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Via email

Re: **U.S. Border Patrol's Abuse and Mistreatment of** [redacted]

The ACLU Foundation of San Diego & Imperial Counties ("ACLU"), together with Jewish Family Service of San Diego ("JFS") and Dr. Kay Daniels, MD, Clinical Professor of Obstetrics and Gynecology ("Dr. Daniels")[1], submit this administrative complaint to the Department of Homeland Security's Office of Inspector General ("DHS OIG"), regarding U.S. Border Patrol's mistreatment of [redacted], who gave birth at the Chula Vista Border Patrol Station on February 16, 2020 under harsh conditions that placed her and her baby at unnecessary risk. ACLU and JFS call on DHS OIG to engage in a thorough investigation of the events that transpired while Ms. [redacted] was in Border Patrol custody and in a review of the policies and procedures that resulted in the abuse she suffered. We also provide crucial recommendations for DHS OIG to urge U.S. Customs and Border Protection ("CBP") [2] to adopt to prevent incidents like this from occurring in the future.

The ACLU routinely encounters people who have been recently released from CBP custody in the San Diego region. JFS provides crucial services to individuals and families seeking asylum in the Tijuana/San Diego border region, including direct representation and operation of the JFS Migrant Family Shelter in San Diego. ACLU and JFS obtained all facts alleged in this complaint by interviewing Ms. [redacted] and reviewing her medical and immigration documents.

[1] Dr. Daniels is employed by Stanford University School of Medicine's Department of Obstetrics and Gynecology. She joins this complaint in her individual professional capacity, not as a representative of Stanford University's School of Medicine.

[2] Each reference to CBP in this document includes reference to Border Patrol, a sub-agency of CBP.

As you are undoubtedly aware, on January 22, 2020, the ACLU Foundation of San Diego & Imperial Counties and the ACLU Border Rights Center submitted an administrative complaint to DHS OIG detailing CBP's abuse and mistreatment of pregnant people in its custody ("January 2020 complaint").[3] The January 2020 complaint documented the accounts of four women who experienced horrific treatment in CBP custody while pregnant and made a series of relevant recommendations. As we share below, Ms. [redacted] experience is tragically one more account to add to the mountain of evidence demonstrating that CBP detention facilities are categorically unsuitable and inappropriate for pregnant and other vulnerable people. Her experience further underscores why timely and meaningful DHS OIG review of CBP policies and procedures is necessary.

I. Facts

A. Ms. [redacted] Account

Ms. [redacted] fled Guatemala along with her husband and two daughters, ages two and 12, seeking asylum in the United States. Ms. [redacted] family was forced into the so-called "Migrant Protection Protocols" ("MPP") in May 2019. Forced to remain in Mexico during the pendency of their immigration court proceedings, the family struggled to find a lawyer and access to other essential resources, including medical care and housing.[4] Over the next several months, the family presented at the Mexican side of the San Ysidro Port of Entry ("POE") for periodic immigration court hearings as early as 4:00 am, as required by the U.S. Department of Homeland Security ("DHS") under MPP.

On January 13, 2020, when Ms. [redacted] was seven-months pregnant, the family presented at the POE for their third court hearing. DHS officials told Ms. [redacted] they would not transport her to immigration court due to the late stage of her pregnancy.[5] Instead, officials transported her and her family to a Border Patrol station before sending them back to Mexico. The family's next immigration court hearing was scheduled for May 04, 2020.

In February 2020, the persecutor who caused Ms. [redacted] family to flee Guatemala began harassing her, calling the family's cellular phone and sending text messages threatening to find them in Tijuana. On February 16, 2020, desperate and fearful for her family's

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[3] *See* AMERICAN CIVIL LIBERTIES UNION OF SAN DIEGO & IMPERIAL COUNTIES, ET AL., ADMINISTRATIVE COMPLAINT RE: U.S. CUSTOMS AND BORDER PROTECTION AND BORDER PATROL'S ABUSE AND MISTREATMENT OF DETAINED PREGNANT PEOPLE (Jan. 2020), https://www.aclusandiego.org/wp-content/uploads/2020/01/2020-01-22-OIG-Complaint-1-FINAL-1.pdf. On March 04, 2020, the ACLU submitted an addendum to this complaint to DHS OIG. *See* https://www.aclusandiego.org/wp-content/uploads/2020/03/2020-03-04-OIG-compl-preg-persons-addendum-appendix-FINAL.pdf

