

University of Chicago Law School

Chicago Unbound

Global Human Rights Clinic

2018

Neglect and Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection

University of Chicago Law School - Global Human Rights Clinic

Follow this and additional works at: <https://chicagounbound.uchicago.edu/ihrcl>



Part of the **Law Commons**

Recommended Citation

University of Chicago Law School - Global Human Rights Clinic, "Neglect and Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection" (2018). *Global Human Rights Clinic*. 1.
<https://chicagounbound.uchicago.edu/ihrcl/1>

This Article is brought to you for free and open access by Chicago Unbound. It has been accepted for inclusion in Global Human Rights Clinic by an authorized administrator of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.

Neglect and Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection

May 2018



“I am going to take you back to the river so that you can die”



THE UNIVERSITY OF
CHICAGO
THE LAW SCHOOL
INTERNATIONAL HUMAN RIGHTS CLINIC

ACLU San Diego and
Imperial Counties
**BORDER
LITIGATION
PROJECT**

ACLU
**BORDER
RIGHTS**

Copyright © 2019 International Human Rights Clinic

All rights reserved.

ISBN 978-1-7334730-1-9

University of Chicago Law School
Mandel Legal Aid Clinic
6020 South University Avenue
Chicago, Illinois 60637

<https://www.law.uchicago.edu/ihrcl>



Introduction: Abuse of Children by U.S. Customs and Border Protection¹



According to the U.S. government, tens of thousands of Central American and Mexican children travel alone to the United States every year to escape violence and poverty in their home countries.² U.S. Customs and Border Protection (CBP), a sub-agency of the Department of Homeland Security (DHS), detains many of these children when they arrive at U.S. ports of entry or cross the U.S. border.³ While in CBP custody, immigrant children have reported physical and psychological abuse, unsanitary and inhumane living conditions, isolation from family members, extended periods of detention, and denial of access to legal and medical services.⁴

In 2014, legal service providers and immigrants' rights advocates observed a sharp increase in complaints of abuse and neglect from children in CBP custody. In June 2014, several of these organizations submitted an administrative complaint to

two DHS oversight agencies, the Office of Inspector General (OIG) and Office for Civil Rights and Civil Liberties (CRCL), documenting CBP's mistreatment of 116 unaccompanied children aged five to seventeen.⁵ One quarter of the children reported physical abuse, including sexual assault, the use of stress positions, and beatings by Border Patrol agents.⁶ More than half reported verbal abuse, including death threats.⁷ More than half also reported denial of necessary medical care—resulting, at times, in hospitalization.⁸ Eighty percent reported inadequate food and water.⁹

Despite initial promises that DHS would thoroughly investigate these allegations, and notwithstanding an acknowledgment of “recurring problems” in CBP detention facilities, DHS OIG announced in October 2014 that routine inspections of detention facilities would be curtailed.¹⁰ In December 2014, the ACLU's Border Litigation Project—a joint project of the ACLU affiliates in Arizona and San Diego—filed a Freedom of Information Act (FOIA) request seeking records related to abuse of children in CBP custody.¹¹ When the request was ignored, the ACLU, along with Cooley LLP, filed a FOIA lawsuit in federal court to compel release of the records sought.¹² After many

months of additional delays and the imposition of court-ordered deadlines, various DHS subcomponent agencies finally began to produce responsive records.

Since 2015, the ACLU has obtained over 30,000 pages of records related to abuse of children in CBP custody. These records document a pattern of intimidation, harassment, physical abuse, refusal of medical services, and improper deportation between 2009 and 2014. These records also reveal the absence of meaningful internal or external agency oversight and accountability. The federal government has failed to provide adequate safeguards and humane detention conditions for children in CBP custody. It has further failed to institute effective accountability mechanisms for government officers who abuse the vulnerable children entrusted to their care. These failures have allowed a culture of impunity to flourish within CBP, subjecting immigrant children to conditions that are too often neglectful at best and sadistic at worst.

This report serves as a companion to a subset of the records obtained by the ACLU—specifically, those released by DHS CRCL (“the CRCL documents”)—and highlights the most prevalent types of CBP child abuse documented therein. To review the full set of records, as well as additional information about the plight of immigrant children in CBP custody, please visit <https://www.aclusandiego.org/civil-rights-civil-liberties/>.

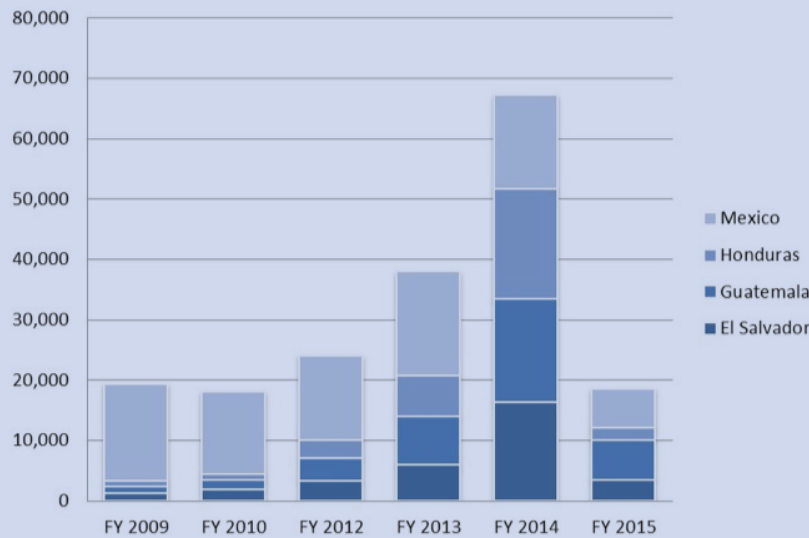
Background: Children Seeking Asylum in the United States

Migrants, generally, risk their lives in search of safety, stability, and opportunity.¹³ During migration, they cross dangerous terrain under extreme conditions, rely on treacherous forms of transportation, and travel without consistent access to food or water. Migrants are vulnerable to exploitation, abuse, theft, human traffickers, and other criminal actors seeking to benefit from their desperation. According to UNICEF, 26,000 migrant deaths have been recorded since 2014.¹⁴ The actual number of migrant fatalities in this period, however, is likely much higher.¹⁵

Children migrants are especially vulnerable, particularly when traveling alone. Throughout the world, children are forced to seek refuge in other countries to escape armed conflict, violent crime, endemic poverty, natural disasters, discrimination, and other forms of oppression.¹⁶ In 2015, approximately 10 of the 21 million refugees seeking asylum outside their countries of origin were children.¹⁷ In 2016, 12 million children sought refuge outside of their country’s borders.¹⁸

The four most common countries of origin for unaccompanied child migrants arriving in the United States are Mexico, El Salvador, Guatemala, and Honduras.¹⁹ The “Northern Triangle,” which includes El Salvador, Guatemala, and Honduras, is considered one of the most violent regions in the world.²⁰ Honduras is first in the world for per capita homicides, El Salvador is fourth, and Guatemala is fifth.²¹ An estimated 150,000 people were killed in the Northern Triangle between 2006 and 2016.²² According to DHS, children migrants from Honduras and El Salvador usually come from the areas in those countries most impacted by gang violence.²³

Unaccompanied Children: Four Most Common Countries of Origin²⁴

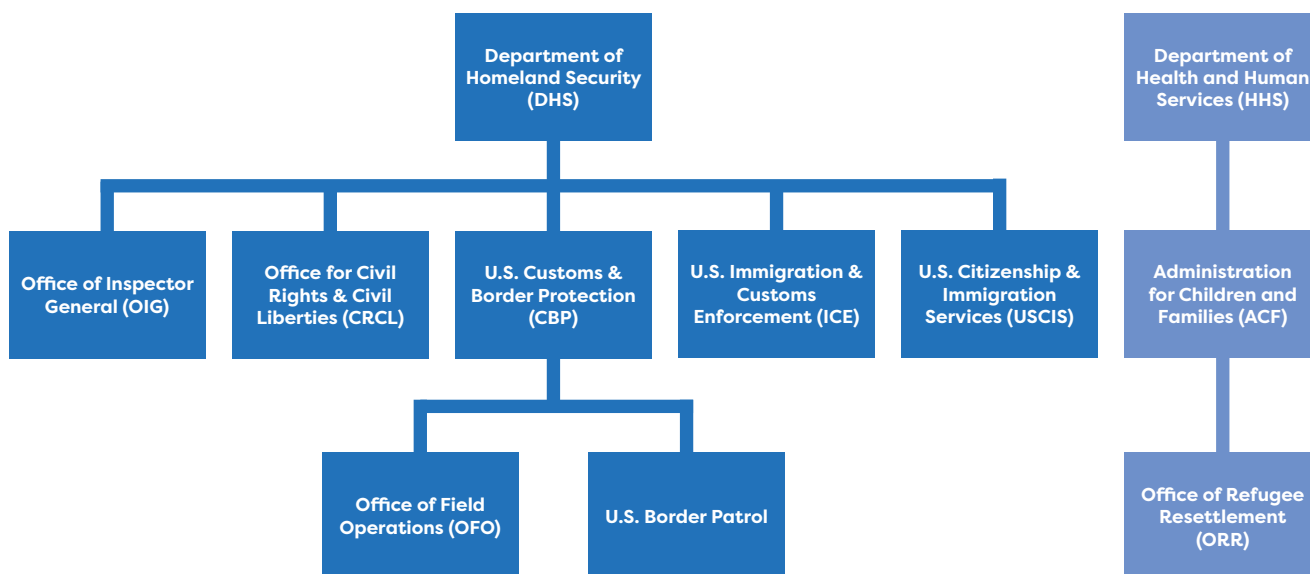


Child migrants from these countries often travel north on foot. Under U.S. law, those that are apprehended without guardians or caretakers are referred to as “unaccompanied alien children” (UAC).²⁵ Along the way, many experience severe trauma, including sexual violence and other abuse.²⁶ Some die in transit; for example, many children have died on “La Bestia,” a dangerous freight train immigrants ride through parts of Mexico.²⁷ Those who survive seek entry to the United States along the southern border, often hoping to reunite with family members already here. Many present themselves to CBP officers or Border Patrol agents, who then take them into custody.

In early 2014, there was a spike in the number of unaccompanied children from Central America and Mexico arriving in the United States.²⁸ As those children were taken into CBP custody, reports emerged of wide-ranging abuses: officials pointing their guns at the children, shooting them with Tasers for amusement or punishment, hitting or kicking them, and threatening them with rape or death. Additionally, firsthand accounts and internal government reports documented horrific detention conditions: children held in freezing rooms with no blankets,

food, or clean water; forced to sleep on concrete floors or share overcrowded cells with adult strangers; denied necessary medical care; bullied into signing self-deportation paperwork; and subjected to physical and sexual assault while in CBP custody.

The CRCL documents that form the basis for this report include detained children’s accounts of terror and abuse in CBP custody, as reported by those children to clinicians in advocacy organizations during post-release physical and psychological evaluations. These documents also reveal DHS’s complete institutional failure to investigate or address suspected child abuse. Again and again, the government agents responsible for these children’s welfare have turned a blind eye to colleagues’ lawlessness and violence. Despite ample reports and awareness of the problem, high-level-government officials in multiple DHS agencies, including those charged with oversight, have failed to act.



Legal and Institutional Framework: Protection of Migrant Children

Before undertaking a closer examination of the CRCL documents, a brief overview of the key federal agencies charged with processing and protecting migrant children may be helpful.

Department of Homeland Security—Immigration Enforcement

As noted, DHS, CBP’s parent agency, is the executive agency with primary responsibility for implementing and enforcing U.S. immigration laws. Formed in the aftermath of the September 11, 2001 attacks, DHS was created through the integration of twenty-two different federal departments and agencies, including the Department of Justice’s Immigration and Naturalization Service (INS) and the Department of Treasury’s U.S. Customs Service.²⁹

Today, two DHS agencies have primary responsibility for immigration enforcement—U.S. Immigration and Customs Enforcement (ICE) and CBP—and one has primary responsibility for immigration services—U.S. Citizenship and Immigration Services (USCIS).

ICE is responsible for “identif[ying] and apprehend[ing] removable aliens” within the United States.³⁰ CBP, which includes the U.S. Border Patrol, is responsible for enforcing U.S. immigration and customs laws at ports of entry (POEs)³¹ and elsewhere along the border.³² CBP’s Office of Field Operations (OFO) officers are responsible for screening all foreign visitors, returning American citizens, and imported cargo at all land, air, and sea POEs.³³ U.S. Border Patrol agents, on the other hand, are responsible for enforcing U.S. immigration and customs laws along land and sea borders, away from POEs.³⁴

Pursuant to statute, CBP officials are authorized “to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States,” and “to arrest any alien who in his presence or view is entering or attempting to enter the United States” in violation of applicable U.S. law.³⁵ In addition to this authority, CBP officials may conduct stops and searches “a reasonable distance from any external boundary of the United States.”³⁶ Outdated federal regulations define a “reasonable distance” as up to “100 air miles from any external boundary of the United States.”³⁷ As a result, two-thirds of the U.S. population—approximately 200 million people—are potentially subject to so-called

investigatory detention and warrantless search by CBP officials.³⁸

Between 2001 and 2014, the United States spent more than \$100 billion on border and immigration control.³⁹ In FY 2012, DHS spent \$17.9 billion on CBP and ICE.⁴⁰ In FY 2019, CBP alone requested a budget of \$16.7 billion.⁴¹ CBP is now the largest law enforcement organization in the United States, with more than 60,000 employees.⁴² CBP also operates the largest law enforcement air force in the world—a fleet of planes, helicopters, and drones with a capacity roughly equivalent to that of Brazil’s entire combat air force.⁴³

The Border Patrol has expanded from 4,000 agents in 1994 to over 20,000 today.⁴⁴ This unprecedented, rapid growth occurred through hiring surges, during which the agency’s recruiting age limit was raised and new agents were permitted to complete the training academy and enter the field without first completing full background checks.⁴⁵ During this period, the Border Patrol prematurely promoted inexperienced agents to supervisory and training positions.⁴⁶ This period of rapid expansion was also characterized by an increase in agents’ use of excessive force and fatal shootings.⁴⁷

Predictably, reports of abuse and corruption increased. National law enforcement experts criticized CBP’s lack of transparency, oversight, and accountability with respect to excessive use of force.⁴⁸ In 2012, senior CBP officials reported that they believed roughly ten percent of the agency’s workforce had “integrity problems”—and that as much as twenty percent might deserve to be removed from the force entirely.⁴⁹ In 2014, CBP’s former head of internal affairs, James F. Tomsheck, estimated that between five and ten percent of CBP officials are or have been corrupt.⁵⁰

Department of Homeland Security—Oversight Entities

DHS also includes several internal oversight agencies, which must play a meaningful role if abuse and corruption elsewhere in DHS are to be identified and cured. CRCL “integrates civil rights

and civil liberties into all [DHS] activities,” including by “investigating and resolving civil rights and civil liberties complaints filed by the public regarding Department policies or activities, or actions taken by Department personnel.”⁵¹ OIG “conducts and supervises independent audits, investigations, and inspections” of DHS “programs and operations,” and also “seek[s] to deter, identify and address fraud, abuse, mismanagement, and waste of taxpayer funds invested in Homeland Security.”⁵² Both CRCL and OIG may receive and investigate complaints about DHS activities and make non-binding recommendations to remedy such complaints. Additionally, CBP and ICE each have their own internal review offices responsible for ensuring integrity and professionalism.⁵³

Department of Health and Human Services

In addition to DHS, the U.S. Department of Health and Human Services (HHS) plays a role in responding to migrant children arriving in the United States. Within HHS’s Administration for Children and Families (ACF) is the Office of Refugee Resettlement (ORR), which since 2003 has been responsible “for the care and placement of unaccompanied alien children” in the United States.⁵⁴ ORR receives referrals from other executive agencies (most typically DHS). Upon referral, children may be placed into ORR care; the majority are later released to sponsors (often family members).⁵⁵

Between 2003 and 2011, ORR served an average of 7,000 to 8,000 unaccompanied children each year.⁵⁶ Over the past few years, however, these numbers have increased. In FY 2012, 13,625 children were referred to ORR; in FY 2013, 24,668; in FY 2014, 57,496; and in FY 2015, 33,726.

