



VIA OVERNIGHT MAIL AND ELECTRONIC MAIL

February 2, 2016

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RE: Extreme temperatures in short-term U.S. Customs and Border Patrol detention facilities along the U.S. – Mexico border

Dear Mr. Roth and Ms. Mack:

The Programa de Defensa e Incidencia Binacional (PDIB), the National Immigration Project of the National Lawyers Guild, and the American Civil Liberties Union of New Mexico submit this complaint on behalf of migrants exposed to extreme temperatures in short-term detention facilities maintained by U.S. Customs and Border Protection (CBP) in the southern border region.

On October 5, 2015, CBP published an “agency-wide policy that sets forth the first nationwide standards which govern CBP’s interaction with detained individuals,” entitled “National Standards for Transport, Escort, Detention and Search” (TEDS Standards). These new standards address temperature controls in short-term detention in facilities managed by CBP. The undersigned organizations do not agree that the TEDS Standards establish acceptable or

appropriate standards regarding the temperature of the holding cells. Moreover, recent interviews with formerly detained individuals demonstrate that CBP continues to subject migrants to extreme temperatures that fail to comply with even these inadequate Standards.

The undersigned organizations strongly urge your offices to investigate CBP's continued practice of subjecting detainees to extreme temperatures in short-term detention facilities— in violation of the TEDS Standards, agency memoranda, and detainees' constitutional and human rights. **Part I** of this complaint briefly describes the diverse reports highlighting the issue of extreme temperature in short-term detention facilities. **Part II** addresses the recent change in agency policy regarding short-term detention facilities, and how, notwithstanding the change in policy, formerly detained individuals still experience extreme temperatures. **Part III** concludes with a series of recommendations for implementing and monitoring CBP's policies on temperature in short-term detention facilities.

Part I. Public outcry: extensive and diverse publications highlight the extreme temperatures migrants suffer in short-term detention facilities.

Since at least 2009, CBP's failure to provide adequate conditions in short-term detention facilities has been highly publicized. Reports, media coverage, legislation, lawsuits, and international criticism have called attention to the sole focus of this complaint: extreme temperatures in short-term detention facilities.

Based upon hundreds of interviews with formerly detained individuals, various nonprofit organizations have reported that detained individuals in CBP short-term detention facilities experience extreme temperatures.¹ In 2009, the Florence Immigrant and Refugee Rights Project found that 85% of formerly detained children reported that the holding cells “were kept at an excessively low temperature.”² Subsequently, in 2011, the organization No More Deaths cited extreme temperatures as one of the most commonly reported forms of inhumane detention

¹ See, e.g., *Former Detainees Describe Horrific Conditions in CBP Detention*, AMERICAN IMMIGRATION COUNCIL, available at <http://bit.ly/1ZWstmn> (providing testimonials from formerly detained individuals about low temperatures in CBP holding cells) (last visited Jan. 15, 2016); Perla Del Angel et. al, *Violaciones a derechos humanos de personas migrantes mexicanas detenidas en los Estados Unidos [Human Rights Violations Against Mexican Migrants Detained in the United States]*, PROGRAMA DE DEFENSA E INCIDENCIA BINACIONAL DE LA INICIATIVA FRONTERA NORTE DE MEXICO 23 (May 2013) available at <http://bit.ly/1JIYixg> (finding that migrants are exposed to low temperatures that cause numbness of extremities and a higher risk of respiratory issues); *Report to the United Nations Working Group on Arbitrary Detention: Detention of Migrants in the United States*, THE ADVOCATES FOR HUMAN RIGHTS & DETENTION WATCH NETWORK 19 (Jan. 20, 2014) available at <http://bit.ly/1KHYP60> (finding “[o]f particular concern” CBP’s “practice of holding detained immigrants in very cold cells”).