[4] This account is consistent with reports that document individuals' widespread exposure to horrific conditions under MPP, including lack of "access to safe shelter, sufficient food, proper sanitation, or adequate medical care" as well as abysmal rates of attorney representation. Human Rights First, *A Year of Horrors: The Trump Administration's Illegal Returns of Asylum Seekers to Danger in Mexico* (Jan. 2020), https://www humanrightsfirst.org/sites/default/files/MPP-aYearofHorrors-UPDATED.pdf.

[5] This account is consistent with media and first-hand reports of an emerging trend whereby DHS does not permit pregnant women to appear in immigration court for their scheduled hearings. *See* Max Rivlin-Nadler, *Pregnant Asylum-Seekers Barred From U.S. Entry For Court Hearings*, NAT'L PUBLIC RADIO (Feb. 23, 2020), https://www.npr.org/2020/02/23/808536155/pregnant-asylum-seekers-barred-from-u-s-entry-for-court-hearings.

wellbeing, Ms. [redacted] decided to seek safety in the United States once more, concluding she would rather be detained with her husband and daughters in the United States than risk her persecutor finding her family in Mexico. At that time, she was eight months pregnant, with a due date of March 14, 2020.

During their journey, Ms. [redacted] suffered from cough attacks and severe pain in her womb. Concerned for her wellbeing, Ms. [redacted] husband attempted to call 9-1-1- from the desert to no avail. Soon thereafter, a Border Patrol agent discovered and arrested the family, threatening to send them back to Mexico. Ms. [redacted] continued to be in obvious distress. Her husband pleaded for medical attention, but instead of transporting her to a hospital, the Border Patrol agent transported the family to the Chula Vista Border Patrol Station. During the drive, the agent subjected them to a "rough ride,"[6] during which the agent jerked the steering wheel and slammed on the brakes of the vehicle, worsening Ms. [redacted] pain.

Once at the Chula Vista Border Patrol Station, agents began processing the family. During that time, Ms. [redacted] pain became excruciating and intolerable. In an attempt to withstand the pain, she stood up, holding onto a garbage can for support. Border Patrol agents repeatedly commanded her to sit down. Her cough worsened. Roughly thirty minutes after arriving to the station, in the midst of another coughing fit, she partially delivered her baby into her pants while standing and holding onto a garbage can. Ms. [redacted] was stunned; her due date was still four weeks away. Her husband heard the baby's cries and, desperate to ensure the safety of his newborn child, lowered his wife's pants and reached for the baby's head, which was protruding out of her body. A Border Patrol agent and multiple medical staff also reached for the baby, some without gloves, and the baby was born. Although joyous about the birth of her child, Ms. [redacted] felt humiliated after realizing she had been surrounded by about 20 strangers, including multiple Border Patrol agents and other unknown detained men, while she gave birth.

After the delivery, Border Patrol agents continued to instruct Ms. [redacted] to sit down, but she could not due to the pain of the delivery. Paramedics arrived shortly after the birth and transported her to the Sharp Chula Vista Medical Center, where she stayed for two nights. There, medical professionals diagnosed her with influenza and gave the newborn baby prophylactic influenza treatment. Ms. [redacted] never spent a moment in the hospital without a Border Patrol agent in her room or directly observing her, which was invasive to her, given the deeply private and sensitive nature of her post-partum care. Ms. [redacted] was transported to the hospital alone, without her husband or other two daughters, all of whom remained locked up in the Chula Vista Border Patrol Station. The entire time she was at the hospital, Ms. [redacted] family was denied information about how she and the baby were doing.

