



June 11, 2014

VIA FEDEX AND EMAIL

Megan H. Mack
Officer for Civil Rights and Civil Liberties
Department of Homeland Security
245 Murray Lane, SW
Washington, DC 20528

John Roth
Inspector General
Department of Homeland Security
245 Murray Lane, SW
Washington, DC 20528

RE: Systemic Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection

Dear Ms. Mack and Mr. Roth:

The undersigned organizations, National Immigrant Justice Center, Esperanza Immigrant Rights Project, Americans for Immigrant Justice, Florence Immigrant and Refugee Rights Project and the ACLU Border Litigation Project, jointly file the present complaint on behalf of 116 unaccompanied immigrant children, ages five to seventeen years old,¹ who experienced abuse and mistreatment while in the custody of U.S. Customs and Border Protection (CBP), which includes U.S. Border Patrol.² We urge you to conduct a prompt and thorough investigation into each of these allegations, and to take swift action consistent with your respective agency missions to fully address the systemic problems at CBP highlighted by these children's complaints, including implementation of the federal policy recommendations provided at the end of this document.

The experiences of the children documented herein³ reflect those of a growing number of unaccompanied children, many of whom flee their home countries due to persecution, violence and extreme poverty. After completing a perilous journey to the United States, many are

¹ Ages listed are the ages of the children at the time the abuse or mistreatment occurred. While the youngest complainant was five years old, several of the abuses described herein involved younger children, including infants.

² Where possible, these complaints identify whether abuse was committed by a CBP official or by a Border Patrol agent. If a child was unable to identify the offending immigration official's specific affiliation, the complaint references CBP.

³ To protect the identities of the children filing complaints, we are withholding their full names from the public version of this complaint. The children's identities and the full details of their complaints are being provided to DHS in affidavits accompanying this complaint. *See* Appendix, Ex. 1-116. Please note that each complaint includes a release specifying the organization filing the complaint on the child's behalf—should you wish to investigate a specific case, please contact the organization that prepared the corresponding affidavit. For reference, we have also included complaints that were previously filed on behalf of unaccompanied immigrant children for which the filing organization has not received a response. *See* Appendix, Ex.96 and Ex. 116. These two complaints were previously filed with CRCL, but the filing organizations are re-submitting those as part of this joint complaint because they remain pending with no action taken to date.

subjected to various forms of abuse, harassment and other harms at the hands of Border Patrol and CBP officials.

For example, approximately one in four children included in this complaint reported some form of physical abuse, including sexual assault, beatings, and the use of stress positions by CBP officials. More than half of these children reported various forms of verbal abuse, including racially- and sexually-charged comments and death threats. More than half reported the denial of medical care, including two young mothers whose infant children became sick while detained in freezing temperatures, and another child whose asthma medication was confiscated while she suffered multiple asthma attacks. Children consistently reported being held in unsanitary, overcrowded, and freezing-cold cells, and roughly 70 percent reported being held beyond the legally mandated 72-hour period. Many reported being detained without blankets and having to sleep on the floor, with the lights left on. More than 80 percent described denial of adequate food and water in CBP custody, including a child whose only available drinking water came from a toilet tank and others who received only frozen or spoiled food and subsequently became ill. These children, some of whom experienced sexual violence in their home countries and/or en route to the United States, reported feeling humiliated by having to use filthy restrooms in full view of other detainees and security cameras. Approximately 15 percent of these children reported being separated from other family members, and 30 percent reported that their money and/or personal belongings were confiscated by CBP officials and not returned to them. Many children reported being shackled—sometimes painfully—during transport.

The sheer volume and consistency of these complaints reflects longstanding, systemic problems with CBP policy and practices. Unfortunately, the abuse of unaccompanied children by U.S. immigration officials is not a new phenomenon. For years, the undersigned organizations and others have documented civil rights violations by CBP officials, including Border Patrol agents, involving unaccompanied immigrant children. Numerous organizations have issued reports and filed complaints with Department of Homeland Security (DHS) oversight bodies, to no avail.⁴ As the American Immigration Council (AIC) recently reported, most complaints of Border Patrol abuse do not result in any action against agents who break the law, and many are never properly investigated at all.⁵ This has been the collective experience of the undersigned organizations as well. By failing to meaningfully investigate or otherwise respond to consistent reports of systemic abuse, DHS has demonstrated a continuing disregard for the civil and human rights of unaccompanied immigrant children.

⁴ See Women's Refugee Commission, *Forced From Home: The Lost Boys and Girls of Central America* (October 2012)(hereinafter WRC *Forced From Home*) available at <http://bit.ly/1idNuUo>; No More Deaths, *Crossing the Line: Human rights Abuses of Migrants in Short-Term Custody on the Arizona/Sonora Border* (2008)(hereinafter NMD *Crossing the Line*) available at <http://bit.ly/1uFDsTJ>; No More Deaths, *A Culture of Cruelty: Abuse and Impunity in Short-Term U.S. Border Patrol Custody*,(2011,) (hereinafter NMD *A Culture of Cruelty*) available at <http://bit.ly/1prx9z>; Florence Immigrant and Refugee Rights Project, *Seeking Protection, Enduring Prosecution: The Treatment and Abuse of Unaccompanied Undocumented Children in Short-term Immigration Detention*,(2009) (hereinafter Florence Project *Seeking Protection, Enduring Prosecution*) available at <http://bit.ly/1prCKx>; Betsy Cavendish and Maru Cortazar, Applesseed, *Children at the Border: The Screening, Protection and Repatriation of Unaccompanied Mexican Minors* (2011) (hereinafter Applesseed *Children at the Border*) available at <http://bit.ly/1mt5hbi>.

⁵ See American Immigration Council, *No Action Taken: Lack of CBP Accountability in Responding to Complaints of Abuse* (2014) (hereinafter AIC *No Action Taken*) available at <http://bit.ly/1ozF1dd>.

CBP abuse of immigrant children persists in spite of prior litigation concerning the treatment of unaccompanied children,⁶ and subsequent legislation enacted to protect these children.⁷ Given these longstanding problems, and in light of the rising number of unaccompanied children seeking relief from dangerous conditions in their home countries, the need for broad and lasting agency reforms is clear. We therefore call on DHS, CBP, and the U.S. government to take immediate action to end the mistreatment and abuse that unaccompanied immigrant children continue to endure at the hands of CBP officials. We also urge CRCL and OIG to promptly and thoroughly investigate the allegations raised in this complaint, to hold accountable any agents found to have engaged in unlawful or improper conduct, and to release the results of those investigations publicly. Our nine formal recommendations are listed in the conclusion.

Part I of this complaint provides background on the recent increase in regional child migration and the well-documented history of abuse of children by CBP officials. Part II consists of a representative sample of short summaries of children's experiences of abuse in CBP custody, grouped by type of abuse. Part III discusses the applicable legal framework that governs civil rights protections for unaccompanied immigrant children. Part IV concludes with a series of recommendations for responding to and preventing the widespread abuse of immigrant children by CBP officials.

I. Background:

A. Organizations

National Immigrant Justice Center (NIJC) —The National Immigrant Justice Center is dedicated to ensuring human rights protections and access to justice for all immigrants, refugees and asylum seekers. NIJC provides direct legal services to and advocates for these populations through policy reform, impact litigation, and public education. Since its founding three decades ago, NIJC has been unique in blending individual client advocacy with broad-based systemic change. NIJC is the largest legal service provider for unaccompanied immigrant children detained in Illinois. Each month, NIJC's Immigrant Children's Protection Project provides Know Your Rights presentation, legal screenings, and representation to more than 500 unaccompanied immigrant children detained in nine facilities across the Chicagoland area.

Esperanza Immigrant Rights Project (Esperanza) — Esperanza Immigrant Rights Project inspires hope and advances social justice for Southern California's most vulnerable immigrant and refugee communities through legal representation, community education, and advocacy. Esperanza is the largest non-profit immigration legal service provider in the State of California, serving approximately 8,000 individuals per year in the greater-Los Angeles Area, including at least 200 unaccompanied immigrant children each month. Esperanza was one of the first organizations in the country to represent mentally ill detained immigrants pursuant to the *Franco-Gonzalez v. Holder* litigation, and runs one of only two pilot programs in the country

⁶ See *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997) (hereinafter *Flores Settlement Agreement*). The *Flores Settlement Agreement* was reached after nearly a decade of litigation, following remand from the Supreme Court in *Flores v. Reno*, 113 S.Ct. 1439 (1992).