As explained further below, U.S. immigration law distinguishes between children arriving to the United States from “contiguous countries” (i.e., Mexico and Canada) and those arriving from non-contiguous countries. When the latter are apprehended by CBP or ICE, these agencies must notify HHS within forty-eight hours and transfer any child deemed a UAC to HHS within seventy-two hours.⁵⁷ For unaccompanied children from contiguous countries, such notice and

transfer to HHS are required if the child has a fear of returning to his or her home country or may be a trafficking victim.⁵⁸

Basic Legal Framework: U.S. Immigration Law & Policy

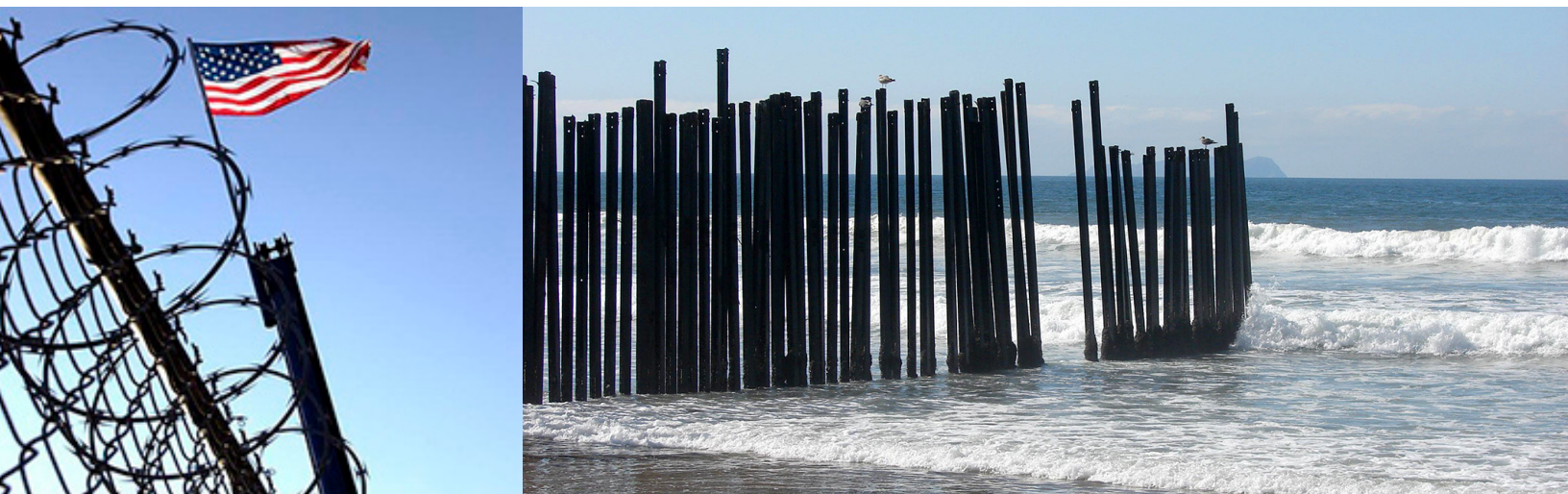
U.S. immigration law is notoriously complex. The Immigration and Naturalization Act (INA) is the primary federal law governing current immigration policy, which historically has been centered on certain overriding principles: family reunification, admission of skilled immigrants who are of special value to the U.S. economy, diversity, and refugee protection.⁵⁹ This last principle is at the heart of this report.

Each year, thousands of noncitizens apply for asylum, “a protection granted to foreign nationals already in the United States or at the border who meet the international definition of a ‘refugee.’”⁶⁰ The United Nations Convention Relating to the Status of Refugees (“1951 Refugee Convention”) and the 1967 Protocol thereto define a refugee “as a person who is unable or unwilling to return to his or her home country, and cannot obtain protection in that country, due to past persecution or a well-founded fear of being persecuted ‘on account of race, religion, nationality, membership in a particular social group, or political opinion.’”⁶¹ In 1980, Congress incorporated this definition into U.S. immigration law when it enacted the Refugee Act.⁶²

As a signatory to the 1967 Protocol, and through U.S. immigration law, the United States has legal obligations to protect those who qualify as refugees. As relevant here, one path to obtain refugee status is to apply for asylum, which is a form of protection only available to those present in the United States or seeking entry at a POE.⁶³ There are two primary ways to do so: affirmatively or defensively. An affirmative application for asylum may be initiated by a noncitizen who is not in removal proceedings. Alternatively, a noncitizen in removal proceedings may submit a defensive application for asylum to USCIS—i.e., she may apply for asylum as a defense against deportation. Both processes require the asylum-seeker to be physically present in the United States.⁶⁴

Noncitizen adults arriving at the border, however, are subject to “expedited removal,” an accelerated process which authorizes DHS to deport individuals without a full immigration hearing.⁶⁵ To ensure that these deportations comply with the United States’ domestic and international legal obligations, federal law requires immigration officials to afford noncitizens who express fear of returning to their home country (or an intention to apply for asylum) a “credible fear interview,” which is to be conducted by an officer in USCIS’s Asylum Division.⁶⁶

According to the standards set by Congress for credible fear interviews, a migrant need only show “a significant possibility . . . that [s/he] could



establish eligibility for asylum” to be permitted to move to the next stage of the asylum application process.⁶⁷ To succeed at the credible fear interview stage, a migrant needs to establish only that there is a ten percent chance of persecution if he or she is returned to his or her country of origin.⁶⁸ In other words, the standard for a credible fear interview is designed to be low. Because asylum claims are necessarily highly fact specific—often requiring the gathering and presentation of evidence on country conditions, personal history, and expert testimony—U.S. law recognizes that an informal interview (in which a migrant has no legal help or access to resources) should not be an insurmountable hurdle. Individuals found to have a “credible fear” are then referred to an immigration judge for a hearing. Those found not to have a credible fear are to be afforded an opportunity to contest that finding, likewise in a hearing before an immigration judge.

In addition to these domestic laws, a variety of international law provisions protect noncitizens and refugees.

International law (the principle of *nonrefoulement*) absolutely prohibits the return of a noncitizen to her home country if, once there, she would face torture, persecution, or other degrading treatment.⁶⁹ Thus, when federal immigration enforcement officials fail to inform arriving noncitizens of the right to seek asylum, or when such officials ignore would-be asylum seekers’ claims of fear of persecution, they violate not only domestic U.S. law but binding international human rights obligations.

Certain additional provisions are especially relevant. The International Covenant on Civil and Political Rights (ICCPR), which the United States has ratified, “specifically recognizes the right of a noncitizen facing deportation to have a hearing about his or her claims in front of a competent authority.”⁷⁰ The ICCPR further requires that detained persons “be treated with humanity and with respect for the inherent dignity of the human person,”⁷¹ although the documented realities of detention in the United States radically diverge from this basic precept.⁷²

The U.N. Convention on the Rights of the Child (CRC), which the United States has signed but not yet ratified, obligates countries to provide protection and care for unaccompanied children, and to take into account a child’s best interests in every action affecting the child.⁷³

Legal Protections for Migrant Children

Under U.S. law, various provisions create special procedures to safeguard and protect migrant children. Three are especially relevant here.

For many years, unaccompanied children were either turned away at the U.S. border or apprehended and detained by INS in adult detention facilities.⁷⁴ When INS subjected a large number of unaccompanied migrant children from Central America to such detention in the 1980s, protracted litigation ensued, culminating in a settlement agreement (the *Flores Settlement*) that created nationwide standards on the treatment, detention, and release of children in federal government custody.⁷⁵ The settlement remains in effect, although it now binds DHS and ORR (following the dissolution of INS after September 11).⁷⁶

Among other requirements, the *Flores Settlement* requires the government to provide children with basic necessities, including: safe and sanitary facilities; access to toilets and sinks; access to drinking water and food; medical assistance (if the child is in need of emergency services); adequate temperature control and ventilation in detention facilities; and adequate supervision in such facilities to protect the children from others, including unrelated adults.⁷⁷ Additionally, the government is to treat all children in custody “with dignity, respect and special concern for their particular vulnerability as minors,” and “place each detained minor in the least restrictive setting appropriate to the minor’s age and special needs.”⁷⁸ Children are also to be provided with a notice of rights, a list of free legal service providers, and an explanation of the right to judicial review.⁷⁹

In 2008, Congress enacted the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA), in part as a response “to ongoing concerns that [children] apprehended by the Border Patrol were not being adequately screened for reasons they should not be returned to their home country[ies].”⁸⁰ Among other provisions, the TVPRA increased protections for unaccompanied alien children in the United States. The statute directed the Secretary of DHS, in conjunction with other federal agencies, to develop policies and procedures to ensure that unaccompanied children in the United States could be safely repatriated to their country of nationality or of last habitual residence.⁸¹

The TVPRA established one set of rules for children from contiguous countries (i.e., Mexico and Canada), and another set of rules for children from non-contiguous countries. Children from Mexico and Canada are not to be deported before federal immigration officials ascertain whether the child (1) is a trafficking victim, (2) has a fear of returning to her country of nationality or last habitual residence, due to a credible fear of persecution, and (3) is able to make an independent decision to withdraw her application for admission to the United States.⁸² To ascertain these facts, federal immigration officials are to screen children within forty-eight hours of apprehension.⁸³ If a child is determined to be a trafficking victim, or to have a credible fear of persecution, or unable to make a decision about

her application for admission, she is not to be immediately deported; rather, immigration officers must transfer the child to HHS/ORR custody.⁸⁴ Likewise, children from countries other than Mexico or Canada, and children apprehended away from the U.S. border, are to be transferred to the care and custody of HHS and placed in formal removal proceedings.⁸⁵

In HHS/ORR custody, children are to be placed in “the least restrictive setting appropriate for the child’s needs,” such as “a shelter facility, foster care or group home . . . secure care facility, residential treatment center, or other special needs care facility.”⁸⁶

Together, the *Flores Settlement* and the TVPRA place specific legal obligations on the federal government to treat children with dignity and special concern at all stages of the process: humane apprehension, safe and sanitary detention, and prompt transfer from immigration enforcement (CBP or ICE) to protective custody (HHS/ORR).⁸⁷

Supplementing these obligations, another federal statute, the Victims of Child Abuse Act of 1990 (VCAA), requires all law enforcement personnel working in federal facilities, including DHS officials in immigration detention facilities, to report suspected or alleged child abuse.⁸⁸ “Child abuse” is defined as “the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child.”⁸⁹ “Physical injury” “includes but is not limited to



lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm.”⁹⁰ “Mental injury” is defined as “harm to a child’s psychological or intellectual functioning.”⁹¹ “Sexual abuse” includes “rape, molestation, prostitution, or other form of sexual exploitation.”⁹² “Negligent treatment” is defined as “the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child.”⁹³

Under the VCAA and its implementing regulations, covered professionals working in a federally operated or contracted facility must report “facts that give reason to suspect that a child has suffered an incident of child abuse” to the local law enforcement or child protective services agency with jurisdiction over the land area or facility in question, or, for federally operated facilities, to the Federal Bureau of Investigation (FBI).⁹⁴

Despite the numerous allegations of serious child abuse detailed in the CRCL documents that are the subject of this report, there is no indication from these documents that CRCL—or any other DHS component agency—complied with the VCAA and submitted reports of alleged abuse to the FBI.

Lastly, another federal statute—the Prison Rape Elimination Act (PREA)—addresses sexual abuse and assault in detention facilities. DHS regulations implementing the PREA require CBP to collect and review data on all allegations of sexual abuse and assault in detention to, *inter alia*, “facilitate the detection of possible patterns and help prevent future incidents in holding facilities.”⁹⁵ The PREA is discussed in more detail below.⁹⁶





Apprehension



The remainder of this report⁹⁷ provides a glimpse into migrant children’s encounters with federal immigration enforcement officials at or near the southern U.S. border. The complaints contained within the CRCL documents illustrate how CBP officers regularly fail to comply with applicable laws and governing policies, and how these failures subject the most vulnerable children to unconscionable mistreatment.⁹⁸

The report proceeds chronologically through the steps of a typical child migrant’s journey: arrival and apprehension, detention, and deportation. Within each section, the applicable legal rules are restated, and then juxtaposed with the unlawful realities evidenced by the CRCL documents. The report then concludes with an examination of the parallel failures of DHS oversight agencies like OIG and CRCL to properly investigate complaints of abuse and

ensure meaningful accountability for misconduct within DHS.

For many unaccompanied children crossing into the United States along the southern border, their first contact with the U.S. government is an encounter with CBP officials, including Border Patrol agents. These children may approach these officials and ask for their assistance, assuming they will receive guidance and be treated with professionalism and respect. The CRCL documents, however, reveal a very different reality: one in which government officials subject migrant children to verbal and physical abuse and deny them basic humanitarian care.

Excessive Force and Physical Abuse

THE RULE: Like all law enforcement, CBP officers (including Border Patrol agents) may use only “objectively reasonable” force, and may only use force at all when doing so “is necessary to carry out their law enforcement duties.”⁹⁹ An evaluation of the reasonableness of a particular use of force by law enforcement requires a fact-intensive assessment

of the totality of the circumstances surrounding the use of force. The Supreme Court has identified a number of factors relevant to determining whether force used is reasonable, including: (1) the severity of the crime at issue (if any); (2) whether the suspect poses an immediate threat to the safety of officers or others; and (3) whether the suspect actively resisted arrest or otherwise attempted to escape.¹⁰⁰

THE REALITY: CBP officials regularly use force on children when such force is not objectively reasonable or necessary.

In one complaint, a 16-year-old child recounted that a Border Patrol agent threw him down and smashed his head into the ground with his boot.¹⁰¹ The child also reported that as the same agent walked him to a Border Patrol vehicle, he told the child that he would “fuck [him] up” if he tried to run away.¹⁰²

In another instance, Border Patrol agents apprehended a 13-year-old child in shallow ocean water near Imperial Beach, California. The government report excerpted below states that the child “was evading apprehension,” although no details or justification for this determination are provided. A Border Patrol agent grabbed the child by the back of the neck and kicked him in the shins, causing the boy to fall. The agent then pulled the child back up to a standing position and kicked him again, knocking him to the ground a second time. Thereafter, the agent shoved the child into the back of a patrol vehicle.¹⁰³

This 13 yr old UAC was evading apprehension by Imperial Beach, CA BP agents, with two other aliens, during evening hours of 9/11/09 by running into the ocean and crawling in shallow water near the beach. Eventually he got out of the water and ran down the shoreline when a BP vehicle approached, and the minor surrendered by walking toward the vehicle. The minor claims a Caucasian agent emerged from the vehicle, grabbed the minor by the back of the neck, shoved him and kicked him on the shins to trip him, causing him to fall onto his hands and face. The same agent allegedly pulled the minor up to a standing position then again kicked him as before,

104

In another incident, a Border Patrol agent tightly handcuffed a child’s wrists and ignored the child’s pleas to loosen the cuffs, instead tightening them further. While the child was restrained, the agent also continually pushed the child’s shoulder into the ground, causing bleeding.¹⁰⁵ This is inconsistent with CBP policy regarding the use of restraints on at-risk populations, including children.¹⁰⁶

In another case, a child reported that Border Patrol agents awoke a group of migrants sleeping in the Arizona desert by yelling at and kicking them.¹⁰⁷ The agents then restrained the child’s hands so tightly that his circulation was cut off; the child’s pleas for the restraints to be loosened were ignored.¹⁰⁸

In yet another complaint, a Border Patrol agent grabbed a girl he claimed was running away:

run away from an agent who ordered her to “stop,” and then grabbed her, handcuffed her to a male who was apprehended with her, and dragged them together along the ground, which caused (b)(6) to hit her head on the ground and sustain two bruises on her neck, scratches to her shoulders and arms, and thorns in her head.

109

A 15-year-old reported that after an agent handcuffed him, the agent put on a glove and hit him in the mouth, causing bleeding. Though other agents noticed the teenager’s injury, they did not provide him with medical attention.¹¹⁰

that after an agent handcuffed him, the agent put on a glove and hit the minor in the mouth,

111

Another complaint documented a child who was “run over by a CBP truck,” which resulted in “crushing damage” and “significant trauma” to the child’s leg.¹¹² The complaint also indicated “that CBP did not take proper care of [the child’s] injury.” Later, doctors diagnosed the child “with a broken right leg.”¹¹³

At times, physical abuse at apprehension involves sexual abuse. For example, one agent grabbed a child’s buttocks when he was alone with her after arresting her in the Phoenix, Arizona desert.¹¹⁴ The abuse only stopped when she screamed, attracting another agent to the area.¹¹⁵

In another incident, CBP officials abused a 16-year-old girl upon apprehension. The girl reported that, after mocking her by asking her why “she did not ask the Mexicans for help,” the officials subjected her to a search in which they “forcefully spread her legs and touched her private parts so hard that she screamed.”¹¹⁶

Unnecessary and Punitive Use of Tasers

A Taser is an electro-shock weapon that may be deployed in either dart mode or drive-stun mode.¹¹⁷ When used in dart mode, Tasers subject their targets to an electrical current that causes “involuntary muscle contractions.”¹¹⁸ In drive-stun mode, the Taser “is pressed against the subject’s body, which causes a painful current to run through the specific body area to which the Taser is applied.”¹¹⁹

CBP refers to Tasers and similar weapons as “electronic control weapons” (ECWs), which are defined in the agency’s use of force policy handbook as “a less-lethal weapon which is designed to use short-duration electronic pulses to cause Neuro-Muscular Incapacitation (NMI) and/or pain.”¹²⁰

Many use-of-force experts believe ECWs like Tasers should not be used on children given the adverse psychological impacts and the possibility of fatal consequences.¹²¹

THE RULE: According to CBP’s use of force policy handbook, an ECW may be used “as a compliance tool on a subject offering, *at a minimum*, active resistance in a manner that” the officer “reasonably believes may result in injury to themselves or to another person.”¹²² Each and every use of an ECW “must be both reasonable and necessary to overcome non-compliance by an actively resistant subject.”¹²³ An ECW should not be discharged more than three times on any one subject.¹²⁴ Moreover, CBP policy expressly states that personnel “should not use an ECW . . . with respect to subjects who are: small children; elderly; pregnant; low body mass index (BMI) persons; . . . running; or handcuffed.”¹²⁵ Whenever practicable, CBP officials are to provide verbal warnings prior to deploying ECWs.¹²⁶

THE REALITY: Despite these policies, agents deploy Tasers and other ECWs against children who are not resisting arrest. In multiple reported incidents, CBP officials couple use of Tasers with additional physical abuse, despite the fact that children are incapacitated after being tased. The CRCL documents also indicate that CBP officials do not provide tased children with follow-up medical care to assess or treat injuries resulting from Taser use against them.