The hospital discharged Ms. [redacted] on February 18, 2020, but Border Patrol agents returned her to the Chula Vista Border Patrol Station where they forced her to spend another night along with her newborn baby and the rest of her family. Border Patrol agents denied Ms. [redacted] a blanket for her newborn baby despite the extremely cold temperatures in the

[6] *See* A. C. Thompson, *"Dirtbag," Savages," Subhuman": A Border Agent's Hateful Career and the Crime That Finally Ended It*, PROPUBLICA (Aug. 16, 2019), https://www.propublica.org/article/border-agents-hateful-career-and-the-crime-that-finally-ended-it ("[The agent had] been accused of giving a handcuffed suspect what agents called a 'rough ride,' slamming the brakes on his all-terrain vehicle in a way that flung the suspect into the ground.").

holding cell. From the point of processing until she was released from Border Patrol custody, agents repeatedly harassed Ms. [redacted]. For instance, Border Patrol agents accused her of trying to enter the United States only to deliver her child, despite that the birth was a complete shock to her as her baby was due in mid-March.

Ms. [redacted] never had an opportunity to shower, despite requesting to, after she gave birth while in Border Patrol custody – not in the hospital nor at the Chula Vista Border Patrol Station.

Border Patrol finally released Ms. [redacted] and her family on February 19, 2020. The family arrived at the JFS Migrant Family Shelter, where Ms. [redacted] showered for the first time since giving birth. At the shelter, JFS staff assisted the family with other basic needs, including clothing, food, travel coordination, assistance with immigration court paperwork, and most importantly, critical medical care via the JFS Migrant Family Shelter's subcontractor, the University of California, San Diego.

B. Discrepancies in Border Patrol's Media Release

On February 19, 2020, Border Patrol published a press release[7] that appears to be about Ms. [redacted] experience giving birth in the Chula Vista Border Patrol Station, which media outlets subsequently reported on.[8] The press release and news reports contain several statements that are fundamentally at odds with Ms. [redacted] account. Border Patrol claimed "[t]he apprehending agent could visibly see that the woman was pregnant; however, the mother did not appear to be in distress and did not request any medical attention."[9] As detailed above, Ms. [redacted] was in severe distress when the Border Patrol agent arrested her and her family, so much so that her husband tried calling 9-1-1- from the desert. Both she and her husband requested medical attention at the point of arrest and repeated their requests until Ms. [redacted] gave birth.

Border Patrol additionally reported, "medical staff, along with agents, prepared an area for the mother to give birth."[10] Ms. [redacted] is not aware of agents having prepared an area for her to give birth; instead, she recalls agents repeatedly commanding she sit down while she was apparently in labor and until she ultimately delivered the baby into her pants while holding onto the

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[7] Media Release, U.S. Customs and Border Protection, *Migrant Mother Gives Birth at Border Patrol Station*, Feb. 19, 2020 (hereinafter "Border Patrol Media Release"), https://www.cbp.gov/newsroom/local-media-release/migrant-mother-gives-birth-border-patrol-station; Karen Kucher, *Woman suspected of illegally crossing into U.S. gives birth at Border Patrol office*, LOS ANGELES TIMES (Feb. 19, 2020) (hereinafter "LA Times Article"), https://www.latimes.com/california/story/2020-02-19/guatemalan-woman-gives-birth-at-border-patrol-office-after-being-arrested-crossing-border.

[8] While the media release does not explicitly name Ms. [redacted], details contained therein match those in her case. For example, Ms. [redacted] is a 27-year-old Guatemalan woman who traveled with her husband and two children and gave birth at around 3:00 p.m. on February 16, 2020, at the Chula Vista Border Patrol Station.

[9] Border Patrol Media Release, *supra* note 4.

[10] *Id.*

edge of a garbage can. Ms. [redacted] recollection that gloveless agents reached for her baby further evinces Border Patrol's apparent lack of preparedness. Finally, neither Ms. [redacted] nor her family members "used a ladder to get over the border fence."[11]

At best, Border Patrol's inconsistent media release and statements to the press underscore the urgent need for DHS OIG investigation. At worst, it grossly misrepresents the tragic reality that Ms. [redacted] needlessly gave birth in a Border Patrol station, exposing herself and her newborn baby to significant labor-related danger despite her family's numerous pleas for emergency medical assistance.