⁷ See Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002)(hereinafter 2002 HSA); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008) (hereinafter 2008 TVPRA).

that provides legal representation to minors released from ORR custody. This year Esperanza expects to represent approximately 250 unaccompanied immigrant children in their immigration proceedings. Esperanza Immigrant Rights Project is a program of Catholic Charities of Los Angeles, Inc.

Americans for Immigrant Justice (AI Justice) — Americans for Immigrant Justice is a non-profit law and advocacy firm that protects and promotes the basic human rights of immigrants. In Florida and on a national level, it champions the rights of unaccompanied immigrant children; advocates for survivors of trafficking and domestic violence; and serves as a watchdog on immigration detention practices and policies. AI Justice launched its Children’s Legal Program in 2001. Over the past thirteen years AI Justice has influenced national policy and laws affecting immigrant children and is widely recognized as an expert in immigrant children’s issues. In 2005, AI Justice collaborated with six community partners to create the Immigrant Children’s Legal and Service Partnership (ICLASP) in Miami, Florida. This program was recognized by the Office of Refugee Resettlement as a “model program for care providers throughout the country.” Each year, AI Justice attorneys represent thousands of unaccompanied children held in immigration shelters and in foster care without the protection of a either a parent or legal guardian.

Florence Immigrant and Refugee Rights Project (Florence Project) — The Florence Immigrant & Refugee Rights Project provides and coordinates free legal services and related social services to indigent men, women, and unaccompanied children detained in Arizona for immigration removal proceedings. Founded in 1989, the Florence Project strives to ensure that detained individuals have access to counsel, understand their rights under immigration law, and are treated fairly and humanely by our judicial system. The Florence Project provides high quality legal services and supports initiatives for national changes in immigration law and policy. The Florence Project’s Detained Immigrant and Refugee Children’s Initiative serves approximately 500 children held in shelters, group homes, or long term foster care programs in Phoenix. The Children’s Initiative educates, empowers, and provides legal assistance to unaccompanied immigrant children in removal proceedings.

ACLU Border Litigation Project — The ACLU Border Litigation Project investigates, documents, and litigates civil and human rights violations in the U.S.-Mexico border region. The ACLU is a non-partisan, non-profit, nation-wide organization that works daily in courts, communities, and legislatures across the country to protect and preserve the rights and liberties established by the Bill of Rights and state and federal law. The ACLU has a particular commitment to ensuring that fundamental constitutional protections of due process and equal protection are extended to every person, regardless of citizenship or immigration status, and that government respects the civil and human rights of all people.

B. Unaccompanied Immigrant Children

Unaccompanied immigrant children are among the most vulnerable individuals that CBP officials encounter. For years, journalists, academics and NGOs have reported on the increased migration to the United States by unaccompanied immigrant children, particularly children from

Central America and Mexico, and identified the principal factors responsible for this trend.⁸ In its 2012 report *Forced From Home: The Lost Boys and Girls From Central America*, the Women’s Refugee Commission (WRC) interviewed Central American children who cited the rise of gang and cartel violence, extreme poverty, and state-sponsored and gender-based persecution as reasons for their forced exodus from the region.⁹ In its 2014 report *Children on the Run*, the United Nations High Commissioner for Refugees (UNHCR) noted that the majority of unaccompanied children flee Central America and Mexico to escape persecution, violence in their communities, and/or deprivation or abuse in their homes.¹⁰ Children interviewed by UNHCR recounted fleeing gender-based violence, and beatings, extortion and kidnapping by gang members.¹¹ The UNHCR reported that “no less than 58 percent of the 404 children interviewed were forcibly displaced because they suffered or faced harms that indicated a potential or actual need for international protection.”¹² In a recent policy brief, NIJC published similar findings.¹³ While some unaccompanied immigrant children report a desire to reunite with parents in the U.S., the predominant reason that children give for leaving their home countries is fear of violence or persecution.¹⁴

The dire conditions in their home countries cause many children to embark on the hazardous journey to the United States, traveling by bus, atop freight trains, and on foot.¹⁵ Along the way, unaccompanied children are vulnerable to numerous forms of exploitation and violence, including rape, robbery, assault, kidnapping and extortion.¹⁶ Sometimes these children’s journeys end in tragedy before they reach the United States.¹⁷ Once at the U.S. border, children face the same hazards as adult border crossers. Children interviewed by the WRC witnessed other children drown while crossing the Rio Grande River, while others wandered for days in the desert without food or water.¹⁸ Nonetheless, “[t]he overwhelming majority of children interviewed expressed a willingness to risk the uncertain dangers of the trip north to escape certain dangers they face at home.”¹⁹

Once in the United States, unaccompanied immigrant children face a host of additional obstacles when funneled into our complex immigration system—chief among them is the fact that unaccompanied children have no guarantee of legal counsel and are forced to navigate this

⁸ See WRC *Forced From Home* at 7-13; United Nations High Commissioner for Refugees, *Children on the Run: Unaccompanied Children Leaving Central American and Mexico and the Need for International Protection* (2014) at 9-11 (hereinafter UNHCR *Children on the Run*) available at <http://bit.ly/1hvMNe0>.

⁹ WRC *Forced From Home* at 7-13.

¹⁰ UNHCR *Children on the Run* at 9-11.

¹¹ *Id.*

¹² UNHCR *Children on the Run* at 6. UNHCR notes, “Since, by definition, the Governments of their home countries no longer protect the basic human rights of these individuals, the international community must step in to ensure that those basic rights...are respected.” *Id.*

¹³ National Immigrant Justice Center, *Unaccompanied Immigrant Children: A Policy Brief* (January 2014) at 1-3 (hereinafter NIJC *Policy Brief*) available at <http://bit.ly/1o2RT4B>. The Policy Brief was based on legal consultations with 224 children, ages 2 to 18, held in Chicago-area shelters run by the Office of Refugee Resettlement (ORR) from December 23, 2013 to January 10, 2014.

¹⁴ WRC *Forced From Home* at 7; see also David Rogers, “Flood of Child Immigrants a Neglected Challenge,” *Politico*, May 28, 2014 (hereinafter Rogers *Politico* Article) available at <http://bit.ly/1ozGwio>.

¹⁵ WRC, *Forced From Home* at 8.

¹⁶ *Id.*

¹⁷ Jim Dwyer, “A 12-Year-Old’s Trek of Despair Ends in a Noose at the Border,” *The New York Times*, April 19, 2014 (hereinafter Dwyer *NYT* Article) available at <http://nyti.ms/1n0QFS5>.

¹⁸ WRC *Forced From Home* at 8.

¹⁹ *Id.*

complicated adversarial system on their own.²⁰ Children of all ages represent themselves before judges in immigration proceedings, while the government is represented by counsel.²¹ Without representation, children are unlikely to be able to identify applicable forms of relief, much less analyze past abuses that, in addition to violating U.S. law, may also be relevant to potential legal relief.²²

C. U.S. Customs and Border Protection: A History of Abuse and Impunity

After often enduring severe physical and emotional trauma prior to arrival, unaccompanied immigrant children frequently suffer additional abuses at the hands of CBP and Border Patrol officials who apprehend them. This problem is not new—the same abuses have been documented extensively for years. For example, in 2009, the Florence Project released the report *Seeking Protection, Enduring Prosecution*, based on interviews with 124 unaccompanied children over a two-month period.²³ Eighty-five percent of the unaccompanied immigrant children reported that their holding cells were excessively cold, while 37 percent received food less than three times a day, 25 percent were not offered water, and 49 percent were denied the opportunity to call their family, consulate, or an attorney.²⁴ The Florence Project identified 18 specific cases of physical abuse and 16 cases of verbal abuse.²⁵

In its 2011 report, *Culture of Cruelty, No More Deaths* (NMD) documented more than 30,000 incidents of abuse of adult and child immigrants in short-term CBP custody.²⁶ Reports included psychological, verbal and physical abuse; extreme cold, severe overcrowding, and unsanitary conditions in processing centers; and denial of food, water and medical treatment while in CBP custody.²⁷ NMD noted that many of the 801 children interviewed reported physical abuse, family separation, and night repatriation at rates comparable to adults, and reported some forms of abuse, including denial of drinking water, at higher rates than adults.²⁸ Many of the same problems have been corroborated in subsequent academic and NGO reports.²⁹

NIJC's 2014 *Policy Brief* likewise noted the harsh treatment that children often faced while in CBP custody. In interviews with 224 children over a three-week period, the vast

²⁰ NIJC *Policy Brief* at 3; see also Center for Gender & Refugee Studies & Kids In Need of Defense, *A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System* (2014) (hereinafter CGRS/KIND *Treacherous Journey*), at 3, available at <http://bit.ly/1jDBdLs>; Jacqueline Bhabha and Susan Schmidt, *Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection in the U.S.* (2006)(hereinafter “Bhabha & Schmidt *Seeking Asylum Alone*”) available at <http://bit.ly/1xtzMGO>.

