



September 12, 2024

U.S. Department of Homeland Security
Office of Civil Rights and Civil Liberties
Compliance Branch, Mail Stop #0190
2707 Martin Luther King Jr. Ave., SE
Washington, DC 20528-0190
Sent via Email: CRCLCompliance@hq.dhs.gov

**RE: Abuse of Unaccompanied Minors in Customs and Border Protection
Custody, January 2023 to June 2024**

I. INTRODUCTION

Immigrant Defenders Law Center (“ImmDef”), on behalf of its clients, submits this complaint to the Department of Homeland Security (“DHS”) Office of Civil Rights and Civil Liberties (“CRCL”), as a supplement to its previously filed complaint, dated April 6, 2022 (CRCL Complaint 003652-22-CBP, hereinafter the “2022 Complaint”). On June 9, 2022, ImmDef received a response to its 2022 Complaint from CRCL. This response informed ImmDef that the complaint was sent to the DHS Office of Inspector General (“OIG”) for review and that the OIG declined to investigate the complaint. Since the 2022 Complaint was submitted, ImmDef clients have continued to experience the same abuses while in Customs and Border Protection (“CBP”) custody. This supplemental complaint focuses on the experiences of ImmDef clients between January 2023 and June 2024, and is filed concurrently with a complaint filed by the Florence Immigrant and Refugee Rights Project (“FIRRP”) documenting similar abuses reported by the unaccompanied children they serve. The case examples contained in this complaint substantiate the complaints made in FIRRP’s complaint and vice versa. Together, we continue to urge CRCL to investigate CBP’s systemic abuse of unaccompanied children and adopt measures to prevent the continued violation of unaccompanied children’s human rights.

ImmDef is a Southern California-based 501(c)(3) nonprofit organization whose mission is to achieve universal representation for immigrants in removal proceedings. Founded in 2015, ImmDef pursues this mission by providing pro bono services to and advocacy for Southern California’s most marginalized immigrant and refugee communities.

The Children’s Representation Program (“CRP”) is the largest of ImmDef’s direct representation programs. As a subcontractor of the Office of Refugee Resettlement (“ORR”), through funding received from the Acacia Center for Justice and other sources, ImmDef provides no-cost representation to Southern California-area unaccompanied children in removal



proceedings.¹ Every year, ImmDef provides hundreds of locally detained and released unaccompanied children with various social and legal services including Know Your Rights presentations, legal screenings and consultations, case management support, legal and community referrals, and full-scope legal representation. ImmDef’s CRP leadership has been working with unaccompanied children since 2010 and has extensive knowledge and experience representing children in immigration matters.

As a universal representation program, ImmDef’s CRP attorneys and staff zealously advocate to ensure their unaccompanied child clients receive the full protections of the Trafficking Victims Protection Reauthorization Act (“TVPRA”), the *Flores* Settlement Agreement, and other applicable law. Through our CRP intake process, children are also asked about their treatment in CBP custody. ImmDef is alarmed and disappointed by our clients’ consistent reports of mistreatment by CBP officers.

II. VIOLATIONS

As explained in the 2022 Complaint, the treatment of unaccompanied children in CBP custody is largely governed by two sources: (1) the *Flores* settlement agreement; and (2) the TVPRA. Together, these authorities govern how DHS and its subcomponents, including CBP, treat and process unaccompanied children. For over a decade, legal services providers nationwide have documented CBP’s violations of these protections and the discrete rights of unaccompanied children. Since the submission of the 2022 Complaint, CBP has continued to violate the following rights and protections guaranteed to unaccompanied children in their custody:

- (1) Treatment “with dignity, respect, and special concern for their particular vulnerability as minors,” i.e., an environment free from verbal, physical, and sexual abuse;²
- (2) “Access to . . . drinking water and food as appropriate”;³
- (3) “Access to . . . medical assistance if the minor is in need of emergency services”;⁴

¹ As referred to here, the Southern California area includes seven counties: Los Angeles, Orange, Riverside, San Bernardino, Ventura, Santa Barbara, and Kern.

² *Flores v. Reno* (“*Flores*”), No. CV 85-4544-RJK (Px), Stipulated Settlement Agreement at ¶ 11 (C.D. Cal. Jan. 17, 1997), available at <http://www.aila.org/File/Related/14111359b.pdf> (last visited August 12, 2024).

³ *Id.* at ¶ 12.

⁴ *Id.*



- (4) Right to “[a]dequate temperature control and ventilation”;⁵
- (5) “Access to toilets and sinks”;⁶
- (6) “Transfer . . . to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child”;⁷ and
- (7) Right to remain “segregate[d] from unrelated adults.”⁸

A. ImmDef’s Findings

In 2023 alone, ImmDef’s Detained Youth Empowerment Program (“DYEP”) provided Know Your Rights presentations and conducted legal screenings for at least 4,630 unaccompanied children, many of whom were detained in CBP custody for more than the statutorily mandated 72-hour limit; denied food, water, and medical care; and even subjected to verbal, physical, and sexual abuse. As explained in the 2022 Complaint, during these legal screenings, DYEP staff ask children about the conditions they faced in CBP custody and save their responses as logs in ImmDef’s client case tracking software. While these stories are already egregious, we estimate the severity and quantity of violations that occur in CBP custody are even worse than reported here due to the difficulty of obtaining information from tender-aged and traumatized children as well as human error involved in data input.