One CRCL complaint describes a child lying on his back in a bush when an agent approached and tased him in the stomach.¹²⁷ After administering this powerful electro-shock to the child, the agent proceeded to

physically assault him by standing on the child's leg and pressing down with force; pushing the child; kneeling the child twice in the stomach; and kicking the child into a thorn bush, injuring the child's neck:

Texas. The UAC states that he was lying on his back behind a bush when an agent approached him and deployed an ECW on his stomach. When he attempted to stand, the UAC states the agent stood on top of his leg, and pressed down with force. The UAC further states that the agent then pushed him, kned him twice in his stomach, kicked him several times in the same leg that the agent stood on, and then pushed and kicked him into a thorn bush which caused injuries to his neck. The UAC reports that he cleaned his own wounds at the Weslaco station and did not receive medical attention.

128

Another complaint reported that a child was physically abused after crossing the Rio Grande river. As in other reported incidents, Border Patrol agents used a Taser on the child, who was already incapacitated. As the excerpt demonstrates, the child reported serious pain and loss of control and feeling in his right arm; there is no indication he received any medical attention:

two other UAC near Penitas, Texas, on or around April 17, 2013. The UAC claims that two agents approached them, ordered him to get on the ground, and shortly after he complied the two other minors were thrown on top of him. The UAC also alleges that one of the agents began singing the words, "I'm going to deport you." He also alleges that an agent approached him with an ECW, asked if he knew what it was and, when he replied that he did not, the agent deployed the ECW on him while he was underneath the other minors causing extreme pain in his right arm and lack of sensation and control until the next day. There is no indication that the UAC received medical care following the alleged ECW deployment. On April 26, 2013, CRCL received an SIR from HHS ORR reporting the same allegations.

129

A separate complaint alleged that Border Patrol agents chased a child and used a Taser to effect arrest, without any indication that the child was resisting. The subject was 14 years old, 5 feet tall, and 120 pounds; the use of the Taser was thus inconsistent with the policies summarized above.

The subject was later determined to be a UAC, who was 14 years old, 60 inches (5'0 feet), and 120 pounds. ECW policy states that agents should consider using other force options on subjects that are small children or low body mass index individuals. The policy and associated training

130

Although the CRCL documents include several complaints about CBP officials' use of Tasers on children,¹³¹ the documents do not evidence any uniform system for Border Patrol stations to store, track, manage, monitor, or file reports regarding agents' use of ECWs (including Tasers).¹³²

Verbal Threats & Abuse

THE RULE: CBP policy requires employees to “treat all individuals with dignity and respect.”¹³³ CBP employees also “must speak and act with the utmost integrity and professionalism” and “conduct themselves in a manner that reflects positively on CBP at all times.”¹³⁴

With respect to children, CBP officials are to “consider the best interest of the juvenile at all decision points beginning at the first encounter and continuing through processing, detention, transfer, or repatriation.”¹³⁵ CBP policy explicitly states that officers and agents “should recognize that juveniles experience situations differently than adults”¹³⁶ and identifies juveniles and UACs as “at-risk populations” who may require additional care or oversight.¹³⁷

THE REALITY: The CRCL documents include many instances of CBP officials’ verbal abuse of the children they apprehend, including death threats and threats of other violence. Such abuse, degrading and fear-inducing for any adult, has even greater adverse impacts on vulnerable children and can significantly affect a child’s psychological development and well-being.¹³⁸

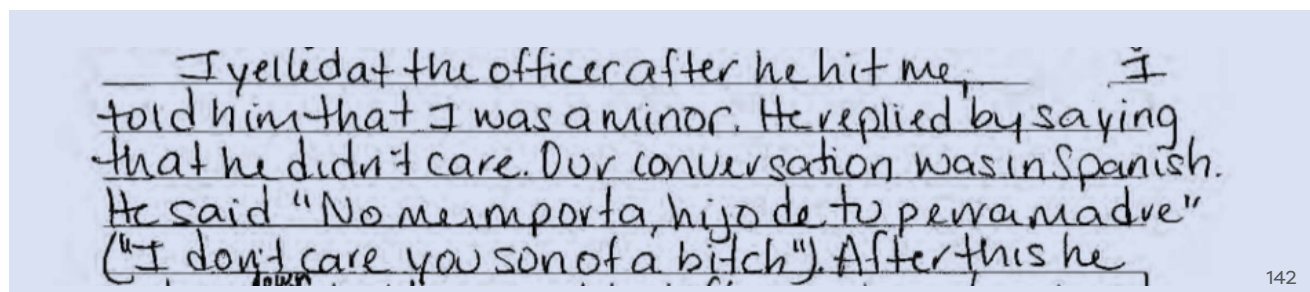
One 15-year-old alleged that he had been left behind by his travel group because he was ill. Although he was very sick when Border Patrol agents subsequently found him, they denied him medical care, pushed him, and verbally abused him, calling him a “fucking idiot” and a “piece of crap.”¹³⁹

They called derogatory names such as “pinche pendejo” [fucking idiot] and “mierda” [piece of crap] as they each pushed me from one side to the other while I was standing up. I was shocked when I heard them say these words since I

140



In another complaint, a 15-year-old reported that a CBP official punched him and hit him with a thorny branch, leaving a scar; when the child told the official that he was a minor, the official replied, “I don’t care you son of a bitch.”¹⁴¹

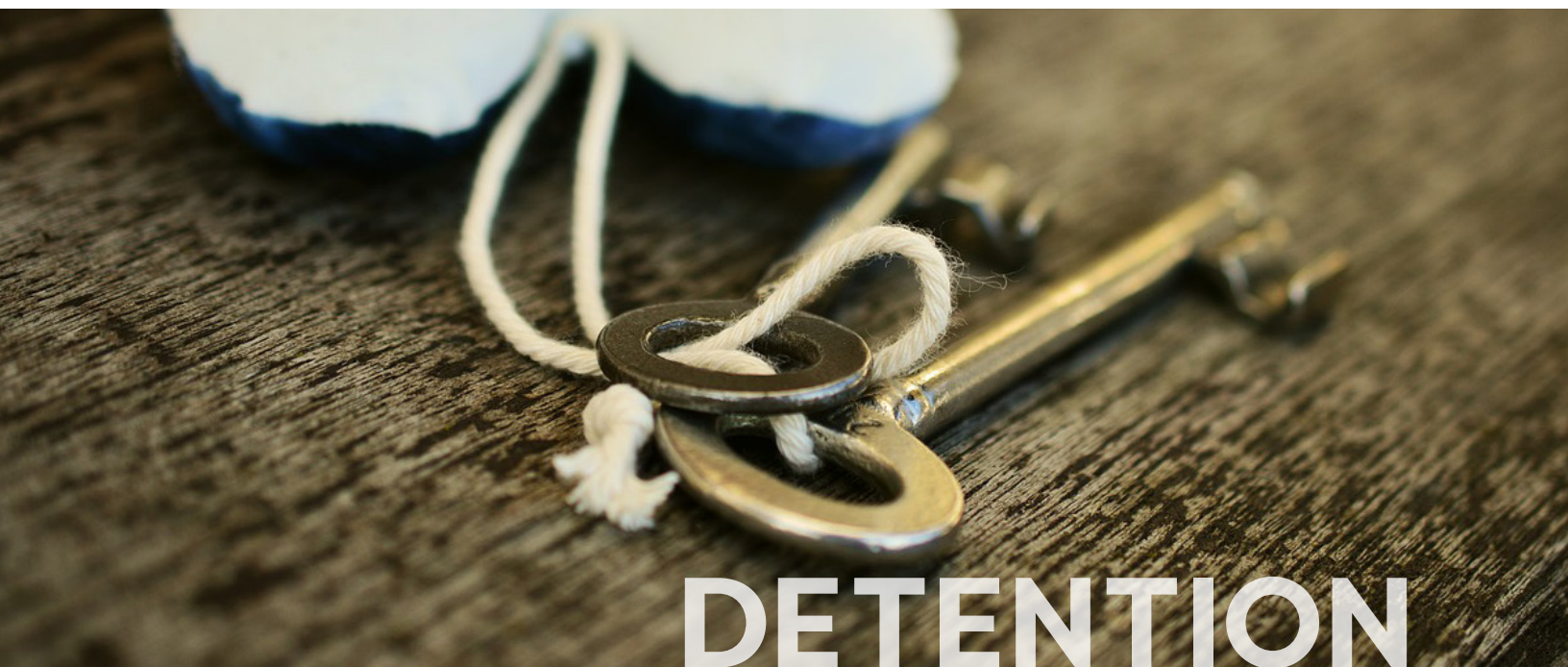


Another child alleged that the Border Patrol agent who apprehended him called him a “dog” and threatened to kick other migrants under his care.¹⁴³ In another example, a child recounted that an agent threw him on the ground, pointed a firearm at him, and said, “stop or I will shoot you.”¹⁴⁴ Another child reported that a Border Patrol agent called him “gay” and a “she-male,” and said, “these people just come here to get a sex change operation.”¹⁴⁵ When the child asked the agent a question, the agent responded by telling the child “to get off his pedestal” and “threatened to send him to federal prison.”¹⁴⁶ This child also witnessed the agent say in Spanish “I don’t give a fuck” how official documents were filled out.¹⁴⁷

Other Selected Examples of Abuse of Minors Upon Apprehension

Among the many other instances of CBP abuse reflected in the CRCL documents are allegations that specific officials:

- Stomped on a child¹⁴⁸
- Threw a child to the ground¹⁴⁹
- Punched a child’s head three times¹⁵⁰
- Hit a child’s head with a flashlight¹⁵¹
- Hit a child in the head before placement in a patrol vehicle; kicked the child and yelled at him after he was in the patrol vehicle¹⁵²
- Lifted a child by the neck and pushed him against a glass structure¹⁵³
- Kneaded a child twice in the stomach¹⁵⁴
- Elbowed a child in the stomach, causing him to lose his breath and double over in pain¹⁵⁵
- Threw two other minors on top of a child¹⁵⁶
- Pulled a child to a standing position by his hair, yelled profanities at the child, and threw the child to the ground, where the side of the child’s face hit a rock¹⁵⁷
- Kicked a child in the ribs¹⁵⁸
- Tased a child, causing him to fall on the ground; Border Patrol agent then kicked child in the back while telling child to get up¹⁵⁹
- Ran over a 17-year-old with patrol vehicle, and then punched the minor on head and body several times¹⁶⁰



DETENTION

Detention



Apprehension is just the beginning of a child's interaction with CBP. As detailed above, CBP must follow specific rules in processing children apprehended at or near the border.¹⁶¹ Except in "exceptional circumstances," unaccompanied children are to be transferred from CBP to HHS/ORR custody within seventy-two hours.¹⁶² Unaccompanied children from Mexico or Canada may be permitted to return voluntarily to their home countries only after CBP ensures that they are not trafficking victims and that they do not have a fear of returning home.¹⁶³

While in CBP custody, children are to be treated with special care and consideration. Yet, although CBP is bound to provide these vulnerable children with certain baseline protections in custody, the CRCL documents indicate a much bleaker reality.

These records are consistent with human rights reports that have documented abysmal CBP detention conditions for years.¹⁶⁴ CBP's short-term

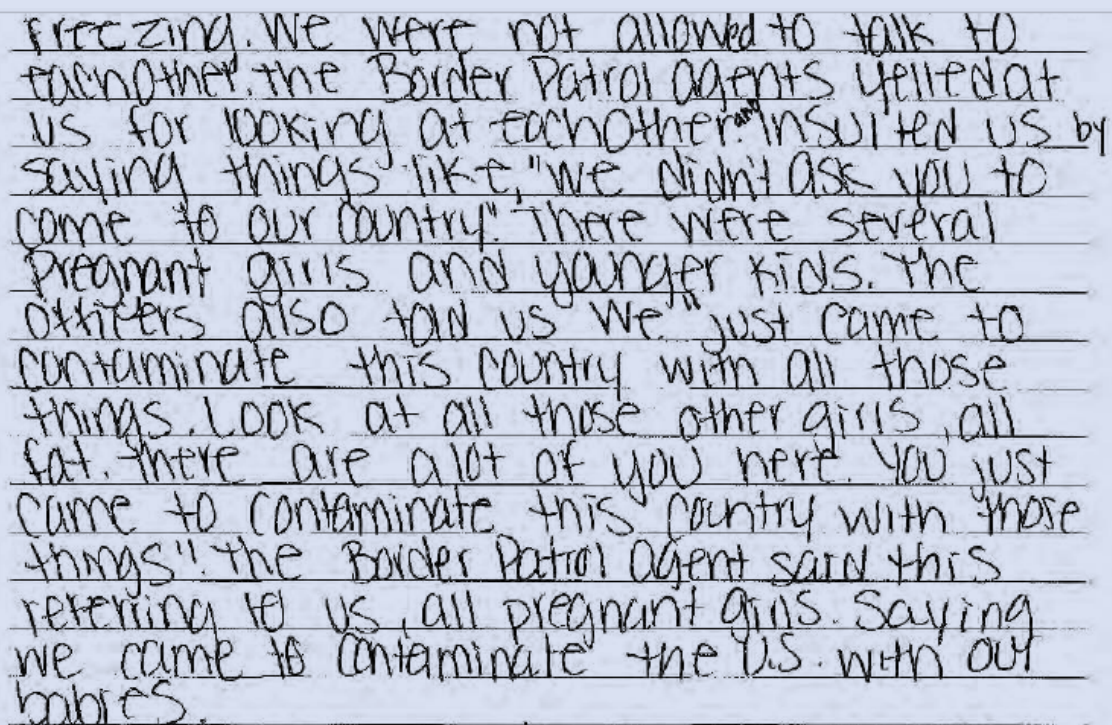
detention facilities consist of sparse holding cells often described as "hieleras" (freezers or iceboxes). Temperatures in these rooms can be so low that detainees' fingers and toes turn blue (a condition known as peripheral cyanosis) and/or their lips split.¹⁶⁵ Moreover, CBP holding cells often lack basic supplies.¹⁶⁶ For example, detainees often sleep on concrete floors without any bedding, and have no access to such basic toiletries as soap, toothpaste, toothbrushes, feminine hygiene products, or working showers.¹⁶⁷ Although CBP detention facilities are explicitly designed for short-term holds, the CRCL documents indicate that sometimes children spend up to a week in these facilities. During detention, unaccompanied children suffer abuse and neglect.

Failure to Treat Detained Children with Dignity, Respect, and "Special Concern"

THE RULE: The *Flores* Settlement requires DHS to treat children with dignity, respect, and "special concern" for their vulnerability as children.¹⁶⁸

THE REALITY: Children's complaints reveal multiple instances of verbal and physical abuse by Border Patrol agents while in CBP detention, including unpredictable harassment depending on agents' precarious moods.

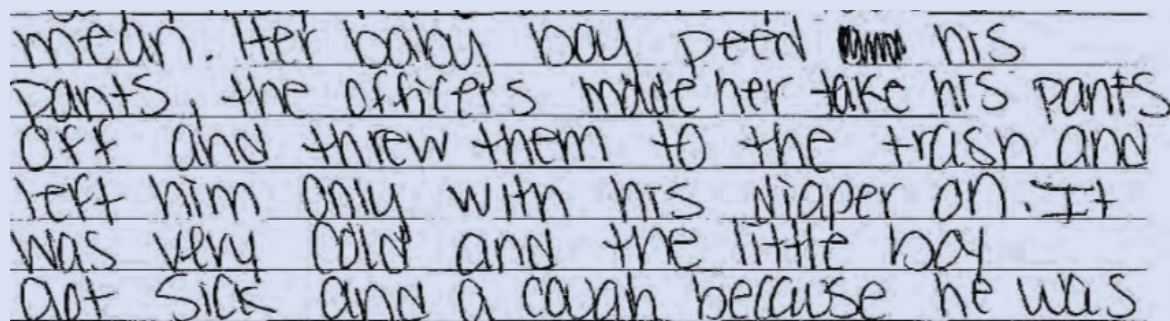
One pregnant minor held with other pregnant young women and infants recounted Border Patrol agents insulting the young women, accusing them of coming to the United States to "contaminate this country" with their children:



freezing. We were not allowed to talk to each other. the Border Patrol agents yelled at us for looking at each other. Insulted us by saying things like, "we didn't ask you to come to our country." There were several pregnant girls and younger kids. The officers also told us we "just came to contaminate this country with all those things. Look at all those other girls, all fat. there are a lot of you here. You just came to contaminate this country with those things". the Border Patrol Agent said this referring to us, all pregnant girls. Saying we came to contaminate the U.S. with our babies.

169

When an infant detained in that same room soiled his pants through his diaper, the agents made his mother remove his pants and throw them in the trash.¹⁷⁰ The agents did not, however, provide the infant with another diaper or pair of pants, even though the room was extremely cold.¹⁷¹ The child eventually became sick:



mean. Her baby boy peed ~~in~~ his pants, the officers made her take his pants off and threw them to the trash and left him only with his diaper on. It was very cold and the little boy got sick and a cough because he was

172

The CRCL documents also record a variety of threats made by Border Patrol agents to detained children in their care. One child recounted to a medical clinician how agents threatened to hit him with their batons if he was not quiet, and threatened to withhold food if he did not follow instructions quickly.¹⁷³

Client recalled that while was being detained and processed by immigration, the officers were verbally abusing towards him by stating “We didn’t asked you to come here, be quiet or I will hit you with this” (client described a truncheon or baton). Client narrated that other of the comments were: “We are going to leave you without food if you don’t move

174

While listening to his story, the clinician noted that the child seemed to be in “a hypervigilant state” and that the child reported having nightmares about his time in CBP detention:

At the time of the mental health evaluation, client presented with in a hypervigilant state. Client’s body was trembling and he was fidgeting with his finger. When asked if he was nervous, client stated that he was really scared that because of what happened at the detention center. Client verbalized having nightmares about the days he spent in the immigration detention center and stated “I have never felt this fear before.”

