



HUMAN
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IN THE FREEZER

Abusive Conditions for Women and Children
in US Immigration Holding Cells



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Summary

United States immigration authorities routinely detain men, women, and children, including infants, in frigid holding cells, sometimes for days, when they are taken into custody at or near the US border with Mexico. Migrants and US Customs and Border Protection (CBP) agents alike commonly refer to these cells as *hieleras* (“freezers”).

All immigration detainees have the right to be treated with dignity and humanity, and children, whether unaccompanied or with family members, are entitled to additional safeguards under US and international law. This report examines US authorities’ compliance with the specific protections that should be afforded to children, drawing on 110 interviews with children themselves or women detained with their children. As detailed below, we found that conditions in holding cells at the southern border are often poor and in several critical respects identical to those previously found by US courts to be in violation of CBP’s obligations and prior commitments.

Women and children detained along the border usually spend one to three nights, and sometimes longer, in CBP holding cells, where they sleep on the floor, often with only a Mylar blanket, similar to the foil wrappers used by marathon runners, to protect them from the cold. Border agents sometimes require them to remove and discard sweaters or other layers of clothing, purportedly for security reasons, before they enter the holding cells.

Almost all of the women and children we spoke with said that they were not allowed to shower, sometimes for days, until just before they were transferred to longer-term detention facilities. Nearly all said that they did not receive hand soap, toothpaste, or toothbrushes in these holding cells, meaning that for the duration of their stay they were not able to wash their hands with soap before and after eating and after using the toilet. Most women said that menstrual hygiene products and diapers were available on request, but several told us they did not have access to these items while in CBP holding cells. If they had these and other toiletries among their personal property, they were not allowed to retrieve these items while in the holding cells.

In a typical account, Carolina R., a Guatemalan woman who spent four nights in a freezer in Arizona in late August 2017, told Human Rights Watch, “It was cold, really cold. They just

gave us a piece of aluminium for a blanket [likely a Mylar blanket]. There weren't any mats. We just slept on the floor." The women and children held in the cell could not shower during the four days she was there, she said.

Investigations by other groups have also found that holding cells are uncomfortably cold. In October 2017, for example, the Women's Refugee Commission reported that nearly all of some 150 women interviewed in 2016 and 2017 said they had been held "for days in freezing cold CBP facilities."

While some agents refer to holding cells as *hieleras*, CBP officials publicly deny that these holding cells are cold. Human Rights Watch was not able to determine the precise temperature in any of the holding facilities, but women and children detained in CBP holding cells and other immigration detention facilities consistently report that the temperatures in the holding cells are uncomfortably cold.

Immigration holding cells often do not provide sleeping mats even though it is common for women and children to spend at least one night in these facilities. Nearly all of the women and children interviewed by Human Rights Watch spent at least one night in a CBP holding cell. Other studies, including one by the US Government Accountability Office (GAO), have consistently found that two-thirds of migrants in holding cells remain there for at least one night, and tens of thousands of migrants spend 72 hours or more in holding cells.

CBP acknowledges that it does not routinely provide sleeping mats but has attempted to justify its failure to do so by stating that its holding cells are not designed for overnight custody. Even so, it revised its detention standards in 2015 to state that detention in holding cells should "generally" last no longer than 72 hours.

Immigration authorities hold adult men, teenage boys and girls, and mothers and younger children in separate cells, meaning that families are often separated when they are placed in CBP holding cells.

Detention and family separation, even for short periods of time, have serious adverse consequences for mental well-being, particularly for those who have already suffered trauma. Most of the women and children interviewed by Human Rights Watch said they

had fled their home countries after they were targeted for violence or other persecution, and many had faced abuse on their journey.

Time in CBP holding cells was “the most difficult and traumatic” period of detention for women and children apprehended by US immigration authorities, a 2015 mental health assessment found.

To address these serious concerns, holding cells should be used for very short periods of confinement only. As CBP itself states, these facilities are not designed for overnight stays, and a detention expert who examined these cells concluded that they were not appropriate for confinement of adults for more than 10 hours. Detention overnight in holding cells should accordingly be employed only when it is unavoidable, and never for children. Those who are held overnight should receive sleeping mats as well as blankets. Temperatures in holding cells should be set at reasonable and comfortable levels. Access to showers and hygiene materials, including soap, toothbrushes, and menstrual hygiene products, should be provided to those held overnight.

US immigration authorities should also avoid splitting families upon apprehension. Instead, authorities should identify and implement alternatives to detention that keep families together.

Methodology

This report is based on 110 interviews with women and children who had been held in immigration holding cells along or near the US border with Mexico, including holding cells in or near McAllen, Laredo, Eagle Pass, and El Paso, Texas; Santa Teresa, New Mexico; Nogales, Tucson, Sonoita, and San Luis, Arizona; and Calexico and San Ysidro, California. This total includes four boys between the ages of seven and 17, and seven girls between the ages of 12 and 17. Thirty-nine of the interviewees were Guatemalan, 30 were Salvadoran, 23 were Honduran, eight were Mexican, seven were Brazilian, and three were Venezuelan. Of the 110, 103 were held in 2017, and seven of them—five women and two boys—were held in 2015 or 2016.

We did not specifically look for women and children who had spent the night in holding cells. Instead, we identified women and children who had been in US Immigration and Customs Enforcement (ICE) detention facilities and, in the course of our interviews, asked whether they had also spent any time in a CBP holding cell.

These interviews were conducted in Spanish and Portuguese by a male researcher fluent in those languages. All interviews for this report took place between April and December 2017. Children under the age of 12 were interviewed in the presence of their mothers. Some girls between the ages of 12 and 17 were interviewed together, at their request. All interviews were conducted in private settings.

The researcher informed all interviewees of the nature and purpose of our research, and our intention to publish a report with the information gathered. He informed each potential interviewee that they were under no obligation to speak with us, that Human Rights Watch does not provide humanitarian services or legal assistance, and that they could stop speaking with us or decline to answer any question with no adverse consequences. He obtained oral consent for each interview. Interviewees did not receive material compensation for speaking with Human Rights Watch.

The women and children interviewed for this report could not always identify the precise location where they were held. We determined the approximate location for each place of detention by asking interviewees where and how they entered the United States, the last

town in Mexico they passed through, and the length of time and manner of transport from the point of apprehension to the holding cell. For example, we concluded that a woman was held in El Paso if she told us she travelled to Ciudad Juárez, went to the official border station to request asylum, and said that she was placed in a holding cell at or close to the border station (in such cases, women or children often told us “the *hielera* was right there” or “it was a five-minute walk” from the border post). Women or children who crossed irregularly could often name the Mexican border town closest to where they crossed, the amount of time they spent in the United States before they were apprehended, and the approximate time it took them to reach the holding cell (for instance, “twenty minutes in a vehicle”), in which case we describe their place of detention as near the corresponding US border town. For the Rio Grande Valley, because of the number of border stations and potential holding locations, we only specify the place of detention if the person we interviewed knew the name of the US town in which she was held.

We have used pseudonyms to protect the privacy of the women and children we interviewed. We have also withheld other details, including the location and precise date of many of the interviews, that would enable the identification of those who spoke with us.

We contacted CBP for data on the number of men, women, and children detained in holding cells for the most recent month for which these statistics were available, along with the numbers held for 24 hours, 48 hours, and 72 or more hours during that month. In response, CBP told us to submit a request under the Freedom of Information Act for that information.¹ We did so.² We also asked CBP for its response to the accounts we heard, in which women and children routinely described sleeping directly on the floor in uncomfortably cold cells, being unable to wash their hands with soap after using the toilets, before and after eating, and before and after feeding or changing infants, and being separated from other family members while in holding cells, among other abusive practices.³ CBP officials spoke with us in February 2018 but did not specifically respond to

¹ Email from Christiana Coleman, public affairs specialist, United States Customs and Border Protection (CBP), to Michael Garcia Bochenek, senior counsel, Children’s Rights Division, Human Rights Watch, January 17, 2018.

² Letter from Michael Garcia Bochenek, senior counsel, Children’s Rights Division, Human Rights Watch, to Kevin K. McAleenan, acting commissioner, CBP, January 25, 2018 (requesting records and other documents under the Freedom of Information Act (FOIA), 5 U.S.C. § 552); Letter from CBP FOIA Division to Michael Garcia Bochenek, No. CBP-2018-026013, January 26, 2018 (acknowledging receipt of FOIA request).

³ Letter from Michael Garcia Bochenek, senior counsel, Children’s Rights Division, Human Rights Watch, to Kevin K. McAleenan, acting commissioner, CBP, February 2, 2018 (summarizing principal findings and requesting CBP’s response), appended to this report.

the questions we put to them; citing pending litigation, they restricted their remarks to general statements of CBP policy.⁴ As of publication, CBP had not provided the data we requested under the Freedom of Information Act.

The researcher who conducted these interviews also took part in an inspection of and interviews at family immigration detention facilities as part of a team assessing immigration authorities' compliance with a 1997 settlement agreement.⁵ The interviews conducted as part of this separate assessment are consistent with the findings of this report but were not relied on in preparing it.

In line with international standards, the term “child” refers to a person under the age of 18.⁶

⁴ Conference call with Timothy Quinn, executive director, Office of Intergovernmental Public Liaison, CBP; Daniel Hetlage, director of media, CBP; and Eduardo Sanchez, US Border Patrol, February 15, 2018.

⁵ Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 85-4544 (C.D. Cal. January 17, 1997) [*Flores* Settlement Agreement], <https://www.aclu.org/legal-document/flores-v-meese-stipulated-settlement-agreement-plus-extension-settlement> (accessed December 1, 2017). For a discussion of the *Flores* settlement, see “Legal Standards” section, “CBP Standards and the *Flores* Settlement” subsection, below.

