Minority Staff Report

THE FAILURE TO PROVIDE ADEQUATE CARE TO VULNERABLE INDIVIDUALS IN CBP CUSTODY

U.S. SENATE COMMITTEE ON THE
JUDICIARY
Ranking Member Dick Durbin

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Executive Summary

Objective

After the death of Anadith Reyes Álvarez in May 2023, then-Chair of the Senate Judiciary Committee, Senator Richard J. Durbin directed his staff to investigate the role and performance of Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) and CBP's medical services contractor, Loyal Source Government Services, in providing medical care to detainees. The objective of the Committee's investigation was to evaluate the provision of medical care in CBP facilities. Chair Durbin's staff analyzed the breakdowns in medical care and oversight that allowed for the preventable death of eight-year-old Anadith in CBP custody, and identified steps CBP has taken and should take to prevent a similar tragedy from occurring in the future. At the time of publication of this report, Senator Durbin is Ranking Member of the Senate Judiciary Committee.

Background

Anadith Reyes Álvarez, an eight-year-old girl with sickle cell disease and congenital heart disease, died on May 17, 2023 in CBP custody following several days of illness.[1] Prior to Anadith's death and recent whistleblower allegations, media and agency oversight offices had raised alarms about CBP's failure to provide adequate medical care to detained immigrants in the agency's custody.[2] This was, in part, because Anadith was not the first child to die in CBP custody. In 2018, two children died within a month of each other.[3] The Committee's investigation revealed longstanding failures in the provision of medical care in CBP custody. Despite efforts to draw attention to CBP's inability to provide adequate medical care, including by CBP's Office of Chief Medical Officer (OCMO), many concerns were not sufficiently addressed, leading to the conditions that caused Anadith's death in 2023.[4]

Under any administration, desperate individuals will seek safety in the United States. However, the number of individuals approaching the border during the Biden Administration decreased dramatically in 2024 due to policies put in place by President Biden and the Mexican government.[5] Despite these lower numbers, individuals have spent long periods of time in CBP custody where they rely entirely on CBP for medical care.

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[1] *Update: Death in Custody of 8-Year-Old in Harlingen, Texas*, U.S. CUSTOMS AND BORDER PROT. (May 21, 2023), https://www.cbp.gov/newsroom/national-media-release/update-death-custody-8-year-old-harlingen-texas.

[2] Sheri Fink and Caitlin Dickerson, *Border Patrol Facilities Put Detainees With Medical Conditions at Risk*, THE NEW YORK TIMES (Mar. 5, 2019), https://www.nytimes.com/2019/03/05/us/border-patrol-deaths-migrant-children.html

[3] Miriam Jordan, *8-Year Old Migrant Child From Guatemala Dies in U.S. Custody*, THE NEW YORK TIMES (Dec. 25, 2018), https://www.nytimes.com/2018/12/25/us/guatemalan-boy-dies-border-patrol.html; Amir Vera, *Autopsy determines 7-year-old Guatemalan girl died from sepsis while in US custody*, CNN (Mar. 30, 2019), https://www.cnn.com/2019/03/29/us/guatemala-jakelin-caal-maquin-autopsy/index.html.

[4] *Child's death in immigration custody was preventable, independent monitor concludes*, NATIONAL CENTER FOR YOUTH LAW (Jul. 20, 2023), https://youthlaw.org/news/childs-death-immigration-custody-was-preventable-independent-monitor-concludes.

[5] Salvador Hernandez and Ruben Vives, *Unlawful border crossings dropped to four-year low in November, new data show*, LOS ANGELES TIMES (Dec. 31, 2024), https://www.latimes.com/california/story/2024-12-31/year-end-border-

Under the current administration, the provision of adequate medical care in CBP facilities will be an urgent issue. President Donald Trump already has begun enacting sweeping policies restricting immigration that aim to shut down the border, even to those lawfully seeking asylum. If medical care in CBP custody worsens, more individuals and children may die.

Sources and Methods

As part of this investigation, the Committee reviewed investigations and reports from agency oversight offices, Congress, nongovernmental organizations, whistleblowers, the *Flores* Juvenile Care Monitor,[6] and other stakeholders that identified numerous factors contributing to poor medical care in CBP facilities, including CBP's failure to provide rigorous oversight of its medical services contractor. The Committee reviewed policies in place prior to and after Anadith's death and considered other steps CBP has taken to improve medical care in its facilities. The Committee obtained information directly from CBP and Loyal Source. Initial information requests were made to CBP and Loyal Source on December 14, 2023. Loyal Source promptly complied with the Committee's investigation requests. CBP did not finish its document production to the Committee until October 16, 2024, prolonging the investigation.

Key Findings

The Committee's investigation of CBP's medical care concluded that the substandard care Anadith received in CBP custody was not aberrant but consistent with other examples of poor care in CBP custody. The report makes five key findings:

I. ***Children Are Held Too Long in CBP Custody, Putting Them at Risk.*** CBP guidelines state that detained individuals generally should not be held for longer than 72 hours in a CBP facility, and the law requires that unaccompanied minors generally be released from CBP custody in under 72 hours.[7] The Committee's review found that many children in

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crossings-lowest-seen-in-biden-administration; Mary Beth Sheridan, *How Mexico is helping Biden and Harris at the U.S. border,* THE WASHINGTON POST (Sept. 4, 2024), https://www.washingtonpost.com/world/2024/09/14/mexico-migrant-border-merry-go-round/.

[6] CBP Settlement Agreement, *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. No. 1254-1, at *17 (C.D. Cal., May 21, 2022) (describing authority of Juvenile Care Monitor to monitor CBP's compliance with the Settlement Agreement in Rio Grande Valley and El Paso Border Patrol Sectors).

[7] *National Standards on Transport, Escort, Detention, and Search (TEDS)*, U.S. CUSTOMS AND BORDER PROT. (Oct. 2015), https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf (requires that "[e]very effort must be made to hold detainees for the least amount of time required for their processing, transfer, release, or repatriation as appropriate and as operationally feasible," and that people "should generally not be held for longer than 72 hours"); 8 U.S.C.. § 1232(b)(3) ("Except in the case of exceptional circumstances, any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child."); Amna Nawaz, *Hundreds of children have been held by Border Patrol for more than 10 days. The legal limit is 72 hours*, PBS NEWS (Mar. 17, 2021), https://www.pbs.org/newshour/nation/hundreds-of-children-have-been-held-by-border-patrol-for-more-than-10-days-the-legal-limit-is-72-hours.

CBP custody are held for far longer than 72 hours. For example, in October 2024, 832 children were in CBP custody for over seven days and 56 children were in custody for over 14 days.[8] Incredibly, during the same month, a 7-year-old child and 14-year-old child were held for 22 days.[9] Despite her medical vulnerabilities and tender age, at the time Anadith died, she had spent nine days in CBP custody with her family, far above the 72-hour maximum. The Committee's review found that prolonged periods in custody place children, like Anadith, at greater risk of harm.[10]

II. ***CBP Facilities Are Chronically Understaffed.*** Though the failure to staff CBP facilities with adequate medical personnel is well documented, CBP and Loyal Source disagree about the gravity of the problem and its root causes. CBP takes the position that Loyal Source has consistently neglected to provide sufficient medical staff at CBP facilities. Loyal Source disagrees, taking the position that it has consistently met the staffing requirements under its contract, but because CBP's background check process is lengthy, Loyal Source has not been able to quickly complete the hiring process and move newly hired staff into vacant positions. CBP and Loyal Source have not been able to work together effectively to resolve these challenges, leaving individuals in CBP custody without adequate care.

III. ***Staff Have Not Properly Used Medical Records Systems to Track Critical Information About Medically Vulnerable Individuals.*** Accurate and comprehensive medical records are necessary to identify and care for individuals with elevated medical risks. In earlier phases of the implementation of CBP's current Electronic Medical Records (EMR) system, CBP and Loyal Source identified technical challenges with the system. Though many of those issues have been addressed, OCMO leadership recommends implementing a new EMR system. The Committee has found past challenges with the EMR system noteworthy; however, key issues have been resolved and the U.S. Office of Special Counsel (OSC) currently is investigating whistleblower reports that Acting OCMO Chief Medical Officer (CMO), Dr. Alexander Eastman, improperly attempted to replace the EMR. Because of these developments, OCMO should continue to explore alternatives to replacing the EMR system.[11] In addition, systemic issues cannot be resolved by implementing a new EMR system. CBP and Loyal Source staff, for example, have not always properly recorded medical records in CBP's current EMR system nor checked the EMR system when treating a patient. Anadith's case is a tragic example. Her medical history was documented in the EMR system when her family was first taken into custody

[8] Decl. of Diane de Gramont in Supp. of Pls.' Reply in Supp. of Mot. to Modify the 2022 CBP Settlement, *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. No. 1538, at *4 (C.D. Cal., Jan. 14, 2025) (citing data provided by CBP).
[9] *Id*.
[10] *See infra* Part VII.G.
[11] According to reporting, Dr. Eastman was removed as CBP's Acting Chief Medical Officer in December 2024. *CBP Acting Chief Medical Officer Removed Following Whistleblower Disclosures*, GOVERNMENT ACCOUNTABILITY PROJECT (Dec. 20, 2024), https://whistleblower.org/press-release/cbp-acting-chief-medical-officer-removed-following-whistleblower-disclosures/; Nick Schwellenbach, *CBP Replaces Top Doctor Accused of Misconduct*, POGO (Dec. 19, 2024), https://www.pogo.org/investigations/cbp-replaces-top-doctor-accused-of-misconduct.

and transported to the Donna Centralized Processing Facility.[12] Loyal Source staff and U.S. Border Patrol personnel at Harlingen Station who interacted with the girl and her mother, however, claimed to be unaware Anadith had sickle cell anemia or a history of congenital heart disease.[13] This is because the medical staff member who treated Anadith in the hours before her death apparently never reviewed her records in the EMR system.[14] In the hours preceding her death, medical staff denied Anadith life-saving care.[15] In fact, agents were reportedly dismissive of Anadith's mother's pleas for help and Anadith's worsening symptoms.[16] In an interview with CBS, Anadith's mother, Mabel Alvarez, recounted what a dismissive CBP agent told Anadith: "Tell me how you can't breathe, because a girl that can't breathe would be passing out and you're not passing out, you're fine."[17]

IV. ***Medical Personnel Are Not Always Empowered to Seek Emergency Medical Services Without Approval from Nonmedical Personnel.*** One of the factors that contributed to Anadith's death was medical services personnel's failure to seek higher-level care when Anadith's health was failing, including securing transport to a hospital or calling emergency services. The Committee has determined that the process for obtaining emergency care is not consistent across CBP facilities, and despite CBP policies stating that medical services personnel should contact emergency services, Loyal Source medical personnel do not always feel empowered to seek emergency services without approval by nonmedical CBP personnel at CBP facilities.[18]

V. ***Contracted Medical Personnel Need Consistent Oversight by CBP to Ensure the Successful Implementation of Guidance to Improve Medical Care for Vulnerable Individuals, Including Children.*** Guidance related to the medical treatment of children and other vulnerable individuals, such as pregnant individuals, creates requirements for Loyal Source staff. It remains unclear, however, how CBP or DHS entities like the DHS Office of Health Security (OHS) and the DHS Office of the Immigration Detention Ombudsman (OIDO), conduct meaningful oversight to ensure Loyal Source medical services staff comply with the guidance. Since the development and implementation of the Elevated In-Custody Medical Risk (ECMR) guidance, for example, there does not appear to be consistent internal monitoring of implementation of the guidance, including Loyal Source's performance. It also is unclear how internal monitoring by CBP takes place to ensure medical services staff are consistently conducting health interviews,

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[12] *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1326, at *34 (C.D. Cal., Jan. 30, 2023), https://youthlaw.org/sites/default/files/2023-07/2023.01.30%20-%20Flores%20Juvenile%20Care%20Monitor%20Report.pdf.

[13] *Update: Death in Custody of 8-Year-Old in Harlingen, Texas,* U.S. CUSTOMS AND BORDER PROT. (Jun. 1, 2023), https://www.cbp.gov/newsroom/speeches-and-statements/june-1-2023-update-death-custody-8-year-old-harlingen-texas.

[14] *Id.*

[15] *Id.*

[16] Camilo Montoya-Galvez, *Official concedes 8-year-old who died in U.S. custody could have been saved as devastated family recalls final days*, CBS NEWS (Jul. 20, 2023), https://www.cbsnews.com/news/anadith-danay-reyes-alvarez-8-year-old-migrant-died-border-patrol-custody-family/.

[17] *Id.*

[18] *See infra* Part VII.C.

medical assessments, and medical encounters, and reviewing the medical history of individuals, including children, to ensure they are receiving proper treatment.

Recommendations

The report contains seven recommendations for strengthening mechanisms for holding CBP and contractor Loyal Source accountable, improving the delivery of medical care, and reducing risk to medically vulnerable individuals in CBP custody.

REPORT

I. Overview of CBP Medical Care

The medical personnel responsible for Anadith's care at the time she died were employees of Loyal Source, a company contracted by CBP to provide medical care to individuals in CBP custody.[19] CBP and Loyal Source whistleblowers have alleged that CBP's Office of Acquisitions failed to hold Loyal Source accountable for deficient medical care over a number of years.[20] Whistleblowers and oversight offices, such as the DHS Office of Inspector General (OIG) and DHS Office of Civil Rights and Civil Liberties (CRCL), have attributed inadequate medical care in CBP facilities to, among other factors, understaffing, an inadequate electronic medical records system, and a lack of clarity related to roles and responsibilities in the delivery of medical care. In addition to inadequate medical care, oversight entities have highlighted dangers associated with longer stays in CBP custody.[21] The length of time in custody may exacerbate existing medical care needs, create additional challenges for medical staff attending to the needs of large numbers of migrants, and create dangerous and untenable conditions in CBP facilities that were not designed for long-term detention.[22]

Under the 2022 *Flores* Settlement Agreement, Texas immigration detention facilities in the Rio Grande Valley and El Paso Border Patrol Sectors became subject to enhanced medical

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[19] Nick Miroff, *Medical provider vying for border contract faces scrutiny after girl's death*, THE WASHINGTON POST (Nov. 19, 2023), https://www.washingtonpost.com/immigration/2023/11/19/border-loyal-source-medical-care-migrants/.

[20] *Id.*

[21] Results of Unannounced Inspections of CBP Holding Facilities in the San Diego Area, OFF. OF INSPECTOR GEN., U.S. DEP'T OF HOMELAND SEC. 4-6, 9 (Nov. 15, 2023), https://www.oig.dhs.gov/sites/default/files/assets/2023-11/OIG-24-07-Nov23.pdf.