² Ana Arboleda & Dorien Ediger-Seto, *Seeking Protection, Enduring Prosecution: The Treatment and Abuse of Unaccompanied Undocumented Children in Short-Term Immigration Detention*, FLORENCE IMMIGRANT AND REFUGEE RIGHTS PROJECT 13 (Aug. 2009) available at <http://bit.ly/1SMrdmF>.

facility conditions.³ In 2013, Americans for Immigrant Justice reported that CBP holding cells were so cold that “detainees’ fingers and toes turn blue and their lips chap and split open due to the cold.”⁴ In 2014, the Guatemala Acupuncture and Medical Aid Project found that 94% of the formerly detained adults interviewed experienced sleep deprivation because of “too cold” or “freezing” temperature in holding cell.⁵ Moreover, in September 2015, the Jesuit Conference of Canada and the United States as well as the Kino Border Initiative (Iniciativa Kino para la Frontera) reported that detained migrants continue to experience “cold, overcrowded, [and] filthy conditions” in holding cells.⁶ A report published in December 2015 by the American Immigration Council found that, according to PDIB data collected between June and November 2015, on average three out of every four individuals detained in short-term detention facilities in Rio Grande Valley Sector, Tucson Sector and El Paso Sector were exposed to extreme cold temperatures.⁷

These reports coincide with national media coverage exposing the terrible conditions that migrants confront in short-term detention facilities.⁸ *Mother Jones* reported that “few forms of abuse are more pervasive than the *hielera* – the Spanish word for ‘icebox’ that detainees and guards alike use to describe CBP’s frigid holding cells.”⁹ CBS DC highlighted an immigrant teen’s testimony at an ad-hoc hearing before the Congressional Progress Caucus where he

³ *A Culture of Cruelty: Abuse and Impunity in Short-Term U.S. Border Patrol Custody*, NO MORE DEATHS, NO MAS MUERTES 21 (2011) available at <http://bit.ly/1GvjHFc>.

⁴ *The “Hieleras”*: A Report on Human & Civil Rights Abuses Committed by U.S. Customs and Border Protection, AMERICANS FOR IMMIGRANT JUSTICE 3 (Aug. 2013), available at <http://bit.ly/1pjuZVB>.

⁵ *Deprivation, not Deterrence*, GUATEMALA ACUPUNCTURE AND MEDICAL AID PROJECT 12 (Oct. 2014) available at <http://bit.ly/1KHZf3P>.

⁶ Michael S. Danielson, *Our Values on the Line: Migrant Abuses and Family Separation at the Border*, JESUIT CONFERENCE OF CANADA AND THE UNITED STATES & KINO BORDER INITIATIVE – INICIATIVA KINO PARA LA FRONTERA 10 (Sept. 2015) available at <http://bit.ly/1Utr4Ch>.

⁷ Guillermo Cantor, *Hieleras (Iceboxes) in the Rio Grande Valley Sector: Lengthy Detention, Deplorable Conditions, and Abuse in CBP Holding Cells*, AMERICAN IMMIGRATION COUNCIL 8 (Dec. 2015) available at <http://bit.ly/1SIR4Aq>.

⁸ See, e.g., Andrew Becker, *Immigrants Held in Border Deep Freezers*, THE DAILY BEAST (Nov. 19, 2013, 5:45 AM), available at <http://thebea.st/1khABsR> (highlighting the experiences of a recently arrived family detained for six days in a short-term detention facility); Cindy Carcamo & Richard Simon, *Immigrant Groups Complain of ‘Icebox’ Detention Cells*, LOS ANGELES TIMES (Dec. 5, 2013) available at <http://lat.ms/1jFfVvKH>; Alfonso Chardy, *Immigrants Recount Horror of Being Detained in ‘Iceboxes’ Before Transfer to South Florida*, MIAMI HERALD (April 19, 2014 3:19 PM) available at <http://hrlid.us/1QHjnJQ> (highlighting that migrants in short-term detention facilities are detained in “cells kept inhumanely cold”).

