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Re: U.S. Customs and Border Protection and Border Patrol's Abuse and Mistreatment of Detained Pregnant People

I. Introduction

The American Civil Liberties Union Foundation of San Diego & Imperial Counties and the ACLU Border Rights Center (together, "ACLU") hereby submit this administrative complaint to the Department of Homeland Security's Office of Inspector General ("DHS OIG"), regarding U.S. Customs and Border Protection ("CBP")'s mistreatment of detained pregnant people.¹ The ACLU requests that DHS OIG undertake a review based on the information contained in this complaint, which is the first in a series of four total complaints addressing the agency's abuse and neglect of detainees.²

This complaint is derived from interviews the ACLU completed between March and July 2019 with people in San Diego and Tijuana who recently had been released from CBP custody.³ During the course of these interviews, individuals related instances of heinous abuse or neglect by CBP officials, including Border Patrol agents.

¹ CBP is the largest law enforcement agency in the United States, with over 60,000 officers. Border Patrol is a subcomponent of CBP. Throughout this complaint, reference to CBP includes Border Patrol.

² Unless otherwise noted, the abuses described here occurred in Border Patrol stations, although some of the people the ACLU interviewed for this project also had been detained by CBP's Office of Field Operations ("OFO") at a port of entry. Neither CBP nor Border Patrol provides detainees with clear information regarding where they are detained (or on what authority), and detainees are sometimes transferred between facilities. Thus, it is not uncommon for individuals to express confusion after release when asked where and by whom they were detained. For these reasons, the complaints in this series may include some accounts stemming from CBP OFO custody rather than Border Patrol custody.

³ During this time period, the ACLU interviewed 103 individuals. To prepare this account, the ACLU reviewed a subset of the interviews completed (i.e., interviews with pregnant people), and selected a small sample of those interviews for inclusion in this complaint. Although the narratives included here reflect some of the most egregious instances of CBP's abuse and neglect of pregnant detainees, they also echo recurring themes of mistreatment consistently reported by pregnant people to the ACLU.

These reports are especially concerning given that most of these individuals are asylum seekers who had already endured significant trauma in fleeing their homelands to escape persecution. Many such immigrants experience sexual violence during a harrowing journey north to the United States and while trying to survive in northern Mexican border towns with limited or no means to secure shelter, food, or safety.⁴ When taken into CBP custody, these vulnerable individuals experienced further abuse and neglect that exacerbated their pre-existing trauma.

CBP's failure to adhere to the maximum detention periods set forth in its own policies aggravate these harms. CBP facilities are only intended to be used for short-term custody. Many of these facilities—including almost all Border Patrol stations—lack beds, showers, or full-time medical care staff. Cognizant of these structural deficiencies, CBP policy states that detainees “should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities.”⁵ Border Patrol policy is more restricted still, stating “[w]henver possible, a detainee should not be held for more than 12 hours.”⁶

The TEDS standards and Border Patrol Short-Term Custody policy establish a “floor”—that is, the bare *minimum* guidelines with which CBP must comply.⁷ CBP, however, routinely

⁴ Unlawful U.S. policies that interfere with an individual's statutory and regulatory rights to seek asylum in the United States have exacerbated these dangers. *See, e.g.*, Jason Kao & Denise Lu, *How Trump's Policies Are Leaving Thousands of Asylum Seekers Waiting in Mexico*, N.Y. TIMES, Aug. 18, 2019, <https://www.nytimes.com/interactive/2019/08/18/us/mexico-immigration-asylum.html> (describing metering and “Remain in Mexico”—a.k.a. “Migrant Protection Protocols”—program).

⁵ U.S. CUSTOMS AND BORDER PROTECTION, NAT'L STANDARDS ON TRANSPORT, ESCORT, DETENTION, AND SEARCH, at § 4.1 (Oct. 2015) [hereinafter “TEDS”], <https://www.cbp.gov/document/directives/cbp-national-standards-transport-escort-detention-and-search>.

⁶ U.S. BORDER PATROL, DETENTION STANDARDS: HOLD ROOMS AND SHORT TERM CUSTODY, REFERENCE NO. 08-11267, at § 6.2.1 (Jan. 31, 2008) [hereinafter “Border Patrol Short-Term Custody Policy”], <https://www.documentcloud.org/documents/818095-bp-policy-on-hold-rooms-and-short-term-custody.html>.