[22] *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1381, at *14 (C.D. Cal., Dec. 13, 2024), https://youthlaw.org/sites/default/files/2024-12/December%202024%20Juvenile%20Care%20Final%20Monitor%20Report%20by%20Andrea%20S.%20Ordin%2C%20Dr.%20Nancy%20Ewen%20Wang%2C%20Dr.%20Paul%20Wise_0.pdf.
(". . . holding children at elevated medical risk in custody for what appears to be increasingly longer times will inevitably place additional stress on the ability of the CBP medical system to ensure the well-being of children at elevated medical risk while in custody.").

care requirements for children.[23] These include providing adequate medical care to vulnerable children in CBP custody, referring children to local health systems for higher level care, using risk management principles, contracting with medical personnel to provide enhanced medical support, and conducting health intake interviews and assessments.[24] Children in DHS custody, including CBP custody, continue to be subject to the original *Flores* Settlement Agreement which permits plaintiffs' counsel to visit facilities and speak with children.[25] The 2022 Settlement Agreement required the appointment of a Juvenile Care Monitor to monitor CBP's compliance with its requirements, and allowed the Juvenile Care Monitor to access CBP documents and records, conduct unannounced visits, and speak with detained children and families as well as CBP employees of CBP contractors.[26]

Loyal Source remained relatively free from public scrutiny until it became the subject of whistleblower allegations and reporting alleging CBP failed to engage in adequate oversight over Loyal Source. Whistleblower Troy Hendrickson stated that Loyal Source spent millions of federal funds while providing subpar healthcare.[27] He alleged that if concerns had been addressed by CBP, Anadith might not have died. Hendrickson stated that, among other failures, Loyal Source was understaffed by 40 percent, migrant electronic health records were improperly maintained, and billing mistakes resulted in overpayments of millions of dollars to Loyal Source.[28] More recent whistleblower allegations from current and former employees of CBP and Loyal Source detail concerns about the circumstances surrounding Anadith's death and the delivery of medical care in CBP facilities, including staffing shortages, inadequate oversight of Loyal Source, and failures to anticipate medical care needs during surges at the border.[29]

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[23] CBP Settlement Agreement, *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. No. 1254-1, at *7-10 (C.D. Cal., May 21, 2022).
[24] *Id*.
[25] *See* Stipulated Settlement Agreement, *Flores v. Reno*, No. 85-4544-RJK (Px), at ¶12 (C.D. Cal. Jan. 17, 1997), https://www.acf.hhs.gov/sites/default/files/documents/orr/Flores-Settlement-Agreement.pdf ("Facilities will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services… Every effort must be taken to ensure that the safety and well-being of the minors detained in these facilities are satisfactorily provided for by the staff").
[26] CBP Settlement Agreement, *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. No. 1254-1 (C.D. Cal., May 21, 2022). A new U.S. Dep't of Health and Human Services (HHS) rule governing the treatment of unaccompanied children in Office of Refugee Resettlement custody went into effect on July 1, 2024. The district court overseeing *Flores* ruled that *Flores* was "conditionally and partially terminat[ed]" as to HHS, but the terms of the *Flores* agreement continue to apply with "full force and effect" to DHS. *See Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. No. 1447, at *20-21 (C.D. Cal., June 28, 2024); *See also Updates on Protections for Unaccompanied Children*, NATIONAL CENTER FOR YOUTH LAW (July 2024), https://youthlaw.org/sites/default/files/attachments/2024-07/NCYL-July2024-UpdatesOnProtectionsForUnaccompaniedChildren.pdf.
[27] *Protected Whistleblower Disclosures Regarding the Performance and Oversight Failures of the Medical Services Contract of U.S. Customs and Border Protection with Loyal Source Government Services*, GOVERNMENT ACCOUNTABILITY PROJECT (Nov. 20, 2023), https://whistleblower.org/wp-content/uploads/2023/11/11-30-2023-Hendrickson-Congressional-Disclosure.pdf.
[28] *Protected Whistleblower Disclosures Regarding the Performance and Oversight Failures of the Medical Services Contract of U.S. Customs and Border Protection with Loyal Source Government Services*, GOVERNMENT ACCOUNTABILITY PROJECT (Nov. 20, 2023), https://whistleblower.org/wp-content/uploads/2023/11/11-30-2023-Hendrickson-Congressional-Disclosure.pdf; Rafael Bernal, *Whistleblower report alleges shoddy medical care for detained migrants*, THE HILL (Nov. 30, 2023), https://thehill.com/homenews/administration/4336206-cbp-whistleblower-report-medical-care-detained-migrants/.
[29] *Protected Whistleblowers' Disclosures Regarding Failure of CBP Leadership and CBP Office of Acquisition to Oversee its Medical Services Contract with Loyal Source Government Services and Ongoing Wrongdoing by Acting*

II. Deaths of Children in CBP Custody

Prior to Anadith's death and recent whistleblower allegations, media and agency oversight offices raised alarms about CBP's failure to provide adequate medical care.[30] This was, in part, because Anadith was not the first child to die in CBP custody. In 2018, a seven-year-old girl, Jakelin Caal Maquin, and an eight-year-old boy, Felipe Gomez Alonso, died within a month of each other,[31] spurring public outrage, a series of investigations, and extensive scrutiny of CBP conditions and policies.

After the deaths of children in 2018, CBP stated it was aware the agency's infrastructure was inadequate. The CBP commissioner acknowledged CBP facilities were built in the 1980s and 1990s to temporarily house single adult males and were not built for holding children or families.[32] He likened a CBP facility to a "police station" where a person is detained for a short period of time before they are sent to a jail or a facility built to house individuals for longer periods of time.[33]

Though DHS implemented some enhancements in early 2018 to medical screenings, children continued to die in CBP custody—both in CBP holding cells and at hospitals after spending time in holding cells.[34] In May 2019, a 16-year-old boy, Carlos Gregario Hernandez Vasques, died after spending six days in CBP custody, suffering from flu symptoms, including a fever, and reportedly failing to receive any welfare checks as his health rapidly deteriorated.[35] Anadith's tragic death in 2023 brought renewed scrutiny and calls for accountability, reigniting a number of congressional and federal investigations into CBP medical care.[36]

CBP Chief Medical Officer, GOVERNMENT ACCOUNTABILITY PROJECT (Feb. 16, 2024), https://whistleblower.org/wp-content/uploads/2024/02/02-16-2024-CBP-Medical-Services-Whistleblower-Disclosure.pdf.

[30] Miriam Jordan, *8-Year Old Migrant Child From Guatemala Dies in U.S. Custody*, THE NEW YORK TIMES (Dec. 25, 2018), https://www.nytimes.com/2018/12/25/us/guatemalan-boy-dies-border-patrol.html; Amir Vera, *Autopsy determines 7-year-old Guatemalan girl died from sepsis while in US custody*, CNN (Mar. 30, 2019), https://www.cnn.com/2019/03/29/us/guatemala-jakelin-caal-maquin-autopsy/index.html.

[31] *Id.*

[32] Miriam Jordan, *8-Year Old Migrant Child From Guatemala Dies in U.S. Custody*, THE NEW YORK TIMES (Dec. 25, 2018), https://www.nytimes.com/2018/12/25/us/guatemalan-boy-dies-border-patrol.html.

[33] *Id*.

[34] Robert Moore, Susan Schmidt, and Maryam Jameel, *Inside the Cell Where a Sick 16-Year-Old Boy Died in Border Patrol Care*, PROPUBLICA (Dec. 5, 2019), https://www.propublica.org/article/inside-the-cell-where-a-sick-16-year-old-boy-died-in-border-patrol-care.

[35] *Id*.

[36] *Durbin Presses for Further Investigation into Systemic Failures at Customs and Border Protection Resulting in Years of Deficient Medical Care*, U.S. SENATE COMMITTEE ON THE JUDICIARY (Dec. 14, 2023), https://www.judiciary.senate.gov/press/releases/durbin-presses-for-further-investigation-into-systemic-failures-at-customs-and-border-protection-resulting-in-years-of-deficient-medical-care; *Oversight Democrats Request GAO Conduct Review of Medically Necessary Procedures for ICE, CBP Detainees*, U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY DEMOCRATS (May 10, 2024), https://oversightdemocrats.house.gov/news/press-releases/oversight-democrats-request-gao-conduct-review-medically-necessary-procedures.

III. Longstanding Deficiencies in Medical Care in CBP Facilities

Several years before Anadith's death, a 2020 DHS OIG report found that CBP stations were ill-equipped to address influxes of migrants. During its investigation, OIG visited 14 Border Patrol stations. In 12 of the 14 facilities, detainees had been there for longer than the permitted 72 hours, and a substantial number had been there for over a month.[37] Of 9,400 detainees, 3,750 had been held longer than 72 hours when OIG conducted its inspection.[38] OIG identified overcrowding as playing a role in exacerbating the health care crisis at these stations, since many immigrants were held in close quarters with one another. The report found that when CBP stations attempted to address overcrowding by isolating and quarantining sick individuals, this further exacerbated overcrowding for those who were not sick, increasing their susceptibility to any disease or ailment and starting the cycle anew.[39] When OIG conducted its investigation, processes in place at the time only required CBP staff to visually inspect migrants for signs of injury, illness, or other physical or mental health concerns, and to ask migrants about needed prescription medications.[40] The flaw in this approach, according to the investigation, was that the guidelines for CBP stations did not require the sites to have on-site medical staff.[41] As a result, only 10 out of 14 of the stations that investigators visited had medical personnel addressing health care issues.[42] In the other four, medical assessments were performed by CBP agents or emergency medical technicians.[43]

The report also detailed how Border Patrol facilities did not meet CBP's own National Standards on Transport, Escort, Detention, and Search (TEDS) regarding treatment of children in CBP custody. The standards require special protections for children in detention, including requirements for food, clothing, and conditions of detention.[44] According to the report, some children in custody for more than 48 hours lacked access to a shower or a change of clothing.[45] And in a few facilities, children did not get a hot meal until OIG arrived at the facility.[46]

Later reports from agency oversight offices also raised alarms about CBP's failure to provide adequate medical care. A July 2020 Government Accountability Office (GAO) report noted that CBP had not consistently implemented enhanced medical care policies and procedures for those in their custody, including children, at southwest border facilities.[47] The report recommended that CBP develop certain oversight mechanisms, including "documentation of expected practices, metrics and corresponding performance targets, and roles and responsibilities

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[37] *Capping Report: CBP Struggled to Provide Adequate Detention Conditions During 2019 Migrant Surge*, 13, OFF. OF INSPECTOR GEN., U.S. DEP'T OF HOMELAND SEC. (Jun. 12, 2020), https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-38-Jun20.pdf.
[38] *Id.*
[39] *Id.* at 17.
[40] *Id.* at 14.
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.* at 18-19.
[45] *Id.*
[46] *Id.*
[47] *Southwest Border: CBP Needs to Increase Oversight of Funds, Medical Care, and Reporting of Deaths*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE (Jul. 2020), https://www.gao.gov/assets/gao-20-536.pdf.

for taking corrective action."[48] In response, CBP incorporated medical quality management requirements into its medical support contract, established a Contracting Officer's Representative position for medical services, and developed a protocol for conducting management inspections of medical care at CBP facilities.[49] GAO also recommended that CBP ensure that CBP contracting officers for its medical services blanket purchase agreement (BPA) perform and document annual reviews—a requirement under the Federal Acquisition Regulation.[50] According to GAO, CBP's Procurement Directorate Border Enforcement Contracting Division provided individual training regarding how to respond to the GAO recommendations and provided a BPA review checklist that lists required elements of an annual review and reminded staff to preserve the documentation.[51] These actions were intended to help CBP better ensure that annual reviews of its medical services agreement are performed and properly documented, thereby providing contracting officers with opportunities to identify additional savings and ensure that the agreement continues to be the best option to meet CBP's need for contracted medical services. An OIG management alert issued later in 2020 recommended CBP take immediate steps to ensure its medical services contract did not lapse and a medical services contractor remained in place.[52]

In July 2021, OIG issued a report analyzing CBP's standards of care for migrants in its custody to determine if CBP policies adequately safeguarded detained migrants experiencing medical emergencies or illnesses.[53] The report found CBP could not demonstrate it consistently complied with agency policies at the time to conduct health interviews and "regular and frequent" welfare checks to identify people who were experiencing serious medical conditions.[54] The report also determined CBP could not ensure policies were followed, because it failed to conduct sufficient oversight, policies and procedures were not clear, and CBP officers and agents were not adequately trained to identify individuals who needed medical attention.[55] OIG recommended CBP update its procedures to clearly define at-risk individuals, establish times for welfare checks, ensure rescreening of migrants if their detention exceeded 72 hours in CBP custody, and ensure all juveniles in CBP custody complete medical assessments.[56] OIG also recommended the CBP Chief Medical Officer work with U.S. Border Patrol and the Office of Field Operations to strengthen oversight and quality assurance plans and to review and assess medical screening, welfare checks, and the recording of supporting documentation.[57] Finally, OIG recommended CBP develop trainings on changes to policies and procedures and on

[48] *Id.* at 47.
[49] *Id.* at 77.
[50] *Id.* at 55.
[51] *Id.* at 54.
[52] *Management Alert – CBP Needs to Award a Medical Services Contract Quickly to Ensure no Gap in Services 6*, OFF. OF INSPECTOR GEN., U.S. DEP'T OF HOMELAND SEC. (Sept. 3, 2020), https://www.oig.dhs.gov/sites/default/files/assets/Mga/2020/oig-20-70-sep20-mgmtalert.pdf.
[53] *CBP Needs to Strengthen Its Oversight and Policy to Better Care for Migrants Needing Medical Attention*, OFF. OF INSPECTOR GEN., U.S. DEP'T OF HOMELAND SEC. (Jul. 20, 2021), https://www.oig.dhs.gov/sites/default/files/assets/2021-07/OIG-21-48-Jul21.pdf.
[54] *Id.* at 5.
[55] *Id*. at 4.
[56] *Id*. at 8.
[57] *Id*.

identifying medical emergencies.[58] CBP concurred with OIG's recommendations and indicated it would update its policies and procedures.

A 2022 Ombudsman Alert issued by the DHS Immigration Detention Ombudsman (OIDO) raised concerns that there was a "critical shortage of medical services at CBP facilities" that "could jeopardize the health and safety of noncitizens in CBP custody."[59] In June 2023, OIDO issued a more in-depth analysis of the Loyal Source medical contract with CBP, voicing concerns that the medical staffing levels at Tucson medical units did not meet contract requirements.[60]

IV. Investigations into the Circumstances of Anadith's Death

The circumstances that resulted in Anadith's death were unfortunately not an aberration, but indicative of systemic problems with the provision of medical care in CBP facilities and CBP's broader failure to properly oversee that care. A pediatrician appointed by a federal court to monitor CBP's compliance with the June 2022 settlement agreement in *Flores v. Garland* issued multiple reports highlighting serious concerns with medical care of children in CBP facilities in the Rio Grande Valley and El Paso Border Patrol Sectors.[61] A report issued in July 2023 stated CBP procedures and policies in place at the time of Anadith's death were "catastrophically inadequate to prevent the deterioration in [Anadith's] condition and ultimately, her tragic death."[62] According to the report, "these failures occurred at multiple levels and should not be viewed as rare anomalies but rather as systemic weaknesses that if not remedied, are likely to result in future harm to children in CBP custody."[63]

After an investigation of the circumstances surrounding Anadith's death, CBP's Office of Professional Responsibility (OPR) found numerous breakdowns in Anadith's care, including

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[58] *Id*.
[59] *Ombudsman Alert: Critical Medical Understaffing on the Border* 1, OFFICE OF THE IMMIGRATION DETENTION OMBUDSMAN (Jul. 12, 2022), https://www.dhs.gov/sites/default/files/2022-07/OIDO%20Ombudsman%20Alert%20CBP%20Medical%20Contract%20Final_508.pdf.
[60] *OIDO Review: CBP Medical Support Contract for Southwest Border and Tucson,* OFFICE OF THE IMMIGRATION DETENTION OMBUDSMAN (Jun. 16, 2023), https://www.dhs.gov/sites/default/files/2023-07/OIDO%20Review%20-%20CBP%20Medical%20Support%20Contract%20for%20Southwest%20Border%20and%20Tucson.pdf, (finding, in addition to inadequate staffing levels, Loyal Source had incorrectly billed for overtime and double time hours).
[61] *See e.g., Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1381 (C.D. Cal., Dec. 13, 2024), https://youthlaw.org/sites/default/files/2024-12/December%202024%20Juvenile%20Care%20Final%20Monitor%20Report%20by%20Andrea%20S.%20Ordin%2C%20Dr.%20Nancy%20Ewen%20Wang%2C%20Dr.%20Paul%20Wise_0.pdf; *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1352 (C.D. Cal., July 18, 2023), https://youthlaw.org/sites/default/files/2023-07/2023.07.18_Flores%20Juvenile%20Care%20Monitor%20Report.pdf; *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1326 (C.D. Cal., Jan 30, 2023), https://youthlaw.org/sites/default/files/2023-07/2023.01.30%20-%20Flores%20Juvenile%20Care%20Monitor%20Report.pdf; *see also* Plaintiffs' Mem. in Support of Motion to Modify 2022 CBP Settlement, *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1526-1, at *2-3 (C.D. Cal., Dec. 20, 2024) (requesting the court extend the Settlement for 2.5 years given CBP's noncompliance with its terms).
[62] *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1352, at *35 (C.D. Cal., July 18, 2023), https://youthlaw.org/sites/default/files/2023-07/2023.07.18_Flores%20Juvenile%20Care%20Monitor%20Report.pdf.
[63] *Id*. at *41.