⁹ Molly Redden, *Why are Immigration Detention Facilities so Cold?*, MOTHER JONES (July 16, 2014, 5:00 AM) available at <http://bit.ly/1wvYKCh>.

testified that his time in the “ice boxes was the worst experience of [his] life.”¹⁰ Similarly, the National Public Radio explored the story of 11-year-old Sixta, who said that “the [holding] room was kept so frigid [that] she caught a cold, and it went untreated for so long that she started bleeding from her nose and throat.”¹¹

Such extensive publicity on extreme temperatures in short-term detention facilities influenced political action. Senator Barbara Boxer (D-Calif.) and Representative Lucille Roybal-Allard (CA-40) introduced separate legislation to protect individuals held in CBP short-term detention facilities. Specifically, the Protect Family Values at the Border Act required that regulations ensure that individuals in CBP short-term detention facilities receive “adequate lighting and *climate control that achieves a reasonable indoor temperature.*”¹² While neither legislation was ultimately successful, Senator Boxer continued to push the matter when, in 2014, she sent a letter to President Obama urging him to issue an executive order implementing humane standards for short-term detention facilities.¹³

The concerns addressed by the proposed Protect Family Values at the Border Act and the Humane Short Term Custody Act have been echoed in multiple lawsuits denouncing conditions experienced by detainees in short-term detention. In *Alba Quiñonez Flores v. United States of America*, the plaintiff brought a claim under the Federal Tort Claims Act for damages resulting from “CBP’s negligent operation of substandard holding facilities,” which was “held at an unreasonably cold temperature the officers knew or should have known would cause extreme discomfort and pose a health risk” to the plaintiff.¹⁴ Similarly, in *Doe v. Johnson*, No. 15-00250 (D. Ariz., filed June 8, 2015), plaintiffs challenge the “harsh and degrading conditions” in the Tucson Sector CBP facilities, including extreme temperatures. On January 11, 2016, a federal district court judge denied the government’s motion to dismiss in part, finding that, “taken as true,” the complaint demonstrates that the plaintiffs “are likely to suffer deprivations of [...] warmth”¹⁵ in CBP Tucson Sector facilities and, furthermore, certified a class of plaintiffs that includes “[a]ll individuals who are now or in the future will be detained for one or more nights at

¹⁰ *Immigrant Teens Claims He was Mistreated by Border Officials: ‘My Time in the Ice Boxes Was Worst Experience of My Life,’* CBS DC (July 30, 2014 9:05 AM) available at <http://cbsloc.al/1qocv3R>.

¹¹ John Burnett, *Amid Wave of Child Immigrants, Reports of Abuse by Border Patrol*, NATIONAL PUBLIC RADIO (July 24, 2014, 2:21 PM) available at <http://n.pr/1nwd0K9>.

¹² H.R.3130 – Protect Family Values at the Border Act, CONGRESS.GOV, available at <http://1.usa.gov/1Tq7Sai> (last visited Jan. 15, 2016) (Emphasis added). See also, Barbara Boxer, *Boxer Introduces Bill to Ensure Humane Treatment at Customs and Border Patrol Detention Facilities* (Dec. 12, 2013) available at <http://1.usa.gov/1Se6Z5z> (last visited Jan. 15, 2016).

¹³ Barbara Boxer, *Boxer Urges President Obama to Issue Executive Order to Ensure Humane Treatment at Border Detention Facilities* (June 10, 2014) available at <http://1.usa.gov/1QvvDLx> (last visited Jan. 15, 2016).

¹⁴ Complaint at 1, 12, *Alba Quiñonez Flores v. United States of America*, No. 1:14-cv-03166-JBW-RML (May. 20, 2014) available at <http://bit.ly/1JIZTmE>.