175

An ORR report to CRCL discussed a Border Patrol agent who had threatened to “harm a minor if he did not give the agent money.”¹⁷⁶ The child reported that he paid the agent between \$200 to \$400 to be released.¹⁷⁷

Denial of Safe, Secure, and Clean Facilities

THE RULE: CBP must provide children in its custody with safe, secure, and clean facilities.¹⁷⁸ According to CBP policy, children should have access to clean toilets, sinks, showers, and bedding, as well as basic toiletries such as soap, toilet paper, diapers, and sanitary napkins.¹⁷⁹ CBP facility supervisors are required to check holding cells regularly to ensure proper cleaning and sanitization.¹⁸⁰

THE REALITY: The CRCL documents paint a picture of unsanitary, unsafe, and overcrowded CBP detention facilities. For example, following a July 2014 site visit to the Rio Grande Valley Sector Border Patrol detention sites, CRCL observed one station with “no trash receptacles . . . present in the hold rooms” and “body fluids



on the walls and floors, along with used sanitary napkins and used toilet paper containing feces on the floors, all which cause a strong offensive odor throughout the processing area and should be considered as a health hazard.”¹⁸¹

In complaints to CRCL, children likewise reported trash throughout their detention cells,¹⁸² unsanitary restrooms,¹⁸³ and no diapers¹⁸⁴ or blankets¹⁸⁵ for babies.

One child reported that Border Patrol agents did not immediately attend to a toilet that had overflowed:

different stations. At the second station the UAC claims the toilet overflowed, but agents refused to assist. Later, he reports the problem was repaired but the hold room was not cleaned until a day later, which caused the hold room to smell bad.

186

Another minor was pregnant when she was apprehended. After she prematurely gave birth to a four-pound baby, agents returned both mother and infant to an overcrowded, dirty holding cell—against a doctor’s specific orders:

hospital for approximately 10 days. Prior to her hospital release, she states that her doctor informed a Border Patrol agent that the premature baby could not be around other people, but the agent responded that he must follow orders, and subsequently returned the UAC and her infant to the Rio Grande City station. The UAC claims she and her infant remained in a dirty hold room for 2 days where she had no appropriate space to change her infant’s diapers as the hold room was full of garbage and sick people. Although the UAC went through a premature birth, the EARM records

187

In addition, many detained children reported no bedding at all.¹⁸⁸ For example, one child, whose arm was fractured by a Border Patrol agent during apprehension, was made to sleep on a cement floor “without a blanket or a mat” while she was in custody.¹⁸⁹

Denial of Drinking Water and Food

THE RULE: The *Flores* Settlement requires CBP to provide adequate water and food to detained children.¹⁹⁰ CBP policies further require officials to provide detainees with regularly scheduled hot meals, and to have snacks and milk available upon request for the youngest detainees.¹⁹¹

THE REALITY: The CRCL documents show CBP's failure to abide by these basic requirements.

Following unannounced site visits to detention centers along the southwestern border, DHS OIG noted that basic supplies were so inadequate that certain agency officials had taken it upon themselves to provide detained children with food and clothing.¹⁹²

Detained children reported the provision of spoiled food.¹⁹³ One child, for instance, complained to CRCL that three male Border Patrol agents verbally abused her, denied her a chance to phone her mother, and threw her food—"ice cold bologna with a yellow center"—on the ground.¹⁹⁴

Some children reported not receiving any food for several days at a time¹⁹⁵ or receiving only juice and crackers for several days.¹⁹⁶ Other children described agents deliberately withholding food.¹⁹⁷

One detained minor mother reported seeing other detained mothers with infants asking Border Patrol agents for milk which was never provided; the minor reported that the children in the hold rooms were crying from hunger.¹⁹⁸

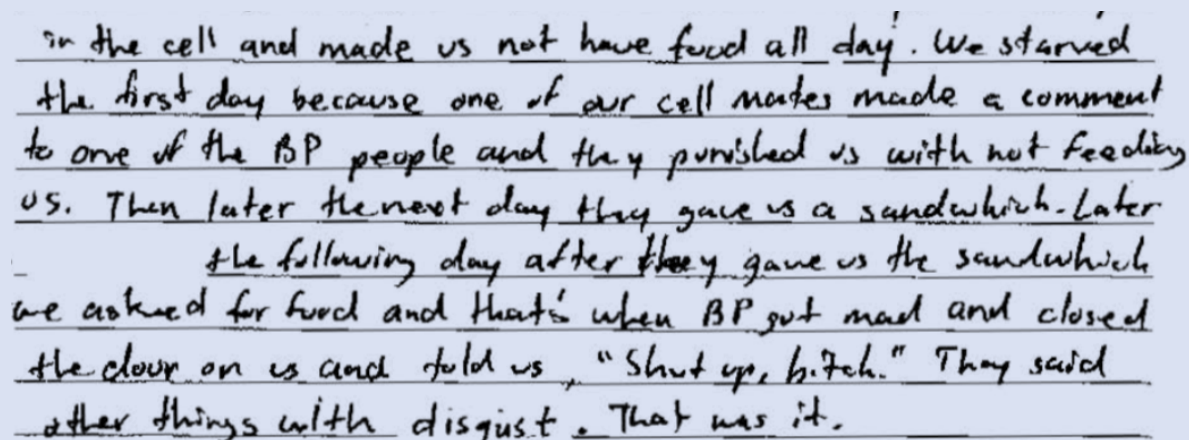
Another teenage mother reported that agents denied her milk for her baby for two days before giving her milk that "smelled really bad" and made her infant daughter very ill:

When I was finally given milk at the end of my second day in the hielera. The milk was in a can and smelled really bad. We were given no soup at this hielera and I could not clean my daughter's bottle without soup, only with water. My daughter drank the milk and got sick and was throwing up for four days. She would only drink water and she would —

199



A third child, detained with her sister, reported that neither child received any food during their first full day in CBP custody. They “starved” that day because a Border Patrol agent retaliated against them after another detainee made a comment the agent did not like:



in the cell and made us not have food all day. We starved the first day because one of our cell mates made a comment to one of the BP people and they punished us with not feeding us. Then later the next day they gave us a sandwich. Later the following day after they gave us the sandwich we asked for food and that's when BP got mad and closed the door on us and told us, "Shut up, b.itch." They said other things with disgust. That was it.

200

The selected CRCL documents that form the basis for this report include at least three reports from different children of “undrinkable” water “that tasted like chlorine in CBP detention.”²⁰¹

Denial of Medical Care

THE RULE: The *Flores* Settlement requires DHS agencies to provide basic medical assistance and any necessary emergency services to detained children.²⁰² Although neither the *Flores* Settlement nor CBP policy provide detailed descriptions of the scope of medical care to be provided, this requirement must be understood in the context of the requisite “special concern” owed to children.

THE REALITY: The CRCL documents reflect CBP’s disturbing practice of ignoring children’s basic medical needs.

One CRCL memo recounted fourteen separate complaints of “denial of medical care” or “inappropriate medical care” for children in CBP custody in the Rio Grande Valley Sector.²⁰³

One child, detained after undergoing spinal surgery following a car accident, alleged that Border Patrol withheld his prescription medications while he was in custody.²⁰⁴ Additionally, Border Patrol agents, in their rush to deport the child, threatened to ignore his doctor’s orders that he rest for two weeks.²⁰⁵ When the child was transferred to another detention center, agents there tried to give him crutches instead of the wheelchair he requested, even though he still could not stand.²⁰⁶ When the agents finally found the boy a wheelchair, they told him he was “lucky.”²⁰⁷

Another detained minor complained that agents accused her of lying when she told them she was having an asthma attack. After the girl finally did receive medical attention, agents confiscated her medication:

she was apprehended near Hidalgo, Texas. The UAC claims that while detained at the Weslaco station, she had an asthma attack. When she alerted the agents of her worsening condition, the agents allegedly threatened punishment if she was lying. After eventually receiving medical care, she received an inhaler and pills, however, the agents also confiscated the medication. She alleges

208

One detained child reported that Border Patrol agents denied her pain medication and sanitary napkins after she underwent surgery for an ovarian cyst:

claims that she reported stomach pain as a result of surgery two months prior, and that agents denied her pain medication and additional sanitary napkins. The UAC states that as a result she remained in custody with blood-stained pants.³ No health issues are recorded in EARM.

209

Another child reported to CRCL that, after two full days in custody without any food or drink, he finally received food and juice and subsequently fell ill; he was not provided medical care.²¹⁰ In another case, the Border Patrol transported a migrant child and her 2-year-old toddler to a hospital several days after they fell ill, and only after repeated requests for medical care.²¹¹

Another child spent five days in Border Patrol custody after an agent apprehended him near Brownsville, Texas, and used his canine to pull the child out from underneath a car where the child was hiding.²¹² The dog scratched the right side of the child's face, causing his eye to bleed; yet, during his time in detention, the child never received medical care for his visibly injured eye.²¹³ Yet another child, injured by a Border Patrol Taser, received no recorded medical care in detention.²¹⁴

One minor mother (previously mentioned),²¹⁵ reported that she was hospitalized several hours after being processed at the Rio Grande City Border Patrol station; while in the hospital, she gave birth to a four-pound, premature baby. The young mother remained hospitalized for ten days; prior to her release from the hospital and transfer back to Border Patrol custody, her doctor informed a Border Patrol agent that the baby could not be around other detainees.²¹⁶ The Border Patrol ignored the doctor's instructions and returned the minor mother and her child to a "dirty hold room" that was "full of garbage and sick people."²¹⁷

Another minor mother (previously mentioned), whose daughter became ill from drinking spoiled milk provided by the agents, reported that after her daughter was treated at the hospital for dehydration, agents confiscated the medication provided to the child at the hospital:

we went back to the hielera and the agents took the medicine for my child away. The agents in the second hielera did not give the medicine to my child and would not let me give it to her. She went about two days without medicine.

218

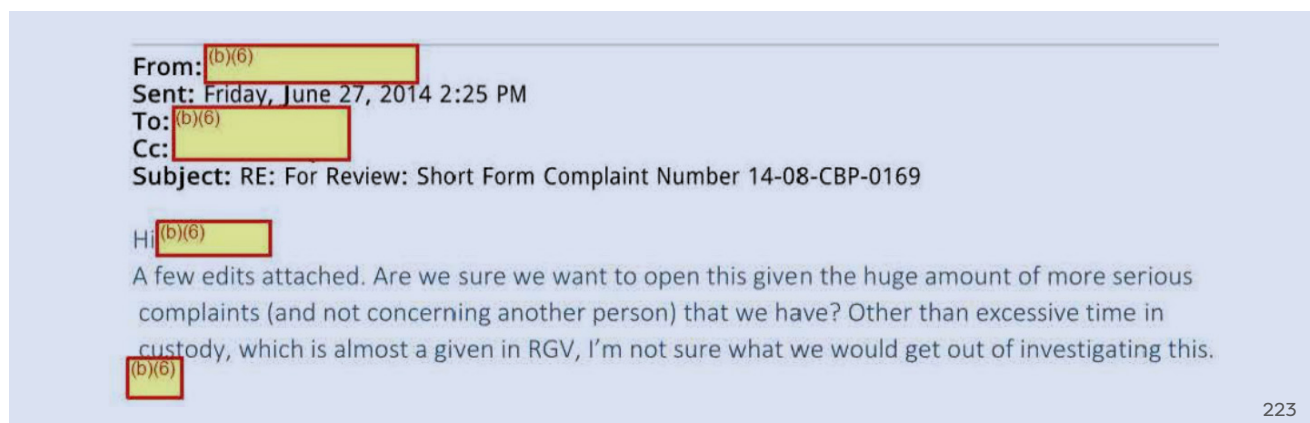
Finally, the same CRCL memo that noted unsanitary detention room conditions also reported CBP's insufficient medical screening procedures.²¹⁹ As an example, the memo recorded the case of a 14-year-old child who was eight months pregnant.²²⁰ Although Border Patrol agents represented to CRCL investigators that the agency's practice was to send pregnant children to a hospital for evaluation, there was no record that this pregnant minor had ever been taken to a hospital—indeed, there was no record that the Border Patrol had even registered the fact that she was pregnant.²²¹

Detention in Excess of 72-Hour Maximum

THE RULE: As previously explained, the TVPRA reinforces the *Flores* Settlement's requirement that unaccompanied children be held in the "least restrictive setting that is in the best interest of the child"; moreover, the TVPRA requires CBP to transfer most children from immigration enforcement detention to HHS/ORR within seventy-two hours.²²²

THE REALITY: CBP regularly detains children for extended periods of time in excess of the seventy-two-hour maximum.

In one email, a CRCL employee noted that detention in excess of the seventy-two-hour maximum was "almost a given in [the Rio Grande Valley Sector]":



According to the CRCL documents, many children spend over a week in CBP detention.²²⁴

Freezing Cell Temperatures and Disruptive Sleep Conditions

THE RULE: The *Flores* Settlement requires adequate temperature control and ventilation for detention centers that hold children.²²⁵

THE REALITY: Like the various reports previously referenced here,²²⁶ the CRCL documents indicate that extremely cold hold rooms are endemic throughout the CBP detention system.²²⁷

One young woman reported spending nine days in CBP custody, shuttled between "several different stations."²²⁸ All "were cold" and "blankets were not provided" in any.²²⁹ Another child held in two different stations during her time in CBP custody also claimed that both hold rooms were cold.²³⁰

One child claimed that a Border Patrol agent punished him by putting him in a freezing cold room for twenty-four hours with only his boxers on:

UAC claims that a Border Patrol agent punished him by putting him in a freezing cold room with metal walls for 24 hours and left him only in his boxers. The UAC states that when he was let out he was freezing, could hardly walk, and his skin was pale. He reports that the BP agent then gave him a burger and told him he had “endurance.” According to EARM records,

231

Another child reported being held alone in a “freezing cold” room for ten days as punishment after agents discovered that he had lied about his age.²³² According to CRCL’s summary of the child’s complaint, the boy reported that this episode exacerbated existing head trauma and that, since his detention, the boy had experienced “trembles, weakness, headaches, reduced concentration, a reduced ability to react, reduced ability to talk, and insomnia at night.”²³³

One child alleged that, while in CBP custody, he was unable to sleep because the agents kept the hold room very cold and left the lights on; no bedding was provided other than a thin aluminum sheet.²³⁴ Another reported that after being apprehended near a river, he was put into a hielera still wearing his wet and muddy clothes.²³⁵

Failure to Protect Children from Sexual Assault or Abuse

THE RULE: Immigrants in detention, like other detainees, are highly vulnerable to sexual abuse or assault, either by other detainees or by the agents detaining them.²³⁶ To protect immigrant children from such abuse, the *Flores* Settlement requires such children to be detained separately from unrelated adults.²³⁷

In 2003, Congress enacted the Prison Rape Elimination Act (PREA) to protect all persons in custody from sexual abuse. In 2012, President Obama directed DHS and other federal agencies with confinement facilities that were not subject to Department of Justice (DOJ) PREA rules “to develop and implement regulations to prevent, detect, and respond to sexual abuse and assault.”²³⁸ DHS adopted PREA regulations in March 2014.²³⁹ Thereafter, and as required by these regulations, CBP issued a “zero tolerance” policy regarding sexual abuse and assault for individuals in CBP custody.²⁴⁰



Pursuant to this “zero tolerance” policy, CBP pledged to “provide a swift response to allegations of sexual abuse of detainees in holding facilities,” and required all CBP personnel “to immediately report any knowledge, suspicion, or information regarding an incident of sexual abuse, retaliation for reporting or participating in an investigation about sexual abuse or assault, or any employee misconduct or neglect that may have contributed to any incident of sexual abuse, assault or retaliation.”²⁴¹ CBP further pledged to “cooperate fully with investigations relating to allegations of sexual abuse and assault of detainees and with external audits of and corrective actions relating to sexual abuse and assault in CBP holding facilities.”²⁴² CBP also committed to “conduct an incident review following each investigation of sexual abuse and assault” and to “collect and analyze required data on reports and incidents of sexual abuse and assault to assess and improve sexual abuse prevention, response, and intervention policies, practices and training.”²⁴³ Finally, CBP stated that agency employees “who violate the prohibition against sexual abuse and assault” set forth in the “zero tolerance policy” would “be subject to disciplinary or adverse action up to and including removal from their position and Federal service.”²⁴⁴

THE REALITY: The CRCL documents show CBP’s failure to comply with its own “zero tolerance” policies, the *Flores* Settlement requirements, and federal law protecting detainees from sexual abuse or assault.²⁴⁵

First, the CRCL documents indicate that children are detained with unrelated adults, increasing their vulnerability to sexual abuse.

9) Even after I told the BP that I was a minor, traveling alone, they kept me in the same room as the adults.

246

One child reported that he “was placed in a holding cell with three unknown adults, and was kept there even though he told Border Patrol agents that he was a minor.”²⁴⁷ Another minor, who was apprehended with her 2-year-old son, reported being placed in a hold room with “approximately twenty-five adults.”²⁴⁸ Such reports appear throughout the CRCL documents.