Loyal Source staff's professed lack of awareness that Anadith had sickle cell disease and a history of congenital heart disease; medical personnel's failure to consult with on-call physicians, including an on-call pediatrician; and medical personnel's failure to document multiple medical encounters with Anadith.[64] In addition, the camera system at the facility was not functioning and the outage was not reported to OPR.[65] OPR found that Mabel Álvarez, Anadith's mother, took necessary steps to alert Loyal Source staff of her daughter's medical conditions only hours after they were placed in CBP custody. When Anadith's health declined, Ms. Álvarez repeatedly requested that Anadith be taken to a hospital.[66] Medical staff only called an ambulance after Anadith suffered a seizure and was unresponsive.[67]

Acting Commissioner Troy Miller requested a review of CBP's medical care by DHS OHS. DHS OHS conducted in-person site visits to multiple facilities in the Rio Grande Valley Sector and made recommendations for correcting inadequate medical care in CBP facilities. In a June 8, 2023 memorandum, Herbert O. Wolfe, the Acting Chief Medical Officer (CMO) and Acting Director of OHS, provided an overview of the numerous failures to provide adequate medical care in CBP facilities and recommended changes.[68] The recommendations, according to the memo, were "critical to ensuring that individuals in CBP custody receive safe, effective, and humane medical care while in DHS custody, and that such care is well-documented."[69]

OHS's observations and recommendations for improving medical care in CBP custody addressed several critical deficiencies. First, the observation that families were being held in custody longer than the established 72-hour standard revealed that CBP lacked a clear process for identifying and managing medically at-risk individuals, including children.[70] As a result, these individuals were not prioritized for expedited processing to reduce their time in custody. The second major issue concerned the management of the CBP Medical Services Contract (MSC) with Loyal Source, which was found to contribute to unsafe conditions and increase the likelihood of preventable harm.[71] There was no verification that sentinel event reviews—reviews taking place after an unexpected death or serious injury to a patient—were being conducted or documented.[72] Furthermore, CBP lacked awareness of the supervising physicians' involvement and had no clear standard operating procedures (SOPs) in place for clinical care.[73] The third

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[64] *June 1, 2023 Update: Death in Custody of 8-Year-Old in Harlingen, Texas,* U.S. CUSTOMS AND BORDER PROT. (Jun. 1, 2023), https://www.cbp.gov/newsroom/speeches-and-statements/june-1-2023-update-death-custody-8-year-old-harlingen-texas.
[65] *Id.*
[66] *Id.*
[67] *Id.* Anadith's family alleges both neglect and discrimination contributed to her death. Anadith's mother has alleged medical staff ignored her pleas and treated her family poorly, in part, because her family is Black. Camilo Montoya-Galvez, *Official concedes 8-year-old who died in U.S. custody could have been saved as devastated family recalls final days,* CBS NEWS, (Jul. 20, 2023), https://www.cbsnews.com/news/anadith-danay-reyes-alvarez-8-year-old-migrant-died-border-patrol-custody-family/.
[68] Memo from Herbert O. Wolfe, Acting Chief Medical Officer to Troy Miller, Acting CBP Commissioner, *Initial Observations and Recommended Medical Improvement Actions for Care of Individuals in CBP Custody* (Jun. 8, 2023), Appendix, Key Document I.
[69] *Id.* at ¶ 2.
[70] *Id.* at ¶ 3.
[71] *Id.* at ¶ 5.
[72] *Id.*
[73] *Id.*

observation noted deficiencies in enhanced medical monitoring (EMM), especially for individuals in isolation. The lack of objective criteria, clinical protocols, and proper use of the EMR system resulted in inadequate monitoring and documentation of care.[74] Some individuals in isolation had little to no documentation of their medical care, and the EMR system was not used effectively to track patient information or ensure continuity of care. Fourth, communication and documentation of clinical care were inconsistent.[75] Critical medical history and information were not shared between health care providers during shift changes, and there was no documented communication between medical and custodial personnel regarding at-risk individuals. Additionally, the EMR system lacked functionality to produce comprehensive care summaries, making it difficult to ensure continuity of care.[76] The fifth observation focused on the inadequacies of the USBP Harlingen Isolation Unit, where medical care was insufficient and lacked sufficient oversight by CBP.[77] There was a notable absence of medical engagement and accountability for the individuals placed in isolation.

To address these issues, OHS made five recommendations related to: 1) medical risk reduction, 2) contract management and operations, 3) enhanced medical monitoring, 4) clinical care communication and documentation, and 5) isolation unit operations. First, medically at-risk individuals should be identified quickly, and their time in custody should be minimized by prioritizing their processing in collaboration with medical service providers.[78] Second, CBP must improve the management of the MSC by reviewing and updating its oversight of clinical operations, including the establishment of a sentinel event review process.[79] Third, EMM protocols should be clarified, ensuring regular medical assessments are documented in the EMR system for individuals in isolation, with consultations conducted by supervising physicians or pediatric advisors as needed.[80] Fourth, OHS recommended updating the EMR system to enable comprehensive documentation of clinical history, medical findings, and care provided, while improving communication between health care providers and custodial staff during shift changes.[81] Finally, OHS recommended the Harlingen Isolation Unit be closed, with operations transitioned to the Donna Processing Center, which is better equipped to handle isolation care.[82] Additionally, CBP should develop new standards and procedures for isolation units in consultation with OHS to ensure safe, effective, and humane medical care.[83]

V. Overview of Entities Involved in Provision and Oversight of Medical Care in CBP Custody

[74] *Id*. at ¶ 7.
[75] *Id.* at ¶ 9.
[76] *Id*.
[77] *Id.* at ¶ 11.
[78] *Id.* at ¶ 4.
[79] *Id.* at ¶ 6.
[80] *Id.* at ¶ 8.
[81] *Id.* at ¶ 10.
[82] *Id.* at ¶ 12.
[83] *Id.*

A. Role of Loyal Source as CBP's Sole Contractor for Medical Services

Currently, Loyal Source, a private company, contracts with CBP to provide onsite medical care at CBP facilities. CBP entered into a $421 million contract with Loyal Source on September 30, 2020,[84] and has since renewed the contract. Loyal Source staff are responsible for day-to-day medical care, including intake screenings when an individual enters CBP custody, treatment of minor medical issues, responses to acute medical care needs and emergency medical situations, dispensing medication, referrals to local hospitals, and follow-up care after an individual is discharged from a hospital and returned to CBP custody.[85]

The number of CBP facilities where medical care is provided has grown exponentially. Loyal Source provided medical care in only three medical units in 2015; it now provides medical care in approximately 93 medical units at 82 locations.[86] The number of Loyal Source personnel also has increased significantly, from 60 medical personnel in 2015 to more than 1,000 medical personnel in 2023.[87] According to snapshots of the medical services workforce provided by CBP, in July 2022, 873 contracted personnel were working in CBP facilities; a year later, in July 2023, 1,471 personnel were working in CBP facilities; in July 2024, slightly fewer—1,340 personnel—were working in CBP facilities.[88]

Contracted medical staff in CBP facilities include advanced practice providers, including nurse practitioners and physician assistants; support personnel, including EMTs, paramedics, certified nursing assistants, certified medical assistants, and licensed vocational nurses; advisory staff, including patient safety risk monitors, supervising physicians, and pediatric advisors; and program managers by region, including a program manager and a deputy program manager.[89]

B. Role of CBP Office of Acquisitions

Though Loyal Source medical services staff provide care within the facilities, CBP personnel also play key roles in the delivery of medical care. Through its Office of Acquisitions, CBP manages the medical services contract with Loyal Source, making decisions about what work Loyal Source is required to perform under the contact.[90] The Office of Acquisitions resides

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[84] *Delivery Order V797D30203-70B03C20F00001383*, GOVTRIBE (last visited Jan. 6, 2024), https://govtribe.com/award/federal-contract-award/delivery-order-v797d30203-70b03c20f00001383.

[85] TEDS, TEDS MEDICAL CARE OF INDIVIDUALS IN CUSTODY POWERPOINT, Appendix, Key Document A; *see also* OFF. OF THE IMMIGRATION DET. OMBUDSMAN, OMBUDSMAN ALERT: CRITICAL MEDICAL UNDERSTAFFING ON THE BORDER 1, (Jul. 12, 2022), https://www.dhs.gov/sites/default/files/2022-07/OIDO%20Ombudsman%20Alert%20CBP%20Medical%20Contract%20Final_508.pdf.

[86] U.S. Customs and Border Protection, Office of the Chief Medical Officer, Border Health System Briefing to Senate Judiciary Staff (Aug. 1, 2024).

[87] Loyal Source Government Services Briefing to Senate Judiciary Staff (Dec. 5, 2023).

[88] U.S. Customs and Border Protection, Office of the Chief Medical Officer, Border Health System Briefing to Senate Judiciary Staff (Aug. 1, 2024).

[89] *Id.*

[90] Federal Acquisition Regulation (FAR) Section 1.602-2 (stating the responsibility of the Contract Officer "is to ensur[e] performance of all necessary actions for effective contracting, ensur[e] compliance with the terms of the contract, and safeguar[d] the interests of the United States in its contractual relationships."); FAR Section 1.604 of the FAR (stating a COR's role is to "assis[t] in the technical monitoring or administration of a contract.").

within the Enterprise Services support office.[91] It is responsible for providing expertise and oversight in procuring "mission-essential" services, among other responsibilities.[92] The Contract Officer in the Border Enforcement Contracting Division of the CBP Office of Acquisitions manages the Loyal Source contract, with a Contract Officer Representative.

C. Role of CBP Office of Chief Medical Officer (OCMO) and Response to Anadith's Death

CBP's Office of Chief Medical Officer (OCMO) plays an oversight and management role in the delivery of medical care. Within CBP's organizational structure, CBP medical services and OCMO fall under CBP's Chief Operating Officer and Operations Support.[93] DHS describes OCMO's role as providing "medical direction, coordination, and oversight of medical support to CBP personnel, operations, and persons in custody."[94] The Chief Medical Officer is the "principal adviser regarding medical issues and emerging health matters, priorities, and policies of critical importance to CBP" and is "CBP's lead medical representative to external partners."[95] According to materials provided by OCMO to the Committee, OCMO's stated mission is to "vigilantly safeguard those entrusted to our care, while countering health security threats at our nation's border."[96] OCMO develops guidance and spearheads the development of systems—such as the EMR system used to maintain medical records—to guide the delivery of medical care, though Loyal Source staff provides the care.

Data provided to the Committee by OCMO showed fluctuations of medical services in CBP facilities based on the flow of individuals into these facilities.[97] For example, there were larger numbers of screenings, medical encounters, and hospital visits between September 17 and 23, 2023, when a large number of individuals were entering CBP custody, compared with July 21 and 27, 2024, when the numbers were fewer:

- Medical personnel completed 49,241 medical interviews during the September 2023 period, compared to 9,948 medical interviews during the July 2024 period.
- There were 10,614 medical encounters during the September 2023 period, compared to 4,071 medical encounters during the July 2024 period; and

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[91] *Customs and Border Protection: Actions Needed to Enhance Acquisition Management and Knowledge Sharing 7-8*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, (Apr. 2023), https://www.gao.gov/assets/gao-23-105472.pdf.
[92] *Id.* at 8.
[93] *Budget Overview: Fiscal Year 2025, Congressional Justification 261-62*, U.S. CUSTOMS AND BORDER PROT., U.S. DEP'T OF HOMELAND SEC. (stating the role of Operations Support as providing oversight and guidance regarding medical programs and that the Office of the Chief Medical Officer falls within Operations Support), https://www.dhs.gov/sites/default/files/2024-04/2024_0314_us_customs_and_border_protection.pdf; *CBP Organization Chart*, U.S CUSTOMS AND BORDER PROT. (last visited Dec. 11, 2024) (providing a chart of CBP's operational make-up), https://www.cbp.gov/document/publications/cbp-organization-chart.
[94] *Budget Overview: Fiscal Year 2025, Congressional Justification 324*, U.S. CUSTOMS AND BORDER PROT., U.S. DEP'T OF HOMELAND SEC., https://www.dhs.gov/sites/default/files/2024-04/2024_0314_us_customs_and_border_protection.pdf.
[95] *Id.*
[96] U.S. Customs and Border Protection, Office of the Chief Medical Officer, Border Health System Briefing to Senate Judiciary Staff (Aug. 1, 2024).
[97] *Id.*

- There were 483 hospital referrals during the September 2023 period, compared to 200 hospital referrals during the July 2024 period.

OCMO has shared with the Committee the immediate steps DHS took in response to Anadith's death, including closing Harlingen Station's Isolation Unit Operations—where she was transferred for her fever and flu symptoms—and deploying U.S. Public Health Service (USPHS) uniformed clinicians to locations across the southwest border to provide oversight and medical guidance.[98] DHS also issued a memo detailing medical process improvements to implement and modified the Medical Services Contract.[99] Between July 2023 and February 2024, OCMO stated that it implemented improvements to its enhanced medical monitoring, clinical care communication and documentation, and isolation unit operations.[100]

In addition to these improvements, OCMO has plans to implement "Border Health System Operations," which, according to OCMO, are automated monitoring systems that communicate with CBP's custodial records systems.[101] OCMO also plans to deploy an enhanced medical services contract oversight team which will include OCMO-assigned leads in select Border Patrol sectors.[102]

D. Role of DHS Office of Health Security

DHS OHS describes itself as the "principal medical, workforce health and safety public health authority for DHS." In a briefing with the Committee, OHS stated that its role is, in part, to standardize quality health care for individuals in DHS care, while ensuring oversight of that care.[103] According to OHS, prior to 2022, DHS's organizational structure did not allow for adequate and appropriate oversight of medical and health-related DHS "activities."[104] In July 2022, in response to the COVID-19 pandemic's "unprecedented health security events," Congress authorized a DHS reorganization to create OHS.[105] According to the Acting DHS Chief Medical Officer (CMO), who also serves as the Director of OHS, OHS now has a much-improved ability to conduct oversight and proactively respond to health concerns.[106] Relevant to CBP medical care, OHS states that it has authority to "[o]versee all medical, public health, and workforce health and safety activities of the Department of Homeland Security" and to "[s]erve as the senior medical review authority for determinations regarding whether the standard of care for individuals in DHS custody has been met when there are claims or allegations of improper or

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[98] *See Id.*; *see also* Nick Miroff, *CBP reassigns chief medical officer after child's death in border custody,* THE WASHINGTON POST (Jun. 15, 2023), https://www.washingtonpost.com/nation/2023/06/15/border-patrol-medical-care-child-death/

[99] Memo from Herbert O. Wolfe, Acting Chief Medical Officer to Troy Miller, Acting CBP Commissioner, *Initial Observations and Recommended Medical Improvement Actions for Care of Individuals in CBP Custody* (Jun. 8, 2023), Appendix, Key Document I.

[100] U.S. Customs and Border Protection, Office of the Chief Medical Officer, Border Health System Briefing to Senate Judiciary Staff (Aug. 1, 2024).

[101] *Id.*

[102] *Id.*

[103] U.S. Department of Homeland Security, Office of Health Security Briefing to Senate Judiciary Staff (Sept. 27, 2024)

[104] *Id.*

[105] *Id.*

[106] *Id.*

substandard healthcare against the Department or any of its Components, employees, detailees, or contractors."[107]

OHS provides oversight according to what it calls an "indirect oversight model," where OHS does not exert administrative and operational control over DHS Component Health Leads such as OCMO.[108] OHS's indirect oversight includes providing input into performance plans and appraisals, serving on relevant hiring panels, providing medical contract reviews, setting department-wide policy, and reviewing all policies and procedures related to medical care.[109] In addition, OHS supports CBP OPR investigations and coordinates with other DHS oversight authorities such as CRCL.

One of OHS's initiatives relevant to CBP medical care is the Child Well-Being Program. This program, established through the FY2022 Appropriations Act, is intended to improve the well-being of children in DHS's care. The program currently is being "incubated" within the OHS Special Programs unit and, in 2025, will be transferred to the Border Health Division within the Healthcare Systems and Oversight Directorate. [110] According to OHS, the program will provide field-licensed clinical social workers in all nine CBP sectors to provide advice to caregivers already stationed at CBP facilities.

VI. Policies Governing Medical Care in CBP Custody

A. Overview of the Medical Care Process in CBP Custody

A Medical Process Guide, updated in June 2023, provides an overview of the general process for providing medical care in CBP facilities. Upon entering a CBP facility, CBP medical services personnel complete an *initial health interview*. In cases where medical services staff is not available, CBP staff will conduct the interview.[111] Information obtained in the initial interview is recorded in a CBP 2500 Form.[112] Agency guidance states that the person conducting the interview must utilize appropriate translation services pursuant to CBP Language Access Directive 2130-031.[113] The guidance also states that an additional interview is required if a person was in transport for more than 12 hours or the person's medical condition changed during

[107] *See* Memo from Herbert O. Wolfe, Acting Chief Medical Officer to Troy Miller, Acting CBP Commissioner, *Initial Observations and Recommended Medical Improvement Actions for Care of Individuals in CBP Custody* (Jun. 8, 2023), Appendix, Key Document I (referencing oversight authority pursuant to DHS Delegation 26000, *Delegation to the Chief Medical Officer/Director of the Office of Health Security*. (section II.C.2.) (December 14, 2022)).
[108] U.S. Department of Homeland Security, Office of Health Security Briefing to Senate Judiciary Staff (Sept. 27, 2024).
[109] *Id*.
[110] *Id.*
[111] U.S. CUSTOMS AND BORDER PROT., OFF. CHIEF MEDICAL OFFICER, U.S. DEP'T OF HOMELAND SEC., MEDICAL PROCESS GUIDANCE 3 (June 2023), Appendix, Key Document I.
[112] *Id. at 3.*
[113] *Id. at 3.*

transport. CBP must notify medical services personnel if a person meets those requirements.[114] During the health intake interview, medical services personnel ask if the person has: 1) a history of medical or mental health issues; 2) if the person is taking any medications—either prescription or over-the-counter; 3) if the person has any allergies to food or medicine; 4) if the person is a drug user; 5) if female, if a person is pregnant and how many months pregnant; 6) if female, if the person is nursing; 7) if the person is currently injured or in significant pain; 8) if the person has a skin rash; 9) if the person has a contagious disease; 10) if the person is considering hurting themself or others; 11) if the person feels feverish or has a fever; 12) if the person has a cough or difficulty breathing; and 13) if the person has nausea, vomiting, or diarrhea.[115]

If a person is a juvenile, pregnant, or answered yes to any of the health interview questions, they will then undergo a *medical assessment* conducted by CBP medical services personnel. According to CBP, a person also will receive a medical assessment even if they do not answer yes to any of the health interview questions but are identified as having a potential injury, illness, medication requirement, or medical issue.[116] During a medical assessment, a second health intake interview is conducted and documented in the EMR system. Medical assessments are conducted as appropriate, but according to CBP guidance, must be repeated and documented for juveniles every fifth day in CBP custody.[117] CBP guidance states that in instances where medical services personnel are not available and a medical assessment must take place, a person in custody can be referred to a local health system for the assessment.[118] The guidance states that only a nurse practitioner or physician assistant can record information collected in the medical assessment in the EMR system.