II. Relevant Standards of Care

A. CBP's Existing Policies Related to Pregnant People

As the January 2020 complaint documented, CBP's existing policies are wholly inadequate to safeguard pregnant people in CBP custody. The CBP National Standards on Transport, Escort, Detention, and Search ("TEDS") require officials to assess whether an individual is pregnant during initial processing and to evaluate whether special procedures for "at-risk" individuals apply.[12] Although "at-risk" detainees "may require additional care or oversight," the TEDS standards do not specify what type of additional care or oversight should be provided.[13] The TEDS standards require CBP to offer pregnant detainees "a snack upon arrival and a meal at least six hours thereafter," and "regular access to snacks, milk, and juice."[14] Pregnant detainees are not to be shackled or X-rayed.[15] These limited provisions appear to be the extent of the accommodations required to be given to pregnant detainees, as we have identified no other express provisions in publicly available CBP detention policies addressing care of pregnant detainees.

B. Medical Standard of Care for Pregnant People

The changes wrought by pregnancy make a woman more vulnerable to threats to her and her baby's health. These threats become more pronounced if a woman is under physical and physiological stress. In light of such potential health risks, ideally every woman of childbearing age should be screened for pregnancy upon being taken into custody. A screening should be conducted by a medical professional and include obtaining a menstrual history, inquiring about current contraception use, and testing for pregnancy when indicated.[16]

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[11] LA Times Article, *supra* note 4.

[12] U.S. CUSTOMS AND BORDER PROTECTION, NAT'L STANDARDS ON TRANSPORT, ESCORT, DETENTION, AND SEARCH, at § 4.2 (Oct. 2015), https://www.cbp.gov/document/directives/cbp-nationalstandards-transport-escort-detention-and-search.

[13] *Id.* § 5.1.

[14] *Id.* § 5.6.

[15] *Id.* § 5.5 & 5.7.

[16] Am. Acad. of Pediatrics, *Guidelines of Perinatal Care* (8th ed. 2017).

When a woman is found to be pregnant, they or their custodian should arrange for prenatal medical care and provisions for adequate nutrition. Care includes avoiding strenuous physical activity, especially heavy lifting, which can lead to preterm birth or underweight babies, avoiding fall risk (e.g., by taking care to not place a third trimester pregnant woman on the top of a bunk bed), and providing adequate calories, calcium and iron supplementation to optimize the fetal growth. Avoiding shackling is also essential, as shackling may lead to blood clots, which can be fatal in pregnant women.[17] At the time of labor, it is paramount that every woman be taken to a maternity hospital for delivery. Risk to the mother and the baby are profound if delivery occurs unaccompanied by medical professionals.[18]

Risks of labor outside of a hospital or without the assistance of medical professionals to a mother include postpartum hemorrhage,[19] hypertension,[20] and damage to the mother's birth canal leading to long term disabilities including urinary and fecal incontinence. Underlying malnutrition, asthma, diabetes, anemia, infectious diseases such as tuberculosis, hepatitis B, and sexually transmitted diseases, including HIV or herpes, place women at heightened risk for poor obstetrical outcomes.

In addition to the risks to the pregnant women, risks to babies are also significant if the birth is not attended by trained medical personnel. Transmission of untreated infectious diseases, especially HIV and herpes, will greatly increase a baby's risk of morbidity. Importantly, this patient population is at considerable risk for a preterm delivery or the birth of an underweight infant both of which require immediate medical attention at time of delivery

Finally, the resources available in hospitals can be lifesaving for mothers as well as babies. Antibiotics can mitigate the risk of death to mothers and babies in the case of an infection. Surgical

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[17] Am. Coll. of Obstetricians & Gynecologists, Comm. on Health Care for Underserved Women, *Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females*, Comm. Op. No. 511 (Nov. 2011, reaff'd Nov. 2016), https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2011/11/health-care-for-pregnant-and-postpartum-incarcerated-women-and-adolescent-females

[18] Unattended home births even when planned in the USA for low risk women have a two-fold increase risk of infant death and threefold risk of neonatal seizures. *See Guidelines of Perinatal Care*, *supra* note 16.

[19] Postpartum hemorrhaging is bleeding that occurs after the baby is born. It is one of the leading causes of maternal mortality throughout the world. *See* The World Health Organization, *Recommendations on Prevention and Treatment of Postpartum Hemorrhage* (2012), https://www.who.int/reproductivehealth/publications/maternal_perinatal_health/9789241548502/en/. In the U.S. we have been able to decrease the death from postpartum hemorrhage by having blood products and surgical intervention immediately available in the hospital setting. *See* California Maternal Quality Care Collaborative and California Department of Public Health, *Obstetric Hemorrhage 2.0 Toolkit* (March 24, 2015), https://www.cmqcc.org/resource/obstetric-hemorrhage-20-toolkit.