¹⁵ Order at 8, *Unknown Parties v. Johnson*, No. CV 15-00250-TUC-DCB (D. Ariz. Jan. 11, 2016) available at <http://bit.ly/1WQ0Z1S>.

a CBP facility within the Border Patrol’s Tucson Sector.”¹⁶ Additional claims against CBP that similarly arise from unconstitutional detention conditions, including extreme temperatures, are available for public viewing on <http://HoldCBPAccountable.org/>.¹⁷

Significantly, many migrants are attempting to escape traumatic circumstances and the brutal cold temperatures they experience in such conditions can intensify their trauma.¹⁸ Laurie Cook Heffron, Dean’s Post-Doctoral Fellow in Immigration and Violence Against Women and Lecturer at the University of Texas at Austin School of Social Work, describes that both short-term detention and prolonged detention:

[l]ead to the deterioration of mental health and well being. The isolating and controlled environment of detention exacerbates pre-existing mental health conditions and/or generates negative mental health outcomes for women and children. Furthermore, detention prevents trauma survivors from receiving much-needed services and supports from mental health professionals and from their family members in the United States.¹⁹

A recent Unitarian Universalist Service Committee report entitled *No Safe Haven Here: Children and Families Face Trauma in the Hands of U.S. Immigration* corroborates these findings. The report found that mothers and children reported “significant distress” during their time in short-term detention facilities due to the cold temperatures.²⁰

Foreign media and international human rights organizations also have addressed the extreme temperatures in detention facilities that exacerbate migrant’s pre-existing mental health

¹⁶ Order at 22, *Unknown Parties v. Johnson*, No. CV 15-00250-TUC-DCB (D. Ariz. Jan. 11, 2016) available at <http://bit.ly/20vnrzC>.

¹⁷ See, e.g., *Honduran Family vs. CBP* (FTCA administrative complaint against the United States denouncing hieleras), HOLD CBP ACCOUNTABLE available at <http://bit.ly/20vrmfM> (alleging that the claimant’s experience in the hieleras constitute “negligence, gross negligence, invasion of privacy, false imprisonment, and intentional infliction of emotional distress on the part of CBP law enforcement officers and supervisors”) (last visited Jan. 19, 2016); *Complaint by Immigration Rights Groups to the Department of Homeland Security*, HOLD CBP ACCOUNTABLE available at <http://bit.ly/11XMcET> (summarizing the Civil Rights and Civil Liberties complaint filed by immigrant rights groups about the systemic abuse of unaccompanied immigrant children in short-term detention facilities).

¹⁸ See, e.g., Elizabeth Salerno Valdez, Luis A. Valdez & Samantha Sabo, *Structural Vulnerability Among Migrating Women and Children Fleeing Central America and Mexico: The Public Health Impact of “Humanitarian Parole,”* FRONT PUB. HEALTH 3 (2015) available at <http://1.usa.gov/1nqM7L7> (summarizing data about trauma experienced by migrants in detention facilities after fleeing their home countries to request asylum).

¹⁹ Declaration of Laurie Cook Heffron at 5, *R.I.L.R v. Johnson*, No. 15-11 (JEB) (D.D.C. Feb. 20, 2015) available at <http://bit.ly/1Utxf9H>.

²⁰ Amber D. Moulton, *No Safe Haven Here: Children and Families Face Trauma in the Hands of U.S. Immigration*, UNITARIAN UNIVERSALIST SERVICE COMMITTEE 4 available at <http://bit.ly/1PIBSm8> (last visited Jan.15, 2016).

conditions.²¹ For example, in its 2014 concluding observations, the United Nations Committee Against Torture stated its concern over reports of “substandard conditions of detention in immigration facilities” in the United States.²² Similarly, after visiting the “inadequate,” “inappropriate and unacceptable” short-term detention facilities along the U.S. southern border in September 2014, the Inter-American Commission on Human Rights recommended improving the conditions of detention.²³ In particular, the Commission suggested raising the temperatures in the so-called *hieleras* or holding facilities” and explained:

If no component of DHS controls the temperature of the facility, then DHS should coordinate immediately with the entity that does, in order to ensure that the rooms are maintained at appropriate temperatures for persons who may have been walking in the desert or extremely hot weather for days prior to apprehension.²⁴

International and domestic criticism highlight the public outcry over the use of extreme temperatures in short-term detention facilities. Even with the publication of CBP standards in 2008 and 2015, discussed below, migrants continue to experience extreme temperatures in short-term detention facilities.