CBP OFO also has a hold room policy, but the only publicly available version of this policy the ACLU has been able to identify is heavily redacted. *See* U.S. CUSTOMS AND BORDER PROTECTION, DIRECTIVE NO. 3340-030B, SECURE DETENTION, TRANSPORT AND ESCORT PROCEDURES AT PORTS OF ENTRY, at 5–8 (rev. Aug. 2011), https://www.americanimmigrationcouncil.org/sites/default/files/foia_documents/access_to_counsel_cbp_requests_and_documents_4-9-13.pdf.

⁷ According to a 2016 Government Accountability Office report, “[t]he TEDS policy is intended as a foundational document” to be supplemented with more detailed policies developed by CBP subcomponents. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-16-514, IMMIGRATION DETENTION: ADDITIONAL ACTIONS NEEDED TO STRENGTHEN DHS MANAGEMENT OF SHORT-TERM HOLDING FACILITIES, at 9 n.14 (May 2016), <https://www.gao.gov/assets/680/677484.pdf>. As far as we can tell, however, CBP has not made more detailed policies available to the public.

CBP policies also operate against the backdrop of federal statutes and regulations that bind the agency to certain standards of care. For example, CBP's TEDS cites the following additional authorities: 19 U.S.C. §§ 482, 1461, 1581, 1582, & 1589a; 8 C.F.R. §§ 232, 235, 236, & 287; 6 C.F.R. § 115; Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 F.R. 13100 (Mar. 7, 2014) (to be codified at 6 C.F.R. pt. 115); and the Immigration and Nationality Act, Pub. L. No. 82-414, § 101, 66 Stat. 163, 167 (1952) (codified as amended at 8

disregards these minimum standards.⁸ For example, a July 2019 DHS OIG report found that, of 8,000 individuals detained by Border Patrol in the Rio Grande Valley, 3,400 (42.5 percent) were held in excess of 72 hours.⁹ More troubling still: 1,500 individuals (18.75 percent) were detained for *more than ten days*.¹⁰ Consistent with these reports, the ACLU's investigation likewise indicated that CBP officials frequently exceed these detention limits. Most individuals we interviewed had spent at least four or five days in CBP custody. One individual we spoke with had been detained for *eighteen* days. Overlong detentions not only transgress agency policies, but also facilitate detainee neglect and mistreatment, which may violate the United States Constitution.¹¹

As noted, Border Patrol stations lack bedding, showers, and staff trained to interact with or assist traumatized or otherwise vulnerable populations. People held in these facilities endure freezing

U.S.C. § 1101). The TEDS also reference other CBP policies, including: U.S. CUSTOMS AND BORDER PROTECTION OFF. OF FIELD OPERATIONS, CIS HB 3300-04B, PERSONAL SEARCH HANDBOOK (2004), https://foiarr.cbp.gov/docs/Manuals_and_Instructions/2009/283167437_7/1102030829_Personal_Search_Handbook_2.pdf; U.S. CUSTOMS AND BORDER PROTECTION OFF. OF TRAINING AND DEV., HB 4500-01C, USE OF FORCE POLICY, GUIDELINES AND PROCEDURES HANDBOOK (2014), <https://www.cbp.gov/sites/default/files/documents/UseofforcePolicyHandbook.pdf>; U.S. CUSTOMS AND BORDER PROTECTION, DIRECTIVE NO. 3340-030B, SECURE DETENTION, TRANSPORT AND ESCORT PROCEDURES AT PORTS OF ENTRY, at 5–8 (rev. Aug. 2011), https://www.americanimmigrationcouncil.org/sites/default/files/foia_documents/access_to_counsel_cbp_requests_and_documents_4-9-13.pdf; Border Patrol Short-Term Custody Policy, *supra* note 6; U.S. CUSTOMS AND BORDER PROTECTION, CBP POLICY ON NONDISCRIMINATION IN LAW ENFORCEMENT ACTIVITIES AND ALL OTHER ADMINISTERED PROGRAMS (2017), <https://www.cbp.gov/about/eeo-diversity/policies/nondiscrimination-law-enforcement-activities-and-all-other-administered>.