⁶ Convention on the Rights of the Child, art. 1, adopted November 20, 1989, 1577 U.N.T.S. 3 (entered into force September 2, 1990). The United States has signed but not ratified the Convention on the Rights of the Child.

Routine Detention in Inhumane Conditions

They took us to a room that was cold and gave us aluminium blankets.

There were no mats. We slept on the bare floor. It was cold, really cold.

—Alcina C., a Guatemalan woman held with her 13-year-old daughter in a CBP holding cell in Arizona, September 2017

It was a very cold room. We had winter clothes and still couldn't handle the temperature. We slept directly on the floor. The lights were on the whole time, even in the room.

—Raissa S., a Brazilian woman held with her seven-year-old son in a CBP holding cell in El Paso, Texas, May 2017

Undocumented families taken into custody by US immigration agents at or near the US-Mexico border are generally placed in holding cells for several hours to several days, and sometimes a week or more. These holding cells are often uncomfortably cold, with temperatures set so low that women and children recall huddling together for warmth. Immigration holding cells often do not provide mats for sleeping, even for those who are there several nights or more, meaning that women—even when pregnant—as well as children must sleep on concrete benches or directly on the floor.

Women and children must frequently go without showering while in these cells, regardless of the length of time they are held. Immigration holding cells often do not provide soap, meaning that women and children are unable to wash their hands after using the toilet or before and after eating. None of the people we interviewed were provided with toothbrushes or toothpaste while in CBP holding cells. In some cases, holding cells lack toilet paper or do not provide sanitary pads or tampons for women and girls who are menstruating.

A federal court found in 2015 that conditions in these holding cells were “deplorable”⁷ and in violation of a two-decade-old settlement agreement in *Flores v. Reno*, governing conditions of immigration detention for children.⁸ In June 2017, the same court found that

⁷ In Chambers—Order re Plaintiffs’ Motion to Enforce Settlement of Class Action and Defendants’ Motion to Amend Settlement Agreement at 18, *Flores v. Johnson*, No. CV 85-4544 (C.D. Cal. July 24, 2015) [2015 *Flores* Order].

⁸ *Flores* Settlement Agreement.

CBP holding cells in Texas' Rio Grande Valley continued to breach the *Flores* settlement by failing to provide detained children with adequate access to food and clean drinking water, subjecting them to unsanitary conditions, keeping cells extremely cold, and subjecting them to conditions that caused sleep deprivation, among other shortcomings.⁹

Nearly all of the women and children we interviewed described conditions in CBP holding cells that in many critical respects match those found by the court to be in violation of the settlement agreement.

Immigration holding cells are maintained by two CBP agencies. One, the Office of Field Operations, oversees official border stations (or “ports of entry”). The other, the Border Patrol, is responsible for immigration enforcement elsewhere along the land borders.¹⁰ Typically, the Border Patrol apprehends undocumented migrants who attempt to cross the border irregularly, for example, by wading across the river or crossing the desert, while agents with the Office of Field Operations take into custody those who request asylum at an official border crossing. The women and children interviewed for this report recount similar experiences in immigration holding cells regardless of whether they presented themselves at a border post or were apprehended after irregular entry.

Women travelling with children are usually transferred to one of three ICE family detention centers, two in Texas and one in Pennsylvania,¹¹ sometimes after an intermediate period of detention in the Centralized Processing Center-Ursula, a CBP processing facility in McAllen that many refer to as the *perrera* (“dog kennel”) because its cells are separated by chain-

⁹ In Chambers—Order re Plaintiffs’ Motion to Enforce and Appoint a Special Monitor at 18, *Flores v. Johnson*, No. CV 854544 (C.D. Cal. June 27, 2017) [2017 *Flores* Order].

¹⁰ See generally CBP, Executive Assistant Commissioners’ Offices, last published April 26, 2017, <https://www.cbp.gov/about/leadership-organization/executive-assistant-commissioners-offices> (accessed December 20, 2017).

¹¹ On the history of and conditions in family immigration detention centers, see Report of the DHS [Department of Homeland Security] Advisory Committee on Family Residential Centers, September 30, 2016, <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf> (accessed December 21, 2017); American Bar Association, Commission on Immigration, *Family Immigration Detention: Why the Past Cannot Be Prologue* (Washington, DC: American Bar Association, 2015), https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/FINAL%20ABA%20Family%20Detention%20Report%208-19-15.authcheckdam.pdf (accessed December 21, 2017). See also Adrienne Gaffney, “What’s It Like to Be a Teen Living in an Immigration Detention Center,” *Teen Vogue*, February 16, 2017, <https://www.teenvogue.com/story/teens-living-in-immigration-detention-center> (accessed December 21, 2017). For an overview of immigration detention of asylum seekers generally, see Human Rights First, *Life on Lockdown: Increased U.S. Detention of Asylum Seekers* (New York: Human Rights First, July 2016), <http://www.humanrightsfirst.org/sites/default/files/Lifeline-on-Lockdown.pdf> (accessed December 21, 2017).

link fencing and resemble cages.¹² Adult men are transferred to other detention facilities, meaning that fathers and adult siblings are separated from mothers and children under the age of 18.¹³

Once in ICE family immigration detention centers, women and children go before an asylum officer, who assesses whether they have a “credible fear” of persecution or torture in their home countries.¹⁴ Those who are found to have credible fear of return may be released from detention while their full asylum claims are heard.¹⁵

Abusive detention practices in immigration holding cells are not new; reports that CBP regularly subjects migrants to punitive conditions in its holding cells are longstanding. In October 2017, for example, the Women’s Refugee Commission reported that nearly all of 150 women interviewed in 2016 and 2017 had been held “for days in freezing cold CBP facilities commonly referred to in Spanish as *hieleras*.”¹⁶

The American Immigration Council documented “markedly dehumanizing conditions” in CBP holding cells, including extremely cold temperatures, lack of access to showers, and

¹² See, for example, Jocelyn Dyer, “Families Report Abuse in Border Patrol Detention Facilities, Despite Court Ruling,” Human Rights First, December 1, 2015 (“The families we met at Dilley say they were transferred next to a facility called *la perrera* because of its resemblance to a dog kennel.”), <https://www.humanrightsfirst.org/blog/families-report-abuse-border-patrol-detention-facilities-despite-court-ruling> (accessed December 21, 2017).

¹³ See Jessica Jones, Katharina Obser, and Jennifer Podkul, *Betraying Family Values: How Immigration Policy at the United States Border Is Separating Families* (New York: Women’s Refugee Commission, Lutheran Immigration and Refugee Service, and Kids in Need of Defense (KIND), updated April 2017), <https://www.womensrefugeecommission.org/rights/gbv/resources/1450-betraying-family-values> (accessed December 20, 2017).

¹⁴ Asylum seekers who have previously been deported from the United States face a stricter standard in these interviews; they must show a “reasonable” fear of persecution or torture. Compare 8 C.F.R. § 208.30 (credible fear determinations) with 8 C.F.R. § 208.31 (reasonable fear determinations). For official guidance on applying these standards, see US Citizenship and Immigration Services (USCIS), Refugee, Asylum, and International Operations Directorate Officer Training Course on Credible Fear of Persecution and Torture Determinations, February 13, 2017, <http://www.aila.org/infonet/raio-and-asylum-division-officer-training-course> (accessed December 20, 2017); USCIS, Refugee, Asylum, and International Operations Directorate Officer Training Course on Reasonable Fear of Persecution and Torture Determinations, February 13, 2017, <http://www.aila.org/infonet/raio-asylum-division-training-course-reasonable> (accessed December 20, 2017). See also Tal Kopan, “Trump Admin Quietly Made Asylum More Difficult in the US,” CNN, March 8, 2017, <http://edition.cnn.com/2017/03/08/politics/trump-immigration-crackdown-asylum/index.html> (accessed December 20, 2017).

¹⁵ See US Immigration and Customs Enforcement (ICE), Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture, Directive No. 11002.1 (December 8, 2009), https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_aliases_found_credible_fear.pdf (accessed December 21, 2017).

¹⁶ Women’s Refugee Commission, *Prison for Survivors: The Detention of Women Seeking Asylum in the United States* (New York: Women’s Refugee Commission, 2017), pp. 9-10, <https://www.womensrefugeecommission.org/rights/resources/1528-prison-for-survivors-women-in-us-detention-oct2017> (accessed December 1, 2017).

sleep deprivation, in a December 2015 report.¹⁷ The Inter-American Commission on Human Rights heard similar accounts when its members interviewed women in immigration detention for a 2015 report.¹⁸

When Human Rights Watch interviewed a dozen migrant families in 2014, shortly after their release from CBP holding cells in Tucson, Arizona, and McAllen, Texas, they told us they had been unable to keep their children warm in the cold cells and were not provided with sufficient appropriate food for children during their time in CBP custody.¹⁹ During a visit the same year to the CBP's Ursula processing center, then a newly established detention center in a converted warehouse in McAllen (the facility often referred to by women as the *perrera*, or dog kennel), Human Rights Watch observed unaccompanied adolescent girls shivering in cells near large air conditioning ducts.²⁰

And a report by the Miami-based nongovernmental organization Americans for Immigrant Justice (formerly known as the Florida Immigrant Advocacy Center) observed in 2013:

The temperature in the cells is so cold that CBP officers themselves refer to them as "*hieleras*," or iceboxes, in Spanish. Detainees' fingers and toes turn blue and their lips chap and split due to the cold.²¹

Other groups, including the Florence Immigrant and Refugee Rights Project and the National Immigrant Justice Center, have also found that women and children faced these

¹⁷ Guillermo Cantor, *Hieleras (Iceboxes) in the Rio Grande Valley Sector: Lengthy Detention, Deplorable Conditions, and Abuse in CBP Holding Cells* (Washington, DC: Americans for Immigrant Justice, 2015), p. 2, https://www.americanimmigrationcouncil.org/sites/default/files/research/hieleras_iceboxes_in_the_rio_grande_valley_sector.pdf (accessed December 1, 2017).