Second, the CRCL documents show federal officers threatening to place children in their custody with unrelated adults precisely so that these children might be sexually abused or raped. One 16-year-old (who did not know his actual date of birth and thus could not verify his minor status to the Border Patrol) reported:

16yo. He reported that he could not read or write and therefore, did not know what year he was born either. They told him that was impossible not to know so they threatened to place a false age on his paperwork so that they can send him to adult detention and get raped by the other men inside. He recalls one agent telling him "Te vamos a poner de 23 para mandarte a la carcel para que los otros te hagan su vieja" (translation: We're going to put that you are 23yo to send you to jail so that the others can make you their lady). They also stated to him, "te vamos a pintar la cara tambien" (translation: Were going to put makeup on you too). They continued to make inappropriate sexual comments to him he reported as they went on referring to what can happen to him in the jail cells with the other men such as grabbing him from behind and forcing oral sex on him. He reported that they eventually stopped harassing him since he did not declare that he was over 18yo and just told him to leave and placed him in a juvenile cell. He remained in their care for approximately 3 days or so and was sent to another for about 2 days and finally to NY.

249

Another child reported that an agent threatened a group of children with “sexual abuse by an adult male detainee” and then brought an adult detainee to the juvenile hold room:

use an ECW against the bleeding minor's brother. The UAC also alleges that an agent threatened the minors with sexual abuse by an adult male detainee, and then an adult Mexican detainee was brought into the juvenile hold room, where he immediately began using derogatory and intimidating language toward the minors.

250

Third, the CRCL documents record threatened or actual sexual abuse by CBP officials.

One child reported abuse by two officers, one male and one female:

- 11) The female officer threatened me. She said that if I did not say the truth about my age I would become the wife of a black male detainee and the other detainees. Then the female officer left the room and I was alone with the male officer.
- 12) The male officer told me to take off all of my clothes. He patted my body down but did not touch my private parts.
- 13) While I was still in the nude, the officer made me swear that I was telling the truth. Then he began asking me how old I was, my birth date, and where I was coming from. While I was undressed I remember the male officer laughing at me. I was undressed for about 15 minutes.

251

A 15-year-old witnessed a male Border Patrol agent sexually abusing another female detainee; a few days later, the same agent inappropriately touched the 15-year-old:

_____ during her 7 days in Border Patrol custody at the Weslaco Station in Texas (Rio Grande Valley Sector), she witnessed a male Border Patrol Agent sexually abuse another female detainee by placing his hand in between the pants and stomach and stating inappropriate comments about her physical appearance. In addition, a few days later the same male agent touched her thigh in an inappropriate manner.

252

A 16-year-old minor in CBP custody with her infant reported that a Border Patrol agent stood near the door of her holding cell and told her, in Spanish, “right now, we close the door, we rape you and fuck you.”²⁵³

Another minor reported that after being apprehended by Border Patrol agents, she was put into a room for questioning.²⁵⁴ Then four agents came into the room, removed their name badges, and threatened to send her to a separate building with another agent.²⁵⁵ The agents informed her that they would not be responsible for whatever happened to her there, and the young woman understood them to be threatening her.²⁵⁶

Other Selected Examples of Abuse of Minors During Detention

Among the many other instances of CBP abuse reflected in the CRCL documents are allegations that specific officials:

- Failed to provide detained children with blankets²⁵⁷ or provided foul smelling blankets²⁵⁸ or threatened to take blankets away from children,²⁵⁹ despite freezing temperatures in hold rooms
- Failed to provide trash receptacles for hold rooms²⁶⁰
- Failed to provide detained children with personal hygiene necessities²⁶¹
- Verbally abused detained children, calling them dogs and “other ugly things”²⁶²
- Told a child who wished to speak to her mother that she “was a prostitute”²⁶³
- Tried to coerce detained children to comply with directions by threatening to withhold food or by threatening physical abuse²⁶⁴
- Denied detained children permission to stand or move freely for days, and threatened children who stood up with transfer to solitary confinement in a small, freezing room²⁶⁵
- Told a detained child who had not been allowed to shower for nine days, “if you wanted to shower you should have stayed in your country”²⁶⁶
- Hurried detained children during bathroom runs, and denied children the opportunity to wash their hands or otherwise bathe²⁶⁷
- Placed a child in shackles during transport²⁶⁸
- Distributed only frozen food twice a day, causing the detained children to become ill²⁶⁹
- Denied a pregnant minor medical attention when she reported pain and accused her of lying about her pain in order to be released; the minor’s pains were labor pains that preceded a still birth²⁷⁰
- Told a detained child to “suck it up” when she told agents she had not received food²⁷¹
- Forced a visibly pregnant minor to sleep on the floor and called her a liar when she said she was pregnant²⁷²





Deportation



As already explained, CBP detention is intended to be short term²⁷³—the agency itself has stated that “[e]very effort is made to transfer a detainee out of CBP custody as soon as is operationally feasible,” either via transfer to another agency or release.²⁷⁴ As noted, different rules apply to migrant children from “contiguous countries” (Mexico and Canada) versus other migrant children.²⁷⁵ Moreover, U.S. law provides procedural protections for these children who have a fear of returning to their home countries.²⁷⁶ Thus, before CBP can transfer, release, or initiate deportation proceedings for any child, it must first determine the child’s age, nationality, and reason(s) for migrating to the United States.²⁷⁷

To gather this basic information, CBP officials must review any available written documents and interview migrant children in their custody.²⁷⁸ CBP determinations as to age, nationality, and fear of return are often insulated from independent review or oversight, even though these determinations have major consequences for the welfare of migrant children in U.S. government custody.

The CRCL documents reflect a number of abuses by CBP officials. Children’s complaints indicate that officials refuse to believe the children’s own accounts; actively threaten or misinform children in custody to coerce these children to “voluntarily” self-deport rather than seek protected status in the United States; and misplace or even destroy key identity and other documents provided to them by migrant children.

Inaccurate Assessments of Age and Nationality

THE RULE: Within forty-eight hours of apprehending or discovering an unaccompanied child, or suspecting that any individual in its custody is under eighteen years of age, CBP is required to notify HHS.²⁷⁹ To comply with this requirement, CBP must take special care in processing individuals who may be minors and pay particular attention to any available evidence of age and nationality, including the individual’s own statements and identity documents, if present.

THE REALITY: The CRCL documents show CBP officials misclassified migrant children as adults;

refused to believe official government documentation establishing the children's ages and nationalities; and failed to properly assess or safeguard vital identity documents produced for inspection by the children.

In some instances, officials ignored or threw out identity documents establishing a migrant child's age and nationality. For example, one 16-year-old produced a birth certificate to validate his age; Border Patrol agents threw the document away and asked the child to "show his teeth" instead to verify his age:

August 6, 2014 CRCL received a Significant Incident Report (SIR) via email from the U.S. Department of Health and Human Services Office of Refugee and Resettlement (HHS/ORR) on behalf of 16-year-old unaccompanied alien child (UAC) (b)(6). The SIR alleges that while he in custody at the McAllen Border Patrol Station, a Border Patrol agent (BPA) called the UAC a liar when he stated his age and asked the UAC to show the agent his teeth. The UAC further alleges that when he provided his birth certificate the agent threw it away. (b)(6) referred this matter to CBP as a Short Form on 11/14/14.)

280

One Border Patrol agent accused another child of lying about his age, even though the child had submitted his passport and birth certificate to the agents for inspection.²⁸¹ The child reported that "about ten agents started to laugh" and said he "must be about 32 years of age."²⁸² The agent who processed the child asked him why he "had come to 'fuck over this country'" and then told him he didn't want to see the expression on the child's face before making the child "wear a painter's mask."²⁸³

In another complaint, a Border Patrol agent told a detained minor mother that her two-year-old's birth certificate "was invalid because it lacked a photo"; when the minor mother tried to explain that Honduran birth certificates did not include photographs, the agent verbally abused her:

Allegedly, that same day an agent insisted the two-year-old child's birth certificate was invalid because it lacked a photo, and then verbally abused the UAC when she responded that Honduran birth certificates don't have photos.

284

Deportation Without Due Process & As a Result of Coercion

THE RULE: Over the past twenty-five years, immigration enforcement officers have increasingly relied on summary removal procedures to deport noncitizens without providing them with a full hearing before an immigration judge.²⁸⁵ One danger of these forms of summary deportation is that eligible migrants may be denied the opportunity to apply for asylum. Another is that immigration enforcement officers will abuse their authority and pressure, threaten, or otherwise try to coerce migrants to sign "self-deportation" documents the noncitizens neither understand nor wish to accept, contrary to applicable laws and regulations and the Due Process Clause of the U.S. Constitution.²⁸⁶

THE REALITY: The CRCL documents record multiple instances in which CBP officials subjected migrant children to threats or otherwise stressful situations in an attempt to coerce these children into "self-deportation."

One 17-year-old reported that a Border Patrol agent “pressured him to sign a document,” which the minor resisted doing. The agent then directed the boy “to remove all of his clothing, except his underwear,” and told him “he would remain unclothed if he did not agree to sign the document.”

ALLEGATIONS – WESLACO

Complaint No. 14-02-CBP-0173

On November 14, 2013, CRCL received a SIR from HHS ORR on behalf of UAC (b)(6) age 17. The UAC alleges that after his October 27, 2013 apprehension near Mission, Texas, he was transported to the Weslaco Station, where he was mistreated by an agent who pressured him to sign a document. Because he feared unknowingly signing a deportation document, the UAC states that he did not provide his signature. Subsequently, according to the complaint, the agent then directed the UAC to remove all of his clothing, except his underwear, and he would remain unclothed if he did not agree to sign the document. Afraid and cold, the UAC states that he signed the document. The UAC was transferred to HHS ORR custody on October 29.

Complaint No. 14-03-CBP-0037 (ECW, Medical)

287

Several documents indicate CBP officials used threats against a child’s family members to coerce the child into signing deportation documents.

One 14-year-old was told she would not be reunited with her sibling unless she signed “a deportation order,” and further told that if she did not sign, both she and her sibling would be deported anyway but separated during deportation. The girl finally signed, even though she had not wanted to:

Us where adults. They asked me questions. They told my sister that she had to sign a deportation order to be deported. She said no and they took her to a small room near us. The room was directly behind me and the door was open so I could hear everything that they were saying. They told my sister that she had to sign to be deported and she said no. Another man came in
*processing station = hielera

and told her that she had to sign the paper or they would not send me and her back together. They told her that they would deport me and send me back the day before her so I would be alone. They continued to tell her that she had to sign. I fell asleep sitting down in the room. When I woke up my sister was still in the other room with the glass window and she motioned at me through the window to let me know that she had signed.

288

A detained teenage mother was threatened with jail time and rape if she did not sign a “voluntary” deportation form; Border Patrol agents told her “[i]f you cooperate with us we can deport you to Mexico, otherwise we will take you to jail, and deport your entire family while your child will end up in foster care”:

Summary:

On 1/9/10, CRCL received a Significant Incident Report (SIR) from the HHS Office of Refugee Resettlement (ORR) reporting that 16-year-old unaccompanied minor, (b)(6) alleged she was verbally abused and threatened by Border Patrol agents at or near the Campo, CA Border Patrol Station. The UAC stated she can identify the agents who she claims repeatedly used foul language toward her, threatened and intimidated her. She alleges that one of two agents standing under the door way of her holding cell said, “ahorita ceramos la puerta, te violamos y te chingamos” which the SIR states translates to, “right now, we close the door, we rape you and fuck you.” And they further stated, “if you cooperate with us we can deport you to Mexico, otherwise we will take you to jail, and deport your entire family while your child will end up in foster care.” The UAC also alleges agents at the station threatened jail if she did not sign a voluntary departure form. (It is reported that the minor was eventually released to her father, who resides in San Diego, CA.)

289

Another child reported that when he refused to sign a document waiving his right to see an immigration judge, the supervisory Border Patrol agent told him that seeing a judge would be a waste of time because the judge would deport the minor without asking any questions.²⁹⁰

The CRCL documents also indicate that migrant children often are provided deportation documents only in English, which many of these children do not understand; the children do not have access to translators or lawyers while in CBP custody.²⁹¹

- 11) I was made to sign papers that I did not understand, and they were not explained to me. The BP agent said that if I didn't sign they wouldn't let me out. However, the papers were in English and I did not understand what they said. I did not feel like I had an option in signing them.
- 12) When I left BP detention to come to the shelter that I am at now, I asked for my bag back. The agents told me that if I wanted my bag I would be in detention for a very long time. I was really scared so I let them keep my bag.
- 13) Thinking about my experience in Border Patrol detention, the worst thing was that they don't treat adults and minors equally. In the end, we are all people, we are all brothers and sisters, and we should be treated the same.

292

Confiscated Property

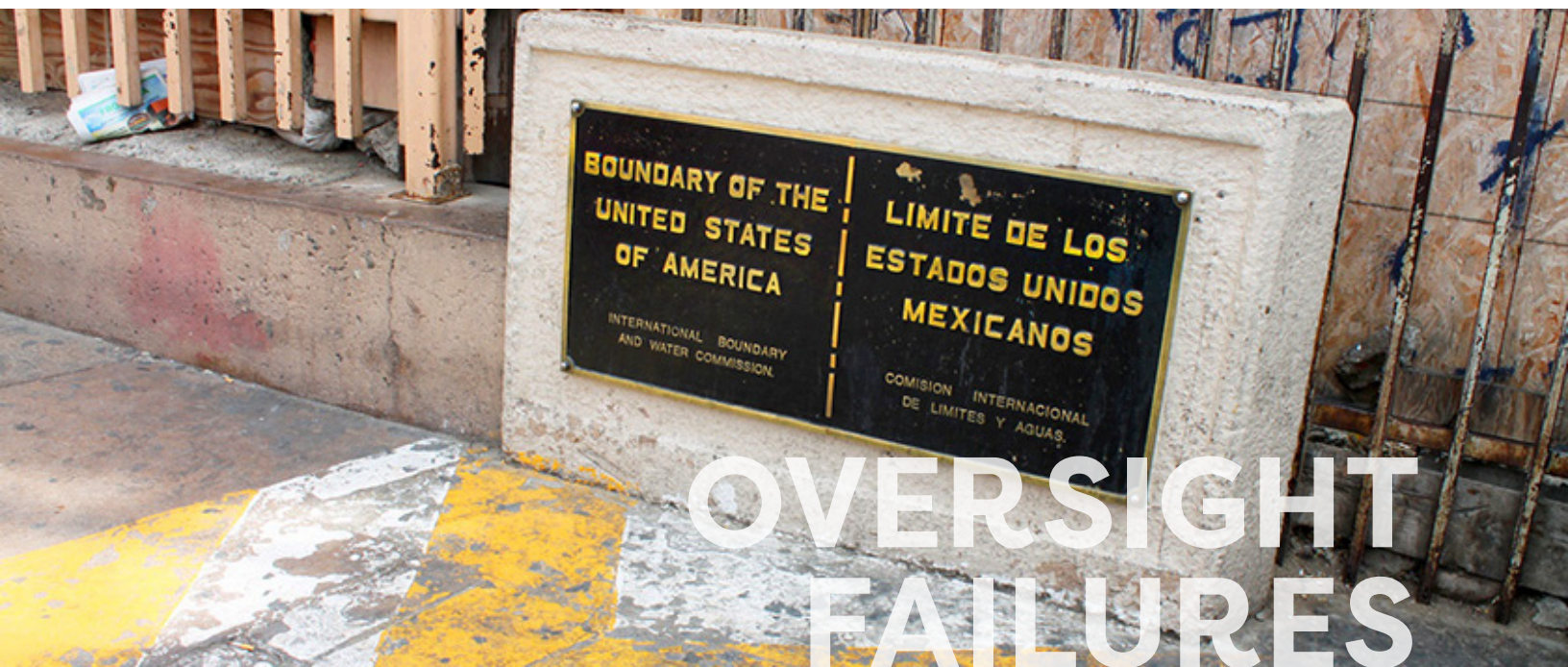
THE RULE: Pursuant to agency policy, CBP officials are required to create accurate records of all detainees' property, including "funds, valuables, baggage, and other personal property."²⁹³ Officials are to log all personal property on a Form I-77, create receipts for such property, and store such property in a secure area.²⁹⁴ For minors, all "property and legal papers that are in [a] juvenile's possession, or are served upon the juvenile during processing, shall accompany the juvenile upon transfer to any other agency or facility."²⁹⁵

THE REALITY: The CRCL documents indicate that CBP officials do not consistently respect these rules or safeguard detained children's personal property.

One 17-year-old reported that, when she was leaving Border Patrol detention to go to a shelter, she asked the agents to return her bag.²⁹⁶ "The agents told me that if I wanted my bag I would be in detention for a very long time," she reported. "I was really scared so I let them keep my bag."²⁹⁷

A 16-year old detained in a Border Patrol station near Rio Grande City in April 2013 reported that one agent told detainees that "he was going to throw away all of our belongings except gold, silver, valueable [sic] things or things that were important to us."²⁹⁸ The teenager stated that the agent allowed him to "keep some letters and a photo I had with me because it was something important to me."²⁹⁹ Yet, reported the teenager, the Border Patrol agent "was the one who would decide if [the item] was important or not," and made the detainees "throw away things that [were] important."³⁰⁰ The teenager explained that when the agent "picked up my Bible, which was in a transparent bag, he threw it into the garbage."³⁰¹

Other records document agents' confiscation of children's property as a form of punishment or physical abuse. In one case, a Border Patrol agent confiscated a child's sweater and then immediately placed the child—who was still wet from swimming across the Rio Grande river—in a very cold cell.³⁰²



Oversight Failures



Beyond the misconduct detailed, the CRCL documents are shocking for the independent reason that they do not contain any evidence of disciplinary action or other meaningful accountability for abusive CBP officials. Rather, the records indicate—at best—cursory “investigations” closed out via boilerplate language rather than thorough individualized assessments.

