



Homeland Security

July 17, 2019

The Honorable Nancy Pelosi
Speaker of the House
1236 Longworth House Office Building
Washington, DC 20515

Dear Madam Speaker:

President Trump has asked me to respond on his behalf to your letter of July 1, 2019, regarding the conditions and care of families and children in custody along the Southwest Border (SWB). Thank you for your recommendations and for your support of the recent humanitarian assistance package. The supplemental funding provided by Congress meets immediate acute needs at the border and has already improved conditions for children.

This bipartisan Congressional support allows us to continue to live up to our highest ideals as a Department and provide critical care to those in our custody. It has already had an impact along the border.

In your letter, you recommended that “DHS...immediately finalize plans, standards and protocols to protect the health and safety of individuals in the custody of U.S. Customs and Border Protections (CBP),” specifically highlighting “protocols for medical assessments and medical emergencies; requirements for ensuring the provision of water, appropriate nutrition hygiene and sanitation needs; and standards for temporary holding facilities that adhere to the best practices for the care of children.” You asked for a timeline for the finalization of such plans, and asked that DHS incorporate the expertise of organizations such as the American Academy of Pediatrics (AAP) in this process.

These are critical issues and DHS and CBP have previously developed a number of plans, standards and protocols to ensure the health and safety of those in our custody. I would like to outline those efforts and highlight some of the key actions DHS has taken and plans to take to address our shared concerns. Many of the recommendations included in the House Majority bill are being executed already.

No law enforcement agency in the United States is bringing more medical capability to ensure the health and safety of those it encounters or holds in custody than CBP.

Since January, and now supported by the emergency funding you helped authorize, the DHS team has prepared over 6 million meals, conducted 400,000 migrant health interviews, and completed more than 80,000 migrant medical assessments for individuals in CBP custody. Since U.S. Border Patrol's (USBP) Critical Reporting Cell was stood up on December 22, 2018, Border Patrol Agents have taken more than 21,000 sick or injured migrants to hospitals and conducted medical transportation or stood hospital watch for over 245,000 hours, the rough equivalent of 100 *years* of work.

CBP professionals have constructed, outfitted, and staffed four new facilities to enhance the conditions in which individuals are held in CBP custody – with two more anticipated by the end of July. The challenge we face together today is continuing to scale the implementation of these already successful plans, standards, and protocols across the entire SWB to address the true scope of this unprecedented humanitarian crisis.

Congress' June 26 support for emergency humanitarian and border security funding represented a major step forward in addressing the problems the scale of this crisis presents. At your convenience, I would welcome the opportunity to provide you with a comprehensive briefing on our efforts to date and our future plans to mitigate the human impact of this crisis to better inform our continued collaboration at this critical time. I would also value the opportunity to discuss the nonpartisan Homeland Security Advisory Council's (HSAC) expert recommendations, highlighted in the interim report issued on April 16, 2019.¹

I look forward to working with you and your colleagues to address this crisis, and remain appreciative of your support for the women and men of DHS and the migrants in our custody during this challenging time. Should you have any further questions or concerns, I look forward to working with you and your team to address them.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. McAleenan', with a long horizontal line extending to the right.

Kevin K. McAleenan
Acting Secretary

Enclosure

¹ https://www.dhs.gov/sites/default/files/publications/19_0416_hsac-emergency-interim-report.pdf

Standards of Care

The numbers of family unit aliens (FMUA) and unaccompanied alien children (UAC) we are currently encountering along the SWB are unprecedented. This volume has placed significant strain on a border security system with infrastructure originally designed to prevent the illegal crossing of single adult males, and a workforce of law enforcement agents with minimal medical resourcing. However, DHS has guidelines and requirements in place to provide high standards of care to all migrants, particularly children and families, and we strive to live up to them every day.

The core of the standards and protocols responsive to the requests that you highlighted in your letter can be found in CBP's 2015 *National Standards on Transport, Escort, Detention and Search* (TEDS), the first nationwide standards governing CBP's interaction with individuals in its custody.² As Deputy Commissioner of CBP, I helped to finalize and implement the TEDS standards in 2015. TEDS represents both the collaborative work of various CBP and DHS offices, including the DHS Office of Civil Rights and Civil Liberties (CRCL), as well as a number of immigration-focused non-governmental organizations.