²¹ CGRS/Kind *Treacherous Journey* at 3.

²² NIJC *Policy Brief* at 3.

²³ Florence Project *Seeking Protection, Enduring Prosecution* at 7-8.

²⁴ *Id.* at 13-14.

²⁵ *Id.* at 10, 12.

²⁶ NMD *A Culture of Cruelty* at 12; see also NMD, *Crossing the Line*

²⁷ NMD *A Culture of Cruelty* at 5.

²⁸ *Id.* at 18.

²⁹ See Daniel E. Martinez et al., *Border on Criminal: The Routine Abuse of Migrants in the Removal System* (Dec. 2012), available at <http://bit.ly/1cBbxwb>; The Center for Latin American Studies, Univ. of Arizona, *In the Shadow of the Wall: Family Separation, Immigration Enforcement and Security*. (Mar. 15, 2013), 24, available at <http://bit.ly/1nOQRrt>; Kino Border Initiative, *Documented Failures: The Consequences of Immigration Policy at the U.S.-Mexico Border* (Feb. 13, 2013), available at <http://bit.ly/1pa3UVo>; Binational Defense and Advocacy Program, Northern Border Initiative, *Human Rights Violations of Mexican Migrants Detained in the United States 2011-2012* (May 2013), available at <http://bit.ly/1nt4WsE>.

majority of children reported being detained in *hieleras*, the Spanish word for “freezers,” used to describe holding rooms maintained at extremely cold temperatures.³⁰ Many children reported being unable to track the length of time they were held in CBP custody because the lights in their cells were never turned off. At least 29 children were held in CBP custody beyond the 72-hour legal limit.³¹ Some of the children reported being hungry in CBP custody, including several who reported that they were “barely fed.”³² In addition, 56 percent of children said they were placed in three-point shackles, affixed at the wrists, waist, and ankles.³³ The WRC documented similar instances of abuse and mistreatment in its 2009 *Halfway Home* and its 2012 *Forced From Home* reports.³⁴

Particularly troubling is the failure of DHS oversight agencies to respond to these reports, and to individual cases in which CBP officials abused children. For example, from 2009 to 2011, No More Deaths and partner organizations filed 75 CRCL complaints regarding CBP abuses, but did not receive a response from the agency in a single case.³⁵ This is consistent with the American Immigration Council’s (AIC) recent findings that 97 percent of the 809 abuse complaints filed against Border Patrol agents between January 2009 and January 2012 resulted in the classification “no action taken.”³⁶ Approximately 60 of these complaints involved abuse of immigrant children, including one case in which a child reported that an agent “hit him on the head with a metal flashlight 20 times, kicked him five times, and pushed him down a hill.”³⁷

The lack of meaningful investigation by DHS oversight agencies perpetuates a culture of impunity within CBP and reflects a broader failure by federal agencies and policymakers to respond to the ongoing, systemic abuses of unaccompanied children. Particularly in light of the increase in unaccompanied children fleeing dangerous conditions in the region,³⁸ major agency reforms are urgently needed.

II. Individual Complaints

A unifying theme of the attached complaints is the agency’s continued failure to incorporate the governing principle of U.S. policy regarding unaccompanied immigrant children into its every day practice: that these children are to be treated with dignity, respect and special concern for their particular vulnerability as children. Documented from approximately March to May 2014, these 116 cases paint a consistent picture of widespread abuse and mistreatment. Over 80 percent of these children reported inadequate food and water by CBP officials.

³⁰ NIJC *Policy Brief* at 3.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ WRC *Forced From Home* at 20-21; *see also* Women’s Refugee Commission, *Halfway Home: Unaccompanied Immigrant Children in Immigration Custody* (2008) at 9-11 (hereinafter WRC *Halfway Home*), available at <http://bit.ly/1hvPc8M>.

³⁵ NMD *A Culture of Cruelty* at 8.

³⁶ AIC *No Action Taken* at 8.

³⁷ Damien Cave, “Complaints of Abuse by Border Agents Often Ignored, Records Show,” *New York Times*, May 5, 2014 (hereinafter Cave NYT Article) available at <http://nyti.ms/1iTzDY5>.

³⁸ WRC *Forced From Home* at 4; Ian Gordon, “70,000 Kids Will Show Up Alone at Our Border This Year. What Happens to Them?” *Mother Jones*, July/August 2014 Issue, (hereinafter Gordon *Mother Jones* Article) available at <http://bit.ly/T9FbDg>; Julia Preston, “U.S. Setting Up Emergency Shelter in Texas as Youths Cross Border Alone,” *New York Times*, May 16, 2014, (hereinafter Preston NYT Article) available at <http://nyti.ms/1iVQGTP>; *see also* Rogers *Politico* Article.

Approximately half of the children described the denial of medical care. More than half reported experiencing some form of verbal abuse, while approximately one in four reported physical abuse ranging from sexual assault to punching, kicking, and use of stress positions as punishment. One in three reported CBP officials confiscated and did not return money and/or belongings, and approximately 15 percent reported being forcibly separated from family members. Approximately 70 percent of these children were detained by CBP beyond the 72-hour statutory limit.

We note that the submitted complaints are a representative sample and not an exhaustive compilation of the many stories of CBP abuse that our organizations encounter. We further note that there are many reasons to believe that abuse of children by CBP officials is dramatically under-reported. For example, both Esperanza and NIJC interviewed many children who reported abuse while still detained in CBP custody, but declined to file a complaint for fear that doing so would negatively impact their immigration case or otherwise result in retaliation. Others said they were treated “fine” by officials, but when asked for details, described serious abuse and mistreatment, including harsh detention conditions. While most children transferred to the custody of the Department of Health and Human Services’ Office of Refugee Resettlement (ORR) receive a legal orientation and screening, many are not specifically asked about their treatment in CBP custody. Even if abuses are identified, agencies offering legal services to unaccompanied children often do not have the resources to file complaints or follow up once a child has been released from ORR custody. Children released without proper screening face serious obstacles to obtaining legal assistance. All of these factors result in many cases of CBP abuse going unreported.

What follows is a representative sample of the abuses documented in 116 affidavits submitted to DHS as attachments to this complaint. Although many children reported multiple forms of abuse and mistreatment while in CBP custody, the following summaries are organized generally by the type of abuse suffered: physical and sexual abuse, verbal abuse, failure to provide medical treatment, mistreatment of infants and pregnant and nursing minors, inhumane detention conditions, due process concerns, and use of shackles.

Physical and Sexual Abuse

R.D.

R.D. fled to the United States at age 17 after being sexually abused by a gang member in her home country. While trying to cross the border, she cut her hand on a fence. After Border Patrol apprehended her, an agent looked at her hand and squeezed the wound, causing her great pain. The agent told her, “It’s good that you are hurt, you deserve to be hurt for coming to the US illegally.” R.D. became so ill in CBP custody that she could not release her bowels for the entire five days she was detained. She believed this was caused by the food CBP gave her. R.D. reports that there were young boys in her *huelera* who had crossed the border with their mothers, but had been separated from them by CBP.

D.G.

D.G. is a 16-year-old Central American girl. Shortly after CBP arrested her, officials mocked her and asked her why she did not ask the Mexicans for help. When they searched her,

officials violently spread her legs and touched her genital areas forcefully, making her scream. D.G. was detained with both children and adults. She describes the holding cell as ice-cold and filthy, and says the bright fluorescent lights were left on all day and night. D.G. became ill while in CBP custody but when she asked to see a doctor, officials told her it was “not their fault” that she was sick and ignored her. CBP officials did not return all of D.G.’s personal belongings when she was released.

C.S.

C.S. is a 17-year-old boy who came to the United States seeking safety from gangs in El Salvador. After he was detained, C.S. was threatened by CBP officials. After a CBP official noticed C.S. laughing with a friend, C.S. was forced to stand for over an hour. The same official took away the boys’ blankets and threatened to put the boys in a colder room if they sat down. CBP officials only fed C.S. frozen bologna sandwiches. When C.S. was transported from the detention center, CBP officials shackled him at his hands, waist, and feet. C.S. was too afraid to tell the officials that the handcuffs were too tight.