If medical services staff determine that a person needs additional medical care at any point while in CBP custody, they will undergo a *medical encounter*. In the course of determining whether additional medical care is required, pediatricians and supervising physicians will be consulted "as required."[119] After the medical encounter is performed, a medical summary will be compiled for continuity of care. If it is determined that a person in custody has an elevated in-custody medical risk, medical personnel take additional steps.[120]

CBP provided the Committee with a framework for the care contracted medical personnel should provide. The care that contracted medical personnel *always* should provide includes: 1) health interviews and screenings; 2) medical assessments; 3) medical encounters, 4) medication prescriptions and distributions; 5) medical summaries; 6) hospital referral; and 7) elevated in-custody medical risk monitoring, processing, and alerts.[121] Medical personnel will provide

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[114] *Id. at 4.*
[115] Loyal Source Health Evaluation SOP (Apr. 17, 2023), Appendix, Key Document H.
[116] U.S. CUSTOMS AND BORDER PATROL, OFF. CHIEF MEDICAL OFFICER, U.S. DEP'T OF HOMELAND SEC., MEDICAL PROCESS GUIDANCE (June 2023), Appendix, Key Document I (stating medical assessments are not necessary if a concern is identified during initial intake; the issue may then be addressed during a medical encounter without a medical assessment).
[117] *Id*. at 5-6.
[118] *Id.*
[119] *Id.* at 6.
[120] *See infra* Part VI.B.
[121] U.S. Customs and Border Protection, Office of the Chief Medical Officer, Border Health System Briefing to Senate Judiciary Staff (Aug. 1, 2024).

additional medical care in a "limited capacity," including: 1) basic care; 2) wound care; 3) very limited point of care testing capabilities; and 4) pharmaceuticals.[122] According to OCMO, *in no cases* can medical services personnel provide: 1) cardiac testing; 2) IV therapy; 3) oxygen; 4) imaging of laboratory capabilities; 4) durable medical equipment; or 5) suicide watch and monitoring.[123]

The CBP TEDS standards also generally have guided the treatment of individuals in CBP custody since the standards were established in 2015.[124] The TEDS standards govern different phases of medical care, including screening, documenting, and treating injuries, illnesses, or physical or mental health issues upon an individual's entry into a CBP holding cell.[125] The standards also address when advanced medical care is needed and should be requested. According to the TEDS standards, "at-risk" individuals include those who require additional care and oversight, such as infants, juveniles, or elderly individuals; minors with an acute injury; individuals with a chronic illness; and individuals with medical or mental health conditions.[126]

After Anadith's death, CBP developed additional guidance for medical care, including treatment of individuals with enhanced medical risk. According to Loyal Source, it incorporated some of CBP's guidance in its own internal policies that are distributed to Loyal Source staff. According to OCMO, though OCMO reviews Loyal Source guidance, it does not edit or otherwise control the guidance that Loyal Source disseminates to its staff.[127]

B. Policies Regarding Elevated Medical Risk and Transferring to Hospitals

After Anadith's death, in October 2023, CBP issued guidance to address the treatment of individuals, like Anadith, who are at higher risk of harm in CBP custody because of a medical condition. CBP defines Elevated In-Custody Medical Risk (ECMR) as "an acute or chronic medical condition(s) which may elevate risk of deterioration while in custody or pose risk to the congregate population."[128] According to OCMO, the ECMR monitoring and processing is

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[122] *Id.*
[123] *Id.*
[124] *National Standards on Transport, Escort, Detention, and Search (TEDS)*, U.S. CUSTOMS AND BORDER PROT. (Oct. 2015), https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf ("the Foreword from then acting Commissioner Kerlikowske describes it as 'an agency-wise policy that sets forth the first nationwide standards which govern CBP's interaction with detained individuals. This policy continues our commitment to the safety, security and care of those in our custody . . . incorporates best practices developed in the field, and reflects key legal and regulatory requirements.").
[125] *National Standards on Transport, Escort, Detention, and Search (TEDS)*, U.S. CUSTOMS AND BORDER PROT. (Oct. 2015), https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf
[126] TEDS, TEDS MEDICAL CARE OF INDIVIDUALS IN CUSTODY POWERPOINT 5, Appendix, Key Document A ("at-risk individuals also include pregnant women or post-partum mothers, individuals who have defined mental, physical, or developmental disabilities, and individuals of any age with a known or reported contagious disease, illness, and/or injury and/or who have been isolated/quarantined within a CBP facility.")
[127] U.S. Customs and Border Protection, Office of the Chief Medical Officer, Border Health System Briefing to Senate Judiciary Staff (Aug. 1, 2024).
[128] TEDS, TEDS MEDICAL CARE OF INDIVIDUALS IN CUSTODY POWERPOINT 4, Appendix, Key Document A ("CBP officers now receive trainings that include identifying those at higher risk and applying a multi-tiered approach to those experiencing medical distress. The trainings describe the "3 Rs"—recognize, respond and refer—in response to medical distress"); U.S. CUSTOMS AND BORDER PROTECTION, OFFICE OF THE CHIEF MEDICAL OFFICER, MEDICAL

designed to proactively identify, monitor, and expedite the processing of individuals like Anadith.[129]

The new ECMR guidance categorizes people by levels of medical risk and assigns treatment corresponding to their classification. If medical personnel determine a person has medical needs or a diagnosis that exceeds the capabilities of the medical unit, that individual is given a "red determination" and tagged with a red wristband on their left wrist. Once a person is given a red determination, clinical medical staff must consult with the supervising physician or pediatric advisor and note the interaction in the EMR system and monitor the individual every four hours, at a minimum, obtaining vital signs and a review of symptoms.[130] According to CBP guidance, after a medical encounter is recorded, a pop-up will appear in the EMR system to inform the clinical staff of the patient's "At Risk" categorization in the EMR system and provide further instructions. The ECMR category color also is visible in the EMR system.[131]

According to the ECMR guidance, any worsening medical status of a person with a red determination requires: 1) immediate physician consultation and/or 2) immediate hospital referral. If the person cannot be cared for within the limited scope of care provided by medical staff, CBP will "expedite" the processing of this individual out of CBP custody. CBP guidance also requires CBP officers and agents to report "any changes in conditions" of an individual in custody to medical services staff.[132]

This guidance also applies to juveniles in detention and lists considerations and specific clinical conditions that would fall under a red determination classification for juveniles.

C. Guidance Governing Treatment of Children

Current policies in place governing the treatment of children in CBP custody include the CBP Infant Detainee Assessment SOP; the CBP Medical Process Guidance issued in June 2023 (addressing requirements for tender age juveniles (12 and under) and noncitizen unaccompanied children); the updated ECMR guidance, issued in October 2023; and TEDS. As previously mentioned, juveniles in CBP custody receive health intake interviews upon entering a CBP facility and receive a medical assessment with a second intake interview every five days.[133]

According to CBP guidance, however, there may be cases where operational dynamics or "lack of medical resources" make medical assessments of all juveniles "not feasible."[134] In these cases, the guidance states that medical assessments on "non-tender age juveniles may be

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PROCESS GUIDANCE, ANNEX A: ELEVATED IN-CUSTODY MEDICAL RISK (ECMR) (Oct. 2023), Appendix, Key Document L.

[129] U.S. Customs and Border Protection, Office of the Chief Medical Officer, Border Health System Briefing to Senate Judiciary Staff (Aug. 1, 2024).

[130] U.S. CUSTOMS AND BORDER PROTECTION, OFFICE OF THE CHIEF MEDICAL OFFICER, MEDICAL PROCESS GUIDANCE, ANNEX A: ELEVATED IN-CUSTODY MEDICAL RISK (ECMR) 4 (Oct. 2023), Appendix, Key Document L.

[131] *Id.* at 5.

[132] *Id.* at 4-5 (guidance provides no specific information regarding how the agency will "expedite" processing).

[133] U.S. CUSTOMS AND BORDER PROTECTION, OFFICE OF THE CHIEF MEDICAL OFFICER, MEDICAL PROCESS GUIDANCE 3-4, 6 (Jun. 2023), Appendix, Key Document J.

[134] *Id.* at 5.

temporarily paused to focus limited medical resources on tender age juveniles and persons with identified medical issues."[135] The guidance states that this pause requires written approval by facility leadership and should cease as soon as "operationally possible."[136] The guidance states that there are "no exceptions to the requirement of tender-age juveniles receiving a medical assessment and if there are no medical services staff at the CBP facility, the child should be referred to a local healthcare facility for a medical assessment."[137]

According to a CBP training on the requirements of TEDS, juveniles may not refuse a medical assessment or a referral to a higher level of care, if warranted.[138] Younger children, especially infants, should "generate a higher index of suspicion for illness or injury, and have a lower threshold for referral."[139] The training states that CBP should be "vigilant about the unique circumstances of children. It can be harder for them to communicate problems. It can also be harder for the observer to identify problems and referring as appropriate."[140]

Between July 2020 and March 2023, CBP responded to GAO recommendations to develop training focused on "trauma-informed recognition of medical distress" that addresses differences in recognizing medical distress in children compared to adults and discusses steps CBP employees should take to respond to children experiencing medical distress in CBP custody.[141] Guidance shared with the Committee addresses medical distress and specifies that if a person shows signs of medical distress at any time in CBP custody, medical personnel should be contacted and can decide if additional treatment is indicated. CBP officials, according to CBP training, are instructed to "err on the side of safety."[142]

The ECMR guidance describes juveniles who fall into the "ECMR RED" category and states that juveniles who fall into this category generally include those with acute or chronic medical conditions that: 1) require medication to maintain daily function; 2) require intensive management by a subspecialist; 3) require durable medical equipment, specialty diet, intensive occupational therapy, physical therapy, or rehab to maintain daily function; or 4) impact daily function. The category also generally includes: 1) juveniles with significant developmental delays and/or who require special needs care; 2) infants less than 12 weeks old; 3) juveniles placed in medical isolation or quarantine (see below for more detail); and 4) juveniles with congenital syndromes and anomalies, especially those which require assistance with activities of daily living, such as cerebral palsy.[143]

The guidance also lists specific conditions that fall into the ECMR RED category, including: 1) congenital heart disease (especially if surgical repair was required, attempted, or

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[135] *Id.*
[136] *Id.*
[137] *Id.* at 6.
[138] TEDS, TEDS MEDICAL CARE OF INDIVIDUALS IN CUSTODY POWERPOINT 26, Appendix, Key Document A.
[139] *Id.*
[140] *Id.*
[141] *Southwest Border: CBP Needs to Increase Oversight of Funds, Medical Care, and Reporting of Deaths*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE (Jul. 14, 2020), (https://www.gao.gov/products/gao-20-536.
[142] TEDS, TEDS MEDICAL CARE OF INDIVIDUALS IN CUSTODY POWERPOINT 25-29, Appendix, Key Document A.
[143] U.S. CUSTOMS AND BORDER PROTECTION, OFFICE OF THE CHIEF MEDICAL OFFICER, MEDICAL PROCESS GUIDANCE 6 (Jun. 2023), Appendix, Key Document J.

recommended); 2) sickle cell disease; 3) infectious disease (including possible or confirmed measles, malaria, Dengue, COVID-19, influenza, and varicella) or the presence of a fever in children less than 12 weeks old; 4) oropharyngeal conditions; 5) structural lung disease; 6) hematologic conditions; 7) endocrine conditions; 8) neurologic conditions (including epilepsy, seizure disorder, and cerebral palsy); and 9) children subject to sexual assault allegations.[144]

Even if symptoms of a condition listed are not present during a medical encounter, CBP encourages medical providers "to consult with pediatric advisors and/or supervising physicians when they are concerned about medical status of a juvenile in their care even in the absence of an identifiable medical diagnosis/condition."[145] This is important given that the Juvenile Care Monitor's December report noted that "ongoing reassessment" of the enhanced medical monitoring system should continue to determine "whether the list of conditions triggering entry into the EMM program should evolve."[146]

When a determination is made to send a person to a hospital, CBP will provide a referral form to an individual if they have already been seen by a medical services provider in CBP custody.[147] Upon discharge from the hospital, the hospital provides CBP with a summary of care using the CBP Medical Information Request Form, which can be a clinical summary printed from the EMR system.[148]

D. Policies Regarding Pregnant Individuals in CBP Custody

Before 2017, CBP did not hold pregnant people in custody absent exceptional circumstances. After the policy changed during the Trump Administration, reports emerged of pregnant individuals receiving poor medical care in CBP custody.[149] After Senator Durbin and others called on DHS OIG to investigate CBP practices,[150] OIG found that CBP failed to supply adequate care to pregnant, postpartum, and/or nursing individuals in their custody.[151] This was followed by a November 2021 CBP policy statement, which enumerated the medical services

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[144] U.S. CUSTOMS AND BORDER PROTECTION, OFFICE OF THE CHIEF MEDICAL OFFICER, MEDICAL PROCESS GUIDANCE, ANNEX A: ELEVATED IN-CUSTODY MEDICAL RISK (ECMR) 6 (Oct. 2023), Appendix, Key Document L.
[145] TEDS, TEDS MEDICAL CARE OF INDIVIDUALS IN CUSTODY POWERPOINT, Appendix, Key Document A.
[146] *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1381, at *16 (C.D. Cal., Dec. 13, 2024), https://youthlaw.org/sites/default/files/2024-12/December%202024%20Juvenile%20Care%20Final%20Monitor%20Report%20by%20Andrea%20S.%20Ordin%2C%20Dr.%20Nancy%20Ewen%20Wang%2C%20Dr.%20Paul%20Wise_0.pdf.
[147] U.S. Customs and Border Protection, Office of the Chief Medical Officer, Border Health System Briefing to Senate Judiciary Staff (Aug. 1, 2024).
[148] *Id.*
[149] Zack Budryk, *Guatemalan woman who gave birth in Border Patrol Station says request for help were ignored*, THE HILL, (Apr. 9, 2020), https://thehill.com/latino/491944-guatemalan-woman-who-gave-birth-in-border-patrol-station-says-requests-for-help-were/.
[150] Letter from Sens. Blumenthal, Markey, Hirono, Carper, Durbin, Warren, Harris, Van Hollen, Booker, Duckworth, Gillibrand, Klobuchar, and Merkley to Joseph V. Cuffari, Inspector Gen., Off. of Inspector Gen., U.S. Dep't of Homeland Sec. (Apr. 8, 2020), https://www.blumenthal.senate.gov/imo/media/doc/2020.04.08%20DHS%20OIG%20Letter%20re%20CBP%20Mistreating%20Pregnant%20Detainees.pdf.
[151] *Review of the February 16, 2020 Childbirth at the Chula Vista Border Patrol Station,* OFF. OF INSPECTOR GEN., U.S. DEP'T OF HOMELAND SEC. (Jul. 20, 2021), https://www.oig.dhs.gov/sites/default/files/assets/2021-07/OIG-21-49-Jul21.pdf.

and safeguards ostensibly available to pregnant, postpartum, and/or nursing people in CBP custody.[152]

As previously stated, any individual who indicates they are pregnant during the initial health intake interview receives a health assessment.[153] In response to information gathered at intake interviews and medical assessments, a pregnant person also may receive a "medical encounter," where a medical professional evaluates any potential health concerns, taking "additional steps as appropriate, including treatment or referral and medical disposition."[154] Pregnant women above 20 weeks of gestation are given a red determination under the new ECMR guidance.[155]

According to CBP guidance, any detained pregnant, postpartum, and/or nursing individual "should be placed in the least restrictive setting possible."[156] Furthermore, breastfeeding people should be afforded privacy while nursing.[157] According to CBP, everyone in the agency's custody (including those who are pregnant, postpartum, and/or nursing) should not be forced to "stand for long periods of time" and should be provided sufficient room to sit, rest, and sleep.[158] Agency policy also requires personnel to conduct welfare checks on pregnant. postpartum, and/or nursing individuals every 15 minutes.[159]

E. Loyal Source Health Evaluation Standard Operation Procedures

The purpose of the Health Evaluation SOP, according to Loyal Source, is to inform Loyal Source staff of required medical evaluations, interim medical care processes, and exit assessments; identify documentation requirements for patients in the Medical Units; outline the Medical Unit Scope of Care; and provide clarification regarding EMR system use and documentation.[160] The SOP applies to all medical services providers and staff working in CBP medical units.[161]

The SOP provides for an intake health interview with 13 scripted questions, a skin and scabies assessment, a lice assessment, any required medical assessment or medical encounter after the initial intake health interview, and enhanced medical monitoring "as directed" by a