The right to be free from verbal, physical, and sexual abuse:

M.D.⁹ is a fifteen-year-old boy from Guinea. He was physically abused while detained by CBP. Officers hit him multiple times on his stomach and leg. He was only given biscuits for food. They provided aluminum blankets, but they were not enough to keep him warm in the very cold temperatures.

The right to drinking water, food, and medical attention:

L.M.S. is an eighteen-year-old from Mexico who was detained while she was a pregnant minor. She told officers that the food was hurting her stomach, and they gave her medicine, but the medicine did not work. She was vomiting before she took the medicine

⁵ *Id.*

⁶ *Id.*

⁷ 8 U.S.C. 1252(b)(3).

⁸ *Flores* at ¶12.

⁹ Clients’ initials are being used to protect their privacy and prevent retaliation.



and while she was taking the medicine. The officers did not give her any other medicine, nor did they do anything else to help her stop vomiting.

R.R.L. is an eight-year-old child from Mexico who reported that the food was consistently undercooked and always tasted bad.

Right to humane living conditions:

ImmDef encountered children who were held in unsanitary conditions, forced to sleep on the ground or outside, and detained for longer than 72 hours. Many children also reported extremely cold temperatures and privacy violations.

E.R.H. is a thirteen-year-old boy from Mexico who was treated terribly while in CBP custody. He reported that he and his younger sister stayed one night in an open-air camp before being transferred to an immigration processing facility where they stayed another two nights.¹⁰ During the first night, they were kept at a camp for adults and children. At this camp, they were not given proper bedding and were forced to sleep in very dirty conditions outside on a sheet of plastic. **I.R.H.** is ERH's eleven-year-old sister. She reports that rather than giving them food, immigration officers sold it to them. A mother and a newborn were detained with them and not given any blankets nor was anyone else.

D.S.O. is an eighteen-year-old from Colombia who was detained for four days as a minor with her fifteen-year-old sister. She reported that where they were held resembled a parking lot with a tarp over it. There were not enough mattresses for everyone so D.S.O and her sister slept on the ground.

III. DEMANDS

As previously stated, CBP is exhibiting a pattern and practice of treatment that relies on overcrowded facilities; a lack of adequate food, water, medical care, and privacy; and verbal and physical abuse of the most vulnerable immigrants.¹¹ This is unacceptable. The abuses and

¹⁰ Many organizations have raised complaints about the inhumane conditions of open-air detention sites along the southern border. See CRCL Complaint, CBP Violations of Custody Standards and Human Rights of Individuals Detained in Open-Air Detention Sites in the San Diego Sector Require Immediate Attention to Save Lives, December 11, 2023, available at https://assets.nationbuilder.com/alliancesandiego/pages/3500/attachments/original/1702482964/OADS_CRCL_Complaint_Final_Combined_for_Submission_2023.12.11.pdf (last visited August 12, 2024). We are unable to confirm whether our child clients have been held at these specific facilities.

¹¹ In fiscal year 2023, DHS referred 118,938 unaccompanied children to ORR. See U.S. Department of Health and Human Services, Fact Sheet: Unaccompanied Children (UC) Program 2, available at <https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf> (last visited Apr. 1, 2024)



violations are widespread and are not unique to a single officer or even a single outpost; they are pervasive throughout CBP facilities. This agency cannot and should not hold children without significant reforms to its policies and practices.

We once again urge CBP and DHS to involve stakeholders so that we may inform the agencies' decision-making and ensure the best interests of children are at the center of future policymaking. Furthermore, while we continue to call on the federal government to reimagine and reinvent the system for caring for unaccompanied immigrant children, we reiterate the following short-term solutions from our first complaint, CRCL Complaint 003652-22-CBP, given the continued systemic abuses that unaccompanied children face:

1. ***Strict Adherence to the TVPRA and the Flores Settlement Agreement:*** CBP should adhere to the requirements laid out in the *Flores* settlement agreement and the TVPRA. Specifically:
 - a. Children should not be held in CBP custody for more than 72 hours, as these facilities have never been designed to house children for any extended period of time, and their prolonged detention leads to their continued exposure to abhorrent conditions;
 - b. Children in CBP custody must be provided with an environment that is “safe and sanitary.” This should include adequate access to clean bathroom facilities, toothbrushes, showers, clean clothes, and medical care, as well as adequate, unspoiled, and healthy food and water. Age-appropriate food should be provided for infants and toddlers;
 - c. Children in CBP custody should not be made to sleep on concrete floors in frigid rooms, with bright lights on at all hours of the day and night; and
 - d. CBP must end the practice of gathering in one room or cell all children who report being ill with no regard or forethought to their health and wellbeing and no access to medical treatment.