⁸ See, e.g., AM. IMMIGRATION COUNCIL, DETAINED BEYOND THE LIMIT: PROLONGED CONFINEMENT BY U.S. CUSTOMS AND BORDER PROTECTION ALONG THE SOUTHWEST BORDER, at 5–6 (Aug. 2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/detained_beyond_the_limit.pdf (finding, for period between September 1, 2014 and August 31, 2015: 67 percent of total number of individuals detained in CBP facilities across the southwest border were held for 24 hours or longer; 29 percent for 48 hours or longer; and 14 percent for 72 hours or longer).

⁹ DEP'T OF HOMELAND SEC., OFFICE OF INSPECTOR GENERAL, MANAGEMENT ALERT – DHS NEEDS TO ADDRESS DANGEROUS OVERCROWDING AND PROLONGED DETENTION OF CHILDREN AND ADULTS IN THE RIO GRANDE VALLEY, at 2–3 (July 2, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19.pdf>.

¹⁰ *Id.* at 2–3. See also, e.g., OVERCROWDING AND PROLONGED DETENTION AT CBP FACILITIES: HEARING BEFORE THE H. COMM. ON THE JUDICIARY, 116TH CONGRESS (2019), <https://judiciary.house.gov/legislation/hearings/overcrowding-and-prolonged-detention-cbp-facilities>.

¹¹ See, e.g., *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124 (9th Cir. 2018), *cert. denied sub nom. Cty. of Orange, Cal. v. Gordon*, 139 S. Ct. 794 (2019) (due process right to challenge inadequate medical care for pretrial detainees); see also, e.g., *J.P. v. Sessions*, No. CV-1806081-JAK-SKx, 2019 WL 6723686, at *32–33 (C.D. Cal. Nov. 5, 2019) (quoting *Gordon*, 888 F.3d at 1124–25) (granting preliminary injunction and holding plaintiffs likely to succeed on due process claim arising out of defendants' failure to provide adequate health care to immigration detainees subject to family separation policy); *Doe v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at *13–15 (D. Ariz. Nov. 18, 2016), *clarified on denial of reconsideration*, No. CV-15-00250-TUC-DCB, 2017 WL 467238 (D. Ariz. Jan. 3, 2017), *aff'd sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017) (noting constitutional entitlement to adequate health care in CBP facilities).

temperatures, inedible food (spoiled or frozen), insufficient potable water, overcrowding, and deprivation of medicine and basic hygienic supplies.¹² In light of these structural deficiencies and inhumane conditions, it is the ACLU's position that **these facilities are categorically unsuitable and inappropriate for any period of detention beyond the time required for initial processing, which should in no case exceed 12 hours.**

Our investigation corroborated a well-documented culture of cruelty, willful negligence, and impunity throughout CBP.¹³ It also highlighted the failure of existing agency policies to provide sufficient humanitarian and legal safeguards to protect detainees. Across accounts from recent detainees, four themes emerged: (1) mistreatment of pregnant people, (2) mistreatment and neglect of sick children, (3) family separations, and (4) verbal abuse. As noted, this complaint is the first in a four-part series that will address each theme in turn.