TEDS is grounded in the operational expertise of CBP's Office of Field Operations (OFO) and the U.S. Border Patrol, and incorporates the collective best practices for transport, escort, detention, and search developed in the field. It covers issues as diverse as initial medical assessments, hygiene, bedding, food and beverages, availability of drinking water, temperature in holding areas, and restrooms. In addition, TEDS reflects key legal and regulatory requirements under which CBP and DHS operate, including requirements regarding the care of at-risk individuals in custody, care for personal property, and sexual abuse and assault prevention and response, as required under the Prison Rape Elimination Act (PREA).³

At the statutory level, the *Trafficking Victims Protection Reauthorization Act* (TVPRA) generally requires the United States Government to place eligible UAC in the "least restrictive setting that is in the best interest of the child," and to transfer UAC to the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) for enhanced care and further screening within a 72-hour window, recognizing certain exceptions. The TVPRA also directs that UAC in removal proceedings and UAC from non-contiguous countries be given access to counsel and child advocates.

In terms of court oversight, similarly, the *Flores* Settlement Agreement (FSA) provides a preference for release of all alien children in government custody, and provides that such children be held in non-secure, licensed facilities. The FSA also provides specific standards for children held in short-term holding facilities, including adequate temperature ranges and access to essential needs such as food and water.

² See *CBP National Standards on Transport, Escort, Detention, and Search*, originally published October 29, 2015: <https://www.cbp.gov/document/directives/cbp-national-standards-transport-escort-detention-and-search>

³ <https://www.cbp.gov/about/care-in-custody#wcm-survey-target-id>

In many cases, it is a combination of the TVPRA and the FSA that established baseline “requirements for ensuring the provision of water, appropriate nutrition hygiene and sanitation needs,” and “standards for temporary holding facilities that adhere to the best practices for the care of children” you reference in your letter. DHS policies such as TEDS were built upon these baselines. As you know, DHS believes that both the TVPRA and the FSA must be amended to prevent the continued exploitation of unintended loopholes that serve as “pull factors,” enticing migrants to attempt to enter the country illegally. However, the underlying intent of assuring high standards of care for children, expeditious processing of immigration proceedings, minimal detention, and uniform standards of care for those in custody are all principles that guide DHS policy and action each day.

Oversight

DHS has multiple levels of overlapping oversight designed to ensure we meet the standards above and provide impartial and critical assessments of our standards of care. This structure is designed to ensure comprehensive compliance and transparency, and involves both DHS and third-party organizations and personnel.

Oversight starts with our officers and agents. CBP officers and Border Patrol agents record individual welfare checks and the provision of meals in CBP’s electronic systems of record, pursuant to the TEDS policy referenced above. In addition, the DHS CRCL and Privacy Offices, and their equivalents at each of the respective Components, provide extensive oversight of our operations. CBP maintains an Office of Professional Responsibility with both criminal and administrative investigative authority. Additionally, the DHS Office of the Inspector General has the ability to open investigations into alleged violations at any time, helping to ensure our Department’s accountability to our highest standards.

Furthermore, in particular relation to juveniles in CBP custody, CBP’s Juvenile Coordinator is responsible for monitoring compliance with the FSA and filing annual reports with the Court on his findings regarding CBP’s compliance with this agreement. On July 1, 2019, the Juvenile Coordinator submitted his 2019 annual report (his fourth report overall), based off of observations, file reviews, and interviews with minors and/or parents during 44 site visits (including 12 unannounced) across the SWB from June 1, 2018 to May 30, 2019.⁴ In the 2019 annual report, the Juvenile Coordinator noted:

“In response to the unprecedented levels of UAC and family units in our custody, CBP has deployed all available resources to mitigate the crisis and prioritize the health and safety of minors. I have seen first-hand how the Agency is facing this challenge head-on to provide appropriate care for the minors in its custody, by expanding medical care, creating temporary facilities, and leveraging resources from across DHS as well as our interagency partners... Taken together, these activities provide me with a sufficient

⁴ See *U.S. Customs and Border Protection Juvenile Coordinator Report*, submitted to the Honorable Judge Dolly M. Gee in the U.S. District Court for the Central District of California on July 1, 2019, pursuant to the FSA and *Flores v. Barr*, Case No. CV 85-4544 (C.D. Cal.), attached herein as *Annex A*.