¹⁸ Inter-American Commission on Human Rights, *Refugees and Migrants in the United States: Families and Unaccompanied Children*, OEA/Ser.L/V/II.155 Doc.16 (2015).

¹⁹ Human Rights Watch interviews with migrant families, Tucson, Arizona, June 30, 2014; McAllen, Texas, July 2014.

²⁰ Human Rights Watch visit to Ursula Facility, McAllen, Texas, July 25, 2014.

²¹ Americans for Immigrant Justice, "The 'Hieleras': A Report on Human and Civil Rights Abuses Committed by U.S. Customs and Border Protection," August 7, 2013, <http://www.aijustice.org/the-hieleras-a-report-on-human-civil-rights-abuses-committed-by-u-s-customs-border-protection-2/> (accessed December 1, 2017).

and other abusive conditions in CBP holding cells.²² Men placed in CBP holding cells report similar conditions.²³

CBP officials told Human Rights Watch in February 2018 that the agency follows its own standards and all court orders.²⁴ Nevertheless, the consistent accounts received by Human Rights Watch and the regular reports by other groups of abusive detention conditions in CBP holding cells lead us to conclude that CBP likely continues to violate federal court orders, as well as international standards.

Detention in Frigid Cells

Nearly all of the women interviewed by Human Rights Watch described CBP holding cells as “cold,” “very cold,” “extremely cold,” or in similar terms.²⁵ They gave consistent accounts of detention in cold cells regardless of whether they were detained in late 2017, at earlier points in the year, or in earlier years.

In an account that was typical of those we heard, Ingrid C., a 23-year-old Salvadoran woman, said of the CBP holding cell in Texas where she and her six-year-old daughter

²² See, for example, Florence Immigrant and Refugee Rights Project, *Seeking Protection, Enduring Prosecution: The Treatment and Abuse of Unaccompanied Undocumented Children in Short-Term Immigration Detention* (Florence, Arizona: Florence Immigrant and Refugee Rights Project, 2009) (finding that 85 percent of 124 unaccompanied children interviewed in a two-month period said their holding cells were excessively cold), <http://firrp.org/media/BPAbuseReport.pdf> (accessed January 8, 2018); National Immigrant Justice Center, “Policy Brief: Unaccompanied Immigrant Children: Vulnerable Children Face Insurmountable Obstacles,” January 27, 2014 (vast majority of 224 unaccompanied children interviewed over a three-week period reported detention in *hieleras*), <https://www.immigrantjustice.org/research-items/policy-brief-unaccompanied-immigrant-children-vulnerable-children-face> (accessed January 8, 2018). See also Ed Pilkington, “‘It Was Very, Very Cold’: Migrant Children Endure Border Patrol Ice Boxes,” *Guardian*, January 26, 2015, <https://www.theguardian.com/us-news/2015/jan/26/migrant-children-border-patrol-ice-boxes> (accessed January 8, 2018).

²³ For example, a 20-year-old University of California-Berkeley student told the *San Diego Union-Tribune* that he spent four days in a CBP holding cell in January 2018. “To stay warm in the notoriously frigid cell, often called a “hielera” or icebox by immigrants, detainees had emergency blankets. [The student] said detainees had to cover even their heads with the blankets for them to be effective.” Kate Morrissey, “Berkeley Student in Immigration Detention Misses First Day of Classes,” *San Diego Union-Tribune*, January 16, 2018, <http://www.sandiegouniontribune.com/news/immigration/sd-me-luis-mora-20180112-story.html> (accessed January 17, 2018).

²⁴ Conference call with CBP officials, February 15, 2018.

²⁵ In all, 107 of the 110 women and children Human Rights Watch interviewed described the temperature in the holding cells as uncomfortably cold. For example, Human Rights Watch interviews with Fabiana D., June 2017; Victoria N., June 2017; Ánibel P., September 2017; Graciela Q., September 2017; Jaida H., September 2017; Laura S., September 2017; Paula H., September 2017; Alcina C., September 2017; Melanie G., September 2017; Nancy H., September 2017; Zayra H., September 2017; Norma F., September 2017; Maylin D., December 2017; Heidi M., December 2017; Andrea L., December 2017.

spent one night in May 2017, “It was really cold. We slept right on the floor, with no mat. The lights were on the whole time we were there. It was very, very cold.”²⁶

Women who were detained in November and December 2017 used identical terms to describe their time in CBP holding cells. “It was really cold,” Nelly P., a 44-year-old Salvadoran woman, said of the three days she and her 15-year-old son spent in a holding cell near the El Paso border post in November.²⁷ “So cold,” said Yoselin H., a 36-year-old Honduran woman, describing the two days she and her 13-year-old daughter spent at a holding cell near McAllen, Texas, also in November.²⁸

Victoria N., a 35-year-old Honduran woman who requested asylum at one of the border crossings between Tijuana and San Diego with her 21-year-old daughter and her daughter’s children, described the holding cell where they spent a night in February 2017:

There were lots of people, as many as four families with children. When more people arrived, they turned up the air conditioning. . . . We slept on the floor with the kids in the middle, trying to keep them covered up as much as possible.²⁹

We heard similar accounts from women and children held in 2016 and 2015. For instance, Alejandra J., a 24-year-old Salvadoran woman, gave us an account of her time in a holding cell near Eagle Pass, Texas, with her young son, Noah, in August 2015. As soon as she mentioned the holding cell, Noah, seven at the time of our interview in July 2017, interjected, “It was very cold.” Alejandra continued:

We were completely soaked from crossing the river. We’d waded in the water up to our waists. The place they held us was really cold. They only gave us a paper blanket. That’s all we had to keep us warm. We were sitting on the cement floor, completely freezing. In the end, I had to sleep seated

²⁶ Human Rights Watch interview with Ingrid C., June 2017.

²⁷ Human Rights Watch interview with Nelly P., December 2017.

²⁸ Human Rights Watch interview with Yoselin H., December 2017.

²⁹ Human Rights Watch interview with Victoria N., San Antonio, Texas, June 14, 2017.

upright, with my son in my lap, because I couldn't let him lay down on the cement floor. He would have been much too cold.³⁰

In another typical account, Sandra C., who spent one night with her two daughters in a CBP holding cell in February 2016, told us, “We were very cold. There were no beds.”³¹

A retired jail administrator who inspected eight CBP facilities in 2015 and 2016 said at a court hearing:

The construction of most of the cells is concrete, concrete floors and benches. If you sit on those for any—I mean, literally it just takes a few minutes before you feel the body heat coming out of your body.

The bedding that they supply is a thin Mylar blanket which doesn't provide sufficient insulation to be able to get comfortable enough to sleep.³²

Testifying in federal court, an assistant chief patrol agent described the effects of Mylar blankets in these terms:

It's not an insulation barrier. You're not going to lay it down on a surface and lay down on it thinking it will keep you warm. When you wrap up in it, it keeps the heat in. It's a barrier. It keeps it in. If you are lying down on a snowbank or something like that, obviously that is different. If you are standing up and the wind is blowing, it will keep the wind out, heat in, and keep your body warm . . . If you're lying on cold concrete, it will be no different than lying on the ground.³³

³⁰ Human Rights Watch interview with Alejandra J. and Noah J., San Salvador, El Salvador, July 27, 2017.

³¹ Human Rights Watch interview with Sandra C., Austin, Texas, June 16, 2017.

³² Evidentiary Hearing, Day 1, at 40, *Doe v. Johnson*, No. CV 15-250-TUC-DCB (D. Ariz. November 14, 2016). He added: “I don't think temperature is the only measure you look at. It is about the ability to have insulation, more than one layer of clothing, something to sit or lie on besides concrete benches. I think all of that figures into it. There's also a lack of the ability for large muscle exercise. . . . There's no provision for that in any of the Border Patrol stations. So your body is never heating up.” *Ibid.* at 59.

³³ Evidentiary Hearing, Day 2, at 103-104, *Doe v. Johnson*, No. CV 15-250-TUC-DCB (D. Ariz. November 15, 2016) (testimony of George Allen, assistant chief patrol agent, Tucson sector, Border Patrol).

Some Border Patrol agents required women and children to discard all but a single layer of clothing. “They didn’t want me to keep both my blouse and my sweater. I had to pick one to keep, so I chose my sweater. They didn’t explain why,” Adela R. said of her detention in a holding cell near Nogales, Arizona, in September 2017.³⁴ Maria A., who spent one night in a CBP holding cell in the Rio Grande Valley in 2015, told us she had the same experience, saying, “We had sweaters with us. They said no, nothing more than a t-shirt. We had to throw our other clothing in the trash.”³⁵ CBP has said in court filings that those placed in holding cells are required to remove “outer-clothing” for security reasons.³⁶

CBP standards state that temperatures in holding cells should be “within a reasonable and comfortable range for both detainees and officers/agents.”³⁷ Citing pending litigation, CBP officials did not respond to our specific questions on how it ensures compliance with its policies, including the standard relating to temperatures in its holding cells.³⁸ In some court filings it has said that the temperatures in its hold rooms are kept at 23 degrees Celsius (73 to 74 degrees Fahrenheit) and usually cannot be changed by staff at the hold cells.³⁹ Other CBP court statements describe a wider temperature range for these holding cells.⁴⁰ When the Department of Homeland Security (DHS) Office of Inspector General conducted unannounced site visits to CBP holding

³⁴ Human Rights Watch interview with Adela R., September 2017.

³⁵ Human Rights Watch interview with Maria A., Austin, Texas, June 16, 2017.

³⁶ Opinion at 9, *Doe v. Kelly*, No. 17-15381, 2017 WL 6545103 (9th Cir. December 22, 2017) (CBP “explained that when a detainee arrives at a station, outer-clothing is removed for security reasons”), <http://cdn.ca9.uscourts.gov/datastore/opinions/2017/12/22/17-15381.pdf> (accessed January 25, 2018).