¹² Journalists, advocates, and non-governmental organizations have documented CBP detention conditions extensively over the past decade. *See, e.g.*, Zolan Kanno-Youngs, *Squalid Conditions at Border Detention Centers, Government Report Finds*, N.Y. TIMES, July 2, 2019, <https://www.nytimes.com/2019/07/02/us/politics/border-center-migrant-detention.html>; Dara Lind, *The Horrifying Conditions Facing Kids in Border Detention, Explained*, VOX, June 25, 2019, <https://www.vox.com/policy-and-politics/2019/6/25/18715725/children-border-detention-kids-cages-immigration>; Sheri Fink & Caitlin Dickerson, *Border Patrol Facilities Put Detainees With Medical Conditions at Risk*, N.Y. TIMES, Mar. 5, 2019, <https://www.nytimes.com/2019/03/05/us/border-patrol-deaths-migrant-children.html>; UNIV. OF CHICAGO L. SCHOOL INT'L HUM. RIGHTS CLINIC, ACLU BORDER LITIGATION PROJECT & ACLU BORDER RIGHTS CENTER, *NEGLECT AND ABUSE OF UNACCOMPANIED IMMIGRANT CHILDREN BY U.S. CUSTOMS AND BORDER PROTECTION*, at 16–27 (May 2018), <https://bit.ly/2zRynCa>; AM. IMMIGRATION COUNCIL, *HIELERAS (ICEBOXES) IN THE RIO GRANDE VALLEY SECTOR: LENGTHY DETENTION, DEPLORABLE CONDITIONS, AND ABUSE IN CBP HOLDING CELLS* (Dec. 2015), <https://www.americanimmigrationcouncil.org/research/hieleras-iceboxes-rio-grande-valley-sector>; AM. IMMIGRATION COUNCIL, *WAY TOO LONG: PROLONGED DETENTION IN BORDER PATROL HOLDING CELLS, GOVERNMENT RECORDS SHOW* (June 10, 2015), <https://www.americanimmigrationcouncil.org/research/way-too-long-prolonged-detention-border-patrol-holding-cells-government-records-show>; AMERICANS FOR IMMIGRANT JUSTICE, *THE "HIELERAS": A REPORT ON HUMAN AND CIVIL RIGHTS ABUSES COMMITTED BY U.S. CUSTOMS AND BORDER PROTECTION* (Aug. 7, 2013), <http://www.aijustice.org/the-hieleras-a-report-on-human-civil-rights-abuses-committed-by-u-s-customs-border-protection-2/>; NO MORE DEATHS, *A CULTURE OF CRUELTY: ABUSE AND IMPUNITY IN SHORT-TERM U.S. BORDER PATROL CUSTODY* (2011), <https://nomoredeaths.org/abuse-documentation/a-culture-of-cruelty/>.

¹³ *See, e.g.*, John Washington, *"Kick Ass, Ask Questions Later": A Border Patrol Whistleblower Speaks Out About Culture of Abuse Against Migrants*, INTERCEPT, Sept. 20, 2018, <https://theintercept.com/2018/09/20/border-patrol-agent-immigrant-abuse/>; Sarah Macaraeg, *The Border Patrol Files: Border Patrol Violence: U.S. Paid \$60m to Cover Claims Against the Agency*, GUARDIAN (U.S.), May 1, 2018, <https://www.theguardian.com/world/2018/may/01/border-patrol-violence-us-paid-60m-to-cover-claims-against-the-agency>; Charles Davis, *U.S. Customs and Border Protection Has Killed Nearly 50 People in 10 Years. Most Were Unarmed.*, NEW REPUBLIC, Jan. 4, 2015, <https://newrepublic.com/article/120687/border-patrol-officers-get-impunity-anonymity-immigrant-killings>; Garrett M. Graff, *The Green Monster: How the Border Patrol Became America's Most Out-of-Control Law Enforcement Agency*, POLITICO, Nov./Dec. 2014, <https://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220>; Carrie Johnson, *Former Border Protection Insider Alleges Corruption, Distortion in Agency*, NAT'L PUB. RADIO, Aug. 28, 2014, <https://www.npr.org/2014/08/28/343748572/former-border-protection-insider-alleges-corruption-distortion-in-agency>.

II. CBP Mistreatment of Pregnant People¹⁴

In recent years, the Department of Homeland Security has elected to detain increasing numbers of pregnant people, who have greater medical and physical care needs.¹⁵ Prolonged detention in CBP facilities without access to essential amenities (such as beds or showers) or care from trained medical professionals puts pregnant people at risk of dire health outcomes (including miscarriages and stillbirths).¹⁶

CBP's existing policies are woefully inadequate to safeguard this particularly vulnerable population. The TEDS standards require officials to assess whether an individual is pregnant during initial processing and to evaluate whether special procedures for "at-risk" individuals apply.¹⁷ Although "at-risk" detainees "may require additional care or oversight," the TEDS standards do not specify what type of additional care or oversight should be provided.¹⁸ The TEDS standards require CBP to offer pregnant detainees "a snack upon arrival and a meal at least six hours thereafter," and "regular access to snacks, milk, and juice."¹⁹ Pregnant detainees are not to be shackled or X-rayed.²⁰ The ACLU has identified no other express provisions in publicly available CBP or Border Patrol detention policies addressing care of pregnant detainees.

¹⁴ This complaint refers to "pregnant people" because transgender and non-binary people can also get pregnant. Many transgender men or nonbinary individuals retain their reproductive organs and, as a result, their capacity to become pregnant. *See, e.g.,* J.S. Brandt *et al.*, *Abstract: Transgender men, pregnancy, and the "new" advanced paternal age: A review of the literature*, MATURITAS (Oct. 2019), <https://www.ncbi.nlm.nih.gov/pubmed/31561817>.