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[152] *Policy Statement and Required Actions Regarding Pregnant, Postpartum, Nursing Individuals, and Infants in Custody*, U.S. CUSTOMS AND BORDER PROT., U.S. DEP'T OF HOMELAND SEC. (Nov. 23, 2021) [hereinafter CBP 2021 Policy Statement] https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/2022-Policy%20Statement-%20and-Required-Action-Pregnant-Postpartum-Nursing-Individuals-and-Infants-%20%28signed%29_0.pdf.
[153] TEDS, TEDs MEDICAL CARE OF INDIVIDUALS IN CUSTODY POWERPOINT 12, Appendix, Key Document A.
[154] *Id.* at 4.
[155] U.S. CUSTOMS AND BORDER PROTECTION, OFFICE OF THE CHIEF MEDICAL OFFICER, MEDICAL PROCESS GUIDANCE, ANNEX A: ELEVATED IN-CUSTODY MEDICAL RISK (ECMR) 10 (Oct. 2023), Appendix, Key Document L.
[156] U.S. CUSTOMS AND BORDER PATROL, OFF. CHIEF MEDICAL OFFICER, U.S. DEP'T OF HOMELAND SEC., MEDICAL PROCESS GUIDANCE (Jun. 2023), Appendix, Key Document J.
[157] *Id.*
[158] *Id.*
[159] U.S. CUSTOMS AND BORDER PROT., U.S. DEP'T OF HOMELAND SEC., POLICY STATEMENT AND REQUIRED ACTIONS REGARDING PREGNANT, POSTPARTUM, NURSING INDIVIDUALS, AND INFANTS IN CUSTODY (Nov. 23, 2021) https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/2022-Policy%20Statement-%20and-Required-Action-Pregnant-Postpartum-Nursing-Individuals-and-Infants-%20%28signed%29_0.pdf.
[160] Loyal Source Health Evaluation SOP (Apr. 17, 2023), Appendix, Key Document H.
[161] *Id.*

medical provider during specific upticks in prevalence of communicable disease.[162] The SOP specifies that juvenile patients less than 12 years of age and third trimester pregnant patients always require medical assessments, while juveniles between the ages of 12 and 18 should receive assessments when operationally feasible. Patients who require encounters include patients who answer "yes" to any of the last seven of the 13 questions, are currently taking medication, and/or have a medical complaint. The SOP also describes protocols for provision of interim health care and exit health interviews and assessments.[163]

The SOP clarifies that the Loyal Source "scope of care" is limited to 1) public health assessments; 2) limited acute/chronic care; and 3) basic first aid and life support. The SOP describes public health assessments as assessments where nurse practitioners, physician assistants, and trained support staff (e.g., EMTs or paramedics) can identify diseases that pose a public health threat, including the presence of lice and scabies.

The SOP states that CBP medical units do not have access to routine laboratory, radiology, diagnostic, or confirmatory tools and any illnesses or injuries that require advanced diagnostic tools should be referred to an emergency room or urgent care facility.[164] The SOP states that the following are outside the scope of Loyal Source care: 1) injections; 2) IVs; 3) suturing; 4) incision and draining; 5) prescribing narcotics or scheduled medications; 6) nebulizer treatments; and 7) oxygen therapy.[165]

The guidance requires that Loyal Source staff respond to "life, limb or eyesight" emergencies and provide basic life support.[166] Loyal Source staff also must call 911 and keep the patient stable following basic life support until the emergency response team arrives.[167]

CBP guidance and Loyal Source guidance appear to conflict with respect to pregnant patients in one respect. According to CBP guidance, all individuals who indicate they are pregnant should receive a health assessment. However, according to Loyal Source's Health Evaluation SOP,[168] patients in their third trimester are required to have a health assessment, but patients in their first and second trimester are provided medical assessments only if they request them.

VII. Systemic Problems in the Delivery of Medical Care that Led to Anadith's Death

[162] *Id.*
[163] *Id.*
[164] *Id.*
[165] *Id.*
[166] *Id.*
[167] *Id.*
[168] *Id*.

A. Understaffing

Understaffing has been a critical issue affecting the delivery of medical care in CBP facilities. According to reports by an oversight office and agency and disclosures by a federal whistleblower, Loyal Source consistently failed to meet the staffing requirements in the company's agreement with CBP.[169]

Loyal Source is required "to staff different facilities 24 hours a day."[170] The importance of Loyal Source's role in providing consistent 24-hour care was underscored in 2020, when DHS OIG released a Management Alert warning of potential lapses in medical care due to CBP's delay in awarding a new medical services contract.[171] OIG noted that interrupting Loyal Source's services would have devastating impacts across facilities and jeopardize the health and safety of migrants in CBP custody.[172]

OIDO discovered "significant understaffing" at CBP facilities after analyzing weekly staffing reports provided by Loyal Source to CBP and after site visits and inspections at CBP detention facilities in 2021 and 2022, which coincided with whistleblower reporting.[173] OIDO also discovered staff in some locations worked overtime shifts for up to two weeks to compensate for staffing shortages.[174] While OIDO's report redacted the percentage of shifts Loyal Source filled, it stated the numbers indicated a "critical staffing shortage."[175]

Whistleblower disclosures also illustrated the understaffing issue. In February 2024, confidential whistleblowers employed by Loyal Source who provided medical care at multiple CBP facilities throughout California, Arizona, New Mexico, and Texas, stated Loyal Source frequently failed to staff entire shifts and failed to schedule available workers to fill vacant shifts. The whistleblowers stated that understaffing caused delays in required medical checks, which sometimes resulted in lengthier detention of noncitizens in CBP custody, or deterioration of their

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[169] *OIDO Review: CBP Medical Support Contract for Southwest Border and Tucson,* OFFICE OF THE IMMIGRATION DETENTION OMBUDSMAN (Jun. 16, 2023), https://www.dhs.gov/sites/default/files/2023-07/OIDO%20Review%20-%20CBP%20Medical%20Support%20Contract%20for%20Southwest%20Border%20and%20Tucson.pdf; *Protected Whistleblower Disclosures Regarding the Performance and Oversight Failures of the Medical Services Contract of U.S. Customs and Border Protection with Loyal Source Government Services*, GOVERNMENT ACCOUNTABILITY PROJECT, (Nov. 20, 2023), https://whistleblower.org/wp-content/uploads/2023/11/11-30-2023-Hendrickson-Congressional-Disclosure.pdf; *Protected Whistleblowers' Disclosures Regarding Failure of CBP Leadership and CBP Office of Acquisition to Oversee its Medical Services Contract with Loyal Source Government Services and Ongoing Wrongdoing by Acting CBP Chief Medical Officer*, GOVERNMENT ACCOUNTABILITY PROJECT, (Feb. 16, 2024), https://whistleblower.org/wp-content/uploads/2024/02/02-16-2024-CBP-Medical-Services-Whistleblower-Disclosure.pdf.

[170] *Ombudsman Alert: Critical Understaffing on the Border*, OFFICE OF THE IMMIGRATION DETENTION OMBUDSMAN, (Jul. 12, 2022), https://www.dhs.gov/sites/default/files/2022-07/OIDO%20Ombudsman%20Alert%20CBP%20Medical%20Contract%20Final_508.pdf.

[171] *Management Alert – CBP Needs to Award a Medical Services Contract Quickly to Ensure no Gap in Services 6*, OFF. OF INSPECTOR GEN., U.S. DEP'T OF HOMELAND SEC, (Sept. 3, 2020), https://www.oig.dhs.gov/sites/default/files/assets/Mga/2020/oig-20-70-sep20-mgmtalert.pdf.

[172] *Id.*

[173] *Ombudsman Alert: Critical Understaffing on the Border*, OFFICE OF THE IMMIGRATION DETENTION OMBUDSMAN, (Jul. 12, 2022), https://www.dhs.gov/sites/default/files/2022-07/OIDO%20Ombudsman%20Alert%20CBP%20Medical%20Contract%20Final_508.pdf.

[174] *Id.*

[175] *Id.*

medical conditions.[176] Troy Hendrickson, a whistleblower who worked as a contract officer representative for CBP's medical services contract in 2021, reported 40 percent staffing deficits and "entire shifts where no [medical] provider" was "available at all."[177] In January 2022, Hendrickson urged the CBP Office of Acquisitions to issue a "Letter of Concern" to Loyal Source for "not meeting contract performance scheduling"; however, a cure notice was not issued until after the Anadith's death.[178] Further highlighting the alarming shortage of workers, in late 2023, a Loyal Source employee said he was "often the only medical-care provider at stations in Texas, New Mexico and Arizona where 200 to 300 migrants sometimes arrive during a single shift."[179]

In response to allegations of understaffing at CBP facilities, Loyal Source stated that it does not have a responsibility to fully staff all CBP facilities. This is because its contract with CBP only requires it to fill a certain percentage of positions outlined in OCMO's Med Plan Laydown, also referred to as the staffing plan.[180] The staffing plan, which the Committee reviewed, lists 82 CBP facilities along the southwest border and details required provider and support staff shifts by location.[181] Several facilities require no provider. Though all facilities but one require support staff, the majority of the facilities required only one support staff.

It is important to note that the staffing plan can change depending on migration patterns, prioritizing staffing for some facilities over others. The number of staff required at a facility, therefore, is often in flux. In September 2020, when Loyal Source signed a new contract with CBP, it agreed to maintain "a 95 percent adherence to provider and support schedules at contracted locations."[182] Though the 95 percent adherence rate might sound high, the number of vacancies still may be significant, as "certain locations may tolerate a lower (for instance, 90 percent) adherence" based on the discretion of the CBP contracting officer representative and/or

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[176] *Protected Whistleblowers' Disclosures Regarding Failure of CBP Leadership and CBP Office of Acquisition to Oversee its Medical Services Contract with Loyal Source Government Services and Ongoing Wrongdoing by Acting CBP Chief Medical Officer*, GOVERNMENT ACCOUNTABILITY PROJECT, (Feb. 16, 2024), https://whistleblower.org/wp-content/uploads/2024/02/02-16-2024-CBP-Medical-Services-Whistleblower-Disclosure.pdf.

[177] *Protected Whistleblower Disclosures Regarding the Performance and Oversight Failures of the Medical Services Contract of U.S. Customs and Border Protection with Loyal Source Government Services*, GOVERNMENT ACCOUNTABILITY PROJECT, (Nov. 20, 2023), https://whistleblower.org/wp-content/uploads/2023/11/11-30-2023-Hendrickson-Congressional-Disclosure.pdf.

[178] *Protected Whistleblower Disclosures Regarding the Performance and Oversight Failures of the Medical Services Contract of U.S. Customs and Border Protection with Loyal Source Government Services*, GOVERNMENT ACCOUNTABILITY PROJECT, (Nov. 20, 2023), https://whistleblower.org/wp-content/uploads/2023/11/11-30-2023-Hendrickson-Congressional-Disclosure.pdf.

[179] Nick Miroff, *Medical provider vying for border contract faces scrutiny after girl's death* (Nov. 19, 2023), THE WASHINGTON POST, https://www.washingtonpost.com/immigration/2023/11/19/border-loyal-source-medical-care-migrants/.

[180] *OIDO Review: CBP Medical Support Contract for Southwest Border and Tucson,* OFFICE OF THE IMMIGRATION DETENTION OMBUDSMAN (Jun. 16, 2023), https://www.dhs.gov/sites/default/files/2023-07/OIDO%20Review%20-%20CBP%20Medical%20Support%20Contract%20for%20Southwest%20Border%20and%20Tucson.pdf.

[181] CBP Medical Staffing Positions, Appendix, Key Document O.

[182] *Ombudsman Alert: Critical Understaffing on the Border*, OFFICE OF THE IMMIGRATION DETENTION OMBUDSMAN, (Jul. 12, 2022), https://www.dhs.gov/sites/default/files/2022-07/OIDO%20Ombudsman%20Alert%20CBP%20Medical%20Contract%20Final_508.pdf.

the U.S. Border Patrol National Medical Program Manager.[183] In addition, because some facilities are considered medical "priority" facilities where medical staff is determined to be more critical, they are prioritized for staffing.[184] The Statement of Work for the medical support contract provides few metrics or details regarding how the amended percentage fill rate would be determined, only stating that the new percentage fill rate would be "based on constraints and operational shifts."[185]

B. Inadequate Electronic Medical Records System and Maintenance of Records

Another issue in the delivery of medical care is the maintenance of medical records within CBP facilities; specifically, CBP's failure to document or adequately assess medical encounters and other important medical information within the EMR system. These issues became apparent after Anadith's death.

OPR found numerous breakdowns in Anadith's care related to the documentation and sharing of critical medical information. Despite Anadith's mother providing records related to her daughter's chronic heart condition to medical staff, Loyal Source staff and U.S. Border Patrol personnel at Harlingen Station who interacted with the girl and her mother claimed to be unaware Anadith had sickle cell anemia and a history of congenital heart disease.[186] However, Anadith's medical history was documented in the EMR system when her family was first taken into custody and transported to the Donna Centralized Processing Facility.[187] If true, medical personnel at Harlingen Station apparently chose not to review Anadith's medical history in the EMR system after Anadith and her family were transferred to Harlingen Station, a transfer that was prompted by Anadith testing positive for influenza and requiring isolation. The nurse practitioner who visited with Anadith a total of *four times* in the hours leading up to her death failed to access her electronic medical records where her condition was clearly documented.[188] On top of this failure, OPR found the nurse practitioner treating Anadith immediately prior to her death "declined to review [] papers" brought by another contracted medical staff member from the family.[189] Finally, OPR found Loyal Source medical personnel failed to consult with on-call physicians and document all medical encounters with Anadith.[190]

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[183] *OIDO Review: CBP Medical Support Contract for Southwest Border and Tucson,* OFFICE OF THE IMMIGRATION DETENTION OMBUDSMAN (Jun. 16, 2023), https://www.dhs.gov/sites/default/files/2023-07/OIDO%20Review%20-%20CBP%20Medical%20Support%20Contract%20for%20Southwest%20Border%20and%20Tucson.pdf.
[184] *See* Sept. 24, 2024 response from CBP, Appendix, Key Document R.
[185] *OIDO Review: CBP Medical Support Contract for Southwest Border and Tucson 12,* OFFICE OF THE IMMIGRATION DETENTION OMBUDSMAN (Jun. 16, 2023), https://www.dhs.gov/sites/default/files/2023-07/OIDO%20Review%20-%20CBP%20Medical%20Support%20Contract%20for%20Southwest%20Border%20and%20Tucson.pdf.
[186] *Update: Death in Custody of 8-Year-Old in Harlingen, Texas,* U.S. CUSTOMS AND BORDER PROT. (Jun. 1, 2023), https://www.cbp.gov/newsroom/speeches-and-statements/june-1-2023-update-death-custody-8-year-old-harlingen-texas.
[187] *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1326, at *34 (C.D. Cal., Jan. 30, 2023), https://youthlaw.org/sites/default/files/2023-07/2023.01.30%20-%20Flores%20Juvenile%20Care%20Monitor%20Report.pdf.
[188] *Update: Death in Custody of 8-Year-Old in Harlingen, Texas,* U.S. CUSTOMS AND BORDER PROT. (Jun. 1, 2023), https://www.cbp.gov/newsroom/speeches-and-statements/june-1-2023-update-death-custody-8-year-old-harlingen-texas.
[189] *Id.*
[190] *Id.*

In the July 18, 2023, *Flores* Report, Juvenile Care Monitor Dr. Paul H. Wise stressed the necessity of documenting detained children's medical history and conditions in the EMR system.[191] The report underscored the critical need for accurate and comprehensive medical records to ensure appropriate care for children at elevated medical risk. It noted that in Anadith's case, "there was no documentation that the presence of a child at greatly elevated medical risk had been conveyed to BP [Border Patrol] agents responsible for custodial care" or any documentation that an on-call physician was consulted or "that a transfer to a local facility was contemplated."[192]

In a June 8, 2023 memo by Acting CMO Herbert O. Wolfe to Acting CBP Commissioner Troy Miller, Wolfe voiced concern about the "ad hoc system" in place at the time, with limited capacity to handle medical records, poor staff communication, and unclear procedures for seeking help from external physicians.[193] Wolfe stated that CBP should produce a medical care manual within 90 days to "ensure information sharing and accountability at shift change for medically at-risk individuals in CBP custody" and that all encounters must be electronically documented.[194]

The failure to document medical encounters in the EMR system has been a widespread issue amongst Loyal Source staff. Loyal Source whistleblowers stated that, in some cases, Loyal Source providers chose not to use the EMR system "citing ignorance of the system, understaffing, and overwhelming numbers of noncitizens to process through it."[195] Whistleblower Troy Hendrickson's congressional disclosure outlines similar medical documentation and communication issues by Loyal Source staff. He stated that staff often refused to use the CBP-provided EMR system, resorting instead to paper records due to internet outages or management directives during surges of migrants.[196] In his view, this reliance on paper records led to risks of information deficiencies and hindered the ability of medical providers to appropriately treat individuals in their care.[197]

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[191] *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1326, at *34 (C.D. Cal., Jan. 30, 2023), https://youthlaw.org/sites/default/files/2023-07/2023.01.30%20-%20Flores%20Juvenile%20Care%20Monitor%20Report.pdf.