basis to conclude CBP held minors in a manner that is consistent with the [Flores Settlement Agreement].”⁵

“Overall, I believe CBP understands its obligations under the [Flores Settlement Agreement] and continues to utilize all available resources to ensure that the Agency substantially complies with these obligations.”⁶

“In general, minors received regular meals and snacks; had access to drinking water, functioning toilets, and functioning sinks; were held in rooms with adequate temperature control and ventilation; and had access to emergency medical assistance if needed. When issues were identified, action was taken to remedy or mitigate the effect of these challenges. Moreover, based on my observations and interviews, it appeared custodial actions were performed more often than recorded.”

“During this reporting period, CBP took significant measures to ensure appropriate treatment for minors in its custody. I observed medical contract professionals, USCG, and [U.S. Public Health Service] USPHS deployed to [Rio Grande Valley] RGV, El Paso, Yuma, and El Centro Sectors. I observed the DHS volunteer force and re-assigned agents and officers at Yuma Station, Paso Del Norte Processing Center, El Centro Station, Brown Field Station, and Imperial Beach Station supporting processing and logistical requirements. I also observed coordinated efforts to increase holding capacity and alleviate crowding through soft-sided facilities, converted buildings, and transportation to less crowded facilities.”⁷

Finally, as you know, one of our most crucial levels of oversight is conducted by the Congress. The regular working relationships of DHS with the professional staff and Members in Congress create powerful and continuous ties that ensure transparency and accountability. The press exercises its own substantive oversight on DHS, and the Freedom of Information Act provides similarly powerful capabilities to the press and American public.

Notification

In addition to the TEDS policy, as informed by the TVPRA, PREA and *Flores* and overseen by multiple layers of internal and independent oversight, DHS has also unilaterally implemented new standards for notification of deaths in custody. On December 17, 2018, as part of the immediate internal assessment of how to further enhance processes and protections for children in custody in response to the tragic death of Jakelin Caal Maquin, I ratified a set of *Interim Procedures on the Notification of a Death in Custody*. These *Interim Procedures* set forth specific instructions on notification obligations to the following parties: internal CBP program offices; DHS; Congress; the public; international partners; and other stakeholders, as appropriate.⁸

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ <https://www.cbp.gov/document/guidance/interim-procedures-notification-death-custody>

This policy emphasized the importance of accessibility and transparency in providing information to Congress and the public regarding any death occurring in custody, noting the importance of respecting the Privacy Act and the privacy policies of CBP and DHS during these unfortunate and rare circumstances. Additionally, on December 18, 2018, in accordance with the *Interim Procedures on Notification of a Death in Custody* referenced above, and to expedite reporting of persons in USBP custody experiencing illness or injury, USBP established the agency-wide critical reporting cell referenced above with direct reporting responsibilities to the Commissioner.

Medical Screening

As a law enforcement agency with no long-term detention responsibilities, CBP traditionally and appropriately plays a very small role in the provision of medical care to migrants, in deference to partners such as U.S. Immigration and Customs Enforcement (ICE) and HHS. However, in September 2015, in an abundance of caution based on lessons learned from the UAC influx of 2014, USBP executed a comprehensive medical services contract which was competitively awarded to provide professional medical screening, low acuity treatment, and referral services throughout the SWB, issuing task orders to provide services at three strategic locations within Rio Grande Valley (RGV) Sector.

In August 2018, in response to what was, at the time, an emerging crisis, CBP further expanded the medical screening task order beyond RGV Sector to include medical and mental health screening for UAC at designated stations within El Paso, Yuma and Laredo Sectors. The added scope also provided a one year pilot program mental health screening component for UAC in RGV Sector.

Despite these efforts, as you know, on December 8, 2018, we experienced the tragic death in custody of Jakelin Caal Maquin. As a part of a comprehensive review of this tragedy, as CBP Commissioner, I directed the development of a CBP Interim Medical Directive and Standardized CBP Health Interview Form to enhance the medical standards built into TEDS and other foundational policies. I directed that the formation of this Interim Directive leverage the expertise of CBP's Senior Medical Advisor and the DHS Chief Medical Officer (CMO), as well as outside organizations and experts such as AAP and renowned emergency medical experts.