¹⁵ *See, e.g.,* Maria Sacchetti, *Pregnant Immigration Detainees Spiked 52 Percent Under Trump Administration*, WASH. POST, Dec. 5, 2019, https://www.washingtonpost.com/immigration/pregnant-immigration-detainees-spiked-52-percent-under-trump-administration/2019/12/05/610ed714-16bb-11ea-8406-df3c54b3253e_story.html; Rochelle Garza, *Trump's War on Asylum-Seekers is Endangering Pregnant Women*, ACLU OF TEXAS (Oct. 3, 2019), <https://www.aclu.org/blog/immigrants-rights/trumps-war-asylum-seekers-endangering-pregnant-women>; https://www.aclutx.org/sites/default/files/aclu_oig_complaint_preg_mpp.pdf; Daniella Silva, *Senators Urge Trump Admin to Ease Policy on Detaining Pregnant Migrants*, NBC NEWS, Apr. 8, 2019, <https://www.nbcnews.com/news/us-news/senators-urge-trump-admin-ease-policy-detaining-pregnant-migrants-n991856>.

¹⁶ *See, e.g.,* Carolyn Sufirin, MD, PhD, et al., *Pregnancy Outcomes in US Prisons, 2016-2017*, 109 AM. J. PUB. HEALTH 5, 799–805 (2019) (discussing negative health impacts of substandard care for incarcerated pregnant individuals and their babies); *see also* Rachael Rettner, *Stress in Pregnancy Boosts Stillbirth Risk*, Live Science, Mar. 27, 2013, <https://www.livescience.com/28229-pregnancy-stress-stillbirth.html>. *See also, e.g.,* Zoë Schlanger & Justin Rohrlich, *A Pregnant Woman Miscarried While in Border Patrol Custody on July 4*, QUARTZ, July 9, 2019, <https://qz.com/1662543/a-migrant-lost-her-fetus-while-in-border-patrol-custody-on-july-4/>; Ema O'Connor & Nidhi Prakash, *Pregnant Women Say They Miscarried in Immigration Detention And Didn't Get The Care They Needed*, BUZZFEED NEWS, July 9, 2018, <https://www.buzzfeednews.com/article/emaconnor/pregnant-migrant-women-miscarriage-cpb-ice-detention-trump>.

¹⁷ TEDS, *supra* note 5, § 4.2.

¹⁸ *Id.* § 5.1.

¹⁹ *Id.* § 5.6.

²⁰ *Id.* §§ 5.5 & 5.7.

The ACLU's investigation indicates that Border Patrol fails to respect even these minimal standards or to provide prompt and necessary medical care to pregnant people in custody. Our interviews also indicate that Border Patrol agents subject pregnant people to physical mistreatment, verbal abuse, and/or neglect.

III. Individual Accounts of Pregnant People in CBP Detention

Based on our investigation, we have selected a number of individual accounts that illustrate CBP's unacceptable treatment of pregnant detainees. These accounts have been anonymized: names have been changed, and certain details omitted, to protect the affected individuals. The accounts are, however, reported faithfully and based on lengthy interviews conducted by ACLU staff, usually within days of release from CBP detention.

Jennifer's Account

Jennifer is a 24-year-old Honduran woman who fled to the United States with her two daughters. She was six months pregnant when she was apprehended and detained at a Border Patrol station in May 2019. Jennifer reported that, during her initial processing, a Border Patrol agent subjected her to excessive force. The agent, apparently infuriated that Jennifer and her friend were speaking to each other while awaiting processing, forcibly grabbed Jennifer by the arm and took her out of her seat. The agent then grabbed Jennifer by the shoulders from behind and slammed her face-first against a chain link fence three times. Jennifer attempted to shield her protruding stomach from the fence—crying out “You’re hurting me! I’m pregnant!”—yet the agent continued to throw her against the fence.²¹ Other officials witnessed this abuse but did not intervene. Jennifer's two daughters, ages two and seven, also witnessed the agent's assault on their mother, and cried out in fear as they helplessly watched. Jennifer experienced acute stress after the attack, both because she feared for the health of her pregnancy and was terrified that she would re-encounter the assailing Border Patrol agent while in custody. Border Patrol detained Jennifer for three days; throughout this period, she did not receive any medical care or treatment.