[192] *Id.* at 37.

[193] Memo from Herbert O. Wolfe, Acting Chief Medical Officer to Troy Miller, Acting CBP Commissioner, *Initial Observations and Recommended Medical Improvement Actions for Care of Individuals in CBP Custody* (Jun. 8, 2023), Appendix, Key Document I.

[194] *Id.*

[195] *Protected Whistleblowers' Disclosures Regarding Failure of CBP Leadership and CBP Office of Acquisition to Oversee its Medical Services Contract with Loyal Source Government Services and Ongoing Wrongdoing by Acting CBP Chief Medical Officer*, GOVERNMENT ACCOUNTABILITY PROJECT, (Feb. 16, 2024), https://whistleblower.org/wp-content/uploads/2024/02/02-16-2024-CBP-Medical-Services-Whistleblower-Disclosure.pdf.

[196] *Protected Whistleblower Disclosures Regarding the Performance and Oversight Failures of the Medical Services Contract of U.S. Customs and Border Protection with Loyal Source Government Services*, GOVERNMENT ACCOUNTABILITY PROJECT, 29 (Nov. 20, 2023), https://whistleblower.org/wp-content/uploads/2023/11/11-30-2023-Hendrickson-Congressional-Disclosure.pdf.

[197] *Id.*

In January 2024, Acting CMO Dr. Eastman also highlighted systemic problems with the EMR system in a letter to James W. McCament, Interim CBP Chief Operating Officer. The memo reported multiple instances where incomplete or inaccurate documentation occurred due to staffing failures and noncompliance with contract requirements.[198]

The Fiscal Year 2020 Consolidated Appropriations Act authorized $30 million for CBP's "development of an agency-wide electronic health records system."[199] When first implemented, the electronic system was just CBP's health intake in paper form made virtual and put on a web platform.[200] The system proved inadequate, however, as migration patterns increased and CBP's needs changed.[201] For instance, OCMO stated that the system struggled with intaking external medical records and assisting with clinical assessments.[202]

Though reporting shows Loyal Source staff failed to adequately document medical care in the EMR system, Loyal Source also had concerns related to the usability of the EMR system. Loyal Source staff repeatedly shared concerns about the functionality of the EMR system with CBP. Documents provided to the Committee show that Loyal Source emailed CBP multiple times in early 2021 about concerns with the EMR system, including the system freezing and deleting inputted data, delays in printing clearance forms, poor internet service, and the inability to access charts from previous months for history of treatment.[203] Loyal Source claimed "these small hindrances" become more problematic "when multiplied by the hundreds of bodies moving in and out of the station daily."[204]

CBP attempted to address the concerns shared by Loyal Source staff by rolling out updates to the EMR system, referring Loyal Source staff to the IT Help Desk, and offering to discuss their concerns further.[205] After Anadith's death, CBP initiated a review of its medical record-keeping system to implement updates and determine if they would be "better served by replacing this system with a different system, such as a commercial medical records system."[206] According to OCMO, CBP has since then made 39 updates to the EMR system, which include enhanced diagnosis options, enhanced staff tracking, and automated importing of medical information.[207] Despite these updates, former Acting CMO, Dr. Eastman shared with the Committee that the EMR system still "lacks the ability to provide clinical decision support

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[198] *Id.*
[199] *Consolidated Appropriations Act, 2020, H.R.1158*, 116th Cong. (2019), https://www.congress.gov/bill/116th-congress/house-bill/1158/text.
[200] U.S. Customs and Border Protection, Office of the Chief Medical Officer, Border Health System Briefing to Senate Judiciary Staff (Aug. 1, 2024); U.S. Customs and Border Protection, Alien Health Interview Questionnaire, Form 2500, Appendix, Key Document C.
[201] *Id.*
[202] *Id.*
[203] Loyal Source Communications, (Feb. 11, 2021), Appendix, Key Document G.
[204] Loyal Source communications, (Jan. 29, 2021), Appendix, Key Document E.
[205] Loyal Source communications, (Jan 11, 2021), Appendix, Key Document D; Loyal Source Communications, (Feb. 9, 2021), Appendix, Key Document F.
[206] Nick Miroff, *Inquiry after girl's death reports unsafe medical care in U.S. border facilities,* THE WASHINGTON POST (Jun. 22, 2023), https://www.washingtonpost.com/immigration/2023/06/22/medical-care-unsafe-border-facilities-migrants/.
[207] U.S. CUSTOMS AND BORDER PROTECTION, OFFICE OF THE CHIEF MEDICAL OFFICER, BORDER HEALTH SYSTEM BRIEFING TO SENATE JUDICIARY STAFF (AUG. 1, 2024).

features, which is an industry standard," is currently approximately 60 percent effective, and does not meet the needs of CBP.[208] Dr. Eastman, stated that he would like the agency to move forward with a new system and has interviewed potential vendors.[209]

The tragic circumstances surrounding Anadith's death underscore significant flaws in the maintenance and utilization of medical records within CBP facilities, particularly regarding the documentation of medical encounters and reviewing of medical history. The breakdowns in communication and documentation identified by OPR and the *Flores* Juvenile Care Monitor, as well as the systemic issues reported by whistleblowers and CBP officials, highlight the critical need for a more reliable and comprehensive approach to documenting medical care. Though former Acting CMO, Dr. Eastman, believed an updated EMR system with a higher level of effectiveness would help meet the agency's needs, this proposed solution cannot provide a substitute for consistent adequate medical care, including referencing relevant medical records, provided by responsible medical personnel.

C. Unclear and Inadequate Guidance for Treating Medically Vulnerable Children

In the January 2023 *Flores* Juvenile Care Monitor Report, Dr. Wise, stated that "the admission of a young child with sickle cell disease and a fever to the Harlingen Station should have triggered a close consultation with an on-call pediatrician or an evaluation at a local hospital."[210] Neither of these ever happened. Instead, Anadith remained in CBP custody as her health continued to deteriorate.[211] Compounding the problem, at this time, CBP did not have adequate agency guidance describing how to identify and consistently monitor children in custody who were considered medically at-risk.

In the July 2023 Juvenile Care Monitor Report, Dr. Wise identified several critical areas where guidelines for treating medically vulnerable individuals, assessing chronic medical conditions, and providing elevated levels of care were lacking or unclear. One major issue was the lack of enhanced monitoring of children at elevated medical risk. Dr. Wise noted that "medical monitoring of [Anadith's] condition was not augmented in response to her elevated medical risk."[212] When she died, it was not normal procedure for medical staff in CBP facilities to consistently assess vital signs of at-risk individuals in holding cells or isolation facilities, leading to missed signs of health deterioration. Dr. Wise also revealed a gap in guidance on the overall care of at-risk children, observing "considerable variation in how children with serious chronic disorders are managed by medical personnel."[213] For instance, there was a lack of standardized protocols requiring consultation with pediatric advisors for children with serious medical issues or a "standard practice for informing BP [Border Patrol] personnel that a child at

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[208] *Id.*
[209] *Id.*
[210] *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1352, at *40 (C.D. Cal., July 18, 2023), https://youthlaw.org/sites/default/files/2023-07/2023.07.18_Flores%20Juvenile%20Care%20Monitor%20Report.pdf.
[211] *Id.*
[212] *Id.*
[213] *Id.*

elevated medical risk has entered custody."[214] It appears that consultations with external doctors rarely happened, as the list of on-call doctors posted in the Harlingen, Texas station where Anadith was held had inaccurate and out-of-date information.[215]

Another area of concern was the process for referral to local medical facilities. Despite Anadith's condition, her mother's repeated pleas for an ambulance, and "the series of treatments required to manage" her condition, "contracted medical personnel did not transfer her to a hospital for higher-level care."[216] The Juvenile Care Monitor observed that medical providers faced constraints when deciding to transfer children to local hospitals, often due to logistical and workforce concerns from Border Patrol personnel.[217] In late June 2023, the *Los Angeles Times* reported on an internal OIDO report in which Border Patrol complained about the overuse of hospitalization at the Donna Processing Facility, the same facility Anadith and her family where were first held before being transferred to Harlingen.[218] Border Patrol agents believed medical personnel would transfer migrants to a hospital for conditions the agents believed could be treated on the spot, and it was burdening Border Patrol resources "needed for more emergent cases."[219] According to the Juvenile Care Monitor, considering logistical constraints when deciding to refer a sick child to a hospital is "both inappropriate and dangerous," since this decision "should be based on medical criteria alone as determined by the appropriate medical personnel."[220]

While it is not clear that transport constraints played a role in Anadith's death, it raises questions about potential constraints on referrals for outside care for those at elevated risk. It is important that medical staff feel empowered to make independent decisions regarding the referral of children to local health facilities based solely on medical considerations, and not on the concerns of non-medical personnel. Committee staff spoke with medical services staff at the San Diego soft-sided CBP facility, who stated that they do not contact emergency services, even in an urgent situation, without receiving consent from CBP.[221] This directly contradicts agency guidance stating that an individual in acute medical distress, for example, may require an immediate hospital referral.[222]

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[214] *Id.*
[215] Nick Miroff, *Inquiry after girl's death reports unsafe medical care in U.S. border facilities,* THE WASHINGTON POST (Jun. 22, 2023), https://www.washingtonpost.com/immigration/2023/06/22/medical-care-unsafe-border-facilities-migrants/.
[216] *June 1, 2023 Update: Death in Custody of 8-Year-Old in Harlingen, Texas,* U.S. CUSTOMS AND BORDER PROT. (Jun. 1, 2023), https://www.cbp.gov/newsroom/speeches-and-statements/june-1-2023-update-death-custody-8-year-old-harlingen-texas.
[217] *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1326, at *41 (C.D. Cal., Jan. 30, 2023), https://youthlaw.org/sites/default/files/2023-07/2023.01.30%20-%20Flores%20Juvenile%20Care%20Monitor%20Report.pdf.
[218] Hamed Aleaziz, *Border Patrol officials complained of 'overuse of hospitalization' as 8-year-old died*, LOS ANGELES TIMES (Jun. 28, 2023), https://www.latimes.com/politics/story/2023-06-28/8-year-old-border-patrol-death-fever-hospital.
[219] *Id.*
[220] *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1326, at *41 (C.D. Cal., Jan. 30, 2023), https://youthlaw.org/sites/default/files/2023-07/2023.01.30%20-%20Flores%20Juvenile%20Care%20Monitor%20Report.pdf.
[221] U.S. Customs and Border Protection Site Visit Briefing (Aug. 28, 2024).
[222] U.S. CUSTOMS AND BORDER PROTECTION, OFFICE OF THE CHIEF MEDICAL OFFICER, MEDICAL PROCESS GUIDANCE, ANNEX A: ELEVATED IN-CUSTODY MEDICAL RISK (ECMR) 4, Appendix, Key Document L.

Dr. Wise reiterated to Committee staff that though CBP treats the transfer of an individual to a hospital as a medical decision and helps facilitate the transfer, in reality, the request by contracted medical personnel to send a detained individual to the hospital is more a negotiation with CBP than an immediate approval.[223] According to the December 2024 Juvenile Care Monitor Report, some medical staff still reported resistance from CBP personnel when electing to transfer patients for outside care.[224] It is in the best interest of CBP, and the individuals in CBP care and custody, for CBP to defer to medical providers regarding referrals and ensure that any child or adult in medical distress receives the care they require without delay.

D. Overcrowding

Overcrowding—a longstanding concern at CBP facilities—can strain resources and significantly impact the provision of medical care to detained individuals. According to the January 2023 Juvenile Care Monitor Report, the El Paso sector had recently experienced substantial overcrowding in family holding areas, with conditions frequently exceeding the maximum capacity of the facility.[225] The overcrowding in this sector led to inadequate hygiene conditions, insufficient medical care, and limited caregiver coverage. Sleeping mats were placed close together, and the noise levels, combined with the lack of privacy and personal space, contributed to "elevated levels of psychological distress and emotional volatility among children in custody."[226] When the Juvenile Care Monitor returned to El Paso in July 2023, the overcrowding was no longer present.[227] However, the Juvenile Care Monitor stressed the importance of continuing to closely monitor occupancy, as overcrowding can have detrimental effects on "cleanliness, hygiene, medical care, and caregiver coverage."[228]

According to DHS OIG, in May 2023, the San Diego sector also experienced issues with overcrowding in its facilities. Of the 1,187 detainees in custody across five facilities, 56 percent were held longer than the 72-hour limit specified by the TEDS standards.[229] The San Diego Area Detention (SAD) facility was at 171 percent capacity, with 853 detainees in a facility designed

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[223] Senate Judiciary Staff Meeting with Dr. Wise and Dr. Nancy Ewen Wang, (Oct. 7, 2024) (Dr. Wang was appointed Medical Advisor to the Juvenile Care Monitor, Andrea Ordin, JD in 2024).
[224] *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1381, at *17 (C.D. Cal., Dec. 13, 2024), https://youthlaw.org/sites/default/files/2024-12/December%202024%20Juvenile%20Care%20Final%20Monitor%20Report%20by%20Andrea%20S.%20Ordin%2C%20Dr.%20Nancy%20Ewen%20Wang%2C%20Dr.%20Paul%20Wise_0.pdf
[225] *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1326, at *21-41 (C.D. Cal., Jan. 30, 2023), https://youthlaw.org/sites/default/files/2023-07/2023.01.30%20-%20Flores%20Juvenile%20Care%20Monitor%20Report.pdf.
[226] *Id*. at 18.
[227] *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1352, at *32 (C.D. Cal., July 18, 2023), https://youthlaw.org/sites/default/files/2023-07/2023.07.18_Flores%20Juvenile%20Care%20Monitor%20Report.pdf.
[228] *Id.* at 15.
[229] *Results of Unannounced Inspections of CBP Holding Facilities in the San Diego Area 4*, U.S. DEP'T OF HOMELAND SECURITY OFFICE OF INSPECTOR GENERAL, (Nov. 15, 2023), https://www.oig.dhs.gov/sites/default/files/assets/2023-11/OIG-24-07-Nov23.pdf.

for 500.[230] At SAD, 64 percent of detained individuals were held in custody for over 72 hours.[231] Delays in processing and transferring detainees to federal partners, coupled with prolonged times in custody due to the Enhanced Expedited Removal (EER) process, exacerbated overcrowding.[232] One egregious example is the case of one detained individual, who spent over 34 days in custody "waiting for USCIS or DOJ to adjudicate their fear claims."[233]

OIG identified some steps the agency has taken to address overcrowding, including increasing communication with USCIS, increasing staffing, closely cooperating with ICE Enforcement and Removal Operations (ERO), using virtual processing to increase processing capacity, and enhancing collaboration with non-governmental organizations to support newly released noncitizens.[234] Because the number of individuals in CBP custody is now significantly lower than at certain points in the past few years,[235] overcrowding is currently not as significant of a concern. CBP should continue to work with its agency partners, however, to expedite the processing of individuals in the agency's custody and avoid overcrowding to minimize medical risks.

E. Failure to Conduct Adequate Oversight of Loyal Source

After Anadith's death, amid renewed calls to hold both CBP and Loyal Source responsible for failures to take steps to address systemic issues in the provision of medical care, the poor relationship among the Office of Acquisitions, OCMO, and Loyal Source became public. Troy Hendrickson, in his whistleblower report to Congress, described how efforts to hold Loyal Source accountable were consistently thwarted by the Office of Acquisitions, despite documented concerns about deficiencies in the company's performance.[236]

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[230] *Id.*
[231] *Id.*
[232] *Id.* at 6.
[233] *Id.*
[234] *Id.* at 9.
[235] Adam Isacson, *Five Migration and Security Trends at the U.S.-Mexico Border*, WOLA: ADVOCACY FOR HUMAN RIGHTS IN THE AMERICAS (Nov. 12, 2024), https://www.wola.org/analysis/five-migration-and-security-trends-at-the-u-s-mexico-border/#:~:text=1.,Data%20table ("2,135,005 people entered CBP's custody at the U.S.-Mexico border between October 2023 and September 2024[—]combining people who came to the official border crossings plus people apprehended by CBP's Border Patrol component . . . That was the smallest number since 2021, and 14 percent fewer people than in fiscal 2023."); John Gramlich, *Migrant encounters at U.S.-Mexico border have fallen sharply in 2024*, PEW RESEARCH CENTER, (Oct. 1, 2024), https://www.pewresearch.org/short-reads/2024/10/01/migrant-encounters-at-u-s-mexico-border-have-fallen-sharply-in-2024/#:~:text=By%20John%20Gramlich,recorded%20in%20a%20single%20month.
[236] *Protected Whistleblower Disclosures Regarding the Performance and Oversight Failures of the Medical Services Contract of U.S. Customs and Border Protection with Loyal Source Government Services*, GOVERNMENT ACCOUNTABILITY PROJECT, (Nov. 20, 2023), https://whistleblower.org/wp-content/uploads/2023/11/11-30-2023-Hendrickson-Congressional-Disclosure.pdf; *Protected Whistleblowers' Disclosures Regarding Failure of CBP Leadership and CBP Office of Acquisition to Oversee its Medical Services Contract with Loyal Source Government Services and Ongoing Wrongdoing by Acting CBP Chief Medical Officer*, GOVERNMENT ACCOUNTABILITY PROJECT, 7 (Feb. 16, 2024), https://whistleblower.org/wp-content/uploads/2024/02/02-16-2024-CBP-Medical-Services-Whistleblower-Disclosure.pdf (describing how OCMO leadership raised concerns with CBP leadership, including then Executive Assistant Commissioner of Operations Support Manuel Padilla, and Deputy Executive Assistant Commissioner of Operations Support Mark Koumans).