M.V.

M.V. is a 16-year-old boy who was apprehended near McAllen, Texas. While in CBP custody, M.V. was taken to a room where officials insulted M.V. and accused him of lying about his age. One official accused M.V. of possessing false documents, and threatened that if M.V. did not tell the truth about his age, he would “become the wife” of a male detainee. That official left the room, leaving M.V. alone with a male CBP official. That official directed M.V. to remove all of his clothes. M.V. remained undressed for approximately 15 minutes while the male official patted him down. The male official continued to interrogate M.V. about his age and laughed at M.V. while he was undressed. After the strip search, M.V. was directed to another waiting room where a third official told M.V. he would “pay” for being a liar. When M.V. was transferred to ORR custody, CBP officials handcuffed him in three-point restraints. M.V. was transported with other children who shared that they had also been strip-searched and questioned about their age.

K.M.

After CBP transferred 15-year-old K.M. to ORR custody, K.M. reported that one of the girls with whom she was detained was covered in bruises on her chest and face. The girl initially claimed her injuries had occurred when she fell. When pressed, however, the girl admitted that when she was apprehended, a CBP official took her into a cave and raped her. The girl said that she was afraid to come forward or make a complaint because the CBP official threatened her.

J.P.

J.P. is a 13-year-old boy who was arrested with his 8-year-old sister near Hidalgo, Texas. J.P. and his sister were brought to a holding cell and then separated. J.P. spent three days in the first holding cell where he was detained with other adult men. He states that when he and other boys would cry, the officials would yell at them to stop because there was “no mother there” to comfort them. When J.P. tried to get a CBP official’s attention, the official threatened to hit him with a metal rod. The official then threatened the children not to tell anyone what had happened.

After the third day, J.P. and his sister were brought to another holding facility. In the holding cell at this facility, J.P. was accosted by two adult men who told him they would “eat him up” while he slept. Other men in the cell warned J.P. to watch out for the two men because they liked “chubby boys.” Later, the two men J.P. had been warned about sexually molested him by touching his genitals after J.P. had fallen asleep. The men molested J.P. again the following night. J.P. repeatedly tried to report the abuse to CBP officials, but they ignored him. J.P. continues to feel afraid when he remembers what happened to him.

J.R.

J.R. is a 13-year-old boy who was apprehended near Brownsville, Texas. The officials who apprehended J.R. allowed their service canine to scratch his face, causing bleeding and impaired vision. When CBP took J.R. to a holding facility, they did not give him medical treatment for his wound and he only had an aluminum blanket to clean his face. J.R. also reports witnessing officials use a Taser on a young boy and then handcuffing him to a chair. When he left the facility, J.R. was placed in shackles which were too tight and caused pain.

E.G.

E.G., a 16-year-old boy was apprehended at the border by CBP officials. Officials removed E.G.’s shoes and told him to walk without them to the detention facility. Officials pushed, screamed at, and threatened E.G. as he was walking. One CBP official threatened, “You are in my country now, and we are going to bury you in a hole.” An official asked E.G. if he had killed someone and if that was why he had come to the United States. CBP transferred E.G. between frigid holding cells at various CBP facilities where officials gave him only juice to drink. E.G. found the food inedible and became ill. He describes the holding cells as cold and loud. The lights were never turned off at night and E.G. was unable to sleep.

S.M.

S.M. is a 15-year-old boy. Officials frequently yelled at S.M., and kicked him to wake him up when he tried to sleep. CBP separated S.M. from his uncle and his cousin without any explanation or information regarding where they would be sent.

J.A.

J.A. is a 17-year-old boy who was detained near Hidalgo, Texas. A CBP official forced J.A. to kneel and hold his hands up against the walls of the holding cell for almost twenty minutes as punishment for laughing. The CBP official screamed at J.A. that the official was “the one in charge” and that J.A. would have to remain kneeling in a stress position “until it hurts.” J.A. also reports hearing the same official tell another boy that he looked like a clown and that that was all he was good for. J.A. states that he felt scared and humiliated.

Verbal Abuse

E.M.

E.M. is a 17-year-old child who fled Guatemala after she was raped and impregnated and her family subsequently threatened. E.M. was kidnapped after entering the United States and forced to work before an uncle paid for her release. After E.M. was apprehended near Falfurrias, Texas, she was detained in a CBP holding facility. An officer with the nickname “Mala Cara,” or “Bad Face” told E.M., “Welcome to hell.” and repeatedly addressed her as “princess.” After E.M. complained to other officials, “Mala Cara” treated E.M. even worse. When E.M. was finally transferred to ORR custody, “Mala Cara” threatened, “We’re going to put you on a plane, and I hope it explodes. That would be the happiest day of my life.”

G.G.

G.G. is a 16-year-old girl. When Border Patrol agents apprehended her in Texas, they threatened to kill her if she moved or ran away. When she told the agents her age, they yelled, insulted her, and called her a liar. An agent told her, “Your little scheme won’t work to keep you here in the U.S.” CBP detained G.G. for nine days, in five different detention centers. G.G. was extremely hungry, and CBP officials gave her moldy bread. She became ill and believed it was because of the food. When she asked for something to settle her stomach she was told “this is not a hospital.” When she vomited, officials accused her of being pregnant and called her a “dirty liar.” When G.G. asked the time of day, officials replied, “What do you care? Are you late for work?” G.G. slept on the floor of her cell with a thin sheet of paper for a blanket every night. The bathrooms were filthy—the floors were covered with used sanitary napkins and soiled toilet paper, and there were no garbage cans, no doors, and no privacy. The only water available to G.G. to drink came from the bathroom sink. Officials repeatedly told her, “You’re the garbage that contaminates this country.”

B.O.

B.O., a 14-year-old boy, was held for five days at three different CBP detention centers. During that time, he was unable to sleep because the lights were never turned off. As he was being taken to the airport, a CBP official told B.O. and other children that he hoped the children’s plane would crash. The official made hand movements and noises to simulate a plane taking off and then crashing.

K.M.

K.M. is a 15-year-old girl who was detained in CBP custody for four days. The CBP official to whom she disclosed her age accused her of lying. CBP officials did not provide K.M. with food until a full day after she arrived in custody, and denied her the opportunity to bathe. In the *hielera*, CBP officials woke K.M. and the other children every 30 minutes as they tried to sleep, and K.M. could not keep track of the time because the lights were always left on. CBP officials called her and the other children “sluts,” “parasites,” and “dogs.” When she told an official that the water tasted of chlorine, he replied, “Stupid girl, if you don’t like the water put your hands in the bathroom sink and drink from there.” She and other girls asked for blankets and were told, “You sluts, why did you come to the U.S.? This is not a five-star hotel. You think because you came to this country we are going to treat you well?” When K.M. and the other detained girls told the CBP officials they were hungry, they cursed and said, “We don’t sell food here.” A CBP official entered the holding cell eating a Snickers bar and said, “Look sluts, look at me eat.” The official added, “Hopefully when you are transferred the plane will crash and you

will all die.” Officials pressured K.M. to sign a deportation order, telling her that she would be deported anyway. Officials transported K.M. in three-point shackles, which she describes as being painfully tight. Officials also placed two young pregnant women in three-point shackles, despite their cries and objections that the shackles caused abdominal pain.

M.P.

M.P. is a 17-year-old girl who was apprehended in McAllen Texas. The Border Patrol agent who interviewed M.P. accused her of lying about her age and threatened to send her to jail. When the agent learned that M.P. has a son, the agent threatened that M.P. “would not see her son for three to five years.” M.P. spent approximately six days in CBP custody at two different holding facilities. She only ate twice a day and slept on the floor in the second facility, without a blanket. When she left the second facility, M.P. was shackled at her hands, waist and feet. The shackles were too tight, but she did not feel she could say anything or that anything would be done about it.

R.C.

R.C. is a 16-year-old boy who fled forced gang recruitment in El Salvador. After CBP apprehended R.C. and brought him to a holding facility, officials initially refused to give him food and water. The following morning, a CBP official woke up R.C. and the other detainees by yelling, “Get up you fuckers!” The official continued to yell and swear at R.C. and threatened to take away R.C.’s blanket. R.C. was scared of the officials and worried they might continue to detain him as punishment.

Failure to Provide Medical Treatment

K.A.