On January 28, 2019, I signed the completed *Interim CBP Enhanced Medical Efforts Directive*, directing the deployment of interim enhanced medical efforts to mitigate risk to, and improve care for, individuals in CBP custody along the SWB. This Directive mandated health interviews and medical screening for all juveniles in custody, based on the deployment of surge medical teams and contract medical professionals at priority UAC and FMUA locations along the SWB. A final policy on medical care is being actively worked by the DHS CMO and will be completed by the end of the year.

From its implementation on January 28 to July 10, 2019, 190,490 juveniles in CBP custody have been interviewed and 37,036 have received medical assessments by contracted medical personnel under the *Interim Medical Directive*. Since January 28, 2019, 213,746 adults in CBP

custody have been interviewed and 42,878 have received medical assessments.⁹ I am confident that this emergency Directive, combined with CBP's immediate allocation of funding at risk due to the government shut-down and the expeditious implementation of CBP's rollout plan of contracted medical professionals to high-priority locations, has saved numerous lives during this crisis.¹⁰

With the support of the Supplemental funding, we continue to execute expeditiously to meet this priority through our incumbent contractor. As of Friday, July 12, 2019, we have deployed nearly 200 more contracted medical professionals along the SWB than we had on staff in December 2018. Currently we have contracted medical professionals providing services at strategic locations in the following sectors: RGV, El Paso, Laredo, Yuma and San Diego. Additionally, HHS teams are currently also providing medical services within the RGV, El Paso, and El Centro Sectors. With the support of the supplemental funding, CBP will also be able to award an expanded medical services contract to build more long-term capacity and relieve pressure on our Border Patrol Agents in the field.

Throughout this work, we have consulted with multiple medical experts and critical medical and emergency relief organizations – to include the DHS Chief Medical Officer, CBP's Senior Medical Advisor, two world-renowned pediatricians with expertise in humanitarian crisis response from Harvard and Columbia Universities, along with doctors and technology professionals at In-Q-Tel, the American Association of Pediatricians (AAP), the American Red Cross, and the International Medical Corps. I personally consulted with AAP President Dr. Colleen Kraft on multiple occasions and ensured that her staff recommendations were taken on board by CBP and DHS's medical teams. I also ensured that our Homeland Security Advisory Council Task Force included a highly-credentialed pediatrician, Dr. Sharon Cooper.

This combined advice, along with our operational experience managing the crisis this year, will inform a *Final Medical Directive* to be completed and issued by December 15, 2019. CBP adopted a holistic approach to this problem, taking into account the occasionally conflicting opinions of a variety of qualified experts during these exigent circumstances, accounting for the unique challenges in the border environment, and incorporating them into our operations. The situation along the border is both critical and unique, and the observations, recommendations,

⁹ It is worth noting that the *Interim Medical Directive* prioritizes medical assessments for juveniles, as one of the most vulnerable populations of migrants we face. Under this policy, adults in USBP custody are given medical assessments when they either present with illness or injury, or express concerns during their health interview. This large subset of sick and injured adults demonstrates the severity and risk of these migrants' journeys.

¹⁰ On January 9, 2019, as CBP Commissioner, I ratified an informational memorandum to then Secretary Nielsen titled: *CBP's Expansion of Existing Medical Services Contracts and Expedited Deployment of Additional Contracted Medical Services Personnel to the Southwest Border*. In this memorandum, I briefed my unilateral intent to divert \$17.5 million in CBP funding during the government shutdown to the USBP Medical Services contract in order to expedite the deployment of contracted medical professional to 15 additional USBP and OFO high-volume UAC and FMUA locations. These 15 locations represented "Phase 1" of CBP's phased rollout plan to enhance contracted medical support along the SWB and reduce the most significant risk to UAC and FMUA populations in the quickest manner possible given operational requirements and contractor staffing constraints. This memorandum served to inform the Secretary that, due to the government shutdown and a subsequent inability to consult with traditional financial oversight bodies in a timely manner, as well as the critical life and safety concerns we faced, I was unilaterally directing the reallocation of these funds from previously directed operational priorities.

and offers of support from this diverse group of medical experts are being leveraged to further enhance our capabilities as our contracted medical personnel are deployed.