In his dual role as a detailee at OCMO and a Contract Officer Representative with the Office of Acquisitions, Hendrickson documented Loyal Source's underperformance and failures to adhere to medical standards.[237] Beginning in January 2022, he alerted the Office of Acquisitions and the Office of Chief Counsel of Loyal Source's shortcomings, including that Loyal Source was not staffing any providers on certain shifts at facilities. This included attempts to convince his supervisors at CBP to issue Loyal Source a warning or "cure notice" regarding what he believed to be Loyal Source's failure to comply with the contract to provide medical services at CBP facilities.[238]

Later that year, in September 2022, CBP attempted to award its medical services contract to a different firm, Vighter.[239] Loyal Source and other companies protested that bid.[240] Despite the GAO ruling in CBP's favor and denying Loyal Source's protest, Loyal Source has continued to file additional protests.[241] In 2023, tensions boiled over when the Acquisitions Office refused to follow OCMO's recommendation to give Loyal Source a poor rating in a Contract Performance Assessment Report (CPAR) regarding Loyal Source's performance between September 30, 2021, and March 29, 2023. OCMO submitted a recommended CPAR rating to the Office of Acquisitions Contracting Officer on August 23, 2023. According to a letter from Acting CMO Eastman, a team of OCMO experts arrived at an "accurate, legally defensible, and unbiased CPAR rating."[242] On January 18, 2024, months after submitting the CPAR, OCMO learned that the Office of Acquisitions Contracting Officer had altered the poor rating and officially filed the CPAR without notifying OCMO of the changes.

The CPAR with OCMO's recommendations stated that Loyal Source should not be recommended for similar assignments under the contract in the future. It stated: "Given what I know today about the contractor's ability to perform in accordance with this contract or order's most significant requirements, I would not recommend them for similar requirements in the future."[243]

The Office of Acquisitions changed the language in the CPAR to read: "Given what I know today about the contractor's ability to perform in accordance with this contract or order's most significant requirements, I would recommend them for similar requirements in the future."[244]

In addition to reversing this recommendation, the Office of Acquisitions made changes to multiple evaluation areas within the CPAR. In the version of the CPAR with the poor rating, for

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[237] *Protected Whistleblower Disclosures Regarding the Performance and Oversight Failures of the Medical Services Contract of U.S. Customs and Border Protection with Loyal Source Government Services*, GOVERNMENT ACCOUNTABILITY PROJECT, (Nov. 20, 2023), https://whistleblower.org/wp-content/uploads/2023/11/11-30-2023-Hendrickson-Congressional-Disclosure.pdf.
[238] *Id*. at 7.
[239] Nick Miroff, *Medical provider vying for border contract faces scrutiny after girl's death* (Nov. 19, 2023), THE WASHINGTON POST, https://www.washingtonpost.com/immigration/2023/11/19/border-loyal-source-medical-care-migrants/.
[240] *Id*.
[241] *Id*.
[242] Contractor Performance Assessment Report Rating Inconsistencies, Response from Dr. Eastman, Acting CMO, to James W. McCament, Chief Operating Officer (Feb. 12, 2024), Appendix, Key Document N.
[243] *Id*.
[244] *Id*.

example, Loyal Source received a "Marginal" rating in several categories, including: 1) Quality, 2) Schedule, 3) Cost Control, 4) Management, and 5) Regulatory Compliance. The Office of Acquisitions changed the rating from "Marginal" to "Satisfactory" in each of these categories, overriding OCMO's recommendations.

On March 30, 2023, CBP awarded a contract to Loyal Source through June 29, 2023, and the agency subsequently extended the contract through November 29, 2023.[245] CBP then issued Loyal Source another bridge contract, which has been extended to January 29, 2025.[246]

On August 10, 2023, the Office of Acquisitions sent a cure notice to Loyal Source detailing a number of deficiencies related to its performance under the contract, including: 1) the failure to maintain a certain shift "fill rate" of medical personnel at CBP facilities;[247] 2) incorrect and absent reporting of medical interactions; 3) the failure to adopt certain updated program guidance and to develop ongoing professional performance evaluation standards; and 4) the failure to escalate care and consult physicians.[248]

On March 29, 2024, CBP submitted a Final CPAR of Loyal Source in the Contract Performance Assessment Reporting System (CPARS) with unfavorable performance ratings. Loyal Source sued the United States in October 2024 alleging, among other claims, that CBP's evaluation of Loyal Source's performance was arbitrary and capricious in violation of the Federal Acquisition Regulation (FAR).[249] Although significant portions of the complaint are redacted, Loyal Source refutes CBP's statement that "performance deficiencies" may have contributed to Anadith's death. Loyal Source argues that its contracted medical staff did not breach any standard of care or fail to comply with its contractual obligations preceding Anadith's death.[250] Loyal Source claims that its personnel took "reasonable" action, and CBP, instead, was responsible for detaining Anadith and her family beyond the 72-hour time limit outlined in CBP's TEDS standards.[251] Loyal Source also contends that no "significant medical issues or concerns" were present when Anadith was evaluated by its staff, and that CBP should not use "post hoc" medical judgment "to supplant the medical judgement of the onsite professionals."[252] Loyal Source demands that CBP rescind the Final CPARS and reevaluate Loyal Source's performance.[253]

According to whistleblower reports, the Office of Acquisitions failed to issue negative ratings in CPARs or a cure notice for years prior to the August 2023 notice due to the belief that a negative performance review of Loyal Source would mean that Loyal Source could not provide

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[245] Compl., *Loyal Source Government Services v. United States*, 7 (Fed. Cl. No. 24-01426) (Sept. 24, 2024).
[246] USASPENDING.gov, Award Profile Contract Summary, Award Recipient: Loyal Source Government Services LLC, https://www.usaspending.gov/award/CONT_AWD_70B03C24F00000046_7014_36F79722D0185_3600.
[247] The cure notice states that staff shift fill rates have not reached 95 percent required by the Statement of Work (SOW) for all sites (there is an allowance of 5% for absenteeism). CBP "Cure Notice" to Loyal Source Government Services, (Aug. 10, 2023), Appendix, Key Document K.
[248] *Id.*
[249] Compl., *Loyal Source Government Services v. United States*, 14 (Fed. Cl. No. 24-01426) (Sept. 24, 2024).
[250] *Id*. at 14-20.
[251] *Id*. at 17.
[252] *Id*. at 18.
[253] *Id*. at 3, 4.

medical care in CBP facilities.[254] CBP did not believe it possible to wind down its contract with Loyal Source. As a result, the CBP Office of Acquisitions failed to conduct meaningful oversight and continued to give Loyal Source a passing grade to ensure there was a medical service provider in place.[255]

In June 2024, OCMO stated that it has prioritized the development of an enhanced medical services contract oversight team that will consist of CBP employees and have OCMO-assigned team leads in certain Border Patrol Sectors on the southwest border.[256] While this development is encouraging, it remains unclear how exactly the oversight team will hold Loyal Source accountable under the existing contract in ways that will differ from past practices.

According to OCMO, modifications to the medical services contractor statement of work for the next contract award will include several key changes, including: 1) standardized protocols to identify and document individuals with elevated in-custody risk; 2) requirements to consult physicians for any individuals classified with a red ECMR status or diagnosed with a condition requiring isolation; and 3) detailed documentation of medical monitoring actions performed during an individual's time in custody and communication with CBP staff.[257] It is critical that these accountability mechanisms are built into the contract with CBP's medical services provider.

F. Failure to Ensure Video Cameras Are Functioning at CBP Facilities

The failure to capture video of medical contractor staff interacting with Anadith and her family at the Harlingen station has complicated the investigation of her death. Some questions may never be answered without video evidence.

CBP provided updates to the Committee with respect to its video camera systems, stating that certain steps have been taken to address video cameras failing to function at CBP facilities.[258] It informed the Committee that after two deaths in custody in 2023 at the Harlingen facility, the video surveillance system at the facility was updated with the installation of the AirShip™ Fly-Away Kit Video Surveillance System.[259]

CBP stated that the new video system at Harlingen only became fully operational on August 19, 2024. Since then, according to CBP, Harlingen has experienced "little to no lapse in coverage" except for a temporary outage caused by a power outage.[260] CBP states that the quality of the video, including the resolution, color, clarity, and night vision capability are "adequate to

[254] Briefing with confidential whistleblower.
[255] *Id*.
[256] U.S. Customs and Border Protection, Office of the Chief Medical Officer, Border Health System Briefing to Senate Judiciary Staff (Aug. 1, 2024).
[257] *Id*.
[258] CBP response to Committee (Aug. 20, 2024), Appendix, Key Document Q.
[259] CBP described this system to the Committee as a "self-contained, rugged, portable solution featuring a federated, scalable, secure video and data management platform, comprised of edge hardware and software, core and cloud hardware and software, and downstream data visualization software offerings optimized to support the unique requirements of CBP." In addition, it is "radio and sensor agnostic." CBP response to Committee (Aug. 20, 2024), Appendix, Key Document Q.
[260] *Id.*

meet the basic needs of the USBP Station in the migrant holding and processing areas,"[261] and that records for more than 30 days can be downloaded locally. CBP has stated that the system is only available locally but can be upgraded for cloud storage.[262]

CBP currently is tracking and reporting system outages, including outages for "cameras, recording devices (DVR/NVR), network/encoders, [and] monitors/laptops/CPU."[263] According to CBP policy, any outage over 24 hours should be reported as a significant incident to CBP Watch.[264] Currently, weekly outage reports for camera and DVR/failure are archived.[265] The current outage report, however, does not identify failures in video recording capabilities. CBP has stated that it plans to modify the report to include reporting on video recording failures in the future.[266]

G. Lengthy Stays in CBP Custody and Open-Air Detention Sites Create Urgency

CBP guidelines state that detained individuals generally should not be held longer than 72 hours in a CBP facility,[267] and the law generally requires unaccompanied minors be released from CBP custody in under 72 hours.[268] During periods of time when border crossings have been high, individuals have been held for much longer.[269] DHS officials stated in July 2023 that some individuals had been held in facilities for over 10 days and sometimes up to 30 days.[270]

Pursuant to court order, CBP provides monthly data indicating length of detention for children in CBP custody to plaintiffs' counsel in *Flores v. Garland*.[271] Recently, CBP revealed that the data it has been providing each month to plaintifffs' counsel and the Juvenile Care Monitors was inaccurate and seriously undercounted the number of days that children were held

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[261] *Id.*
[262] *Id.*
[263] *Id.*
[264] *CBP Privacy Impact Assessment for the CBP Web Emergency Operations Center* 3, U.S. CUSTOMS AND BORDER PROTECTION, (Sept. 13. 2021) (CBP Watch is "the primary point of contact for significant incident reporting from all CBP operational component and offices . . ."), https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp-065-webeoc-september2021.pdf
[265] *Id.*
[266] *Id*.
[267] *National Standards on Transport, Escort, Detention, and Search (TEDS)*, U.S. CUSTOMS AND BORDER PROT. (Oct. 2015), https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf
[268] 8 U.S.C.A. § 1232(b)(3) ("Except in the case of exceptional circumstances, any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child.")
[269] Amna Nawaz, *Hundreds of children have been held by Border Patrol for more than 10 days. The legal limit is 72 hours*, PBS NEWS (Mar. 17, 2021), https://www.pbs.org/newshour/nation/hundreds-of-children-have-been-held-by-border-patrol-for-more-than-10-days-the-legal-limit-is-72-hours.
[270] Priscilla Alvarez, *Adult Migrants Are Held in Border Facilities Amid Biden Administration Policy Changes, Sources Say*, CNN (Jul. 18, 2023), https://www.cnn.com/2023/07/18/politics/migrants-border-facilities-biden-policies/index.html.
[271] Decl. of Diane de Gramont in Supp. of Pls.' Reply in Supp. of Mot. to Modify the 2022 CBP Settlement, *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. No. 1538, at *1 (C.D. Cal., Jan. 14, 2025).

in CBP custody.[272] CBP attributed this discrepancy to a failure to include children transferred from CBP to HHS custody in recent months. As a result of this error, CBP failed to accurately report the number of unaccompanied children who were in CBP custody over 72 hours between July and October 2024. *Flores* counsel currently only have updated data for October 2024.[273] The discrepancies in the data are significant. The original October data provided by CBP indicated that two unaccompanied children were in custody over 72 hours. The corrected data indicated that 37 unaccompanied children were in custody over 72 hours. The discrepancies also extended to children in family units. The original October data provided by CBP indicated that 1,203 children in family units were in custody over 72 hours. The corrected data indicated that 2,452 children in family units were in custody over 72 hours in October.[274] This means CBP undercounted by *more than half* the number of children in family units who were in CBP custody for over 72 hours in October 2024.

Prior to these recent admissions by CBP, the most recent *Flores* Juvenile Care Monitor Report raised concerns that data provided by CBP underestimates the number of children that have been in custody over 72 hours.[275] The Report stated that "[e]stimates of the portion of apprehended children in families who are reported to have times [in custody] greater than 72 hours appear to be lower than expected given the reported number of family apprehensions over the same time period."[276] The Juvenile Care Monitor plans to make public clarifications regarding the data prior to the end of the Juvenile Care Monitor term.[277] These concerns were justified, given the recent corrections CBP has made to its October 2024 data.

Corrected data for additional months no doubt will raise even greater concerns regarding lengthy detention and related risk for medically vulnerable individuals, including children. Current data is concerning, nonetheless. According to data, Between October 2023 and October 2024, CBP frequently held unaccompanied children and families in custody for between 72 (three days) and 168 hours (seven days).[278] In December 2023, the highest number of children fell into this category, with 3,457 children held for between 72 and 168 hours.[279] Over 1,000 children in families were held between 72 and 168 hours in November 2023, December 2023, March 2024, April 2024 and June 2024.[280] In June of 2024, 551 families with children were held in custody for more than 168 hours.[281] In August 2024, 360 children in families were in custody for over 168 hours. Incredibly, data indicated children have been held in CBP custody for weeks.[282] A family was held in CBP custody for 20 days in June 2024. In June, July, August,

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[272] *Id*. at *2.
[273] *Id*. at *1
[274] *Id*. at *2.
[275] *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1381, at *4 (C.D. Cal., Dec. 13, 2024), https://youthlaw.org/sites/default/files/2024-12/December%202024%20Juvenile%20Care%20Final%20Monitor%20Report%20by%20Andrea%20S.%20Ordin%2C%20Dr.%20Nancy%20Ewen%20Wang%2C%20Dr.%20Paul%20Wise_0.pdf.
[276] *Id*. at 22.
[277] *Id*.
[278] Government data analyzed by the National Center for Youth Law (on file with the Senate Judiciary Committee). The National Center for Youth Law
[279] *Id*.
[280] *Id*.
[281] *Id*.
[282] *Id*.