As noted, DHS includes several internal oversight agencies, including CRCL and OIG.³⁰³ Yet structural deficiencies (i.e., limited mandates) and insufficiently robust investigations mean that neither CRCL nor OIG has held the line against child abuse by CBP or the Border Patrol.

Insufficient Oversight Authority

CRCL was created to “support[] [DHS]’s mission to secure the nation while preserving individual liberty, fairness, and equality under the law,” specifically by “investigating and resolving civil rights and civil

liberties complaints filed by the public regarding Department policies or activities.”³⁰⁴

Like CRCL, OIG conducts and supervises audits, investigations, and inspections of DHS programs and operations.³⁰⁵ OIG can conduct unannounced site visits at CBP detention facilities to audit compliance with the *Flores* Settlement, the TVPRA, and agency policy.³⁰⁶

The trouble is, neither CRCL nor OIG has the authority to do much more than issue policy recommendations. Although CRCL is authorized to conduct civil rights investigations, it has no power to discipline or prosecute individual CBP officials or to provide any wronged individual a remedy for a substantiated civil rights claim.³⁰⁷ And, under the VCAA, both CRCL and OIG should report alleged child abuse out of DHS to the FBI. Yet there is no indication, on the basis of the CRCL documents, that CRCL has ever done so.

While the CRCL documents shed little light on CRCL’s investigative methodologies, the documents do indicate a lack of independent—much less, effective—investigations. CRCL responses to complaints of serious child abuse are cursory and

reflect a problematic overreliance on CBP's own records (rather than independent assessments) to explore or verify specific allegations. The CRCL documents also indicate significant delays in investigations.³⁰⁸

Overreliance on Incomplete or Inconsistent CBP Records

The CRCL documents reveal an inappropriate reliance on CBP records and personnel's accounts in what are supposed to be "independent" investigations. Indeed, rather than independently investigate complaints of abuse, CRCL refers those complaints *back to CBP*—i.e., the very entity accused of misconduct—to resolve. Additionally, CRCL often recommends the closure of complaints that cannot be verified by CBP's records or personnel accounts,³⁰⁹ even though CRCL itself acknowledges that CBP records are often incomplete or inconsistent.³¹⁰

In one email, ORR personnel noted an unexplained discrepancy between ORR records and DHS records for a child from El Salvador:

Country of Birth: El Salvador

I am not sure why the ORR record differs from the DHS record. It is possible that there was a data entry error upon the minor's referral to ORR DCS, but I have no way to track to see if this occurred

The minor remains under the custody of ORR DCS.

311

Another document—a July 2014 OIG memorandum regarding CBP's treatment of unaccompanied children—noted that CBP's electronic database system (called "E3") was "unreliable due to frequent system outages which have resulted in inconsistent reporting."³¹² "As a result," OIG observed, "E3 is not a reliable tool for CBP to provide increased accountability for [unaccompanied children's] safety and well-being during all phases of CBP's custody process."³¹³ There is no indication in the CRCL documents that any corrective action was taken by CBP in response to this OIG memo.

Failure to Fully Investigate Individual Complaints & Hasty Complaint "Closures"

The CRCL documents also shed some light on the agency's approach to closing complaints before fully investigating them. One response found throughout the CRCL documents is a boilerplate letter notifying the complainant that CRCL "recorded the issues [] raised in [its] database," but would "take no further action at this time."³¹⁴ In other documents, CRCL appears to combine multiple complaints by issue rather than undertaking individualized assessments into alleged abuses. In these records, CRCL notes that an existing investigation "address[es] issues similar to the ones [the complaining child] raised," and states only that the agency will "take into account" the additional information provided as it pursues the pre-existing investigation.³¹⁵

The same, standard complaint closure recommendation form appears repeatedly throughout the CRCL document production. This simple form includes a summary of the submitted complaint and a checklist of standard reasons why the complaint should be closed, such as "insufficient information to investigate" and "allegations . . . unfounded":

Findings for Closure without Recommendations:

<input type="checkbox"/> Insufficient information to investigate	<input checked="" type="checkbox"/> Allegation(s) substantiated but does not warrant recommendations
<input type="checkbox"/> Withdrawal of complaint	<input type="checkbox"/> No finding of detention standards violations
<input type="checkbox"/> Lack of jurisdiction	<input type="checkbox"/> No finding of policy or procedure violations
<input type="checkbox"/> Allegation(s) overtaken by events	<input type="checkbox"/> Complaint being handled as part of a related complaint (Related)
<input type="checkbox"/> Component and/or facility has already corrected the problem	<input checked="" type="checkbox"/> Other: CRCL will make recommendations to CBP on ECW practice and procedure in the Rio Grande Valley Sector site visit recommendations memo.
<input checked="" type="checkbox"/> Allegation(s) against component, individual, and/or facility unfounded	
<input type="checkbox"/> Allegation(s) against component, individual, and/or facility unsubstantiated	

316

In response to one complaint in which a child alleged verbal abuse, the complaint closure form indicates that CRCL took steps only to verify the location and length of the child's detention—it did not investigate or otherwise address the alleged verbal abuse.³¹⁷

Routine, Lengthy Delays in Investigations

The CRCL documents also indicate that routine delays are another substantial obstacle to meaningful and thorough investigations.

Investigative delays can effectively destroy any possibility of accountability. For example, in one complaint closure form, CRCL concluded that a complaint was “unsubstantiated” because “none of the [CBP officials] who

were involved in (b)(6) apprehension could recall her case due to the length of time that had passed between the alleged incident and the date of the inquiry. No CBP records or other reports were found in relation to the UAC's claim. Further, CBP was unable to locate (b)(6)

318

Troublingly, the CRCL documents indicate that CBP itself fails to timely respond to the oversight agency's requests for additional information about specific complaints. For example, in one CRCL email, an investigator notes that over a year after CRCL received a complaint, it had yet to receive any of the information it had requested from CBP.³¹⁹ Although this complaint had been submitted to CRCL in September 2010, CRCL did not close it until March 2013.³²⁰

“Issue Fatigue” and Insufficient Investigative Resources

Finally, the CRCL documents indicate that the agency may lack sufficient resources to handle the volume of complaints received. Some CRCL staff seem so fatigued from accounts of abuse that they appear reluctant to open new investigations. For example, in one CRCL email, the author asks the recipient if “we want to open [this investigation] given the huge amount of more serious complaints . . . that we have? Other than excessive time in custody, which is almost a given in [Rio Grande Valley], I'm not sure what we would get out of investigating this.”³²¹ This document reflects CRCL's failure to recognize or act to investigate CBP's routine detention of children in excess of periods permitted under governing law (both the *Flores* Settlement and the TVPRA) and operative agency policy.



Conclusion



The CRCL documents reviewed herein represent just a fraction of the tens of thousands of pages of records obtained by the ACLU through its FOIA request and subsequent litigation. These documents provide evidence of systemic CBP abuse of children. At best, this abuse amounts to unprofessional, degrading mistreatment of vulnerable minors. At worst, the abuse amounts to unlawful and potentially criminal misconduct by federal immigration officials. The CRCL documents show that abuse occurs at each stage of a child's interaction with CBP, from apprehension to

detention to deportation. The abuse is not limited to one state, sector, station, or group of officials—rather, the CRCL documents reflect misconduct throughout the southwest, from California to Texas, at ports of entry and in the interior of the United States, by CBP and by Border Patrol. And, crucially, the CRCL documents show that various DHS entities, including oversight agencies like CRCL and OIG, are aware of CBP's unethical and unlawful abuse of minors—and yet these DHS entities have failed to properly investigate, much less remedy, alleged abuse. There is no evidence that DHS has taken any action to address or rectify this pattern of abuse. To the contrary: the CRCL records indicate that urgent intervention is necessary to protect these vulnerable children from mistreatment, abuse, and violence, which is otherwise bound to recur.

Endnotes

- 1 The International Human Rights Clinic (IHRC) at the University of Chicago Law School drafted this report, relying on primary source material obtained via the Freedom of Information Act (FOIA) by the ACLU's Border Litigation Project (BLP)—a joint project of the ACLU affiliates in Arizona and San Diego. The IHRC student drafting team included Chinwe Chukwuogo, Nabihah Maqbool, and Grace Paek, with faculty assistance from Associate Clinical Professor of Law and IHRC Director Claudia Flores and Lecturer Nino Guruli. BLP Staff Attorney Mitra Ebadolahi and BLP Fellow Zoë McKinney revised and edited the report. Essential administrative and technical support was provided by the ACLU of San Diego & Imperial Counties' Legal Assistant, Mayra Lopez. The quote on the title page can be found at 2015-CRFO-00803129. All CRCL documents cited herein are compiled in the Appendix.
- 2 Jeh C. Johnson, Secretary, U.S. Dep't of Homeland Sec., Statement on Southwest Border Security (Oct. 18, 2016), <https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016>; see generally UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR), CHILDREN ON THE RUN: UNACCOMPANIED CHILDREN LEAVING CENTRAL AMERICA AND MEXICO AND THE NEED FOR INTERNATIONAL PROTECTION (2014) [hereinafter UNHCR CHILDREN ON THE RUN], <http://www.unhcr.org/en-us/about-us/background/56fc266f4/children-on-the-run-full-report.html>.
- 3 WILLIAM A. KANDEL, CONG. RESEARCH SERV., R43599, UNACCOMPANIED ALIEN CHILDREN: AN OVERVIEW, 4 (Jan. 18, 2017), <https://fas.org/sgp/crs/homsec/R43599.pdf>.
- 4 MICHAEL GARCIA BOCHENEK, HUM. RTS. WATCH (HRW), IN THE FREEZER: ABUSIVE CONDITIONS FOR WOMEN AND CHILDREN IN U.S. IMMIGRATION HOLDING CELLS 25, 32 (2018) [hereinafter HRW IN THE FREEZER], <https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells>; Richard Gonzales, *Federal Investigation Finds 'Significant Issues' at Immigration Detention Centers*, NAT'L PUB. RADIO, Dec. 14, 2017, <https://www.npr.org/sections/thetwo-way/2017/12/14/570984026/federal-investigation-finds-significant-issues-at-immigrant-detention-centers>; Molly Hennessy-Fiske & Cindy Carcamo, *Overcrowded, Unsanitary Conditions Seen at Immigrant Detention Centers*, L.A. TIMES, June 18, 2014, <http://www.latimes.com/nation/nationnow/la-na-nn-texas-immigrant-children-20140618-story.html>.
- 5 Letter from Nat'l Immigrant Just. Ctr. et al., to DHS CRCL & DHS OIG, Administrative Complaint Re: Systemic Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection (June 11, 2014), <https://cbpabusestest2.files.wordpress.com/2015/03/2014-06-11-dhs-complaint-re-cbp-abuse-of-uics.pdf>.
- 6 *Id.* at 2.
- 7 *Id.*
- 8 *Id.*
- 9 *Id.* at 7.
- 10 See *Unaccompanied Minor Children*, CSPAN, June 12, 2014, <https://www.c-span.org/video/?319951-1/dhs-secretary-johnson-unaccompanied-immigrant-children> (last visited May 15, 2018).
- 11 Freedom of Information Act Request (Expedited Processing Requested) from James Lyall & Mitra Ebadolahi, ACLU Border Litigation Project, to Karen Neuman, DHS Privacy Office (Dec. 3, 2014), <https://cbpabusestest2.files.wordpress.com/2015/03/exhibit-a.pdf>.
- 12 Complaint for Injunctive Relief, Am. Civil Liberties Union of Ariz. v. Office of the Inspector Gen., No. 2:15-cv-00247-JJT (D. Ariz. Feb. 11, 2015), ECF No. 1, <https://cbpabusestest2.files.wordpress.com/2015/03/aclu-foia-complaint.pdf>.
- 13 A migrant may be defined “as any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.” *Key Migration Terms*, INT’L ORG. FOR MIGRATION (IOM), <https://www.iom.int/key-migration-terms#Migrant> (last visited May 15, 2018).
- 14 UNITED NATIONS CHILDREN’S FUND (UNICEF), DATA BRIEF: CHILDREN ON THE MOVE KEY FACTS & FIGURES 2 (Feb. 2018) [hereinafter UNICEF CHILDREN ON MOVE], <https://data.unicef.org/wp-content/uploads/2018/02/Data-brief-children-on-the-move-key-facts-and-figures-1.pdf>.
- 15 IOM GLOBAL MIGRATION DATA ANALYSIS CTR., FATAL JOURNEYS VOLUME 3, PART 1: IMPROVING DATA ON MISSING MIGRANTS 1 (2017), https://publications.iom.int/system/files/pdf/fatal_journeys_volume_3_part_1.pdf.

- 16 See generally ORG. OF AM. STATES, INTER-AM. COMM’N ON HUM. RTS, HUMAN RIGHTS SITUATION OF REFUGEE AND MIGRANT FAMILIES AND UNACCOMPANIED CHILDREN IN THE UNITED STATES OF AMERICA, OAS/Ser.L/V/II. 55, Doc. 16 (2015), <https://www.oas.org/en/iachr/reports/pdfs/Refugees-Migrants-US.pdf>; see also UNICEF CHILDREN ON MOVE, *supra* note 14.
- 17 See *Child Migration and Displacement*, UNICEF, <https://data.unicef.org/topic/child-migration-and-displacement/migration/> (last visited May 15, 2018).

An asylum seeker is an individual seeking “safety from persecution or serious harm in a country other than [her] own and await[ing] a decision on [her] application for refugee status.” *Id.* at 6. A refugee is an individual who has “been granted protection in another country because of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinions.” *Id.* See generally *Key Migration Terms*, IOM, <https://www.iom.int/key-migration-terms> (last visited May 15, 2018).
- 18 UNICEF CHILDREN ON MOVE, *supra* note 14, at 2. Additionally, as of 2016, an estimated 16 million children experienced internal displacement within their home countries due to conflict and violence. *Id.* In February 2018, the latter figure had risen to an estimated 17 million. See *Refugees & Internally Displaced Persons*, UNICEF, <https://data.unicef.org/topic/child-migration-and-displacement/displacement/#> (last visited May 15, 2018).
- 19 AM. IMMIGR. COUNCIL (AIC), A GUIDE TO CHILDREN ARRIVING AT THE BORDER: LAWS, POLICIES AND RESPONSES 1 (June 2015) [hereinafter AIC A GUIDE TO CHILDREN], <https://www.americanimmigrationcouncil.org/research/guide-children-arriving-border-laws-policies-and-responses>.
- 20 MARC R. ROSENBLUM, MIGRATION POL’Y INST. (MPI) TRANSATLANTIC COUNCIL ON MIGRATION, UNACCOMPANIED CHILD MIGRATION TO THE UNITED STATES: THE TENSION BETWEEN PROTECTION AND PREVENTION 11 (Apr. 2015), <https://www.migrationpolicy.org/sites/default/files/publications/TCM-Protection-UAC.pdf>; D’VERA COHN ET AL., PEW RESEARCH CTR., RISE IN U.S. IMMIGRANTS FROM EL SALVADOR, GUATEMALA, HONDURAS, OUTPACES GROWTH FROM ELSEWHERE 8 (Dec. 7, 2017), <http://www.pewhispanic.org/2017/12/07/rise-in-u-s-immigrants-from-el-salvador-guatemala-and-honduras-outpaces-growth-from-elsewhere/>.
- 21 AIC A GUIDE TO CHILDREN, *supra* note 19, at 1.
- 22 INT’L CRISIS GROUP, EASY PREY: CRIMINAL VIOLENCE AND CENTRAL AMERICAN MIGRATION 1 (July 28, 2016), <https://d2071andvip0wj.cloudfront.net/057-easy-prey-criminal-violence-and-central-american-migration.pdf>.
- 23 Ana Gonzalez-Barrera et al., *DHS: Violence, Poverty Are Driving Children to Flee Central America to U.S.*, PEW RESEARCH CTR.: FACT TANK (July 1, 2014), <http://www.pewresearch.org/fact-tank/2014/07/01/dhs-violence-poverty-is-driving-children-to-flee-central-america-to-u-s/>.
- 24 *Southwest Border Unaccompanied Alien Children Statistics FY 2016*, U.S. Customs & Border Protection, Jan. 20, 2017, <https://www.cbp.gov/site-page/southwest-border-unaccompanied-alien-children-statistics-fy-2016> (last visited May 15, 2018); AIC A GUIDE TO CHILDREN, *supra* note 19, at 1.
- 25 6 U.S.C. § 279(g)(2) defines “unaccompanied alien child” as “a child who (A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody.” *Id.* (2008); see also IMMIGRANT LEGAL RES. CTR., UNACCOMPANIED MINORS (UACs) & NEW EXECUTIVE ORDERS 1 (Mar. 2017) [hereinafter ILRC UNACCOMPANIED MINORS], https://www.ilrc.org/sites/default/files/resources/uacs_under_trump_administration_final_3.21.17.pdf.
- 26 See UC HASTINGS CTR. FOR GENDER & REFUGEE STUD. ET AL., A TREACHEROUS JOURNEY: CHILD MIGRANTS NAVIGATING THE U.S. IMMIGRATION SYSTEM ii (2014), http://www.uchastings.edu/centers/cgrs-docs/treacherous_journey_cgrs_kind_report.pdf.
- 27 Valeria Luiselli, *Riding ‘The Beast’: Child Migrants Reveal Full Horror of Their Journeys to America*, THE GUARDIAN, Oct. 5, 2017, <https://www.theguardian.com/inequality/2017/oct/05/riding-the-beast-child-migrants-reveal-full-horror-of-their-journeys-to-us> (“There is a saying about La Bestia ‘Go in alive, come out a mummy.’”).
- 28 Dara Lind, *The 2014 Central American Migrant Crisis*, VOX, May 13, 2015, <https://www.vox.com/cards/child-migrant-crisis-unaccompanied-alien-children-rio-grande-valley-obama-immigration/why-are-so-many-children-coming-to-the-us>; see generally, CONG. RESEARCH SERV., R43628, UNACCOMPANIED ALIEN CHILDREN, POTENTIAL FACTORS CONTRIBUTING TO RECENT IMMIGRATION (2014), <https://fas.org/sgp/crs/homsec/R43628.pdf>.
- 29 *History*, U.S. DEP’T OF HOMELAND SEC., <https://www.dhs.gov/history> (last visited May 15, 2018); *History: Who Joined DHS*, U.S. DEP’T OF HOMELAND SEC., <https://www.dhs.gov/who-joined-dhs> (last visited May 15, 2018).