K.A. is a 14-year-old girl. After CBP apprehended her, officials confiscated a gold necklace her mother had given her as well as K.A.’s asthma medication. Neither was returned to her upon release. Conditions in the detention facility aggravated K.A.’s asthma. In the first *hielera*, CBP officials squeezed approximately 80 people into what K.A. describes as a “tiny room” with no room to lie down. There was no privacy, and the toilet was exposed in plain view with a security camera located directly in front of it. K.A. suffered multiple asthma attacks during her detention. When K.A. had her first asthma attack, officials threatened that they would punish her if she were faking the attack. When K.A. finally received medical care, a doctor gave her another inhaler and medication. CBP officials again confiscated her medication, returning the inhaler only after she began to suffer another asthma attack. When K.A. told officials she had not received food, they told her to “suck it up” because she was “a no one in this country.” One official told her, “It would have been better had you stayed in your country, you have no business coming here.”

H.R.

CBP apprehended H.R. and his paternal aunt near Rio Grande City, Texas. At the time of his apprehension, H.R. was seven years old and was severely developmentally disabled and suffering from severe malnourishment. CBP detained H.R. for approximately five days without

any medical treatment. After being transferred to ORR custody, H.R. was hospitalized immediately, underwent surgery, and remained hospitalized for 42 days. His treating physicians and therapists diagnosed H.R. as suffering from a “global developmental delay,” “autism disorder,” and “severe malnutrition.” His examination revealed that at seven years of age he weighed only twenty-five pounds, the average weight of an 11-month old child.

Y.B.

Y.B. is a 15-year-old girl who was detained near Hidalgo, Texas. CBP detained her for approximately two days in four different holding cells. The facility was extremely cold and Y.B. became sick and developed stomach pains. CBP denied Y.B.’s requests for medication and told her she could not see a doctor. While in CBP custody, Y.B. tried to care for a 4-year-old girl who had become separated from her brother. Y.B. reports that when she asked for more food for the little girl, who was crying from hunger, an official told Y.B. that the little girl could “suck her thumb.” Y.B. was shackled while being transported. Although Y.B. asked an official if he could loosen the shackles at her waist because she was sick and had stomach pain, the official refused and instead tightened the shackles more.

Mistreatment of Infants and Pregnant and Nursing Minors

J.P.

J.P. is a 17-year-old girl. CBP detained J.P. and her infant child for six days in a cell so crowded that J.P. could not sit down. Although J.P. breastfeeds her baby, she saw other women asking for milk for their babies. CBP officials refused to provide milk and yelled at the women that they “should not be there” anyway. Some of the children cried from hunger. Through most of the time she was detained, J.P. did not have a blanket to keep her and her infant child warm in the *hielera*.

Y.R.

Y.R. is a 16-year-old girl who was apprehended with her two-year-old son. CBP detained Y.R. and her son in a holding cell with approximately 30 other individuals, including adults. Y.R. reports that the holding cell was “freezing cold,” and she was not provided with any blanket. After her third day in CBP custody, Y.R. realized that her son was feverish. She initially feared calling her son’s condition to the attention of the CBP officials, because she had witnessed how the officials screamed at anyone who asked for help. While one official did provide her with a wet towel to try to reduce her son’s fever, her other pleas for medical assistance were either ignored or dismissed. One official accused her of lying about her age because “sixteen year old girls do not have sons who are older than one.”

M.R.

M.R. is a 15-year-old girl who traveled from Guatemala with her two-year-old son, seeking the support of her family in the United States. M.R. recalls one official who asked, “What are you looking for in the United States? No one told you to come here.” M.R. reports that CBP officials gave her the same cold meals daily and that she had to sleep on a hard floor with only an aluminum “space blanket.” Along with other detainees, M.R. was made to clean the

bathrooms at the facility. On several occasions, she had to wait hours to receive clean diapers for her son. Both M.R. and her son became sick while in CBP custody, but M.R.'s requests for medical attention were ignored or dismissed for approximately five days, until she and her son were finally taken to a hospital. M.R. says that just thinking about the CBP holding facility in which she was detained makes her feel shaky and nauseous.

O.M. and Z. M.

O.M. is a five-year-old boy who fled his home country with his mother, Z.M. When Z.M. attempted to identify herself as an asylum seeker during an initial screening, CBP officials threatened that if she did not reveal who helped her to cross the border, they would take away her son and she would never see him again. CBP officials placed Z.M. in three-point shackles even though she was six and a half months pregnant and threw away her prenatal vitamins and the medication she had brought for O.M. In three days in CBP custody, officials gave O.M. juice and a spoiled burrito that he could not eat. O.M. ate only a cookie each day he remained in detention. He slept on the floor without any bedding. Z.M. reports that the cell smelled of urine and that she did not receive enough water. As CBP officials were separating O.M. and Z.M., O.M. began to cry. The official asked O.M. if he knew how to count, and O.M. responded, "Yes." The official told O.M. to count a week three times because he would not see his mother until that time had passed. In fact, Z.M. and O.M. were not reunited for approximately two months. O.M. describes being terrified and extremely depressed by the separation from his mother and his experience in CBP custody.

S.G.

S.G. is a 17-year-old girl who emigrated from Guatemala with her one-year-old daughter. CBP officials apprehended S.G. and her daughter and detained them in three different *hieleras* for approximately nine days. In the first *hielera*, an official yelled, "You are just coming to this country to steal our money." S.G. was not allowed to change her infant daughter's clothes and she was only once able to change her daughter's diaper. In the second *hielera*, CBP did not provide S.G.'s daughter with a blanket or food and did not provide any diapers until the third day. Her daughter did not receive any medical attention or medication despite being visibly sick. In the third *hielera*, S.G.'s daughter did not receive food until the third day. She cried constantly from hunger in all three *hieleras*.

W.C.

W.C. is a 17-year-old girl who traveled to the United States with her five-month-old daughter. W.C. reports that her daughter cried frequently in CBP detention and developed a fever. Officials refused to provide blankets to keep her warm. W.C. reports that the food in CBP custody was so bad that she could not eat it most days, causing her to faint on multiple occasions. When this happened, official would remark, "No one told you to come here." W.C. also states that because she was not eating enough, she could not produce enough milk for her daughter. When she asked officials for diapers or for juice for her daughter, they ignored her.

Inhumane Detention Conditions

J.P.

J.P. is a 12-year-old girl who left El Salvador with her sister because a gang member was stalking her. She feared the gang member would kidnap and rape her, like many other girls she knew who had also been targeted by gang members in her town. CBP detained J.P. and her sister near Hidalgo, Texas for nearly a full week. During this time, J.P. and her sister were denied adequate water and J.P.'s only meal was bread with frozen bologna. When she vomited after eating the food, officials told J.P., "No one told you to come to this country." When they were finally transferred to an ORR shelter, J.P. and her sister required medical treatment for dehydration.

Y.C.

Y.C. is a 10-year-old boy who fled death threats from gangs in El Salvador. CBP apprehended Y.C. and transferred him between several *hieleras*, but did not give him any food or water for a day. Y.C. is not certain how long he was detained because the lights in the holding cell were never turned off. The temperature in the holding room was so cold that the children could not sleep and Y.C. believed the officials were turning the temperature down to make it colder. If any children in the holding cell tried to play with each other, officials took them outside and yelled at them. CBP did not provide Y.C. with any personal hygiene items and the only bathroom available was in full view of the other detained children. CBP never returned Y.C.'s personal belongings.

J.R.

J.R., a 14-year-old girl from El Salvador, did not receive water for several hours after being apprehended by immigration officials. She eventually drank water tasting strongly of bleach out of a cup shared by other detainees. While she was detained, CBP only gave J.R. food twice a day: a frozen sandwich and a foul-smelling burrito with rotten beans. She repeatedly vomited after eating, but CBP did not provide any other food. J.R. found a worn and dirty aluminum blanket in her cell that had belonged to another detainee, but it was insufficient to keep her warm in the *hielera*. J.R. was unable to sleep because officials woke the children frequently. When the children spoke to each other, the officials yelled at them and jingled handcuffs in a threatening manner. J.R. describes feeling scared, unsafe and anxious throughout her time in detention—especially after she and her younger brother were separated. CBP officials confiscated a gold locket with a picture of J.R. and her brother and never returned it.

L.G.

L.G. is a 17-year-old boy. CBP detained L.G. for five days in a very cold cell in which the lights were kept on all night. During that time, the only food CBP officials provided was "Cup of Noodles" soup with cold water. L.G. was forced to eat the soup with his bare hands and he became ill. CBP officials allowed L.G. to bathe, but placed him in handcuffs while he bathed.

C.S.