2. ***Protect children’s right to privacy:*** CBP officials must respect children’s right to privacy and implement policies and standards that protect children’s right to privacy. Specifically, CBP should ensure that children are afforded individual privacy in shower and bathroom facilities. Also, CBP should immediately remove cameras from sensitive locations, such as bathrooms, and enact more child-friendly best practices to ensure the safety of children in those locations.



3. ***Adherence to and enforcement of the CBP National Standards on Transport, Escort, Detention and Search (TEDS):*** All CBP officials should consider the best interests of the child in all decisions, as required by 2015 TEDS Standard 1.6. Moreover, CBP should promptly promulgate guidelines, like those proposed in the 2016 Interagency Framework on Considering the Best Interests of Unaccompanied Children, to ensure that all CBP officials consider children’s best interests in every decision, from the first encounter through processing, detention, and release or transfer. CBP should also make the TEDS standards enforceable to help ensure that all children are receiving appropriate care in CBP facilities. CBP should regularly conduct reviews and inspections at all facilities holding children to ensure compliance with the TEDS standards and order corrective action and additional training when violations are found. CBP should also regularly review the TEDS standards and implement additional improvements to further promote the safety and wellbeing of children in CBP custody.

4. ***Provide the same standards of care centered on the best interests of children as required in ORR facilities:***¹² CBP’s standards of care should be centered on advancing the best interests of children. Accordingly, CBP should meet or exceed standards of care recommended by pediatric health and child wellbeing experts, including access to clean bathroom and shower facilities that allow for individual privacy; clean, age-appropriate clothing; adequate bedding, food, water, and personal hygiene time and products; adequate medical care; telephone access to contact family; and the ability to remain with trusted family caregivers but separated from unknown adults. Facilities should be temperature-controlled, have adequate lighting, and bright lighting should not be kept on 24 hours a day.

5. ***Mandatory training of CBP officers and staff:*** CBP officers and staff should be trained regularly on topics such as cultural competency, basic human rights, trauma-informed approaches, child development, de-escalation techniques, harm reduction, and the basics of trafficking and asylum.

6. ***Hire child welfare professionals:*** Consistent with Congress’s directive as part of the Consolidated Appropriations Act of 2022, DHS should hire state-licensed child

¹² See generally 8 USC § 1232; see also ORR Unaccompanied Children Program Policy Guide, Office of Refugee Resettlement, available at <https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide> (last visited August 12, 2024).



welfare professionals at all southern land border facilities. Child welfare professionals possess the expertise necessary to ensure the safety and well-being of unaccompanied children in CBP custody. These professionals should conduct protection screenings of arriving children, ensure appropriate care, and maintain children's family unity. They should also be permitted to facilitate reasonable telephonic contact with confirmed family members.

7. ***Access to legal counsel:*** CBP should prioritize access for legal services providers in CBP detention centers. Legal services providers should be able to meet with children in confidential spaces, obtain rosters of children in CBP custody, and access areas in the CBP facility where children are held in order to monitor conditions. Legal services providers should be allowed to speak via telephone with children in CBP custody at any time. All telephonic phone requests to child detainees from legal services providers, family, or outside persons should be logged.
8. ***Access to a phone with a complaint hotline and telephonic access to legal services providers:*** CBP must make available to all minors in its custody a confidential telephone through which children can make outgoing calls, connect with an attorney, and access a private hotline to report abuse. Any child that asks to make a phone call must be allowed to do so at any time. CBP must have a telephone service available that permits children with hearing or speech disabilities to be able to make and receive telephone calls.
9. ***Access to interpreters:*** CBP should ensure access to interpreters for children in its custody. This includes hiring bilingual officers, training officers in language assessment, and providing full-time access to an interpretation service that includes indigenous language interpreters.
10. ***Implement proper surveillance practices in line with privacy laws:*** Insofar as a CBP facility subjects its detainees to video surveillance, it must develop and make publicly available policies that require reasonable record retention consistent with federal and state privacy protections and allow access to those recordings when requested by CRCL, OIG, OIDO, or other investigatory agencies and stakeholders, as part of an investigation into abuse.



IV. CONCLUSION

ImmDef urges the Office of Civil Rights and Civil Liberties to investigate and address the longstanding violations alleged herein and to take all steps necessary to bring CBP personnel and facilities in compliance with the *Flores* settlement agreement and the TVPRA. We also urge CBP and DHS to initiate stakeholder discussions to usher in the changes outlined above.

Please do not hesitate to contact me via e-mail at cscott@immdef.org or by telephone at (213) 634-7601 with questions or inquiries for additional information concerning the complaints raised above. We look forward to continued communication with you concerning these alarming reports.

Sincerely,

A handwritten signature in black ink that reads "cscott".

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