³⁷ CBP, National Standards on Transport, Escort, Detention, and Search (October 2015), p. 16, <https://www.cbp.gov/document/directives/cbp-national-standards-transport-escort-detention-and-search> (accessed December 21, 2017).

³⁸ Conference call with CBP officials, February 15, 2018.

³⁹ “Temperatures in Tucson Sector hold rooms are set at seventy-three to seventy-four degrees and, at most stations, are controlled by computer and cannot be adjusted by station staff. . . . Actual temperature readings are taken at least once during each shift. . . . If the range of the temperature falls outside of an acceptable range a maintenance contractor is called. . . . If another room has a more suitable temperature, detainees are transferred to that room.” Defendants-Appellees-Cross-Appellants’ Brief at 12, *Doe v. Kelly*, No. 17-15381 (9th Cir. April 27, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/doe_v_johnson_brief_in_support_of_defendants_cross-appeal.pdf (accessed December 22, 2017).

⁴⁰ For example, the chief patrol agent for CBP’s Rio Grande Valley sector stated in a declaration filed in federal court that the temperature in CBP’s holding cells “should be within 66-80 degrees Fahrenheit” (19 to 26 degrees Celsius). Declaration of Manuel Padilla, Jr., para. 30(g), *Flores v. Johnson*, No. CV 85-4544 (C.D. Cal. June 3, 2016); see also *ibid.*, paras. 36, 67. The chief patrol agent for CBP’s Tucson sector described the minimum temperature for CBP holding cells as “66 or 68 degrees” (19 to 20 degrees Celsius). Deposition of Paul Beeson, Chief Patrol Agent-Tucson Sector (September 27, 2016), p. 12, in Plaintiff’s Exhibits 1-5, at 68, *Flores v. Johnson*, Doc. 287-1, No. CV 85-4544 DMG (AGRX) (C.D. Cal. December 6, 2016).

facilities in July 2014, it found that temperatures were “inconsistent,” measuring between 13 and 27 degrees Celsius (56 to 80 degrees Fahrenheit).⁴¹

Nights Spent on Concrete Floors

Immigration holding cells do not have beds and often do not provide sleeping mats, even for young children. As a result, most of the women and children interviewed by Human Rights Watch slept directly on the floor. In a typical account, Dalia C. told us that when she and her two children spent three nights in a holding cell at the border post in El Paso, Texas, in June 2017, “We slept on the floor, with no mats.”⁴²

Patricia H., a Guatemalan woman, gave a similar account of the two nights she spent in an immigration holding cell in September 2017, saying that none of the women or children received mats during the time she spent there. “Everybody stayed on the floor,” she said.⁴³ Similarly, when Graciela Q. spent four days in a holding cell near Calexico, California, in August 2017, she said, “I slept on the floor with my son. We didn’t get mats.”⁴⁴

One woman, 44-year-old Nelly P. from El Salvador, told us that she and her 15-year-old son received mats for two of the three nights they spent at a CBP holding cell near El Paso in November 2017. “The last night they took the mats away, maybe because they had too many people there. They didn’t explain why they took the mats,” she said.⁴⁵

A few women told us they did receive mats while in CBP holding cells. For example, Ánibel P., a 24-year-old woman from Guerrero, Mexico, said that when she spent one night in a holding cell at the San Ysidro port of entry, she and her two children were given mats and cloth blankets.⁴⁶

⁴¹ Memorandum from John Roth, Inspector General, to Jeh C. Johnson, Secretary, Department of Homeland Security (DHS), Oversight of Unaccompanied Alien Children, July 30, 2014, p. 3 and attachment 3, https://www.oig.dhs.gov/assets/Mgmt/2014/Over_Un_Ali_Chil.pdf (accessed February 5, 2018).

⁴² Human Rights Watch interview with Dalia C., June 2017.

⁴³ Human Rights Watch interview with Patricia H., September 2017.

⁴⁴ Human Rights Watch interview with Graciela Q., September 2017.

⁴⁵ Human Rights Watch interview with Nelly P., December 2017.

⁴⁶ Human Rights Watch interview with Ánibel P., September 2017.

Most of the women we interviewed received sheets made of Mylar, thin blankets similar to the foil wrappers used by marathon runners,⁴⁷ which the women described as a material akin to plastic, aluminium, or nylon. “The blanket was plastic, or maybe metal,” said Esmeralda L., who spent one night with her two children in a holding cell at the El Paso port of entry in September 2017.⁴⁸ “They gave us a nylon blanket,” said Melanie G.⁴⁹ Another woman, Nancy H., asked to describe the bedding she received when she spent a night at one of the San Diego border crossing holding cells, replied, “Those transparent things, made of aluminium.”⁵⁰

The US government has stated in court filings, “All detainees [in CBP holding cells] are provided a mylar blanket for warmth.”⁵¹ In some instances, however, women and children held in the cells were not issued foil sheets. “The first night they didn’t give us anything,” Dalia C. said of her time in a CBP holding cell near El Paso in June 2017. “Then they gave us blankets.”⁵²

No Showers, Soap, or Toothpaste

Almost none of the women or children interviewed by Human Rights Watch said they had received soap, toothbrushes, or toothpaste while in CBP holding cells. “We spent two days with no toothpaste, no clothes except the ones we were wearing, and no chance to wash,” Melanie G., a Guatemalan woman, said of the holding cell in California where she was detained with her son, in a typical account.⁵³

As a result, nearly all of the women and children we spoke with said that while detained in CBP holding cells they were unable to wash their hands with soap or other disinfectant after using the toilet or before and after eating, changing diapers, or feeding younger

⁴⁷ See Daniel Gross, “What Are Those Foil Wrappers at the Marathon? How to Stay Warm When You Can’t Stop Sweating,” *Slate*, November 6, 2006, http://www.slate.com/articles/news_and_politics/explainer/2006/11/what_are_those_foil_wrappers_at_the_marathon.html (accessed December 1, 2017).

⁴⁸ Human Rights Watch interview with Esmeralda L., September 2017.

⁴⁹ Human Rights Watch interview with Melanie G., September 2017.

⁵⁰ Human Rights Watch interview with Nancy H., September 2017.

⁵¹ Defendants-Appellants-Cross-Appellants’ Reply Brief at 9-10, *Doe v. Kelly*, No. 17-15383 (9th Cir. June 8, 2017), https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/doe_v_johnson_defendants_reply_brief.pdf (accessed December 1, 2017).

⁵² Human Rights Watch interview with Dalia C., June 2017.

⁵³ Human Rights Watch interview with Melanie G., September 2017.

children, exposing them to communicable disease. Three women held in a cell near the El Paso border post in November 2017, however, told Human Rights Watch they were given antibacterial gel to wash their hands.⁵⁴

Most of the women and children interviewed by Human Rights Watch said that they were not allowed to shower while in immigration holding cells. Some women told us that they were permitted a single shower during their time in the immigration holding cells, usually just before transfer to another detention facility. The following accounts are typical of those we heard:

- “We spent three days without showering,” Dalia C. told us.⁵⁵
- “They give you a shower in the second place you go to, but not in the first place, not in the *hielera*,” Patricia H. reported.⁵⁶
- “They only let you bathe once,” said Graciela Q., detained for four days with her son in a holding cell near Calexico in August 2017.⁵⁷
- Yoselin H., who spent two nights with her 13-year-old daughter in a holding cell in McAllen, Texas, in November 2017, said that they were not allowed to shower until they were transferred to the facility known as the *perrera*, or dog kennel, a few blocks away.⁵⁸
- Estela L., a 34-year-old Guatemalan woman, spent three days in a holding cell near El Paso, Texas, without a shower.⁵⁹
- Isabela Q., a 44-year-old Honduran woman, and Teresa D., a 43-year-old Salvadoran woman, each said that they went without showers for five days.⁶⁰
- Kamila V., a 29-year-old Salvadoran woman, said she was only allowed to shower once she was transferred to a family detention center five days after she was taken into custody in November 2017. “After I had been locked up for four days, I asked if

⁵⁴ Human Rights Watch interview with Mirna Y., December 2017; Human Rights Watch interview with Luciana A., December 2017; Human Rights Watch interview with Beatriz G., December 2017.

⁵⁵ Human Rights Watch interview with Dalia C., June 2017.

⁵⁶ Human Rights Watch interview with Patricia H., September 2017.

⁵⁷ Human Rights Watch interview with Graciela Q., September 2017.

⁵⁸ Human Rights Watch interview with Yoselin H., December 2017.

⁵⁹ Human Rights Watch interview with Estela L., December 2017.

⁶⁰ Human Rights Watch interview with Isabela Q., December 2017; Human Rights Watch interview with Teresa D., December 2017.

I could take a shower somewhere. The official spoke very harshly to me and slammed the door on me. He humiliated me,” she told Human Rights Watch.⁶¹

According to the people we interviewed, most holding facilities offer sanitary napkins for menstrual hygiene to women who ask for them,⁶² but we heard of some instances where that was not the case. “There weren’t any sanitary napkins in the first place I was held,” Melanie G. said of the holding cell in California where she spent 26 hours.⁶³ Dalia C., a 30-year-old Honduran woman, told us that the El Paso holding cell where she spent three nights in June 2017 did not make sanitary napkins or other hygiene products available to menstruating women.⁶⁴

Nearly all women told us that holding cells had diapers available if needed, but a few reported that their holding cells did not. “I had to make sure I took my son to the toilet to urinate, because there were no diapers,” Dalia C. told us.⁶⁵

CBP officials declined to answer our specific questions about the availability of hand soap, toothbrushes, toothpaste, and other personal hygiene items in holding cells, citing pending litigation and referring us to their standards.⁶⁶ CBP has said in court filings and depositions that hold cells are stocked with soap or hand sanitizer.⁶⁷ Evaluating the “apparent disconnect” between CBP standards and official position and the experiences of detained women and children, a federal court concluded in 2017 that CBP’s “reliance on their policies, practices, and third party contracts on this issue of unsanitary conditions

⁶¹ Human Rights Watch interview with Kamila V., December 2017.