Nancy's Account

Nancy, a 30-year-old asylum seeker from El Salvador, came to the United States with her partner in May 2019. The pair was taken into Border Patrol custody and separated by agents. The Border Patrol denied each of Nancy's requests to communicate with her partner. Agents repeatedly

²¹ The Border Patrol's excessive force against Jennifer violates CBP's non-discrimination policy and policy requiring at-risk detainees, explicitly including pregnant individuals, be treated with special precautions. *See* TEDS, *supra* note 5, §§ 1.4, 4.2.

told Nancy that she and her partner had no recognized familial connection because they were not married, even though Nancy was pregnant with her partner's child. Nancy reported that the stress of traveling to the United States and being detained while pregnant and separated from her partner was overwhelming.

In Border Patrol custody, Nancy feared for her health and the health of her unborn child. She reported that the food she received was spoiled and served cold; she could not bring herself to eat it.²² Nancy also reported that the available drinking water had a burning smell of chlorine; Nancy feared the water was not potable because the water supply was connected to (and on top of) the toilet in her cell.²³ She was not provided with any hygiene products (toothbrush, toothpaste, sanitary pads). Nancy, who had been taken into custody in wet and mud-covered clothing, was neither permitted a change of clothing nor provided a chance to shower for the duration of her detention.²⁴

Nancy also feared illness in detention, as she was held in an overcrowded cell where detainees had to sleep back to back. She worried constantly about her pregnant belly being accidentally stepped on, kicked, or elbowed by other detainees. She recounted the fact that many detainees appeared to be sick, coughing with runny noses. When the detainees tried to express their health-related concerns to the Border Patrol agents on duty, the agents refused to take any action. Nancy recalls one agent saying, "You are only allowed to ask for a medic if you have a fever."

After seven days in Border Patrol custody, Nancy began to experience significant lower abdomen pain, a headache, and vomiting. She immediately reported her symptoms; in response, Border Patrol agents told her she was lying, and one told her, "If I were you, I would have returned home already." The agents' slander and indifference made Nancy afraid to report her significant pain and discomfort. Nevertheless, Nancy continued to try to tell the agents that she was unwell.²⁵

Finally—three days later, on Nancy's tenth day in Border Patrol custody—Nancy was transported to a nearby hospital for evaluation. Upon her arrival at the emergency room, doctors

²² CBP's own policies require food to be provided in "edible condition." See TEDS, *supra* note 5, § 4.13. See also Border Patrol Short-Term Custody Policy, *supra* note 6, § 6.8.

²³ CBP policy requires "functional drinking fountains or clean drinking water along with clean drinking cups must always be available to detainees." See TEDS, *supra* note 5, § 4.14. See also Border Patrol Short-Term Custody Policy, *supra* note 6, § 6.9.

²⁴ CBP's denial of basic hygienic products and the opportunity to shower during Nancy's prolonged detention also violated agency policy. See TEDS, *supra* note 5, § 4.11 (discussing basic hygiene items and showers).

²⁵ Nancy also reported that, throughout the entire time she was detained by Border Patrol, various Border Patrol agents pressured her to sign a "voluntary departure" form. Voluntary departure permits a respondent in removal proceedings to leave the United States by a certain date, without being subject to a formal removal order. Voluntary departure, however, still can trigger various grounds of inadmissibility for people who hope to enter the United States

witnessed Nancy experience symptoms consistent with a panic attack. Following examination, the doctors also diagnosed Nancy with dehydration, low potassium, low blood sugar, and a kidney infection (for which antibiotics were prescribed).

Nancy was returned to the Border Patrol holding cell after her hospitalization. The next day, she was finally released from Border Patrol custody and permitted to move to the San Diego Migrant Family Shelter, operated by Jewish Family Service. Her partner, however, remained detained.²⁶

Amaya's Account

Amaya is a 25-year-old Honduran asylum seeker who was detained for a total of eighteen days in CBP custody while five months pregnant. When Amaya was taken into custody, CBP neither permitted her to shower nor to change out of her dirty clothing. Consequently, a few days into her detention, Amaya developed a vaginal infection.