C.S. is a 17-year-old girl who was apprehended after crossing the Rio Grande. CBP detained C.S. in a *hielera* in wet clothes that did not dry for the duration of the three and a half days she was there. The only drinking water available to C.S. came from the toilet tank in her

holding cell. The bathroom was situated in plain view of all other detainees with a security camera mounted in front of it. C.S. could not sleep because the temperature was so cold, the lights were on all night, and officials frequently woke the detainees when they tried to sleep.

J.R.

J.R. is a 16-year-old boy who was detained four days in four different *hieleras*. In one holding cell, CBP gave J.R. and about forty others one gallon of water to share and denied requests for more water. CBP gave J.R. a sandwich twice a day, but he vomited after eating. CBP did not provide J.R. with any blanket to keep warm in the *hielera* and J.R. developed a fever and body aches. CBP did not allow J.R. to see a doctor and he did not receive medical attention until after he was transferred to an ORR shelter.

L.D.

L.D. is a 17-year-old boy, who was abandoned by both of his parents and lived on his own from a young age, working twelve-hour shifts for very little money in order to feed himself. As a child with no parents and no adult protection, gangs tried to force L.D. into drug trafficking. When he refused, they threatened to kill him and so he fled. After he was apprehended, CBP detained L.D. in two different *hieleras*. Officials did not give him enough food or water, and told him he had to clean the toilet and pick up garbage if he wanted to receive any food. The *hielera* was very cold and he only had a thin “space blanket” to keep warm. L.D. used the same blanket to try to cover himself when he used the bathroom, which was in plain view of the other detainees. When L.D. developed a fever, he asked for medicine, but CBP did not provide any medical attention.

Due Process Concerns

J.V.

J.V., a 16-year-old boy, did not receive adequate drinking water during four days in CBP custody. He and most of the other detainees in his cell became sick after eating the food. The group of more than 100 detainees shared one toilet, located in plain view of everyone in the holding cell and CBP officials. Officials stripped J.V. of the additional layers of clothes he had with him—a standard practice before placing detainees in the *hielera*. J.V. developed a fever while in custody, but CBP denied his request for medical care. Officials hit and kicked J.V.’s feet to wake him when he tried to sleep. CBP officials confiscated and failed to return J.V.’s birth certificate, and attempted to force J.V. to sign what J.V. believes was a deportation order. When J.V. tried to read the document, officials tore up the document, offered a new one, and again told him to sign.

K.H.

K.H. is an orphan who was apprehended at the border when she was 17-years-old. K.H. fled to the safety of her extended family in the United States after a gang tried to force her into a sexual relationship with one of their members. In CBP custody, K.H. did not receive any clean water to drink and had to sleep on the floor of a cold cell with no blankets. She was unable to sleep because CBP officials made noise all night and kept the lights on. Because she is an

orphan, K.H. would have been eligible for Special Immigrant Juvenile Status (SIJS), a defense to removal which must be initiated prior to a child's 18th birthday. However, because CBP officials confiscated her identity documents and did not return them, K.H. was unable to file an application for SIJS before her 18th birthday.

S.R.

S.R. was 11-years-old when CBP apprehended him. CBP officials separated S.R. from his 14-year-old sister. S.R. describes feeling anxious and scared after the separation, because he did not know if or when he would see her again. CBP did not give him water until two days after he was detained, and the water he ultimately received tasted strongly of chlorine. There was insufficient water for everyone and all the detainees in S.R.'s cell drank from the same cup. S.R. received food twice a day. He became ill and his stomach ached and S.R. believed this was due to the dehydration and lack of food. CBP officials frequently woke him, depriving him of sleep. S.R. recalls seeing CBP officials remove young boys from the holding cell in the middle of the night and believes they were deported. S.R. was not permitted to use the telephone to call his parents or consulate and officials threatened to deport him if he did not do as they said.

M.E.

M.E. is a 16-year-old girl who fled from Mexico to the United States after her brother was disappeared and both she and her family received multiple death threats. When she was apprehended, an immigration official in civilian clothes asked her, "What right do you have to come to our country?" When M.E. tried to explain what she and her family experienced, the official told her she would not get through with her *pinche mentira* (fucking lie) because he knew how to detect a liar like her. In detention, M.E. did not eat because the food CBP gave her appeared and smelled spoiled. She was forced to use a bathroom in plain view of all other detainees and did not have access to soap or hygiene items. The only blanket CBP provided was thin and had the residue of someone else's food on it. M.E. was separated from her older brother, who was also seeking asylum, and she still does not know what happened to him. M.E. fears her brother may have been deported and killed by those threatening their family. Although M.E. continually attempted to seek asylum, CBP returned her to Mexico at the border multiple times before she was ultimately allowed into the United States to seek asylum and transferred to an ORR shelter.

E.M.

CBP detained E.M., a 15-year-old girl, for a total of eight days. Officials gave her water that smelled strongly of chlorine and she became ill after consuming the food CBP provided to her. She was forced to sleep in a very cold and uncomfortable cell. E.M. experienced difficulty sleeping because the lights in the holding cell were never turned off and the facility was extremely noisy. She was not allowed to use a private restroom, nor was she given any personal hygiene items. Her personal belongings were not returned to her. CBP officials yelled at E.M. and told her that they were going to deport her. CBP officials refused to allow E.M. to call her parents or her consulate.

Use of Shackles

A.B.

A.B. is a 15-year-old boy who was apprehended near McAllen, Texas. A.B. reported that while in CBP custody, an officer forced children to stand against a wall for long periods of time as punishment and yelled that this is his country and he is in charge. During A.B.'s transfer to ORR custody, CBP placed A.B. in three-point shackles from his ankles to waist to wrists. A.B. felt the shackles were too tight around his ankles and caused him pain. When A.B. told the officers that the shackles hurt him, they told him to "deal" with it.

M.G.

M.G. is a 14-year-old boy who fled El Salvador out of fear that gang members would kill him. CBP detained him for approximately four days in frigid detention facilities. He reports being "cold, hungry and scared." Upon leaving the last holding cell, officials shackled M.G. at the hands, waist and ankles, causing pain and making it difficult for him to walk. M.G. states, "I felt terrible; I felt like a criminal."

W.M.

W.M. is a 17-year-old boy who was detained near Rio Grande City in Texas, where he was held in CBP custody for approximately four days. While he was transferred from detention, CBP shackled W.M. at the hands, waist and feet, which caused discomfort and pain. He says he did not alert officials that he was in pain "because they didn't care for us and would have been mad."

D.Q.

D.Q. is a 16-year-old girl who was detained in Harlingen, Texas. During her approximately nine days in CBP custody, officials continuously insulted and harassed her and the other children in her holding cell. Officials asked, "Why don't you return to your country?" and called the children "*pinches cabrones*," ("fucking bastards"). Some officials mocked the children's names. D.Q. witnessed officials hitting some of the girls and saw one boy go into convulsions following an asthma attack. D.Q. reports that the boy's sister began screaming for help and officials responded only by bringing the boy a soda. When transported, D.Q. was shackled tightly. In D.Q.'s words, "Never in my life had I been shackled. I felt like an animal."

III. Legal Standards Governing Unaccompanied Immigrant Children

DHS and its components, including CBP and Border Patrol, have an obligation to secure the safety and well-being of all individuals in their custody, including unaccompanied children. In addition to constitutional protections applicable to unaccompanied immigrant children, Congress has enacted legislation to codify certain standards of detention and release for immigrant children.³⁹ DHS has additionally issued some policy guidance to address procedural and substantive safeguards for these children.⁴⁰ These efforts notwithstanding, existing

³⁹ See generally 2002 HSA; 2008 TVPRA.

⁴⁰ U.S. Customs and Border Protection, "Hold Rooms and Short Term Custody Policy," (June 2, 2008) (hereinafter CBP 2008 Hold Rooms and Short Term Custody Policy) available at <http://1.usa.gov/1kPIJpZ>.

legislation and agency policies are insufficient to address the continuing abuses of unaccompanied children by CBP officials.

A. *Flores Settlement Agreement*

Abuse of immigrant children by immigration officials has spurred extensive litigation, in particular the historic *Flores v. Reno* litigation, which established much of the current legal framework governing unaccompanied children in government custody. Still, many of the same problems that gave rise to the *Flores* litigation persist. That litigation—filed at a time of increased Central American migration and in response to growing concern about extended detention and harsh conditions faced by immigrant children in the custody of the former Immigration and Naturalization Services (INS)—resulted in the *Flores* Settlement Agreement (*Flores*) in 1997.⁴¹ *Flores* articulated the important principle that children in detention are to be treated with “dignity, respect and special concern for their particular vulnerability.”⁴² Among other commitments established by *Flores*, the former INS agreed to promulgate regulations to ensure detention facilities met minimum standards, while also committing to adhere to the least restrictive detention setting for these children.