⁶² For example, Human Rights Watch interview with Patricia H., September 2017; Human Rights Watch interview with Ánibel P., September 2017.

⁶³ Human Rights Watch interview with Melanie G., September 2017.

⁶⁴ Human Rights Watch interview with Dalia C., June 2017.

⁶⁵ Ibid.

⁶⁶ Conference call with CBP officials, February 15, 2018.

⁶⁷ For example, the chief patrol officer for CBP’s Rio Grande Valley sector stated in a declaration filed in federal court, “The toilets in the station hold rooms are connected to a sink, which the detainees may use to wash their hands with soap or hand sanitizer.” Declaration of Manuel Padilla, Jr., para. 87, *Flores v. Johnson*. Similarly, in a September 2016 deposition, the chief of CBP’s El Centro sector, which covers the portion of the US-Mexico border that includes Calexico, El Centro, and Indio, California, stated, “Every one of the holding cells [in the El Centro sector] has a sink and it has a soap dispenser that’s checked every day to make sure that it’s . . . restocked and supplied.” Deposition of Chief Patrol Agent Rodney S. Scott at 23 (September 20, 2016), in Plaintiff’s Exhibits 1-5, at 48, *Flores v. Johnson*, Doc. 287-1.

again fails to controvert . . . first-hand accounts” by women and children detained in CBP holding cells.⁶⁸

Lack of Privacy and Overcrowding

Holding cells offer little privacy, another concern raised repeatedly by the women we interviewed. “The toilets are right there in the same room. There’s no privacy, just a little wall going up halfway,” Elaine P. said.⁶⁹ In some holding cells, we heard, the divider does not extend all the way to the floor, so that the feet and heads of those using the toilets are visible to the room’s occupants as well as to anybody passing in the hallway.

Holding cells are small—many of the women we spoke with estimated the size of their cells as three meters by three meters, or about 10 feet by 10 feet—and may hold 10 to 20 people or more at any one time.⁷⁰ Describing the cells where they were held, Patricia H. and other women said they nearly touched the other occupants of the cells when they slept.⁷¹ “We were one on top of another,” said Yoselin H., a 36-year-old woman from Honduras.⁷²

The retired jail administrator who inspected eight CBP facilities in 2015 and 2016 and reviewed surveillance footage observed that the “usable space available to detainees is restricted, in some cases severely”⁷³ and that migrants held there may be “crammed so tightly, they look like sardines in a can, with no room to move in any direction without rolling over someone else.”⁷⁴

⁶⁸ 2017 *Flores* Order at 12.

⁶⁹ Human Rights Watch interview with Elaine P., Austin, Texas, June 16, 2017.

⁷⁰ Some women and children told Human Rights Watch they were alone or held with only a few others, but many of the women and children we interviewed told Human Rights Watch their cells held at least ten people. Others described their cells as so crowded they could not accurately estimate the total. For instance, Human Rights Watch interviews with Graciela Q., September 2017 (“There were a great many in there”); Patricia H., September 2017 (“We were a heap of people.”).

⁷¹ Human Rights Watch interview with Patricia H., September 2017; Human Rights Watch interview with Esmeralda L., September 2017.

⁷² Human Rights Watch interview with Yoselin H., December 2017.

⁷³ Declaration of Eldon Vail in Support of Plaintiffs’ Motion for Preliminary Injunction, para. 36, *Doe v. Johnson*, No. 15-CV-00250-TUC-DCB (D. Ariz. August 17, 2016), https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/doe_v_johnson_declaration_by_eldon_vail.pdf (accessed December 1, 2017).

⁷⁴ *Ibid.*, para. 32.

Other Shortcomings

Many of the women Human Rights Watch interviewed specifically mentioned the fact that the lights were on 24 hours a day, which they said was disorienting and made it difficult to sleep. “The lights were on all night. We didn’t know when the sun set and rose,” Dalia C. said of the immigration holding cell near El Paso where she was held in June 2017.⁷⁵ Sandra C., who spent two nights in an immigration holding cell in February 2016, told us, “The lights were on the whole night. We didn’t sleep; we just sat awake the whole night.”⁷⁶

We heard the same from unaccompanied children who spent time in CBP holding cells. For example, Gabriel R. told us that he spent three nights in a holding cell near San Diego in September 2016, when he was 16. “The lights were on the whole time. You couldn’t tell whether it was day or night,” he said.⁷⁷

The nongovernmental organization Human Rights First has reported that Border Patrol agents have subjected women and children in some holding cells to roll calls throughout the night, jostling sleeping women with their boots if they do not awaken quickly enough.⁷⁸

Most of the people we interviewed said that their holding facilities provided clean drinking water, either in individual bottles or large bottles with paper or plastic cups supplied. But Yoselin H. said that when she was in an immigration holding cell near McAllen, Texas, in November 2017, “There was water in a large bottle, with a few cups. We all drank from the same cups.”⁷⁹ And in other cases, women reported that the only source of water was the tap next to the toilet. These holding cells did not provide cups, meaning that women and children had to use their hands to drink, which they described as particularly demeaning and unsanitary—particularly because they were unable to wash their hands with soap after using the toilet.⁸⁰

⁷⁵ Human Rights Watch interview with Dalia C., June 2017.

⁷⁶ Human Rights Watch interview with Sandra C., Austin, Texas, June 16, 2017.

⁷⁷ Human Rights Watch interview with Gabriel R., Los Angeles, California, April 19, 2017.

⁷⁸ Jocelyn Dyer, “Families Report Abuse in Border Detention Facilities, Despite Court Ruling,” Human Rights First, December 1, 2015, <https://www.humanrightsfirst.org/blog/families-report-abuse-border-patrol-detention-facilities-despite-court-ruling> (accessed December 1, 2017).

⁷⁹ Human Rights Watch interview with Yoselin H., December 2017.

⁸⁰ Human Rights Watch interviews, September 2017; Human Rights Watch interviews, December 2017.

Food was a frequent source of stress for mothers with young children. Many of the women we spoke with said that immigration holding cells offered juice boxes for children, as provided in CBP standards.⁸¹ But we heard of no holding cell that attempted to provide food adjusted to the needs and tastes of infants and toddlers. Asked what she and her children received to eat, Graciela Q., who spent four nights in a holding cell near Calexico, California, in August 2017, told us, “Just burritos,” an answer we heard repeatedly.⁸² Ánibel P., who spent one night in a holding cell in San Diego, California, with her two children, ages seven and five, said that the only food available was ham sandwiches.⁸³ Many women told us that as a result, their children ate very little or not at all while in immigration holding cells. For instance, when Fabiana D. and her young daughter spent two nights in an immigration holding cell near Santa Teresa, New Mexico, her daughter did not eat until they were transferred to the ICE family detention center, where milk and bananas were available.⁸⁴

Holding cells are particularly ill-equipped to meet the needs of very young children and children with disabilities, as Human Rights Watch has found in previous research. For example, when we interviewed a woman from Guatemala travelling with her five-month-old son in 2014 after she was released from two days in a CBP holding cell in Arizona, she told us that she had stopped lactating due to the stress of detention. She was unable to feed her child at all during the time in the holding cell, because the Border Patrol provided only cow’s milk and not baby formula appropriate for infants. “I didn’t have anything to give him,” the mother said. “He got a sore throat, a fever, and diarrhea.”⁸⁵

Another Guatemalan woman we interviewed in 2014 told us she was bringing her 10-year-old US citizen son to the United States to seek medical care. The boy has a disability that makes it impossible for him to walk, talk, or chew and requires that he eat liquefied food. During their three days in CBP detention, Border Patrol provided no food that her son could eat. “He fainted twice,” the woman said. “I was very worried. I said I needed help and Border Patrol said I couldn’t get help.”⁸⁶

⁸¹ CBP, National Standards on Transport, Escort, Detention, and Search, section 5.6 (“Juveniles and pregnant or nursing detainees must have regular access to snacks, milk, and juice.”).

⁸² Human Rights Watch interview with Graciela Q., September 2017.

⁸³ Human Rights Watch interview with Ánibel P., September 2017.

⁸⁴ Human Rights Watch interview with Fabiana D., June 2017.

⁸⁵ Human Rights Watch interview, Tucson, Arizona, July 30, 2014.

⁸⁶ Human Rights Watch interview, Tucson, Arizona, July 30, 2014.

Excessive Time in Holding Cells

Under CBP standards issued in 2015, detention in immigration holding cells should “generally” last no longer than 72 hours.⁸⁷ Another CBP standard specific to Border Patrol holding cells states that “[w]henver possible, a detainee should not be held for more than 12 hours.”⁸⁸ Nevertheless, CBP’s own records⁸⁹ and the accounts of many of the women and children interviewed by Human Rights Watch suggest that migrants’ time in holding cells along the Mexico border frequently exceeds these limits.

CBP and DHS documents repeatedly refer to holding cells as short-term detention facilities. For example, DHS’ summary of its regulations implementing the Prison Rape Elimination Act of 2003 observes that “CBP generally detains individuals for only the short time necessary for inspection and processing, including pending release or transfer of custody to appropriate agencies.”⁹⁰ CBP’s 2015 National Standards on Transport, Escort, Detention, and Search state, “Every 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.”⁹¹

⁸⁷ CBP, National Standards on Transport, Escort, Detention, and Search, October 2015, p. 14.