Eventually, agency officials allowed medical personnel to evaluate Amaya; these personnel conducted their examination in front of other detainees in a crowded holding cell, without any regard for Amaya's privacy. Amaya repeated her request for fresh clothing and clean undergarments, which was again denied. Amaya was prescribed antibiotics and prenatal vitamins. On her fifth day of detention, CBP allowed Amaya to shower; the water, however, was scorching hot, and burned her skin.²⁷ Amaya was not provided clean undergarments at this time. Desperate, she asked the other women in her holding cell to request pantliners from CBP officers for her to use.²⁸

Amaya's vaginal infection persisted. She was given clean undergarments only after two full weeks in CBP custody.

After Amaya was released, she was taken to the San Diego Migrant Family Shelter, operated by Jewish Family Service. Upon arrival, she was weighed and discovered she had lost approximately 22 pounds (10 kilograms) while in detention.

lawfully in the future. *See* AM. IMMIGRATION COUNCIL, PRACTICE ADVISORY, VOLUNTARY DEPARTURE: WHEN THE CONSEQUENCES OF FAILING TO DEPART SHOULD AND SHOULD NOT APPLY (Dec. 21, 2017), https://www.americanimmigrationcouncil.org/practice_advisory/voluntary-departure-when-consequences-failing-depart-should-and-should-not-apply.

²⁶ Eventually, Nancy's partner was transferred to U.S. Immigration and Customs Enforcement ("ICE") custody at the Otay Mesa Detention Facility.

²⁷ To the ACLU's knowledge, no Border Patrol stations in San Diego sector have showers accessible to detainees, so it is probable that Amaya was held in CBP OFO, rather than Border Patrol, custody. *See also supra*, note 2.

²⁸ Amaya reported that CBP officials would provide female detainees just one or two pantliners at a time; for this reason, Amaya asked several of her cell mates to request and share pantliners with her.

Irene's Account

Irene is a 35-year-old Honduran woman who fled her home country together with her husband after they both experienced persecution for being HIV-positive. When the Border Patrol apprehended the pair in January 2019, Irene was two months pregnant. Irene notified the Border Patrol agents of her pregnancy and HIV-positive status. Nevertheless, upon arrival at the Border Patrol station, agents confiscated Irene's HIV medication, prenatal vitamins, and all other belongings. The Border Patrol also separated Irene from her husband. Detained, ill, pregnant, and without her partner, Irene experienced acute physical and emotional stress, including anxiety about her confiscated HIV medicine (which is essential to managing her disease).²⁹

On her first night of detention, Irene experienced heavy vaginal bleeding and painful cramping. She began to fear that she had lost her placenta.³⁰ Irene yelled to the Border Patrol agents, screaming that she was afraid her baby was in danger and that she was bleeding profusely. In response, an agent told her, "Don't be so dramatic." Irene watched in horror as a pool of her own blood formed inside her holding cell. The only person who helped her during this harrowing experience was another detained woman, who massaged Irene's belly to try to ease her pain and attempted to comfort her. Irene, overwhelmed by the amount of blood and what appeared to be tissue passing from her vagina, fainted.

When she regained consciousness, Irene's cell mate told her that the Border Patrol had permitted her to retrieve a change of clothes for Irene from Irene's personal belongings. Irene cleaned herself as best she could and changed out of her blood-soaked attire. Of her cell mate, Irene later reported: "Without her help, I would not be alive; I owe her everything."

Irene did not receive any medical assistance or attention before, during, or after this experience. The Border Patrol did not provide her with any sanitary napkins or other hygienic

²⁹ The Border Patrol's confiscation of Irene's HIV medication and failure to make that medication available to Irene to self-administer contravenes agency policy. *See* TEDS, *supra* note 5, § 4.10; *cf.* Border Patrol Short-Term Custody Policy, *supra* note 6, § 6.7.5 ("Medications").

³⁰ Describing her experience to the ACLU investigator, Irene stated: "Se me salió la placenta, una gran bola de sangre." ("I lost the placenta, a large ball of blood.")

supplies.³¹ Irene was not even permitted to shower to clean off her own blood. Irene, believing she had miscarried, was deeply traumatized. She was not permitted to see or speak with her husband.

Instead of providing Irene with medical care, agents moved her to a segregated holding cell the next day. The Border Patrol did not explain this move, but Irene believes she was moved due to her HIV-positive status and heavy bleeding. While in the segregated cell, Irene received food through a small opening at the bottom of the cell door.