- 30 *Who We Are*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT, <https://www.ice.gov/about> (last visited May 15, 2018).
- 31 USCIS defines a “port of entry” as “any location in the United States or its territories that is designated as a point of entry for aliens and U.S. citizens.” *Glossary, Port of Entry*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/tools/glossary/port-entry> (last visited May 15, 2018).
- 32 *About CBP*, U.S. CUSTOMS & BORDER PROTECTION, <https://www.cbp.gov/about> (last visited May 15, 2018).
- 33 *Id.*
- 34 *Id.*
- 35 8 U.S.C. § 1357(a)(1)–(2) (2006).
- 36 8 U.S.C. § 1357(a)(3). Border Patrol agents must have reasonable suspicion to initiate a roving patrol stop. See *United States v. Brignoni-Ponce*, 422 U.S. 873, 881–82 (1975).
- 37 8 C.F.R. § 287.1(a)(2).
- 38 ACLU WASH. LEGIS. OFFICE, CUSTOMS & BORDER PROTECTION’S (CBP’S) 100-MILE RULE (Sept. 15, 2014), <https://www.aclu.org/other/aclu-factsheet-customs-and-border-protections-100-mile-zone?redirect=immigrants-rights/aclu-fact-sheet-customs-and-border-protections-100-mile-zone>.
- 39 Garrett M. Graff, *The Green Monster: How the Border Patrol Became America’s Most Out-of-Control Law Enforcement Agency*, POLITICO, Nov./Dec. 2014, <http://politi.co/1tIB4CS>.
- 40 D. MEISSNER ET AL., MPI, IMMIGRATION ENFORCEMENT IN THE UNITED STATES: THE RISE OF A FORMIDABLE MACHINERY 2 (Jan. 2013), <https://www.migrationpolicy.org/sites/default/files/publications/enforcementpillars.pdf>.
According to the Migration Policy Institute, this meant that DHS spending for CBP, ICE, and US-VISIT exceeded—by approximately 24 percent—the government’s total combined spending for the FBI, Drug Enforcement Administration (DEA), Secret Service, U.S. Marshals Service, and Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). *Id.* at 9.
- 41 U.S. DEP’T OF HOMELAND SEC., FY 2019 BUDGET-IN-BRIEF 26 (Feb. 27, 2018), <https://www.dhs.gov/publication/fy-2019-budget-brief>.
- 42 Graff, *supra* note 39.
- 43 *Id.*
- 44 *Id.*
- 45 *Id.*
- 46 *Id.*
- 47 See Joshua Holland, *Abuses on the Border*, AM. PROSPECT, May 31, 2016, <http://prospect.org/article/abuses-border>; Graff, *supra* note 39.
- 48 See generally POLICE EXECUTIVE RESEARCH FORUM: CASES & POLICIES 4–5, 7 (Feb. 2013), <http://bit.ly/2dyavaZ>.
- 49 *Id.*
- 50 Andrew Becker, *Border Agency’s Former Watchdog Says Officials Impeded His Efforts*, WASH. POST, Aug. 16, 2014, <http://wapo.st/1wGHdc9> (describing CBP as an agency “rife with coverups and corruption” where officials “distort[] facts to try to hide any missteps”).
- 51 *Office for Civil Rights & Civil Liberties*, U.S. DEP’T OF HOMELAND SEC., <https://www.dhs.gov/office-civil-rights-and-civil-liberties> (last visited May 15, 2018).
- 52 *Office of Inspector General: About Us*, U.S. DEP’T OF HOMELAND SEC., <https://www.oig.dhs.gov/about> (last visited May 15, 2018).
- 53 See *Office of Professional Responsibility*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT, <https://www.ice.gov/leadership/opr> (last visited May 15, 2018); *Office of Professional Responsibility*, U.S. CUSTOMS & BORDER PROTECTION, <https://www.cbp.gov/about/leadership-organization/professional-responsibility> (last visited May 15, 2018).
- 54 *Unaccompanied Alien Children*, U.S. DEP’T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILD. & FAM., OFFICE OF REFUGEE RESETTLEMENT, <https://www.acf.hhs.gov/orr/programs/ucs> (last visited May 15, 2018); see also *Children Entering the United States Unaccompanied: Section 1–1.2 ORR Standards for Placement & Transfer Decisions*, OFFICE OF REFUGEE RESETTLEMENT, Jan. 30, 2015, <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1#1.2> (last visited May 15, 2018).

- 55 U.S. DEP'T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILD. & FAM., OFFICE OF REFUGEE RESETTLEMENT, FACTSHEET: UNACCOMPANIED CHILDREN'S PROGRAM 2 (Jan. 2016) https://www.acf.hhs.gov/sites/default/files/orr/orr_uc_updated_fact_sheet_1416.pdf.
- 56 *Id.* at 1.
- 57 ILRC UNACCOMPANIED MINORS, *supra* note 25, at 1.
- 58 *Id.*
- 59 AIC, FACTSHEET: HOW THE UNITED STATES IMMIGRATION SYSTEM WORKS 1 (Aug. 12, 2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/how_the_united_states_immigration_system_works.pdf.
- 60 AIC, FACTSHEET: ASYLUM IN THE UNITED STATES 1 (Aug. 22, 2016) [hereinafter AIC ASYLUM FACTSHEET], https://www.americanimmigrationcouncil.org/sites/default/files/research/ asylum_in_the_united_states.pdf.
- 61 *Id.*
- See also Convention Relating to the Status of Refugees, Art. 1(A)(2), *adopted* July 8, 1951, 189 U.N.T.S. 150 [hereinafter 1951 Refugee Convention] (entered into force Apr. 22, 1954); Protocol Relating to the Status of Refugees, *adopted* Jan. 31, 1967, 606 U.N.T.S. 267 [hereinafter 1967 Protocol] (entered into force Oct. 4, 1967), both available at <http://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html>.
- 62 Refugee Act of 1980, 8 U.S.C. § 1101(a)(42) (2014).
- 63 AIC ASYLUM FACTSHEET, *supra* note 60, at 1.
- 64 *Id.* at 2.
- 65 *Id.* See generally AIC ET AL., PRACTICE ADVISORY: EXPEDITED REMOVAL: WHAT HAS CHANGED SINCE EXECUTIVE ORDER NO. 13767 (Feb. 20, 2017), <https://bit.ly/2rLwou5>; see also SARAH MEHTA, ACLU, AMERICAN EXILE: RAPID DEPORTATIONS THAT BYPASS THE COURTROOM 10–30 (Dec. 2014) [hereinafter ACLU AMERICAN EXILE] (overview of summary deportation procedures), https://www.aclu.org/sites/default/files/field_document/120214-expeditedremoval_0.pdf.
- 66 AIC ASYLUM FACTSHEET, *supra* note 60, at 2; ACLU AMERICAN EXILE, *supra* note 65, at 17.
- 67 8 U.S.C. § 1225(b)(1)(B)(v) (2009).
- 68 *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431–32 (1987).
- 69 See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 16, *adopted* Dec. 10, 1984, 6 U.S.T. 3316, 1465 U.N.T.S. 85 [hereinafter CAT] (entered into force June 26, 1987, ratified by the United States Oct. 21, 1994); International Covenant on Civil and Political Rights, Art. 7, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR] (entered into force Mar. 23, 1976, ratified by the United States Sept. 8, 1992).
- 70 ACLU AMERICAN EXILE, *supra* note 65, at 97–98; see also ICCPR, *supra* note 69, Art. 13.
- 71 ICCPR, *supra* note 69, Art. 10(1).
- 72 See generally ACLU, UNITED STATES' COMPLIANCE WITH THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (Oct. 17, 2014), https://www.aclu.org/files/assets/aclu_cat_shadow_report_2014_v2.pdf.
- 73 Convention on the Rights of the Child, Arts. 3, 22, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC] (entered into force Sept. 2, 1990, signed by the United States on Feb. 16, 1995); see also ACLU AMERICAN EXILE, *supra* note 65, at 100–01.
- 74 *Id.* at 69.
- 75 Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85-4544-RJK (Px) (C.D. Cal. Jan. 17, 1997) [hereinafter the *Flores* Settlement], https://www.aclu.org/sites/default/files/field_document/flores_settlement_final_plus_extension_of_settlement011797.pdf.
- 76 See generally LUTHERAN IMMIGR. & REFUGEE SERV. ET AL., *FLORES* SETTLEMENT AGREEMENT & DHS CUSTODY (Dec. 2014), tinyurl.com/qxcccfo8.
- 77 The *Flores* Settlement, *supra* note 75, ¶ 12.A.
- 78 *Id.* ¶ 11; see also 8 U.S.C. § 1232(c)(2) (2013).

- 79 The *Flores* Settlement, *supra* note 75, ¶¶ 12.A, 24D; *see also* 8 C.F.R. § 236.3(h).
- 80 KANDEL, *supra* note 3 at 4–5.
- 81 *Id.* at 4.
- 82 8 U.S.C. § 1232(a)(2).
- 83 *Id.* § 1232(a)(4).
- 84 *Id.*
- 85 BENJAMIN J. ROTH & BREANNE L. GRACE, POST-RELEASE: LINKING UNACCOMPANIED IMMIGRANT CHILDREN TO FAMILY AND COMMUNITY 1, 5 (2015), <https://bit.ly/2GeAkst>; *see also* 8 U.S.C. § 1232(c)(2)(A).
- 86 *Children Entering the United States Unaccompanied: Section 1*, U.S. DEP’T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILD. & FAM., OFFICE OF REFUGEE RESETTLEMENT, Jan. 30, 2015, <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1> (last visited May 15, 2018).
- 87 *See* 8 U.S.C. § 1232(a)(3); the *Flores* Settlement, *supra* note 75.
- 88 34 U.S.C. § 20341(b)(6) (2018) (law enforcement and detention facility employees designated as “covered professionals” subject to VCAA reporting requirements).
- 89 *Id.* § 20341(c)(1).
- 90 *Id.* § 20341(c)(2).
- 91 *Id.* § 20341(c)(3).
- 92 *Id.* § 20341(c)(4)–(5).
- 93 *Id.* § 20341(c)(7).
- 94 *Id.* § 20341(a), (d); 28 C.F.R. §§ 81.2–81.3.
- 95 U.S. CUSTOMS & BORDER PROTECTION, MAY 2014 THROUGH DECEMBER 2015 SEXUAL ABUSE & ASSAULT IN HOLDING FACILITIES REPORT 5 (Mar. 2017), <https://bit.ly/2k1zXJd>.
- 96 *See infra* notes 238–244 and accompanying text.
- 97 Throughout this report, the terms “removal” and “deportation” are used interchangeably to refer to the compulsory repatriation of an individual with an order requiring their departure issued by the U.S. government. *See* ACLU AMERICAN EXILE, *supra* note 65, at 123 n.4.
- 98 Certain CRCL documents are excerpted in this report. Handwritten excerpts were from intake forms completed through interviews with children (with translator assistance). Affidavits were also translated and submitted with translation certifications.
- 99 U.S. CUSTOMS & BORDER PROTECTION, USE OF FORCE POLICY, GUIDELINES AND PROCEDURES HANDBOOK 1 (May 2014) [hereinafter CBP UOF Policy], <https://www.cbp.gov/sites/default/files/documents/UseofForcePolicyHandbook.pdf> (“Agents may use ‘objectively reasonable’ force only when it is necessary to carry out their law enforcement duties,” citing *Graham v. Connor*, 490 U.S. 386 (1989), which established that claims of excessive force by law enforcement officials should be analyzed under the Fourth Amendment’s “objective reasonableness” standard).
- 100 *Graham v. Connor*, 490 U.S. 386, 396 (1989); *see also, e.g., C.V. by and through Villegas v. City of Anaheim*, 823 F.3d 1252, 1255 (9th Cir. 2016) (discussing *Graham*).
- 101 2015-CRFO-0000800383.
- 102 *Id.*
- 103 2015-CRFO-0000800427.
- 104 *Id.*
- 105 2015-CRFO-0000801646.
- 106 U.S. CUSTOMS & BORDER PROTECTION, NAT’L STANDARDS ON TRANSPORT, ESCORT, DETENTION, & SEARCH ¶ 5.7 (Oct. 2015) [hereinafter CBP TEDS Policy], <https://www.cbp.gov/document/directives/cbp-national-standards-transport-escort-detention-and-search>.
- 107 2015-CRFO-0000801456.

- 108 *Id.*; see also 2015-CRFO-0000801645 (another incident of overly tight handcuffs applied to a child).
- 109 2015-CRFO-0000801461.
- NB:** In some of the excerpts reproduced in this report, redactions marked “(b)(6)” are visible. This refers to one of FOIA’s nine limited exemptions, Exemption 6, which permits a government agency to withhold certain information that, if disclosed, “would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6) (2016); see generally U.S. DEP’T OF JUSTICE, GUIDE TO THE FREEDOM OF INFORMATION ACT: EXEMPTION 6 (Jan. 10, 2014), <https://www.justice.gov/oip/foia-guide14/exemption6.pdf>. Throughout the CRCL documents, the government has applied (b)(6) redactions to the names (or other personally identifying information) of children in custody, government personnel, and third parties.
- 110 2015-CRFO-0000800356-57.
- 111 *Id.*
- 112 2015-CRFO-008003933.
- 113 2015-CRFO-008003933-34.
- 114 2015-CRFO-008003938.
- 115 *Id.*
- 116 2015-CRFO-0000802084.
- 117 Aaron Sussman, Comment, *Shocking the Conscience: What Police Tasers and Weapon Technology Reveal about Excessive Force Law*, 59 UCLA L. REV. 1342, 1348-50 (2012).
- 118 *Id.* at 1350.
- 119 *Id.*
- 120 CBP UOF POLICY, *supra* note 99, at 28.
- 121 See Elizabeth Seals, Comment, *Police Use of Tasers: The Truth is “Shocking,”* 38 GOLDEN GATE UNIV. L. REV. 109, 115-117 (2007) (explaining that fatalities and health risks associated with Taser shocks are higher for the physically infirm and vulnerable), <http://digitalcommons.law.ggu.edu/ggulrev/vol38/iss1/4>. See also AMNESTY INT’L, UNITED STATES OF AMERICA: EXCESSIVE & LETHAL FORCE? AMNESTY INTERNATIONAL’S CONCERNS ABOUT DEATHS AND ILL-TREATMENT INVOLVING POLICE USE OF TASERS 13, 61 (Nov. 2004), <https://www.amnesty.org/en/documents/AMR51/139/2004/en/>.
- 122 CBP UOF POLICY, *supra* note 99, at 28.
- 123 *Id.* at 29.
- 124 *Id.*
- 125 *Id.*
- 126 *Id.* at 28-29.
- 127 2015-CRFO-0000801647 (same complaint also appears at 2015-CRFO-0000800198).
- 128 *Id.*
- 129 2015-CRFO-0000801645.
- NB:** “SIR” is an acronym for “significant incident report.”
- 130 2015-CRFO-0000800606.
- 131 2015-CRFO-0000801644 (Child witnessed a boy taken outside and tased by CBP officials; boy fell to the ground, shaking, and his eyes rolled back in his head. Boy was returned to cell and immediately restrained at wrists and ankles after being tased); 2015-CRFO-0000801645 (agent tased child’s hip during apprehension).
- 132 2015-CRFO-0000801661.
- 133 CBP TEDS POLICY, *supra* note 106, ¶ 1.4.
- 134 *Id.*
- 135 *Id.* ¶ 1.6.
- 136 *Id.*
- 137 *Id.* ¶ 5.1 (“At-Risk Populations”).