Almost two decades have passed since the *Flores* Settlement Agreement was reached and DHS has failed to promulgate permanent regulations. *Flores* therefore remains the national policy regarding the treatment of unaccompanied immigrant children in federal custody, binding DHS and its component agencies to the standards articulated in the Agreement. Nonetheless, multiple human rights organizations and governmental agencies have issued public reports noting the lack of compliance with *Flores*. For example, in 2001, the Department of Justice (DOJ) responded by commissioning an Office of the Inspector General (OIG) investigation, which found multiple agencies practices that put detained children at risk.⁴³ OIG also noted deficiencies in data tracking and analysis to identify systemic problems in custody times and facility placements.⁴⁴

In 2007, an unaccompanied child challenged violations of *Flores* at the T. Don Hutto Residential Center in Taylor, Texas.⁴⁵ In granting the plaintiff’s motion for a preliminary injunction in part, the court addressed the limitations of *Flores*, which fails to correspond to present day realities:

“Of course, the provisions of this settlement agreement, entered over ten years ago, were never intended to be permanent authority, much less the *only* binding authority setting standards for the detention of minor aliens. The *Flores* Settlement was intended as a stopgap measure until the United States could

⁴¹ See generally *Flores v. Reno*, No. CV 85-4544-RJK(Px)(C.D. Cal. Jan. 17, 1997) available at <http://bit.ly/1o2ThEa>.

⁴² *Id.* at 6.

⁴³ Office of the Inspector General Report, *Report Number I-2001-009: Unaccompanied Juveniles in INS Custody* (September 28, 2001) (hereinafter *OIG 2001 Unaccompanied Juveniles*), available at <http://1.usa.gov/UmJOLa>; see also, Human Rights Watch, *Slipping Through the Cracks: Unaccompanied Immigrant Children Detained By The U.S. Immigration and Naturalization Service* (April 1997) (hereinafter *HRW Unaccompanied Immigrant Children*), available at <http://bit.ly/1ozItLG>; Amnesty International, *United States of America: Human Rights Concerns in Border Region With Mexico* (1998) available at <http://bit.ly/1n0R5Ig>.

⁴⁴ *Id.*

⁴⁵ *Bunikyte, ex rel. Bunikiene v. Chertoff*, 2007 WL 1074070 (W.D.TX 2007)

promulgate reasonable, binding standards for the detention of minor in immigration custody...Despite the passage of just over a decade, neither DHS nor Congress has yet promulgated binding rules regarding standards for the detention of minors. In fact, it appears that *Flores* is the only binding legal standard directly applicable to the detention of minor aliens by the United States government, despite the passage of time and the drastic changes in immigration policy since this judgment was first entered....”⁴⁶

B. *Post-Flores Legislation*

Building on the child protective framework established in the *Flores* Settlement Agreement, the 2002 Homeland Security Act (HSA) and the 2008 Trafficking Victims Protect Reauthorization Act (TVPRA) adopted additional provisions governing the treatment of children in DHS custody. The HSA transferred the responsibility for the care, placement, and internal relocation of unaccompanied children to ORR while DHS maintains responsibility for apprehension and repatriation.⁴⁷ The HSA also codified the requirement that unaccompanied immigrant children be transferred to ORR custody within 72 hours.⁴⁸ The TVPRA later reiterated the 72-hour period in which the transfer of children in DHS custody to ORR custody must occur.⁴⁹ Nonetheless, ORR’s ability to ensure sufficient shelter space for children to be transferred to ORR custody within 72 hours depends largely on the funds appropriated each year by Congress, and funding for ORR has not kept pace with the increasing number of unaccompanied children arriving in the United States each year.⁵⁰ Meanwhile, funding for border enforcement, including CBP and Border Patrol operations has continued to rise.⁵¹

Additional protections were created in the 2003 Prison Rape Elimination Act (PREA), for which DHS adopted implementing regulations that were effective beginning May 6, 2014.⁵² Under those standards, minors, defined as those under the age of 18, are to be detained in the least restrictive setting, consistent with TVPRA and *Flores*. Unaccompanied minors are to be “generally” held separately from adult detainees by “minimizing sight, sound, and physical contact.”⁵³ PREA prohibits facility staff from performing body cavity searches on minors,

⁴⁶ *Id.* at *2.

⁴⁷ 6 U.S.C. § 279(a).

⁴⁸ *See* 6 U.S.C. §279.

⁴⁹ *See* 8 U.S.C. § 1232(b)(3).

⁵⁰ Rogers *Politico* Article, *supra* at 17 (“President Barack Obama surprised many by asking for no increase in UAC funding in his March plan for new 2015 fiscal year that begins Oct. 1. Frustrated Democrats accuse the White House of lowballing the costs to make room for the president’s initiatives under the strict spending caps negotiated last December for 2015.”)

⁵¹ M.R. Rosenblum & D. Meissner. *The Deportation Dilemma: Reconciling Tough and Humane Enforcement*, Migration Policy Institute (April 2014) available at <http://bit.ly/1nCh4JG>.

⁵² Prison Rape Elimination Act of 2003, Pub.L.No. 108-19, September 4, 2003; *see also* Department of Homeland Security, “Standards To Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities,” 79 FR 13099 (2014) (hereinafter DHS 2014 PREA Regulations).

⁵³ DHS 2014 PREA Regulations at §§ 115.14, 115.114. Notably, DHS refused to incorporate comments received that the agency promulgate specific PREA standards that would govern facilities that hold unaccompanied immigrant children – which would include CBP facilities – reasoning that, “With respect to juveniles detained outside of family units, as noted above, unaccompanied alien children are generally placed with ORR almost immediately; ORR is responsible for making decisions related to the care and custody of such children in their charge. For the 72-hour intervening period up to which DHS may generally maintain custody, concerns about abuse should be alleviated by the strong requirements in both subparts that generally prohibit juveniles from being held with adult detainees in non-familial situations. DHS believes that the final standards on juvenile and family

requiring that such searches be conducted by medical practitioners. PREA also incorporates the 72 hour deadline by which children should be transferred to an ORR facility, except in “exceptional circumstances.”

Despite the protections afforded by multiple statutes, however, children continue to experience mistreatment and abuse following apprehension by Border Patrol and in CBP custody. For example, unaccompanied immigrant children regularly report being held in CBP custody beyond the 72 hour period established by the 2002 HSA and 2008 TVPRA, or even beyond the five days contemplated by the *Flores* Settlement Agreement in extenuating circumstances. Furthermore, although the TVPRA mandates that agents receive training to understand the special vulnerabilities of unaccompanied children, the stories of the children recounted in this complaint indicate that such training is ineffective in preventing widespread abuse by CBP officials.

C. Agency policy

CBP has issued a very limited set of short-term custody standards, as well as detention, transport and escort procedures. These policies, however, are generally directed towards *all* individuals in CBP custody, with only some provisions specific to children. Moreover, as numerous human rights reports⁵⁴ and the complaints documented herein make clear, the standards that do exist are often disregarded in practice, and no entity within CBP is charged with ensuring system-wide compliance with these standards.

For example, though CBP published interim guidance in 2005 specific to unaccompanied children, CBP’s 2008 Hold Rooms and Short Term Custody Policy applies to both adults and children.⁵⁵ The 2008 directive purports to establish the “national policy for the temporary detention, transport and escort of persons by CBP.”⁵⁶ It underscores the fact that the terms of the *Flores* Settlement are binding.⁵⁷ Under the directive, unaccompanied children are to be provided a meal after eight hours of detention or if it is believed their detention will be longer than eight hours, with a meal being provided each additional six hours. Two of three meals within any 24-hour period must be hot. Furthermore, juveniles, small children, toddlers, and babies and pregnant women are to have regular access to snacks, milk, and juice at all times.⁵⁸ The absolute maximum time allowed to hold unaccompanied children under extenuating circumstances is limited to five days, as originally stated in the *Flores* settlement.⁵⁹ In addition, CBP’s August 2011 Directive No. 3340-030B, on detention, transport and escort procedures at Ports of Entry provides that “When an official determines that conditions warrant the use of restraints for

detainees, with the revisions noted above, sufficiently protect juveniles in immigration detention and holding facilities. Due to these factors, DHS has declined to promulgate a wholly separate set of standards for facilities that house juveniles.” Unfortunately, the agency’s reliance on observance of the 72 hour transfer period and prohibition of co-mingling with adults is undermined by some of the children’s statement attached to this complaint.