Part II. Even after the TEDS Standards, CBP continues to disregard the requirement that hold cell temperatures must be kept at a “reasonable and comfortable range” in short-term detention facilities.

Despite the voluminous amount of national and international publicity and reports addressing the extreme temperatures experienced by detainees in short-term detention facilities, CBP has provided scant guidance addressing this issue. This section discusses that guidance and CBP’s failure to abide by it.

²¹ See, e.g., Diana Arias, *Salvadoreña detenida con su hijo narra humillaciones sufridas en centro de detención [Salvadoran detained with her son tells humiliations suffered in detention facility]* LA PAGINA (July 06, 2015) available at <http://bit.ly/1WQcOFk> (El Salvador); *Demandan a Patrulla Fronteriza por arrestos en ‘condiciones inhumanas,’ [Border Patrol Sued for Inhumane Conditions]*, ZOCALO SALTILLO (June 6, 2015 11:53 AM) available at <http://bit.ly/1Mttv3q> (Mexico); Hector Silva Avalos, *El infierno en las hieleras [Hell in the “hieleras”]* PLAZA PÚBLICA (July 21, 2014) available at <http://bit.ly/1PIWgzU> (Guatemala), Ed Pilkington, *Freezing cells and sleep deprivation: the brutal conditions migrants still face after capture*, THE GUARDIAN (Dec. 12, 2014) available at <http://bit.ly/1uxlzVi> (United Kingdom).

²² Comm. Against Torture, *Concluding observations on the combined third to fifth periodic reports of the United States of America*, U.N. Doc. CAT/C/USA/CO/3-5 (Dec. 19 2014) available at <http://bit.ly/1DQua9K>.

²³ *Refugees and Migrants in the United States: Families and Unaccompanied Children*, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 19, 76 (July 24, 2015), available at <http://bit.ly/1NoADBv>.

²⁴ *Id.* at 109.

A. Agency policy and memorandum.

A 2008 memorandum entitled *Hold Rooms and Short Term Custody* briefly discusses temperature conditions in short-term detention. The 2008 memorandum states that “[a]ll detainees will be held under safe and humane conditions,” and similarly, that “[a]ll detainees will be held under humane conditions of confinement that provide for their well being and general good health.”²⁵ The TEDS Standards reaffirmed this guidance, providing that:

§4.7 Temperature Controls: When it is within CBP control, officers/agents should maintain hold room temperature within a reasonable and comfortable range for both detainees and officer/agents. Under no circumstances will officers/agents use temperature controls in a punitive manner.²⁶

With regards to unaccompanied children, the TEDS Standards § 5.6 also require that hold rooms provide “adequate temperature control and ventilation.”²⁷

B. CBP’s failure to comply with the TEDS Standards.

The results of 126 interviews with migrants conducted by the Programa de Defensa e Incidencia Binacional (PDIB) after DHS published the TEDS Standards evidences that CBP is not complying with the TEDS Standards governing temperature control. Based on data maintained by PDIB, approximately 126 individuals reported in interviews conducted *after* October 5, 2015 (the date of publication of the TEDS Standards) that they were exposed to extremely cold temperatures in short-term CBP facilities (principally in Texas). Approximately 83% of these individuals reported that they received a “blanket,” which was usually no more than a flimsy aluminum sheet, while approximately 17% did not. Moreover, nearly 97% of those individuals who received a blanket indicated that it was not sufficient to combat the cold.²⁸