[20] Hypertension accounts for 18% of maternal deaths. The diagnosis and management with medication can only be accomplished in a hospital. Without proper care, hypertension may lead a mother to have a seizure or a possible stroke leading to permanent disability or even death. *See* EE Petersen et al., *Vital Signs: Pregnancy-Related Deaths, United States, 2011–2015, and Strategies for Prevention, 13 States, 2013–2017,* Center for Disease Control and Prevention, Morbidity and Mortality Weekly Report 68 (May 10, 2019), https://www.cdc.gov/mmwr/volumes/68/wr/mm6818e1 htm.

intervention such as cesarean delivery is a lifesaving procedure often for both babies and mothers. Necessary specialists can only be provided in the hospital setting. At the time of birth, even full-term infants must have access to proper care, including adequate temperature control, screening for metabolic disorders, treatment with vitamin K, and antibiotic eye ointment. Premature infants often require respiratory support immediately after birth and depending on the prematurity longer term respiratory support is required.

It is critical to the health and safety of newborns and expectant mothers alike to ensure they have access to proper medical care, including trained medical professionals and resources available at hospitals, leading up and during delivery.

III. Recommendations

The egregious nature of Ms. [redacted] experience, including Border Patrol's departure from medical experts' recommendations, coupled with the major discrepancies between her and Border Patrol's respective accounts, underscore the need for DHS OIG to investigate the incident and review CBP and Border Patrol detention policies that relate to pregnant people.

Further, ACLU, JFS, and Dr. Daniels reiterate the recommendations laid out in the January 2020 complaint, especially those that call upon DHS OIG to:

(1) Recommend that CBP stop detaining pregnant people, and instead prioritize the prompt release of such individuals into U.S. shelters or into the care of their personal support networks in the United States;
(2) Recommend CBP immediately and formally exempt all pregnant persons from policies such as the so-called "Migrant Protection Protocols" and other fast-track deportation procedures and instead prioritize their prompt release from immigration detention;
(3) Recommend that CBP develop, adopt, and publish explicit policies that will ensure adequate, timely medical care for pregnant people in the agency's custody. Such policies should be developed in consultation with independent medical experts and rights stakeholders, and reflect best practices recommended by professional associations (such as the American Medical Association, the American Academy of Pediatrics, and the American College of Obstetricians and Gynecologists); and
(4) Assess whether CBP oversight and disciplinary mechanisms are sufficient to ensure that CBP officials are held accountable for all instances of detainee abuse, neglect, or other mistreatment, and to ensure that dangerous, abusive, or otherwise unfit CBP employees are removed promptly from duty.

As a result of Ms. [redacted] experience, ACLU, JFS, and Dr. Daniels additionally call upon DHS OIG to recommend:

(5) Where CBP apprehends pregnant people at or near the border, the agency should immediately transport them to a local hospital for medical evaluation prior to routine processing, given the arduous nature of journeys to and across the border, the health needs and risks associated with pregnancy, and the lack of medical facilities and trained medical professional staff in CBP detention facilities;

(6) CBP respect the privacy of individuals in labor or receiving post-partum care while in their custody;
(7) Prompt release of people who are forced to give birth while in CBP custody, along with their families, as soon as possible after birth, with any processing to occur while the mothers are in the hospital, to avoid returning a newborn to CBP detention facilities; and
(8) Timely access of all people who are forced to give birth while in CBP custody, and their newborn children, to basic necessities, including but not limited to showers, blankets, water, food, bottles, and other items essential for post-partum mothers who may be nursing and recovering from giving birth.

We are deeply concerned about Ms. [redacted] experience in Border Patrol custody, the material inconsistencies between Border Patrol's public statements and her account of the incident, and the inadequate policies and procedures that gave way to the abuse she endured. We urge DHS OIG to investigate the incident, review relevant policies and procedures, and adopt the recommendations contained herein to ensure others do not suffer as Ms. [redacted] and her family did.

Thank you for your attention to this important matter. Do not hesitate to contact us with questions or concerns.

Sincerely,

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