⁵⁴ See *supra*, nn. 4 & 9.

⁵⁵ CBP 2008 Hold Rooms and Short Term Custody Policy at 1 referencing “Interim Guidance on Unaccompanied Juveniles in Custody,” Memorandum to All Chief Patrol Agents from David V. Aguilar, Chief, U.S. Border Patrol (September 2, 2005).

⁵⁶ *Id.* at 1.

⁵⁷ CBP 2008 Hold Rooms and Short Term Custody Policy at 10.

⁵⁸ *Id.* § 6.8 at 8.

⁵⁹ *Id.* § 6.2.4.2 at 4. The 2008 CBP Hold Rooms and Short Term Custody Policy actually requires that “every effort” be made to place of unaccompanied immigrant children in ORR custody within 12 hours.

members of a family unit or juveniles, the official must be able to articulate the conditions which require the restraints”⁶⁰ Any use of restraints during transport “shall be reasonable under the circumstances.”⁶¹ Unredacted portions of the directive do not explain when restraints are deemed “reasonable;” however, as noted, CBP regularly uses restraints on children as young as 13 and 14-years-old without justification. As illustrated by this complaint, many of these guidelines are regularly disregarded in practice.

More than 17 years after the *Flores* Settlement Agreement, *Flores* remains the only substantive policy regarding the rights and protections afforded to unaccompanied children in immigration custody. Subsequent legislation regarding the custody of immigrant children has failed to live up to the mandate or promise of *Flores*. Although DHS has attempted to establish specific agency policies and guidelines, these policies are limited and not legally binding and CBP officials blatantly and routinely ignore them, as documented by numerous human rights reports and in the complaints documented herein. The lack of substantive, legally binding custody standards is exacerbated by the lack of effective oversight and accountability for CBP officials who commit abuses and violate the law and/or agency guidelines, resulting in a culture of impunity. In sum, existing legal protections have proven inadequate to prevent the continued, widespread abuse of vulnerable unaccompanied immigrant children in CBP custody. Substantial reforms are needed.

IV. Conclusion

Numerous sources, including the U.S. government, predict that the number of unaccompanied immigrant children fleeing to the United States to escape violence and poverty in Central America and Mexico will continue to rise.⁶² It is therefore imperative for the government to take significant affirmative steps to address the ongoing, systemic abuse of this vulnerable population by U.S. immigration officials. Several of the reports cited herein have already provided detailed recommendations for agency reforms, which we urge DHS and policymakers to consider.⁶³

Consistent with the principles articulated in *Flores*—that all immigrant children must be treated “with dignity, respect and special concern for their particular vulnerability as minors”—and to ensure compliance with all applicable laws and policies, the undersigned organizations request that CRCL and OIG promptly and thoroughly investigate each of the allegations of abuse documented in this complaint, hold individual agents accountable for unlawful or improper

⁶⁰ U.S. Customs and Border Protection, CBP Directive No. 3340-030B, “Secure Detention, Transport and Escort Procedures At Port of Entry, August 8, 2008 at 18, §9.15.9 (hereinafter CBP 2008 Secure Detention, Transport and Escort Directive).

⁶¹ *Id.* at 18, § 9.15.14.

⁶² See WRC *Forced From Home* at 4; Gordon *Mother Jones* Article, *supra* at 39; Preston *NYT* Article, *supra* at 39; Rogers *Politico* Article, *supra* at 17.

⁶³ See WRC *Forced From Home* at 22-24; NMD *A Culture of Cruelty* at 8-9; Appleseed *Children at the Border* at 33-45; WRC *Halfway Home* at 36-38; Florence Project *Seeking Protection, Enduring Prosecution* at 17-19; NMD *Crossing the Line* at 23-25; April 16, 2014 Letter from the National Immigrant Justice Center to HHS and DHS regarding the recommendations for the April 17 Unaccompanied Alien Children Strategy Listening Session, available at <http://bit.ly/1kLiEY3>; May 23, 2014 Letter from the National Immigrant Justice Center, Kids in Need of Defense, Capital Area Immigrants’ Rights Coalition, and American Friends Service Committee to Secretary Jeh Johnson regarding recommendations to respond to the influx of unaccompanied children, available at <http://bit.ly/1qjZOrg>.

conduct, release the results of those investigations publicly, and issue recommendations for necessary reforms. Most of the children included in this complaint are eligible for immigration relief on the basis of some past harm(s); however, we request that CRCL and OIG recommend appropriate immigration relief for *any* children found to have been abused by CBP officials. We also urge CRCL and OIG to fully engage interagency partners to minimize the extent to which children remain in CBP custody – an agency whose primary mission is border security and who lacks appropriate child welfare infrastructure. In many cases, DHS’ interagency partners are better positioned and trained to care and contend for the myriad of complex issues involving the care of unaccompanied immigrant children, many of whom are also victims of violence.

We further call on DHS and CBP, in coordination with ORR and other federal agencies, to establish an emergency plan and procedures to prevent the widespread abuse described herein, and to ensure children receive the full legal and humanitarian protections mandated by law, including the following key steps:

1. DHS should work to ensure that children are not held in CBP custody for more than 24 hours, in coordination with ORR and other federal agencies. At a minimum, CBP must observe the 72-hour time limit that unaccompanied children can remain in CBP custody;
2. DHS should promulgate and enforce binding short-term detention standards, with provisions specific to unaccompanied children, including policies prohibiting separation of children from family members with whom they are traveling and prohibit the shackling of children absent exceptional circumstances. DHS should develop a protocol for the immediate transfer of children suffering from medical conditions to the appropriate medical provider. In addition, DHS should ensure that CBP facilities that hold children are staffed with officials trained in child welfare and the treatment of victims of violence;
3. DHS should fully implement PREA at all CBP facilities, and should expedite the PREA requirement of comprehensive training⁶⁴ for all officers and agents who encounter detainees in holding cells, so that such training is completed within six months;
4. DHS should not delegate screening responsibilities for unaccompanied immigrant children to CBP, but rather to USCIS, HHS, or to another, appropriate federal agency with specific training on interview techniques for children and other vulnerable populations;
5. DHS should create an office at CBP Headquarters responsible for CBP detention operations, planning, and oversight, and implement routine and transparent independent monitoring of short-term detention facilities. DHS should make reports based on these inspections available to the public and Congress;
6. DHS should implement a Department-wide uniform complaint process,⁶⁵ and create an expedited, confidential process by which unaccompanied immigrant children can safely

⁶⁴ See 6 C.F.R. 115.31.

⁶⁵ For specific recommendations to DHS on a uniform complaint process, see ACLU, AIC, AILA, AIJ, Border Network for Human Rights, Jesuit Refugee Service/USA, Kino Border Initiative, Latin America Working Group, LIRS, National Immigration Forum, NYCLU, Northwest Immigrant Rights Project, Rio Grande Valley Equal Voice

report abuse while in federal custody or following release, and receive timely intervention or recourse;

7. DHS should adopt a zero-tolerance policy for any official who mistreats or abuses children in CBP custody. Officials found to have engaged in this conduct should be immediately terminated. Officials who have pending complaints regarding misconduct should not be permitted to come in contact with children or other vulnerable populations until the complaint is investigated and resolved;
8. DHS should require additional immediate training regarding the agency's obligations under *Flores*, the TVPRA, HSA, PREA and relevant agency guidelines for all DHS and CBP officials who may encounter unaccompanied immigrant children. All such training should be in person and based on the recognition that children must be treated with dignity and respect, incorporate child welfare concepts, and be developed and provided in partnership with NGOs with relevant expertise;
9. Finally, the undersigned organizations urge ORR and its contractors, including all service providers working with unaccompanied children, to implement additional screening protocol for identifying, documenting, and reporting instances of abuse of unaccompanied children by CBP officials to DHS, and obtaining all available forms of assistance for victims of abuse.

Thank you for your attention to this urgent matter. Each of the complaints referenced herein is documented in greater detail in the attached Appendix. For purposes of investigating individual allegations of abuse, please contact the organization responsible for each affidavit directly. For general inquiries, please contact Ashley Huebner via e-mail at ahuebner@heartlandalliance.org or by telephone at (312) 660-1303, or James Lyall via e-mail at jlyall@acluaz.org or by telephone at (602) 650-1854. We look forward to your prompt response.

Sincerely,

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