- 138 IRWIN A. HYMAN & PAMELA A. SNOOK, DANGEROUS SCHOOLS: WHAT WE CAN DO ABOUT THE PHYSICAL AND EMOTIONAL ABUSE TO OUR CHILDREN 183-85 (1999) (noting that emotional abuse in schools can cause emotional and behavioral problems such as anxiety, depression, low self-esteem, difficulty focusing on or completing tasks, hyperactivity, and angry or oppositional behavior).
- 139 2015-CRFO-0000800378.
- 140 *Id.*
- 141 2015-CRFO-00802940-41.
- 142 *Id.*
- 143 2015-CRFO-0000801643.
- 144 2015-CRFO-0000803044.
- 145 2015-CRFO-0000803827-28.
- 146 *Id.*
- 147 *Id.*
- 148 2015-CRFO-0000801527.
- 149 2015-CRFO-0000801706.
- 150 2015-CRFO-0000801744.
- 151 2015-CRFO-0000800372.
- 152 2015-CRFO-0000800470.
- 153 2015-CRFO-0000801643.
- 154 2015-CRFO-0000800198.
- 155 2015-CRFO-0000800432.
- 156 2015-CRFO-0000800195.
- 157 2015-CRFO-0000800427.
- 158 2015-CRFO-00802957.
- 159 2015-CRFO-0000800511; *see also* 2015-CRFO-0000801644 (recounting Taser abuse in detention).
- 160 2015-CRFO-0000800356.
- 161 *See supra* notes 75-87 and accompanying text.
- 162 8 U.S.C. § 1232(b)(3) (2013).
- 163 *Id.* § 1232(a)(2)(A)-(B).
- 164 *See generally* HRW IN THE FREEZER, *supra* note 4, at 10. *See also, e.g.,* Letter from Nat'l Immigr. Project *et al.*, to DHS CRCL & DHS OIG, Administrative Complaint Re: Extreme Temperatures in Short-Term U.S. Customs and Border Patrol Detention Facilities along the U.S. Mexico Border 3 (Feb. 2, 2016), <https://bit.ly/2IFhLmK>; AIC, FORMER DETAINEES DESCRIBE HORRIFIC CONDITIONS IN CBP DETENTION (June 2015), <https://bit.ly/2KI6Dsq>; DANIEL E. MARTÍNEZ ET AL., AIC IMMIGR. POL'Y CTR., BORDERING ON CRIMINAL: THE ROUTINE ABUSE OF MIGRANTS IN THE REMOVAL SYSTEM PART 1: MIGRANT MISTREATMENT WHILE IN U.S. CUSTODY (Dec. 2013); ANA ARBOLEDA ET AL., FLORENCE IMMIGRANT & REFUGEE RTS. PROJECT, SEEKING PROTECTION, ENDURING PROSECUTION: THE TREATMENT & ABUSE OF UNACCOMPANIED UNDOCUMENTED CHILDREN IN SHORT-TERM IMMIGRATION DETENTION (Aug. 2009), <https://bit.ly/1SMrdmF>.
- In 2015, a coalition of advocates filed a class-action lawsuit challenging detention conditions in CBP facilities. The complaint alleges that Tucson Sector Border Patrol holds men, women, and children in freezing, overcrowded, and filthy cells for days at a time, in violation of the U.S. Constitution and CBP's own policies. Additional information on the lawsuit, including relevant pleadings, detainee affidavits, and other materials, is available at <https://www.americanimmigrationcouncil.org/litigation/challenging-unconstitutional-conditions-cbp-detention-facilities>.
- 165 HRW IN THE FREEZER, *supra* note 4, at 10.

166 For photographic examples of inhumane and unsanitary CBP detention conditions, see AIC, Photo Exhibits in *Doe v. Johnson*, Aug. 16, 2016, <https://www.americanimmigrationcouncil.org/content/photo-exhibits-doe-v-johnson> (last visited May 15, 2018).

167 HRW IN THE FREEZER, *supra* note 4, at 36.

168 The *Flores* Settlement, *supra* note 75, ¶ 11.

169 2015-CRFO-00802892.

170 2015-CRFO-00802893.

171 *Id.*

172 *Id.*

173 2015-CRFO-00802909.

174 *Id.*

175 *Id.*

176 2015-CRFO-0803542-43.

177 *Id.*

178 The *Flores* Settlement, *supra* note 75, ¶ 12A.

179 Memorandum from U.S. Border Patrol Chief David V. Aguilar Re: Hold Rooms and Short Term Custody to All Chief Patrol Agents ¶¶ 5.1, 6.10, 6.11, 6.14 (June 2, 2008) [hereinafter CBP MEMO RE SHORT TERM CUSTODY], forms. nomoredeaths.org/wp-content/uploads/2014/10/Hold-Rooms-Short-Term-Custody-Policy.pdf. This document, which was obtained through FOIA, contains various redactions pursuant to 5 U.S.C. § 552(b) (2016).

180 CBP MEMO RE SHORT TERM CUSTODY, *supra* note 179, ¶ 6.16.

181 2015-CRFO-0000801660.

182 2015-CRFO-0000800550; 2015-CRFO-0000800716-17.

183 2015-CRFO-0000801644; 2015-CRFO-0000801712; 2015-CRFO-0000801715; 2015-CRFO-0000802345.

184 2015-CRFO-0000801643; 2015-CRFO-0000801712.

185 2015-CRFO-0000801648.

186 2015-CRFO-0000801645.

187 2015-CRFO-0000800549-50.

188 2015-CRFO-0000800209; 2015-CRFO-0000801644; 2015-CRFO-0000801646; 2015-CRFO-0000801648.

189 2015-CRFO-0000803554.

190 The *Flores* Settlement, *supra* note 75, ¶ 12A.

191 CBP MEMO RE SHORT TERM CUSTODY, *supra* note 179, ¶¶ 6.5.2, 6.8.

192 2015-CRFO-0000802345.

193 2015-CRFO-0000801644 (child reported being provided “moldy bread which made her ill”).

194 2015-CRFO-0000801643.

195 2015-CRFO-0000801642 (child “alleges lack of food while in Border Patrol custody for over 72 hours” and states that “while at the station where he spent a full night, he was never provided food or water when he requested it and that two different agents denied food to everyone in his hold room”).

196 2015-CRFO-0000801456.

197 2015-CRFO-0000800357 (child reported agent who reacted angrily and “called him a ‘pig’” when he asked for food); 2015-CRFO-0000801813-14 (child reported that agents did not give him any food “for about 3 days,” was “only given water,” and was not fed “until the 4th day” when he was given “a bologna sandwich and a juice”).

198 2015-CRFO-00008001646.

199 2015-CRFO-0000801715-17.

200 2015-CRFO-0000800183.

201 2015-CRFO-0000801644 (complaint 14-09-CBP-0255); 2015-CRFO-0000801645-46 (complaint 14-09-CBP-0240); 2015-CRFO-0000801648 (complaint 14-09-CBP-0247).

202 The *Flores* Settlement, *supra* note 75, ¶ 12A. According to CBP policy, medical emergencies may include “heart attack” or “difficulty breathing.” CBP TEDS POLICY, *supra* note 106, ¶ 4.10.

203 2015-CRFO-0000801640-51.

204 *Id.* at 2015-CRFO-0000801642.

205 2015-CRFO-0000800818-26 (underlying complaint including the child’s description of the abuse, which is also referenced at 2015-CRFO-0000801642 as part of a CRCL memo compiling numerous allegations).

206 2015-CRFO-0000800822.

207 *Id.*

208 2015-CRFO-0000801648.

209 2015-CRFO-0000801643.

NB: EARM refers to the “Enforce Alien Removal Module,” a case processing module used by federal immigration enforcement officials. DORA SCHIRO, U.S. IMMIGR. & CUSTOMS ENFORCEMENT, IMMIGRATION DETENTION OVERVIEW & RECOMMENDATIONS 17 (Oct. 6, 2009), <https://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>.

210 2015-CRFO-0000801643.

211 *Id.*

212 2015-CRFO-0000801644.

213 *Id.*

214 2015-CRFO-0000801645.

215 2015-CRFO-0000801646-47.

216 *Id.*

217 *Id.* at 2015-CRFO-0000801647.

218 2015-CRFO-0000800715-17.

219 2015-CRFO-0000801659.

220 *Id.*

221 *Id.*

222 8 U.S.C. § 1232 (2013).

223 2015-CRFO-0000800737.

224 2015-CRFO-00802892-93; 2015-CRFO-0000803827-28.

225 The *Flores* Settlement, *supra* note 75, ¶ 12A.

226 See generally sources cited *supra* note 164.

227 See, e.g., 2015-CRFO-00800716-17; 2015-CRFO-00802908; 2015-CRFO-00803637.

228 2015-CRFO-0000801644.

229 *Id.*

230 2015-CRFO-0000801645.

231 2015-CRFO-0000800134.

232 2015-CRFO-0000800066.

233 *Id.*

234 2015-CRFO-0000803637.

235 2015-CRFO-0000803044.

236 *Sexual Abuse in Immigration Detention*, ACLU, <https://www.aclu.org/issues/immigrants-rights/immigrants-rights-and-detention/sexual-abuse-immigration-detention-0> (last visited May 16, 2018).

- 237 The *Flores* Settlement, *supra* note 75, ¶¶ 12A, 25.
- 238 DHS OIG, CBP NEEDS TO BETTER PLAN ITS IMPLEMENTATION OF THE DHS PRISON RAPE ELIMINATION ACT REGULATIONS 2 (Mar. 31, 2016) [hereinafter DHS OIG REPORT RE CBP PREA IMPLEMENTATION], <https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-51-Mar16.pdf>.
- 239 The DHS PREA regulations are codified at 6 C.F.R. § 115 (2014); see Standards to Prevent, Detect, & Respond to Sexual Abuse & Assault in Confinement Facilities for the U.S. Dep't of Homeland Sec., 79 Fed. Reg. 13100-01 (Mar. 7, 2014) (to be codified at 6 C.F.R. pt. 115). See *also supra* note 95 and accompanying text.
- 240 See Memorandum from U.S. Customs & Border Protection Commissioner R. Gil Kerlikowske Re: CBP Policy on Zero Tolerance of Sexual Abuse and Assault to All CBP Employees (Mar. 11, 2015) [hereinafter CBP Zero Tolerance Policy], <https://www.cbp.gov/sites/default/files/documents/zpt-c1-signed-memo.pdf>; see *also* DHS OIG REPORT RE CBP PREA IMPLEMENTATION, *supra* note 238, at 3.
- 241 CBP Zero Tolerance Policy, *supra* note 240, at 2.
- 242 *Id.*
- 243 *Id.*
- 244 *Id.*
- 245 See, e.g., 2015-CRFO-0000800049; 2015-CRFO-0000800259; 2015-CRFO-0000800278; 2015-CRFO-0000800432; 2015-CRFO-0000800730; 2015-CRFO-0000801442; 2015-CRFO-0000801490-92; 2015-CRFO-0000801643; 2015-CRFO-0000801646.
- 246 2015-CRFO-0000800049.
- 247 2015-CRFO-0000800432.
- 248 2015-CRFO-0000801646.
- 249 2015-CRFO-0000802923-24.
- 250 2015-CRFO-0000801643.
- 251 2015-CRFO-0000800729; see *also* 2015-CRFO-0000801642 (teenage boy reported that Border Patrol agents instructed him “to remove his clothing, searched him, and continued to interview the unclothed [child] about his age”).
- 252 2015-CRFO-0000801700.
- 253 2015-CRFO-0000800007.
- 254 2015-CRFO-0000801441-42.
- 255 *Id.*
- 256 *Id.*
- 257 See, e.g., 2015-CRFO-0000801644; 2015-CRFO-0000801646; 2015-CRFO-0000801648.
- 258 2015-CRFO-0000800049 (“The room was very, very cold. On top of this, they took away my sweater, my shoes and bag. I was provided with a blanket[] but it smelt [sic] so bad that I could not use it.”).
- 259 *Id.*
- 260 2015-CRFO-0000801660.
- 261 2015-CRFO-0000801643.
- 262 *Id.*; 2015-CRFO-0000802857; 2015-CRFO-0000803557.
- 263 2015-CRFO-0000802864.
- 264 2015-CRFO-00802909 (child verbalized having nightmares about the days he spent in the immigration detention center and stated, “I have never felt this fear before”).
- 265 2015-CRFO-00802919.
- 266 *Id.*
- 267 2015-CRFO-0000802952.
- 268 2015-CRFO-0000801644.

269 2015-CRFO-0000801647.

270 2015-CRFO-0000801648.

271 2015-CRFO-0000801649.

272 2015-CRFO-0000800284.

273 8 U.S.C. § 1232(a) (2013).

274 U.S. CUSTOMS & BORDER PROTECTION, SHORT-TERM DETENTION STANDARDS AND OVERSIGHT: FISCAL YEAR 2015 REPORT TO CONGRESS 3 (Dec. 8, 2015) [hereinafter CBP FY2015 DETENTION REPORT], <https://www.dhs.gov/sites/default/files/publications/CBP%20-%20Short-Term%20Detention%20Standards%20and%20Oversight.pdf>.

275 See *supra* notes 82–85 and accompanying text.

276 8 U.S.C. §1232(a)(2) (2013).

277 KANDEL, *supra* note 3, at 5.

278 CBP FY2015 DETENTION REPORT, *supra* note 274, at 3.

279 8 U.S.C. § 1232(b)(1)–(2) (2013).

280 2015-CRFO-0000801726 (when interviewed, the processing Border Patrol agent denied having ever mishandled or thrown away any detainee’s birth certificate).

281 2015-CRFO-0000803212.

282 *Id.*

283 2015-CRFO-0000803212–13.

284 2015-CRFO-0000801646.

285 See generally ACLU AMERICAN EXILE, *supra* note 65, at 10–30 (providing overview of various summary deportation procedures, including expedited removal, reinstatement of removal, administrative voluntary departure / voluntary return, administrative removal, and stipulated removal).

286 The “Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (collecting cases).

287 2015-CRFO-0000800198.

288 2015-CRFO-0000800266–67.

289 2015-CRFO-0000800007.

290 2015-CRFO-00801820.

291 2015-CRFO-0000800357.

292 2015-CRFO-0000800050.

293 CBP MEMO RE SHORT TERM CUSTODY, *supra* note 179, ¶ 6.13.

294 *Id.*

295 *Id.* ¶ 6.13.1.

296 2015-CRFO-0000800049–50.

297 *Id.*

298 2015-CRFO-0000800143.

299 *Id.*

300 *Id.*

301 *Id.*

302 2015-CRFO-0000801610.

303 See *supra* notes 51–53.

304 Office for Civil Rights & Civil Liberties, U.S. DEP’T OF HOMELAND SEC., <https://www.dhs.gov/office-civil-rights-and-civil-liberties> (last visited May 15, 2018).

- 305 *Office of Inspector General: About Us*, U.S. DEP'T OF HOMELAND SEC., <https://www.oig.dhs.gov/about> (last visited May 15, 2018).
- 306 2015-CRFO-00802343 (Memorandum from DHS Inspector General John Roth Re: Oversight of Unaccompanied Alien Children to DHS Secretary Jeh C. Johnson 1 (July 30, 2014) (announcing OIG's intention to perform unannounced site visits using "a checklist that incorporates requirements of (1) The *Flores v. Reno* Settlement Agreement and (2) CBP's internal policies that address the 2008 William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPPRA)."). Just a few months after issuing this memo, OIG suddenly and inexplicably announced that it was curtailing routine inspections of CBP detention facilities.
- 307 See, e.g., Margo Schlanger, *Offices of Goodness: Influence Without Authority in Federal Agencies*, 36 CARDOZO L. REV. 53, 85 (2014) (noting that CRCL "is authorized only to make recommendations to the [DHS] Secretary and DHS offices, and required then to report to Congress those recommendations and the agency response" (citing 6 U.S.C. § 345; 42 U.S.C. § 2000ee-1)); see also *Legal Authorities for the Office of Civil Rights & Civil Liberties*, U.S. DEP'T OF HOMELAND SECURITY, <https://www.dhs.gov/legal-authorities-office-civil-rights-and-civil-liberties> (last visited May 15, 2018).
- 308 E.g., 2015-CRFO-0000801744 (a November 2014 email from CRCL regarding a complaint referred to CRCL from ORR; in the email, CRCL acknowledges receiving the referral *five months earlier*, in July 2014).
- 309 See, e.g., 2015-CRFO-0000800005 (closing a complaint because the agents involved "provided accounts that [the child] was not mistreated").
- 310 2015-CRFO-0000801721 (identifying inconsistent records); 2015-CRFO-00802344-45 (acknowledging deficiencies in record keeping pertaining to UACs).
- 311 2015-CRFO-0000801721.
- 312 2015-CRFO-0000802343-45.
- 313 *Id.* at 2015-CRFO-0000802345.
- 314 See, e.g., 2015-CRFO-00802911; 2015-CRFO-00803207.
- 315 See, e.g., 2015-CRFO-0000803074 ("CRCL has opened an investigation addressing issues similar to the ones you raised. As we complete that investigation, we will take into account the issues described in your complaint and may incorporate information, as appropriate, when we prepare our repost to U.S. Customs and Border Protection.").
- 316 See, e.g., 2015-CRFO-0000800510-13.
- 317 2015-CRFO-0000800228-29.
- 318 2015-CRFO-0000801506.
- 319 2015-CRFO-0000800042; see also 2015-CRFO-0000800359-60.
- 320 2015-CRFO-0000800047-52 (original complaint); 2015-CRFO-0000800039 (letter closing complaint).
- 321 2015-CRFO-0000800737.



THE UNIVERSITY OF
CHICAGO
THE LAW SCHOOL
INTERNATIONAL HUMAN RIGHTS CLINIC

ACLU San Diego and
Imperial Counties
**BORDER
LITIGATION
PROJECT**

ACLU
**BORDER
RIGHTS**