⁸⁸ US Border Patrol, Policy: Hold Rooms and Short-Term Custody, January 31, 2008, section 6.2.1. CBP’s 2015 standards do not explicitly supercede earlier policy documents. See CBP, National Standards on Transport, Escort, Detention, and Search, p. 3. In fact, a sentence stating that the 2015 standards “replace separate policies that have evolved over the years since CBP formation in 2003” was deleted before the final version of these standards was published. Evidentiary Hearing, Day 2, at 19, *Doe v. Johnson*, No. CV 15-250-TUC-DCB (D. Ariz. November 15, 2016) (testimony of Justin Bristow, acting chief for strategic analysis and director, US Border Patrol headquarters). This policy document is included among the “authorities/references” for CBP’s 2015 standards and in DHS’s summary of its regulations implementing the Prison Rape Elimination Act of 2003 (PREA). Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, 79 Fed. Reg. 13100, 13106 (March 7, 2014). In addition, DHS documents prepared during the drafting and consultation on its PREA regulations refer to the Border Patrol’s Hold Rooms and Short-Term Custody policy and a 2008 CBP directive on detention at ports of entry as among the CBP “policies and directives applicable to individuals detained” by the Border Patrol and by Office of Field Operation officers, respectively. Regulatory Impact Analysis, Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, Docket No. ICEB-2012-0003 (February 2014), pp. 27-28.

⁸⁹ See United States Government Accountability Office (GAO), Immigration Detention: Additional Actions Needed to Strengthen DHS Management of Short-Term Holding Facilities, GAO-16-514, May 2016, p. 16.

⁹⁰ 79 Fed. Reg. at 13106.

⁹¹ CBP, National Standards on Transport, Escort, Detention, and Search, section 4.1. Similarly, the 2008 CBP directive setting policy for detention at ports of entry states, “Detention of a person in a POE [port of entry] hold room shall be for the least amount of time necessary to complete CBP processing.” CBP, Secure Detention, Transport, and Escort Procedures at Ports of Entry, CBP Directive No. 3340-030B (August 8, 2008), section 4.12.

The retired jail administrator who inspected eight CBP facilities in 2015 and 2016 concluded that these cells were not designed to hold people for longer than 10 hours.⁹²

Nearly all of women and children interviewed by Human Rights Watch reported that they spent between one and eight nights in immigration holding cells. Their accounts are not unusual. Of 17,000 people detained in holding cells in CBP's Tucson sector, which covers much of the state of Arizona, between June and September 2015 just under 18 percent were transferred within 12 hours. Half the total was held for a day or more.⁹³

An analysis of CBP detention data by the American Immigration Council found that more than two-thirds of the individuals placed in holding cells between September 2014 and August 2015 were held for 24 hours or more, and nearly one-third was held for 48 hours or longer.⁹⁴

When the GAO examined custody data for the same period, it found “potential irregularities” in Border Patrol recordkeeping and observed that in 16 percent—one in seven—of the cases for which Border Patrol had complete data, migrants were held for more than 72 hours, despite claims by Border Patrol officials that time in holding cells rarely exceeded that time frame.⁹⁵

Flawed CBP recordkeeping means that the agency does not have an accurate picture of precisely how many detainees it has held, and for how long. The GAO found in a May 2016 report that CBP did not have processes in place to accurately record and completely assess time in custody.⁹⁶

⁹² Declaration of Eldon Vail, para. 29, *Doe v. Johnson*. He based his conclusion on American Correctional Association (ACA) standards for short-term detention facilities, explaining that for detention of up to 10 hours, ACA standards allow 25 square feet (2.3 square meters) per person in multiple-person cells and call for 35 square feet (3.25 square meters) per person in multiple-person cells for detention of more than 10 hours. Evidentiary Hearing, Day 1, at 48, *Doe v. Johnson*.

⁹³ Opinion at 6, *Doe v. Kelly*, No. 17-15381.

⁹⁴ Guillermo Cantor, *Detained Beyond the Limit: Prolonged Confinement by U.S. Customs and Border Protection Along the Southwest Border* (Washington, DC: American Immigration Council, 2016), p. 2, https://www.americanimmigrationcouncil.org/sites/default/files/research/detained_beyond_the_limit.pdf (accessed December 1, 2017).

⁹⁵ GAO, *Additional Actions Needed to Strengthen DHS Management of Short-Term Holding Facilities*, p. 16.

⁹⁶ *Ibid.*, p. 12.

Moreover, even though vast numbers of migrants spend at least 24 hours in holding cells, CBP has resisted efforts to designate them as overnight facilities.⁹⁷

The DHS Office of Inspector General recommended in March 2016 that, consistent with regulations developed to implement the Prison Rape Elimination Act,⁹⁸ a federal law enacted in 2003, CBP determine which of its holding facilities should be defined as overnight facilities.⁹⁹ These regulations require, among other steps, that agencies within the department conduct periodic audits of “overnight” holding facilities to ensure their safety.¹⁰⁰ CBP rejected the recommendation, writing, “CBP detains individuals for the shortest time necessary to process, release or repatriate or transfer without distinction between day and night.”¹⁰¹

⁹⁷ See DHS, Office of Inspector General, CBP Needs to Better Plan Its Implementation of the DHS Prison Rape Elimination Act Regulations, OIG-16-51 (March 31, 2016), p. 11, <https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-51-Mar16.pdf> (accessed December 1, 2017).

⁹⁸ Prison Rape Elimination Act of 2003, Pub. L. No. 108-79, 117 Stat. 972 (September 4, 2003).

⁹⁹ DHS, Office of Inspector General, CBP Needs to Better Plan Its Implementation of the DHS Prison Rape Elimination Act Regulations, p. 8.

¹⁰⁰ See 6 C.F.R. § 115.193(a) (calling for audits of overnight immigration holding facilities “[w]ithin three years of July 6, 2015,” or for facilities established after that date, within three years of their establishment).

¹⁰¹ DHS, Office of Inspector General, CBP Needs to Better Plan Its Implementation of the DHS Prison Rape Elimination Act Regulations, p. 9.

Separation of Families and the Detention of Young Children

Young children are generally allowed to stay in the same cells as their mothers. Men and teenage boys are held separately; teenage girls may also be separated from other family members.

Some of these children are very young—many of the women interviewed by Human Rights Watch spent one or more nights detained in holding cells with children who were two years old or younger. Adela R. told us that she and her infant daughter spent three nights in a holding cell near the Nogales port of entry in September 2017. “There were five or six other mothers there with their children. The youngest children were six or seven months, up to eight-and nine-year-olds,” she said.¹⁰²

In some cases, we heard that immigration agents attempted to separate mothers and young children. For instance, Miriam F. told us that after she went to the border post in El Paso, Texas, to request asylum in early September 2017:

They first told me there were going to separate me and my daughter. They also said this to the other mothers. We all began to cry. We said that our children were still very small. My daughter is six years old.

Border agents ultimately allowed her daughter to stay with her for the four nights they spent in the holding cell before being transferred to a family detention center.¹⁰³

Boys who are 12 and older are held separately. Ana B., a 32-year-old Guatemalan woman, told us that when she and her son were apprehended by Border Patrol agents in August 2017, he spent the night in a different holding cell. “They took him somewhere else. He’s already 12 years old, so they put him with other kids his age,” she told Human Rights Watch.¹⁰⁴

¹⁰² Human Rights Watch interview with Adela R., December 2017.

¹⁰³ Human Rights Watch interview with Miriam F., December 2017.

¹⁰⁴ Human Rights Watch interview with Ana B., September 2017.

Girls above the age of 12 are often also separated from their mothers and younger siblings. For instance, Alcina C., a Guatemalan woman, said that she and her daughter were separated during the 24 hours they spent in an immigration holding cell in Arizona in September 2017.¹⁰⁵

Adult men are almost always held separately from the rest of their family and are subsequently detained in wholly different facilities from those used for women and their children. One consequence of this practice is that spouses or partners are placed in separate immigration proceedings even though they have in many cases fled a common threat as a family.¹⁰⁶

Separation of the family has serious consequences for mental well-being. Sandra C.'s husband was detained separately from her and their two daughters when they crossed the bridge into Laredo, Texas, to apply for asylum in February 2016. The girls became increasingly distraught during their time in a CBP holding cell and then in the ICE family immigration detention center, she said:

It was a really sad experience. A mother can take anything, but for children, it's different. It's hard to watch them suffer. They didn't want to eat. They just wanted to see their father. They would always cry when they were going to bed. I tried to distract them, but I was also losing hope.¹⁰⁷

¹⁰⁵ Human Rights Watch interview with Alcina C., September 2017.

¹⁰⁶ For example, Human Rights Watch interviews with Lourdes F., June 2017; Paula H., September 2017; Julissa S., September 2017; Valeria L., September 2017; Nancy H., September 2017; Adela R., September 2017. In addition, Teresa D. told Human Rights Watch that she was separated from her 18-year-old son. Human Rights Watch interview with Teresa D., December 2017. Other groups have made the same finding. See, for example, Jones, Obser, and Podkul, *Betraying Family Values*, pp. 13-14; Leigh Barrick, *Divided by Detention: Asylum-Seeking Families' Experiences of Separation* (Washington, D.C.: American Immigration Council, 2016), pp. 7-9, 13-21; Michael Danielson, *Our Values on the Line: Migrant Abuse and Family Separation at the Border* (Washington, DC, and Nogales, Arizona: Jesuit Conference of Canada and the United States and Kino Border Initiative, 2015), pp. 13-20.

¹⁰⁷ Human Rights Watch interview with Sandra C., Austin, Texas, June 16, 2017.

As the American Academy of Pediatrics observed in a June 2015 letter to DHS:

The act of detention or incarceration itself is associated with poorer health outcomes, higher rates of psychological distress, and suicidality, making the situation for already vulnerable women and children even worse.¹⁰⁸

Family separation exacerbates the trauma of detention and increases the risk of anxiety, post-traumatic stress, and depression, a 2015 mental health assessment of women and children in immigration detention found.¹⁰⁹ Similarly, women interviewed for a 2016 report by the American Immigration Council described “persistent emotional fallout of separation” that included “feelings of sadness, uncertainty, and anxiety, as well as difficulty sleeping.”¹¹⁰ The 2015 mental health assessment also found that the initial holding cells were “the most difficult and traumatic” periods of detention for women and children apprehended by immigration authorities.¹¹¹

Under the terms of a 1997 settlement agreement, immigration authorities should hold unaccompanied children separately from unrelated adults and should provide “contact with family members who were arrested with the minor.”¹¹² The agreement does not require the separation of adolescent children from their parents and siblings.