As Border Patrol had confiscated Irene's HIV medication, Irene's symptoms flared. She suffered intense trembling and cold sweats. In addition, Irene continued to experience symptoms consistent with miscarriage, including excruciating cramping and lower back pain.

After twelve days in Border Patrol custody, Irene finally was transferred to the Otay Mesa Detention Center, where she was evaluated by medical personnel. These providers confirmed that Irene was no longer pregnant.³²

IV. Recommendations

As these individual accounts reflect, CBP has failed to maintain even a baseline standard of care for pregnant people in its custody. Moreover, the extended periods of detention to which these vulnerable individuals are subjected exacerbate the physical, mental, and emotional harms detainees experience in CBP custody.

The ACLU asks that DHS OIG conduct an immediate review of CBP's treatment of pregnant people in its custody and issue recommendations to improve CBP and Border Patrol detention policies. At a minimum, we call upon DHS OIG to:

- (1) Recommend that CBP **stop detaining pregnant people**, and instead prioritize the prompt release of such individuals into U.S. shelters or into the care of their personal support networks in the United States.³³

³¹ As described in note 24, *supra*, the Border Patrol's failure to provide Irene with basic hygienic supplies violated CBP policy. *See* TEDS, *supra* note 5, § 4.11.

³² Irene did not, however, receive necessary medical care at Otay Mesa. When she asked for medication, she was told to "drink water and walk it off."

³³ As noted, *supra* note 4, CBP subjects pregnant people to a variety of unlawful U.S. policies that interfere with an individual's statutory and regulatory rights to seek asylum in the United States, including the so-called "Migrant Protection Protocols" and other fast-track deportation and removal procedures. As a corollary to this recommendation, CBP should immediately and formally **exempt all pregnant persons from such policies** and instead prioritize their prompt release from immigration detention. Subjecting people to other unlawful and abusive policies, such as the so-called "Migrant Protection Protocols," is not an acceptable alternative to humane treatment and prompt release.

- (2) Recommend that CBP policies and practices be revised to **prohibit any period of detention beyond the time required for initial processing, which should in no case exceed 12 hours.**³⁴
- (3) Recommend that CBP **develop, adopt, and publish explicit policies that will ensure adequate, timely medical care for pregnant people** in the agency's custody. Such policies should be developed in consultation with independent medical experts and rights stakeholders,³⁵ and reflect best practices recommended by professional associations (such as the American Medical Association and the American College of Obstetricians and Gynecologists).
- (4) Recommend that CBP **annually report on, and publish on its website, the number of pregnant people in its custody** over the preceding year, and, for all pregnant people detained in excess of 12 hours, **publicly report key information and statistics related to such detentions** over the preceding year, including each pregnant person's (a) total length of time spent in CBP detention, (b) access to edible food and potable water, (c) access to showers, (d) access to clean, warm bedding, and (e) access to fresh clothing (including clean undergarments); (f) the availability and provision of prenatal and other necessary medical care to each pregnant detainee in CBP custody (both on site and off site); (g) the use of restraints on pregnant detainees; and (h) incidents of miscarriage or stillbirth in CBP detention.³⁶
- (5) Assess **whether CBP oversight and disciplinary mechanisms are sufficient** to ensure that CBP officials are held accountable for all instances of detainee abuse, neglect, or other mistreatment, and to ensure that dangerous, abusive, or otherwise unfit CBP employees are removed promptly from duty.

Thank you for your time and careful attention to this submission. We look forward to your timely response.

³⁴ This would ensure that CBP's TEDS and other agency policies are consistent with the presumptive maximum detention period set out in Border Patrol's Short-Term Custody Policy, *see supra* note 6, at § 6.2.1.

³⁵ *See, e.g., Fact Sheet: Health Harms Experienced by Pregnant Women in U.S. Immigration Custody*, PHYSICIANS FOR HUMAN RIGHTS (Nov. 2019), <https://phr.org/wp-content/uploads/2019/12/PHR-Pregnant-Women-in-Immigration-Custody-Fact-Sheet-Nov-2019.pdf>.

³⁶ Such data collection and reporting will improve CBP accountability by providing public information necessary to allow external assessments of agency actions and adherence with governing policies.

Sincerely,

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