Care and Conditions

As we continue to further refine our processes for medical screening, my other most important concerns for the health and welfare of those in our custody are our facilities and transportation capabilities. In the border ecosystem, all three issues are inextricably connected. Collectively, these facilities and transportation challenges have severely exacerbated our medical challenges.

As you know, CBP facilities were largely designed for single adult males rather than FMUA and UAC, and the scope and scale of the crisis has amplified challenges associated with even short-term FMUA and UAC custody. As I stated on June 10, 2019, our facilities are overcrowded, and no American should be comfortable with children in a police station for days on end. These are not appropriate settings for children.¹¹

DHS took a number of steps without appropriated funding during the government shutdown to immediately enhance the quality of facilities along the SWB, and continues to move forward aggressively on a variety of facilities projects. Your support in passing the supplemental has helped to provide guaranteed funding to those previous unilateral actions and prepare us to continue to move forward.

Soft-Sided Facilities

- In RGV Sector, CBP has completed building two new soft-sided facilities (the “Donna Facilities”), each designed to support 500 FMUA with full wraparound services. The first was operational on May 1, 2019, the second on June 17, 2019. Full wraparound services include hygiene supplies (such as toothbrushes, soap and deodorant), laundry for clothes, meals, showers, and portable toilets.
 - A third soft-sided facility for 2,000 single adults is projected to be operational in Donna, Texas, on July 30, 2019. This facility will also include full wraparound services.
- In El Paso Sector, CBP completed building a 500 FMUA soft-sided facility that became fully operational on May 3, 2019. CBP is currently assessing potential modifications to this facility to allow for accommodation of UACs as well. This facility also includes full wraparound services.
 - A separate, 2,500 single-adult capacity soft-sided facility is currently under construction in Tornillo, Texas. The contract was awarded on July 3, 2019, and CBP anticipates initial operational capability on July 30, 2019.

¹¹ <http://transcripts.cnn.com/TRANSCRIPTS/1906/10/CPT.01.html>

- In Yuma Sector, CBP completed a 500 FMUA soft-sided facility that became operational on June 29, 2019. This facility also includes full wraparound services.

Modular Facilities

- In El Paso Sector, CBP is also currently developing an 800 capacity modular facility that will include full wraparound services. This facility is currently under construction and security design review, and is anticipated to be operational in August.
- In Yuma Sector, supplemental funding has also allowed CBP to begin acquisition planning for a 1,000 FMUA capacity modular facility.

Permanent Facilities

- In RGV Sector, supplemental funding will allow for critical renovations to the McAllen Central Processing Center (CPC).
- CBP is also working to develop a new 2,000 person CPC in El Paso, Texas, which will provide enhanced standards for UAC and FMUA in CBP temporary custody while awaiting disposition by ICE and/or placement with HHS. The El Paso CPC, modeled in part on the RGV CPC established in 2015, will facilitate consistent medical assessments in one location.

The scale of the crisis has also created major logistics challenges with transportation. Over the past seven months, CBP has reprogrammed transportation assets from across the country, purchased new vehicles, retrofitted them with secure areas and appropriate markings, and deployed them to the SWB. Partnership with the Texas Bureau of Prisons secured four additional large buses on May 15, 2019, and conversations with a national bus company informed their increasing of services from border communities, helping to alleviate the potential for a humanitarian crisis in the communities where families were and are released by DHS. The engagement with this company and facilitated introductions to leading NGOs along the SWB also resulted in the company using their nationwide call center to make travel arrangements for released families in several key border locations. This work, previously done by respite care center volunteers, had represented a significant drain on limited local NGO resources. Begun in RGV, this effort has now spread to San Antonio, and will shortly expand to Phoenix, Tucson, and Yuma.

Despite these successes, transportation remains a major logistical challenge along the SWB. In particular, identifying professionals with Commercial Driver's Licenses with Passenger Endorsements represents a particular challenge. Through a formal Request for Assistance, the Department of Defense (DoD) will provide 160 total van and bus drivers to support DHS along the SWB in late July. Critically, with the assistance of the supplemental, DHS has been able to close a formal Request for Proposal for contracted transportation services, which we anticipate will be awarded on August 15, 2019. This contract will leverage the \$35 million in emergency supplemental funds marked for transportation support to provide comprehensive transportation and medical escort services along the SWB.