DHS regulations explicitly permit the detention of children “with an adult member of the family unit . . . provided there are no safety or security concerns with the arrangement.”¹¹³

¹⁰⁸ Letter from Sandra G. Hassink, president, American Academy of Pediatrics, to Jeh Johnson, secretary, DHS, July 24, 2015, p. 1 (citing Physicians for Human Rights and The Bellevue/NYU Program for Survivors of Torture, *From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers* (Boston and New York: Physicians for Human Rights and The Bellevue/NYU Program for Survivors of Torture, 2003), https://s3.amazonaws.com/PHR_Reports/persecution-to-prison-US-2003.pdf (accessed December 1, 2017)).

¹⁰⁹ Kathleen O'Connor, Claire Thomas-Duckwitz, and Guillermina Gina Núñez Mchiri, *No Safe Haven Here: Mental Health Assessment of Women and Children Held in U.S. Immigration Detention* (Cambridge, Massachusetts: Unitarian Universalist Service Committee, 2015), p. 9, http://www.uusc.org/sites/default/files/mental_health_assessment_of_women_and_children_u.s._immigration_detention.pdf (accessed December 1, 2017). See also Wendy Smith, “Separating Families at the Border Will Multiply Child Trauma,” *Chronicle for Social Change*, January 29, 2018, <https://chronicleofsocialchange.org/child-welfare-2/separating-families-border-multiplying-child-trauma-2/29580> (accessed February 9, 2018).

¹¹⁰ Barrick, *Divided by Detention*, p. 13.

¹¹¹ O'Connor, Thomas-Duckwitz, and Núñez Mchiri, *No Safe Haven Here*, p. 8.

¹¹² Flores Settlement Agreement, para. 12.

¹¹³ 6 C.F.R. § 115.14(b). Introducing the final version of this regulation, DHS explained, “The final standard also clarifies that a juvenile may temporarily remain with a non-parental adult family member if the family relationship has been vetted to the

CBP standards state that “[g]enerally, family units with juveniles should not be separated.”¹¹⁴ Citing pending litigation, CBP officials declined to answer our specific questions about how the agency ensures compliance with this standard and, when we asked for the agency’s definition of “family unit,” referred us to the its 2015 standards.¹¹⁵ That definition appears to indicate that all parents or guardians traveling with a child are considered part of the same family unit.¹¹⁶

In December 2017, the *Washington Post* reported that Trump administration officials were considering a proposal to separate all children from their parents upon apprehension at or near the border, among other measures aimed at deterring undocumented families from travelling to the United States.¹¹⁷ This would not be the first time the Trump administration has considered such a step: then-Secretary of Homeland Security John F. Kelly signaled in

extent feasible, and the agency determines that remaining with the non-parental adult family member is appropriate, under the totality of the circumstances.” 79 Fed. Reg. at 13114.

¹¹⁴ CBP, National Standards on Transport, Escort, Detention, and Search, p. 15. Under the Border Patrol’s 2008 standards for hold rooms, family groups “will be detained as a unit.” Border Patrol, Detention Standards: Hold Rooms and Short-Term Custody, No. 08-11267 (January 31, 2008), section 6.24.12, https://law.yale.edu/system/files/area/conference/ilroundtable/ILR13_GDUSBorderPatrol.pdf (accessed December 1, 2017). The sections defining “family group” and giving examples of family groups are redacted in publicly available versions of this document. See *ibid.*, sections 3.6, 6.24.12(a)-(e).

CBP’s 2008 standards on detention at ports of entry notes, “In cases where family units are encountered but only the parent or legal guardian is detained. the totality of the circumstances will dictate whether he/she should be separated from a juvenile who is not detained. Normally, CBP will strive to keep family unit together: however. there may be times when it is necessary to separate juveniles from the parent(s) and/or legal guardian(s). When it is necessary to separate a juvenile from his/her parent or legal guardian, CBP must ensure that the provisions of the *Flores v. Reno* Agreement are followed.” CBP, Secure Detention, Transport, and Escort Procedures at Ports of Entry, section 8.5. These standards go on to say that “[m]ales and females shall be segregated at all times when in a POE detention cell (even if they claim to be married). Under no circumstances are detained persons under the age of 18 to be held with adult detainees. unless the adult is an immediate relative or recognized guardian who has been charged with the care and custody of the minor, and no other adult detainees are present in the area.” *Ibid.*, section 8.6.

¹¹⁵ Conference call with CBP officials, February 15, 2018.

¹¹⁶ These standards define a family unit as “a group of detainees that includes one or more non-United States citizen juvenile(s) accompanied by his/her/their parent(s) or legal guardian(s), whom the agency will evaluate for safety purposes to protect juveniles from sexual abuse and violence.” CBP, National Standards on Transport, Escort, Detention and Search, p. 28.

¹¹⁷ Nick Miroff, “To Curb Illegal Border Crossings, Trump Administration Weighs New Measures Targeting Families,” *Washington Post*, December 21, 2017, https://www.washingtonpost.com/world/national-security/to-curb-illegal-border-crossings-trump-administration-weighs-new-measures-targeting-families/2017/12/21/19300dc2-e66c-11e7-9ec2-518810e7d44d_story.html (accessed December 21, 2017).

March 2017 that he was considering such an approach,¹¹⁸ although he later backed away from the suggestion.¹¹⁹

¹¹⁸ Daniella Diaz, “Kelly: DHS Is Considering Separating Undocumented Children from Their Parents at the Border,” CNN, March 7, 2017, <http://edition.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigration-border/> (accessed January 8, 2018).

¹¹⁹ Tal Kopan, “Kelly Says DHS Won’t Separate Families at the Border,” CNN, March 30, 2017, <http://edition.cnn.com/2017/03/29/politics/border-families-separation-kelly/index.html> (accessed January 8, 2018).

Pressure to Accept Deportation and Other Inappropriate Conduct

If you're fleeing, that's not my problem. Donald Trump isn't paying me to let you into the United States.

— Liliana Q., from Honduras, describing what a CBP official at the Laredo border crossing told her when she sought asylum, June 2017

Several women told Human Rights Watch that immigration officials pressured them to accept return to their home countries. For instance, Dalia C. said that during the three nights she spent in an immigration holding cell near El Paso in February 2017, agents urged her to agree to return to Honduras without going before an immigration judge to request asylum and have her claim evaluated. “They wanted me to sign my deportation. I said no. I didn’t sign anything,” she said.¹²⁰

Human Rights Watch heard similar accounts from women who were in immigration holdings cells in 2015 and 2014. Maria A., from Guatemala, told us that when she was in a holding cell in the Rio Grande Valley in November 2015, “They said I had to sign so they could return me to my country. I didn’t want to sign. I said I couldn’t go back. They pressed me. I still said no.”¹²¹

In other cases, CBP officials appeared to mislead women about what would happen to them once they left the holding cells, resulting in significant anxiety. Dalia C., from Honduras, said that during her three nights in an immigration holding cell, “They didn’t give me any information. They just told me I would be deported. When they transferred me [to a family immigration detention center], I didn’t know where I was going.”¹²²

¹²⁰ Human Rights Watch interview with Dalia C., June 2017.

¹²¹ Human Rights Watch interview with Maria A., Austin, Texas, June 16, 2017. Human Rights Watch heard similar accounts from other women detained in 2015 and 2014. For example, Human Rights Watch interview with Elaine P., Austin, Texas, June 16, 2017; Human Rights Watch interview with Maribel V., Comayagua, Honduras, September 6, 2014, in Human Rights Watch, *“You Don’t Have Rights Here”: US Border Screening and Return of Central Americans to Risk of Serious Harm* (New York: Human Rights Watch, 2014), p. 27.

¹²² Human Rights Watch interview with Dalia C., June 2017.

Some interactions in which CBP officials questioned women’s credibility left them shaken. Mirna Y., a 23-year-old Honduran woman, told Human Rights Watch that when she spoke to an official at the El Paso border post to request asylum in November 2017, “He said, ‘I don’t believe you. I don’t believe what you’re telling me, because many women have come here saying the same thing.’” She was in tears at the end of the interview, she said.¹²³

Catalina J., a 24-year-old Mexican woman, described a similar response from a CBP officer when she went to the border post at San Ysidro, near San Diego, to request asylum after members of a drug cartel targeted her with death threats because her husband was a police officer. “He got angry with me. ‘I don’t believe what you’re saying,’ he told me. I spent two hours with the official, from 2:00 a.m. to 4:00 a.m.”¹²⁴

And in some instances, women told Human Rights Watch that CBP officials mocked them or told them they did not deserve protection in the United States. Lorna T. and her six-year-old daughter had been kidnapped in Mexico, held for two months, and suffered regular beatings as they travelled to the United States from Honduras. “When I crossed the border, I had still bruises on my face, and my daughter also had injuries. They made fun of me,” she said, referring to officials at the holding cell where she and her daughter spent three nights.¹²⁵

Many women also reported that they were told to sign documents in English, a language they did not understand, under circumstances in which they did not believe they could refuse. “We all signed something that we didn’t understand, in English,” Mirna Y. told Human Rights Watch.¹²⁶

Under the terms of an injunction originally issued in 1988 and last modified in 2007, US immigration authorities are barred from misrepresenting the standards for asylum or inducing migrants to waive their right to a removal, or deportation, hearing.¹²⁷ Migrants should receive notices of their rights in Spanish.¹²⁸ Because the injunction was issued in a

¹²³ Human Rights Watch interview with Mirna Y., December 2017.