A woman apprehended at the U.S. – Mexico border on December 4, 2015, describes how “even [her] bones ached from the cold” and that she was “shaking a lot” while in a CBP short-term detention facility. Another interviewee, apprehended on November 28, 2015 at the McAllen Border Patrol Station in McAllen, Texas, described how “everything was [so] frozen” that “the days became eternal” for him. Furthermore, he believed that the cold conditions in the short-term detention facility were “intentional” and “inhumane.” Similarly, a man detained in McAllen Border Patrol Station in McAllen told a PDIB interviewer that he had “never been in such a cold place. It’s honestly very difficult. I wouldn’t wish it on anyone.” Another man, detained at the El Paso Border Patrol Station, stated that the holding cell was “very cold,” notwithstanding that

²⁵ Memorandum from David V. Aguilar, Chief, U.S. Border Patrol, *Hold Rooms and Short Term Custody*, U.S. CUSTOMS AND BORDER PATROL (June 2, 2008) (Aguilar Memo) available at <http://bit.ly/1nBc6Ab> (last visited Jan. 15, 2016).

²⁶ *National Standards on Transport, Escort, Detention and Search*, U.S. CUSTOMS AND BORDER PROTECTION 16 (§ 4.7) (Oct. 2015) available at <http://1.usa.gov/1nBccYo>.

²⁷ *Id.* at 23 (§ 5.6).

²⁸ Many of the interviewees referenced in the following three paragraphs wished to remain anonymous; records of their interviews are in the possession of PDIB.

he was wet when apprehended by CBP. Even though the holding cell was extremely cold, CBP did not provide him with dry clothing.

While some PDIB interviewees reported that CBP officials claimed that they were unable to raise the temperature. One individual reported that, when he asked a CBP officer to raise the temperature of the holding cell, the officer said “he could not change it.” Another interviewee reported that a CBP officer told him that he could not change the temperature in the hold cell because “it was part of the regulation.”

Significantly, a migrant apprehended on November 16, 2015, reported that when he asked the CBP officer to raise the temperature, the CBP officer proceeded to lower the temperature. This CBP officer directly violated § 4.7 of the TEDS Standards when he used temperature controls in a punitive manner.

The results of these interviews demonstrate that individuals detained in short-term detention facilities continue to experience extreme temperatures and that CBP is not following the new TEDS standards.

Part III. Recommendations and Conclusion.

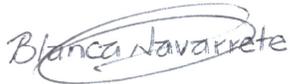
To address the issues of extreme temperature in short-term detention facilities, DHS should:

- Create a transparent temperature monitoring system for all short-term detention facilities that requires a CBP officer to monitor, record, and publish the temperature of each hold cell to an online platform accessible to the public.
- Require CBP officers to record every detainee request to change hold cell temperature. On a weekly basis, CBP officer will publish this record to an online platform accessible to the public.
- Create a free, confidential emergency hotline in each facility so that individuals can call to report abuse 24 hours a day. On this hotline, detainee or their families, friend or attorneys, can report extreme temperatures in hold cells.
- Allow migrant rights organizations unannounced entrance to short-term detention facilities on a regular basis to monitor the temperatures of the holding cells.
- Allow migrants to keep all clothing that they are wearing at the time of apprehension.
- Require CBP to provide additional dry clothing to migrants whose clothing is wet at the time of apprehension.
- Require CBP to discontinue the distribution of aluminum sheets.

- Require CBP to provide migrants with clean cloth blankets, to inform migrants that additional cloth blankets are available, and to give migrants additional cloth blankets upon request.

By implementing the following recommendations, CBP will ensure compliance with the TEDS Standards governing temperature, and, more importantly, help to safeguard the constitutional and human rights of migrants. Given the pervasive and troubling concerns highlighted in this complaint, we urge your offices to immediately investigate CBP's short-term detention facilities.

Respectfully submitted,



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