAC on May 24, 2019 and transferred custody to ORR on June 3, 2019. Per EARM documents, the UAC alleged she was seven months pregnant. EARM records indicate that she was cleared by medical personnel and deemed fit for travel.

Rio Grande Valley Centralized Processing Center Complaints

Complaint Number: 19-09-CBP-0458

Primary Alleged Issues: medical care; language access.

On June 13, 2019, CRCL received an allegation that USBP held UAC (b)(6)

(b)(6) who was 11 years old, for 11 days. Among other allegations, the UAC alleged that during his detention, CBP officials came into the cell early in the morning to remove cushions and blankets from detainees. He further alleged that he developed a fever and went to the medical clinic for treatment, and later spent three days in the sick bay. During his time in the medical clinic, the UAC alleged that the clinic staff spoke primarily English and did not explain his condition or treatment. The ORR referral states that the UAC's Medical Screening Confirmation from CBP failed to indicate that he was diagnosed with or, treated for, a fever. According to EARM, USBP apprehended the UAC on May 30, 2019, and transferred custody to ORR on June 11, 2019.

⁶ The UAC provided a last name for the officer during her ORR intake interview.

Complaint Number: 19-09-CBP-0459

Primary Alleged Issue: hygiene; sleeping conditions.

On June 3, 2019, CRCL received an allegation that USBP held UAC (b)(6) who was 12 years old, for 16 days. The UAC alleged that she took only two showers during her time in detention, and that her request for a third shower was denied. She further alleged having her own sleeping mat for three nights, but thereafter having to share a sleeping mat with other individuals. According to EARM, USBP apprehended the UAC on May 16, 2019 and transferred custody to ORR on June 1, 2019.

Areas to be Reviewed

As previously addressed, the above allegations relate to the detention of UAC that exceed 72 hours, and implicate the following areas that include, but are not limited to: hold room conditions; medical and mental health care; language access; recreation; and abuse of authority by agents. In addition to these allegations, CRCL will review any other important civil rights and civil liberties issues that may arise during the investigation.

CRCL

CRCL Mission. CRCL supports the Department’s mission to secure the Nation while preserving individual liberty, fairness, and equality under the law. CRCL integrates civil rights and civil liberties into all the Department’s activities by:

- Promoting respect for civil rights and civil liberties in policy creation and implementation by advising Department leadership and personnel, and state and local partners;
- Communicating with individuals and communities whose civil rights and civil liberties may be affected by Department activities, informing them about policies and avenues of redress, and promoting appropriate attention within the Department to their experiences and concerns;
- Investigating and resolving civil rights and civil liberties complaints filed by the public regarding Department policies or activities, or actions taken by Department personnel;
- Leading the Department’s equal employment opportunity programs and promoting workforce diversity and merit system principles.

CRCL authorities. Under 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, CRCL is charged with investigating and assessing complaints against DHS employees and officials of abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion. The procedures for our investigations and the recommendations they may generate are outlined in DHS Management Directive 3500.

Access to information. More particularly, 42 U.S.C. § 2000ee-1(d) grants CRCL access to the “information, material, and resources necessary to fulfill the functions” of the office, including the complaint investigation function; Management Directive 3500 further authorizes CRCL to:

- “Notify[] the relevant DHS component(s) involved of the matter and its acceptance by CRCL, and whether the matter will be handled by CRCL or by the component organization;”
- “Interview[] persons and obtain[] other information deemed by CRCL to be relevant and require[e] cooperation by all agency employees;” and
- “Access[] documents and files that may have information deemed by CRCL to be relevant.”

Reprisals forbidden. 42 U.S.C. § 2000ee-1(e) forbids any Federal employee to subject a complainant or witness to any “action constituting a reprisal, or threat of reprisal, for making a complaint or for disclosing information to” CRCL in the course of this investigation. This memorandum and its accompanying request for information are pursuant to these authorities.

Privilege and required transparency. Our communications with CBP personnel and documents generated during this review, particularly the final report, will be protected to the maximum extent possible by attorney-client and deliberative process privileges. Under 6 U.S.C. § 345(b), however, we submit annual reports to Congress — which are also posted on CRCL’s web site — that, among other things, “detail[] any allegations of [civil rights/civil liberties] abuses . . . and any actions taken by the Department in response to such allegations.”

We look forward to working with your staff on this matter and will report back to you our findings and any recommendations.

SCOPE OF REVIEW

The purpose of our review is to determine whether CBP has complied with applicable policies and procedures relating to the care and detention conditions of UAC detained in CBP custody; if any additional facts suggest that the U.S. Constitution, a federal statute, or a Department policy has been violated; and what steps, if any, should be taken by CBP to address any concerns CRCL identifies, both individually (if a problem is ongoing) and as a matter of policy. It is our goal to produce a report that will assist in making CBP the best agency possible and to support the Department’s primary mission to “ensure that the civil rights and civil liberties of persons are not diminished by efforts, activities, and programs aimed at securing the homeland[.]”⁷

QUESTIONS PRESENTED

(b)(5)

⁷ 6 U.S.C. § 111; Section 101, Homeland Security Act of 2002 (as amended). (Establishing the eight primary missions of the Department of Homeland Security.)

(b)(5)

INITIATING THE INVESTIGATION

We request an initial discussion with your agency about these complaints and CRCL's plans for reviewing these matters. (b)(6) will be handling this review. We request that CBP schedule an initial discussion with them as soon as possible. We look forward to working together to determine all the facts surrounding these matters and, if appropriate, the best way forward. If you have any questions, please do not hesitate to contact Mr. (b)(6) by phone at (b)(6) or by email at (b)(6) as well as Ms. (b)(6) by phone at (b)(6) or by email at (b)(6).

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