September and October of 2024, families were held in custody for over 17 days.[283] Unaccompanied children, though fewer in number, also are held for long periods.[284] In August 2024, an unaccompanied child was held for 11 days; in September 2024, an unaccompanied child was held for 20 days.[285]

The detention of children for lengthy periods of time soared under the previous Trump administration. DHS OIG found that over 30 percent of the 2,669 children held in Rio Grande Valley facilities at the time of the OIG's inspection were held for longer than 72 hours.[286] In 2019, detention of unaccompanied children and children with families reportedly reached 300,000; 40 percent of those children were held for longer than 72 hours.[287]

The growth of CBP Open Air Detention Sites (OADs) has created a greater need for adequate medical care. Since 2022, migrants have been detained in certain open-air areas on U.S. side of the border until CBP has capacity to process them at CBP detention facilities.[288] Recently, the *Flores* court established that migrants held in seven OADS—four west of the San Ysidro Port of Entry and three in the desert town of Jacumba, California—were in CBP custody. Because the court determined these migrants are in CBP's legal custody, it held children must receive a range of protections under the *Flores* Settlement Agreement."[289] In its decision, the court cited observations by nonprofit volunteers who witnessed "dozens to hundreds of migrants camping in the OADS, including children."[290] The court described the extreme conditions at these sites: during the summer, "temperatures can be over 110 degrees and, in the winter, temperatures can drop to around 20 degrees," with children being held "anywhere from several hours to several days."[291] In addition, according to court filings, "children and their families are forced to take shelter in porta potties, dumpsters, or tarps filled with trash to escape the cold, wind, and rain."[292]

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[283] *Id*.
[284] *Id*.
[285] *Id*.
[286] *Management Alert – DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley* 5, OFF. OF INSPECTOR GEN., U.S. DEP'T OF HOMELAND SEC. (July 2, 2019), https://www.oig.dhs.gov/sites/default/files/assets/Mga/2019/oig-19-51-jul19.pdf.
[287] Anna Flagg and Andrew Rodriguez Calderon, *500,000 Kids, 30 Million Hours: Trump's Vast Expansion of Child Detention*, THE MARSHALL PROJECT (Sept. 30, 2020), https://www.themarshallproject.org/2020/10/30/500-000-kids-30-million-hours-trump-s-vast-expansion-of-child-detention.
[288] Order, Motion to Enforce, *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1406, at *3 (C.D. Cal. Apr. 3, 2024), https://youthlaw.org/sites/default/files/2024-04/ORDER%20-%20Motion%20to%20Enforce%20%28OADS%29.pdf.
[289] *Major victory for children held in Open Air Detention Sites*, NATIONAL CENTER FOR YOUTH LAW, (Apr. 4, 2024), https://youthlaw.org/news/major-victory-children-held-open-air-detention-sites.
[290] *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1406, at *3 (C.D. Cal. Apr. 3, 2024), https://youthlaw.org/sites/default/files/2024-04/ORDER%20-%20Motion%20to%20Enforce%20%28OADS%29.pdf.
[291] *Id.* at 7.
[292] *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1392, at *1 (C.D. Cal. Feb. 29, 2024), https://www.aila.org/aila-files/28990AF2-3F1A-4AA5-B1A5-40708C0E8085/Motion-to-Enforce-OADS.pdf.

Additional concerns regarding the OADS include that individuals in these open-air areas lack "access to adequate food and water, sanitation, and medical services,"[293] and "migrants, including children, suffer[] from significant injuries or other serious medical issues,"[294] including accounts of "seizures, symptoms of smoke inhalation, severe kidney pain to the point of vomiting, diabetic emergencies, and people going into labor."[295] Other accounts relate to lack of food, with the *Flores* court noting that "CBP hands out one bottle of water and one pack of crackers to each migrant each day," well below the "minimum standard that juveniles should receive a meal every six hours, at least two of which must be hot."[296] Additionally, CBP does not provide "first aid or medical care at OADS," and instead, "rel[ies] on humanitarian volunteers to provide first aid."[297] When detained individuals call for emergency care, ambulances sometimes refuse to respond because of the remote location of the OADS.[298] This is compounded by the fact that, according to reports, CBP agents actively compromise access to medical care by regulating access by medical volunteers and "have at times barred medical volunteers from the sites." Furthermore, there have been reports that CBP agents threaten "people seeking medical assistance with a loss of the right to seek asylum."[299]

CBP has stated that it has a policy to ensure "at-risk or medically fragile individuals, including, but not limited to, individuals with a chronic illness; infants or elderly; minors with an acute injury, medical or mental health condition; pregnant women or postpartum mothers with complications; and individuals with a disabling mental disorder" are processed expeditiously so as to "minimize the length of time in CBP custody." The agency also has stated that it takes numerous factors into consideration when determining how quickly an individual should be processed. These factors include: 1) the impact of custodial conditions, 2) the length of time the individual has been in custody; 3) the number of individuals in custody; 4) medical issues impacting the individuals in custody; 5) whether the individuals are likely to be in custody for more than 72 hours; and 6) whether the facility is over capacity.[300]

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[293] *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1406, at *3 (C.D. Cal. Apr. 3, 2024), https://youthlaw.org/sites/default/files/2024-04/ORDER%20-%20Motion%20to%20Enforce%20%28OADS%29.pdf.
[294] *Id.* at 7.
[295] *Id.*
[296] *Id.* at 11.
[297] *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1406, at *6 (C.D. Cal. Apr. 3, 2024), https://youthlaw.org/sites/default/files/2024-04/ORDER%20-%20Motion%20to%20Enforce%20%28OADS%29.pdf.
[298] *Id*.
[299] *Id.* at 7.
[300] *Short Term Detention: Fiscal Year 2023 Report to Congress 3*, U.S. CUSTOMS AND BORDER PROT., U.S. DEP'T HOMELAND SEC. (Jan. 11, 2023), https://www.dhs.gov/sites/default/files/2024-03/2024_0111_cbp_short_term_detention.pdf.

VIII. Recommendations

A. Reduce Time in Custody and Strengthen Protections for Medically Vulnerable Populations

CBP must take immediate steps to shorten the time individuals remain in custody, particularly those with medical vulnerabilities, as its facilities are not designed for long-term detention. Though existing policies state that individuals with enhanced medical risk should be processed expeditiously, it is not clear what steps the agency takes to ensure expedited processing. CBP should develop and enforce clear guidelines that prioritize the prompt release of medically vulnerable individuals, including those undergoing credible fear interviews, while safeguarding their access to legal counsel.[301] There should be rigorous oversight of CBP's adherence to policies that prioritize these releases, including monitoring through the medical records system and consistent reporting to CRCL and OIDO.

Additionally, CBP must strengthen its policies for pregnant, postpartum, and nursing individuals, who continue to face prolonged detentions and inadequate medical care despite a 2021 policy meant to protect them.[302] Many of these individuals remain in custody for more than 72 hours, even in facilities lacking adequate medical personnel and basic necessities, which increases the risk of miscarriages and other serious health complications.[303] To address this, CBP should issue a new directive clearly stating that, barring extraordinary circumstances, these individuals should not be detained for longer than the minimum time necessary to process them. A new directive to this effect would align with existing ICE policy, which discourages the detention of pregnant, postpartum, and nursing individuals in most instances.[304]

Lastly, data provided to the Committee by OCMO demonstrated a far greater need for medical services during periods when large numbers of migrants approached the southern border. This data provided valuable information about agency medical needs during peak flows and the need for CBP to be prepared for fluctuations in the volume of migrants entering CBP facilities. During the current slowdown of migrants entering the United States, CBP has an opportunity to improve processes in anticipation of future influxes.

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[301] Though not explored in this report, the Committee is aware of serious concerns regarding access to counsel during credible fear interviews. NATIONAL IMMIGRATION LAW CENTER, SEEKING SAFETY FROM DARKNESS: RECOMMENDATIONS TO THE BIDEN ADMINISTRATION TO SAFEGUARD ASYLUM RIGHTS IN CBP CUSTODY (2024), https://www.nilc.org/resources/seeking-safety-from-darkness-recommendations-to-the-biden-administration-to-safeguard-asylum-rights-in-cbp-custody/.

[302] Letter from ACLU Foundation San Diego and Imperial Counties to Joseph V. Cuffari, Off. Of Inspector General, U.S. Dep't of Homeland Sec. (Jan. 22, 2020), https://www.aclu-sdic.org/sites/default/files/2020-01-22-oig-complaint-1-final-1_0.pdf.

[303] *Id*. ("[A] July 2019 DHS OIG report found that, of 8,000 individuals detained by Border Patrol in the Rio Grande Valley, 3,400 (42.5 percent) were held in excess of 72 hours.").

[304] U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, ICE Directive No. 11032.4, *Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals* (Jul. 1, 2021).

B. Ensure Staffing Needs are Met and Increase Access to Physicians

Without adequate or reliable staffing of medical personnel, CBP will not be able to provide adequate medical care to those in its custody.[305] To address this issue, CBP must ensure greater accountability for its medical services contractor, Loyal Source. In addition, CBP should streamline the hiring and clearance process to reduce delays in staffing. This could involve allocating more resources to expedite background checks and other temporary staffing solutions.

CBP and OCMO should also continue to seek input from OHS when negotiating their medical services contract to ensure they are requesting the appropriate level of providers to treat detained individuals and increase access to physicians when needed. Specifically, CBP should look to broaden its network of external physicians. With the new ECMR guidance, physician consultations are sometimes a required step, depending on a detained individual's level of distress. CBP should monitor the accessibility of physicians when they are requested for consults to ensure that physicians are easily accessible at every facility, especially during peak hours or at high-risk locations.

Finally, CBP should implement a robust monitoring system to track the effectiveness of staffing levels and physician access. Key metrics, such as the ratio of medical staff to detainees, response times to medical emergencies, and wait times for physician consultations, should be regularly collected and reported to oversight bodies like OHS. Based on this data, CBP can continuously refine its staffing models and consultation processes to ensure the highest possible standard of care for individuals in custody.

C. Continue to Improve Existing EMR System; Ensure Contracted Medical Staff Assess Medical Records in the EMR System and Share Health Information After Release from CBP Custody

OCMO leadership has recommended CBP acquire a new EMR system to ensure medical services personnel are better able to communicate medical needs, prioritize methods for sharing medical records among health providers, and ensure that hospital records are efficiently conveyed to CBP medical personnel. OCMO staff who have contributed to the development of the existing EMR system have described extensive improvements they have made to the system and expressed concern that the pursuit of a new system is wasteful and unnecessary. The Committee recommends OCMO explore alternatives to an off-the-shelf EMR system that will not require extensive customization and integration.[306] This could include continuing to improve its existing EMR system by integrating new ECMR guidance regarding documenting children at elevated risk. It is concerning that the December 2024 Juvenile Care Monitor Report noted that

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[305] U.S. CUSTOMS AND BORDER PROT., CBP Directive No. 2210-004, *Enhanced Medical Support Efforts* (Dec. 30. 2019).

[306] *Protected Whistleblowers' Disclosures Regarding Failure of CBP Leadership and CBP Office of Acquisition to Oversee its Medical Services Contract with Loyal Source Government Services and Ongoing Wrongdoing by Acting CBP Chief Medical Officer*, GOVERNMENT ACCOUNTABILITY PROJECT 25 (Feb. 16, 2024), https://whistleblower.org/wp-content/uploads/2024/02/02-16-2024-CBP-Medical-Services-Whistleblower-Disclosure.pdf.

"two children who were worthy of elevated risk had not been accurately flagged" by the EMR.[307]

OCMO's improvements to the EMR system must be matched by a firm commitment to ensuring contracted medical staff complete the necessary medical documentation in the EMR system and assess that information when treating individuals in their care. OCMO must ensure that medical services staff carefully assess every individual's medical records. If the records of an individual with enhanced medical needs like Anadith are not carefully assessed and taken into consideration during treatment, even the most sophisticated medical records system cannot save the person's life.

OCMO must establish a system for monitoring medical services staff's review and assessment of medical records during treatment of all detained individuals, with special attention to individuals with heightened medical needs. The most recent *Flores* Juvenile Care Monitor Report noted improvements regarding OCMO's monitoring abilities,[308] but expressed concerns that these monitoring mechanisms "are still being implemented or have had only minimal operational experience in actual facility settings" and their effectiveness is still in question.[309] In addition, it is critical that CBP consistently provide medical records to individuals upon their release from CBP custody to ensure successful continuity of care after every individual's release.

D. Ensure Medical Services Staff are Empowered to Seek Higher-Level Care When Appropriate

Medical services contractors should feel empowered to contact emergency services and seek hospital care for individuals in CBP custody. To the extent CBP must assign agents to accompany individuals to hospitals, there may be logistical hurdles in ensuring an individual is quickly transferred to a hospital. CBP should ensure its policies clearly state that logistical challenges should never impact a decision to seek higher levels of care or slow the process for transferring a person to a hospital. In addition, CBP should evaluate policies to ensure: 1) the ability of a parent or trusted adult to accompany a child to the hospital; and 2) phone communication between health providers and a parent or trusted adult who cannot accompany a child. This will ensure that health providers in local facilities have full and timely access to all medical information, which may prove critical to the care of the child being referred for care.

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[307] *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1381, at *12 (C.D. Cal., Dec. 13, 2024), https://youthlaw.org/sites/default/files/2024-12/December%202024%20Juvenile%20Care%20Final%20Monitor%20Report%20by%20Andrea%20S.%20Ordin%2C%20Dr.%20Nancy%20Ewen%20Wang%2C%20Dr.%20Paul%20Wise_0.pdf.

[308] *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1522, at *14, 28 (C.D. Cal. Dec. 12, 2024), https://youthlaw.org/sites/default/files/2024-12/December%202024%20Juvenile%20Care%20Final%20Monitor%20Report%20by%20Andrea%20S.%20Ordin%2C%20Dr.%20Nancy%20Ewen%20Wang%2C%20Dr.%20Paul%20Wise_0.pdf (stating that the "quality assurance mechanism" includes "the review of electronic medical records of cases that meet specific diagnostic or procedural criteria, such as children entered into the Enhanced Medical Monitoring system; the review of sentinel events that provide special insight into system components likely to have a major impact on patient outcomes, such as urgent transport of a child from a CBP facility to a local hospital; and monitoring of real-time, electronic dashboards of the medical status of children in CBP custody.").

[309] *Id*. at *29-30.

E. Enhance Transparency of Medical Care Oversight

To ensure the delivery of adequate medical care in CBP facilities, stronger oversight and greater transparency are essential. DHS must enhance its internal oversight mechanisms, particularly how it monitors the performance of medical services contractors such as Loyal Source. OCMO, which currently oversees medical care in CBP facilities, is hindered by a lack of staffing and effective processes, and a restructuring is necessary. One solution may be to move OCMO under the DHS Office of Health Security (OHS), which would enable better coordination and streamline oversight efforts. This realignment would allow OHS to take an active role in reviewing medical contracts and ensuring that standards of care are consistently met across all CBP facilities. It also would lessen the likelihood that the Office of Acquisitions interferes or undermines OCMO reform efforts.

Modifications to the medical services contract should include more specific requirements for tracking and monitoring the implementation of protocols such as the ECMR guidelines. A granular approach to data collection and consistent oversight should be implemented, particularly for vulnerable populations such as minors. This will enable the use of documented evidence to assess contractor performance and support future Contract Performance Assessment Reports.

Transparency is key to maintaining public trust and holding CBP accountable for the care provided in its facilities. To this end, CBP should make medical service contracts publicly available and regularly report on the amount of time individuals, particularly children in family units and unaccompanied minors, spend in custody. Reporting should not only include average times in custody, but also present more comprehensive data, such as the mean and outer time limits by nationality, to provide a clearer picture of custody durations.

Additionally, CBP must prioritize the installation and proper maintenance of video cameras in all facilities. These video recordings are critical for documenting and verifying the treatment of migrants, particularly in cases where medical care has been called into question. Clear video footage, much like the body-worn camera footage already available on CBP's website, would greatly enhance accountability. Furthermore, CBP should improve its reporting on camera outages, making these reports public and identifying facilities that require camera upgrades. These efforts would significantly bolster transparency and ensure that CBP upholds its responsibility to provide safe, effective, and humane medical care to those in its custody.

F. Discontinue the Use of Isolation Units Except When a Medical Quarantine is Needed

CBP should discontinue the use of isolation units in all instances where a communicable disease does not render quarantine a medical necessity. If isolation is required because of a contagious illness, individuals in these rooms should have access to warm clothes and blankets and sufficient access to showers, toilets, and a phone. Additionally, individuals should be permitted to spend time outside of isolation units for several hours each day. Children also

should have full access to caregivers and families should not be held in small isolation units. These recommendations are in line with reports by the Juvenile Care Monitor.[310]

G. Ensure Robust Monitoring of Medical Care in CBP Facilities by Medical Experts

External monitoring of medical care in CBP facilities should continue. Under the *Flores* settlement, monitoring of CBP medical care by medical experts has been concentrated in the Rio Grande Valley (RGV) and El Paso sectors. However, this *Flores* monitoring will formally conclude at the end of January 2025. Independent oversight of conditions in CBP facilities, however, is crucial. Whether under a Juvenile Care Monitor appointed by a court or another independent monitor, independent monitoring of medical care should continue and expand to additional CBP sectors. Such monitoring should prioritize assessing the quality of care provided to vulnerable groups, including children and individuals with chronic health conditions, and should help identify systemic problems within CBP facilities that require attention and improvement, such as overcrowding and medical recordkeeping. If OCMO proceeds to conduct oversight over its own activities and medical services contractor without external monitoring, it should put a concrete monitoring plan in place and share that plan with Congress.

[310] *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1412, at *9, 30 (C.D. Cal. May 6, 2024), https://youthlaw.org/sites/default/files/2024-05/Flores%20Monitor%20Report%20-%20May%202024.pdf; *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), Doc. 1522, at *12, 16 (C.D. Cal. Dec. 12, 2024), https://youthlaw.org/sites/default/files/2024-12/December%202024%20Juvenile%20Care%20Final%20Monitor%20Report%20by%20Andrea%20S.%20Ordin%2C%20Dr.%20Nancy%20Ewen%20Wang%2C%20Dr.%20Paul%20Wise_0.pdf ("The use of small isolation rooms requires immediate reconsideration . . . the size of these rooms is inappropriate for holding families for any significant length of time.").