¹²⁴ Human Rights Watch interview with Catalina J., December 2017.

¹²⁵ Human Rights Watch interview with Lorna T., Austin, Texas, June 16, 2017.

¹²⁶ Human Rights Watch interview with Mirna Y., December 2017.

¹²⁷ Modified Consolidated Injunction, para. 1, *Orantes-Hernández v. González*, No. CV 82-01107 (C.D. Cal. Nov. 26, 2007).

¹²⁸ *Ibid.*, para. 2(b).

case brought on behalf of Salvadorans in immigration detention, it applies only to detained Salvadorans who are eligible to apply for asylum.¹²⁹

CBP officials told Human Rights Watch that the agency complies with all court orders. Citing pending litigation, they did not answer our specific questions about how the agency ensures compliance with this injunction.¹³⁰

Possibilities for Complaint

DHS has at least five different complaints mechanisms that can potentially receive and investigate or refer complaints about conditions in holding cells.¹³¹ “DHS primarily advertises available complaint mechanisms through organizational websites” but “this information is not consistently communicated in holding facilities,” the GAO study found.¹³² In response, DHS agreed to post fliers with information on complaints processes to migrants in immigration holding cells.

Although a few of the women we interviewed made complaints directly to officials, none had heard during their time in holding cells that there were other formal mechanisms for doing so. The few who did make complaints were not aware of what action, if any, was taken to investigate and resolve their complaints.

¹²⁹ See *Orantes-Hernández v. Meese*, 685 F. Supp. 1488, 1491 (C.D. Cal. 1988).

¹³⁰ Conference call with CBP officials, February 15, 2018.

¹³¹ GAO, Additional Actions Needed to Strengthen DHS Management of Short-Term Holding Facilities, p. 19.

¹³² *Ibid.*, p. 20. See also Kino Border Initiative and the Jesuits, *Intake Without Oversight: Firsthand Experiences with the Customs and Border Protection Complaints Process* (Washington, DC: Jesuit Conference of Canada and the United States, 2017), http://jesuits.org/Assets/Publications/File/IntakeWithoutOversight_vo6.pdf (accessed December 21, 2017).

Legal Standards

The conditions documented in this report are the same in many critical respects as the conditions courts have already found to violate the terms of a 1997 settlement agreement and recent federal court orders issued to enforce that agreement. These conditions of detention also fail to comply with international standards.

Detention of adult asylum seekers should always be a measure of last resort and should only be for reasons clearly recognized in international law, such as concerns about danger to the public, a likelihood of absconding, or an inability to confirm an individual's identity."¹³³

Family detention is inconsistent with international standards, particularly the fundamental principle—reflected in both international and US law—that “best interest of the child” should govern the state's actions toward children.¹³⁴ For these and other reasons, international standards recognize that children should not be detained solely because of their or their parents' immigration status.¹³⁵ Moreover, deprivation of liberty has a negative

¹³³ United Nations High Commissioner for Refugees (UNHCR), *Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum Seekers and Alternatives to Detention* (2012) [UNHCR Detention Guidelines], para. 2. More generally, the United Nations Working Group on Arbitrary Detention has argued that “immigration detention should gradually be abolished. . . . If there has to be administrative detention, the principle of proportionality requires it to be a last resort. UN Commission on Human Rights, Report of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/13/30 (January 18, 2010), para. 59.

¹³⁴ The Convention on the Rights of the Child provides that children have the right to have their best interests assessed and taken into account as a primary consideration in all actions or decisions that concern them, both in the public and private sphere. Convention on the Rights of the Child, art. 3(1). The United States has not ratified the convention but has signed it. As such, the United States is not bound by the convention but cannot take actions that are contrary to the object and purpose of the treaty. The Committee on the Rights of the Child, which monitors adherence to the convention, has identified the best interests principle as one of four general principles for interpreting and implementing all rights of the child, and applies it as a dynamic concept that requires an assessment appropriate to the specific context. Committee on the Rights of the Child, General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration, U.N. Doc. CRC/C/GC/14 (May 29, 2014), para. 1.

In the United States, all states and the District of Columbia have statutes “requiring that the best interests of the child be considered whenever specified types of decisions are made regarding a child's custody, placement, or other critical life issues.” Child Welfare Information Gateway, Department of Health and Human Services, “Determining the Best Interests of the Child,” 2012, https://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.cfm (accessed October 13, 2014) (listing state statutes requiring best interests considerations and factors considered for such determinations). One form of immigration relief, Special Immigrant Juvenile Status, requires consideration of the best interests of the child. Immigration and Nationality Act, § 101(a)(27)(J) (requiring, in part, a finding that return to the child's country of origin is not in the child's best interests).

¹³⁵ See, for example, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and Committee on the Rights of the Child, Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State Obligations Regarding the Human Rights of Children in the Context of Countries of Origin, Transit, Destination and Return,

effect on children’s capacity to realize other fundamental rights, including the rights to education, health, and family unity, and can result in constructive refoulement.¹³⁶

Previously, the US government made greater use of alternatives to detention for families, such as proven “appearance support” programs that ensure migrants in immigration proceedings understand how and when to appear.¹³⁷

Finally, using detention explicitly as a deterrent to entry into the United States for people seeking international protection is unlawful under international law¹³⁸ and US law.¹³⁹

CBP Standards and the *Flores* Settlement

CBP standards state that detention in holding cells should “generally” last no longer than 72 hours.¹⁴⁰ A specific standard for holding cells managed by the Border Patrol provided that stays should not last longer than 12 hours “whenever possible.”¹⁴¹ The detention of

U.N. Doc. CMW/C/GC/4-CRC/C/GC/23 (November 16, 2017), paras. 5-13; Committee on the Rights of the Child, General Comment No. 6 (2005) on Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, U.N. Doc. CRC/C/GC/2005/6 (September 1, 2005), para. 61.

¹³⁶ See, for example, Human Rights Watch, *Closed Doors: Mexico’s Failure to Protect Central American Refugee and Migrant Children* (New York: Human Rights Watch, 2016), pp. 93-94 (detention’s consequences for education), 106, 123-26 (detention as a component of constructive refoulement); Committee against Torture, General Comment No. 4 (2017) on the Implementation of Article 3 of the Convention in the Context of Article 22, U.N. Doc. CAT/C/GC/4 (February 9, 2018), para. 14 (calling on states not to adopt “dissuasive measures” that would compel return to risk of torture and other ill-treatment).

¹³⁷ See, for example, Vera Institute of Justice, “The Appearance Assistance Program, Attaining Compliance with Immigration Laws Through Community Supervision,” 1998, <http://www.vera.org/sites/default/files/resources/downloads/aap.pdf> (accessed December 21, 2017).

¹³⁸ According to UNHCR, “detention policies aimed at deterrence are generally unlawful under international human rights law as they are not based on an individual assessment as to the necessity to detain.” See UNHCR Detention Guidelines, para. 3. Detention that is imposed to deter future asylum seekers, or to dissuade those who have commenced their claims from pursuing them, is inconsistent with international norms. Furthermore, detention is not permitted as a punitive—for example, criminal—measure or a disciplinary sanction for irregular entry or presence in the country. See Convention relating to the Status of Refugees, art. 31, done July 28, 1951, 189 U.N.T.S. 150 (entered into force April 22, 1954); Protocol relating to the Status of Refugees, done January 31, 1967, 606 U.N.T.S. 267 (entered into force October 4, 1967).

¹³⁹ See *Zadvydas v. Davis*, 533 U.S. 678 (2001) (describing immigration detention as “nonpunitive in purpose and effect”); *Wong Wing v. United States*, 163 U.S. 228 (1896) (finding that under the Fifth and Sixth Amendments to the Constitution, the detention of non-citizens was valid only to facilitate the “expulsion of aliens.”). See also Order, *R.I.L.R. v. Johnson*, Civ. No. 15-11 (D.D.C. February 20, 2015) (enjoining US immigration authorities from detaining Central American mothers and children “for the purpose of deterring future immigration to the United States and from considering deterrence of such immigration as a factor in such custody determinations”), <https://www.aclu.org/legal-document/rilr-v-johnson-order> (accessed December 21, 2017); Order, *R.I.L.R. v. Johnson*, Civ. No. 15-11 (D.D.C. June 29, 2015) (dissolving February 2015 preliminary injunction “in light of the May 13, 2015, policy announcement by U.S. Immigration and Customs Enforcement that it would no longer invoke general deterrence as a factor in custody decisions involving families”), <https://www.aclu.org/cases/rilr-v-johnson> (accessed December 21, 2017).

¹⁴⁰ CBP, National Standards on Transport, Escort, Detention, and Search, p. 14.

¹⁴¹ Border Patrol, Hold Rooms and Short-Term Custody, section 6.2.1.

unaccompanied migrant children is subject to a strict 72-hour time limit: federal law requires that any federal agency with an “unaccompanied alien child” in custody transfer the child to the Department of Health and Human Services “*not later than 72 hours after determining that such child is an unaccompanied alien child.*”¹⁴²

US Department of Homeland Security regulations also provide that “[j]uveniles shall be detained in the least restrictive setting appropriate to the juvenile’s age and special needs.”¹⁴³

A settlement agreement known as the *Flores* settlement, which has been in place for over two decades, requires, among other obligations, that immigration detention of children be in “facilities that are safe and sanitary” and “consistent with . . . concern for the particular vulnerability of minors.”¹⁴⁴ The 1997 agreement applies to “all minors who are detained in the legal custody” of US immigration authorities,¹⁴⁵ including children accompanied by other family members as well as unaccompanied children.¹⁴⁶

A federal district court found in June 2015 that conditions in CBP holding cells were “deplorable” and in violation of the *Flores* settlement.¹⁴⁷ The court specifically noted the following factors, among the “voluminous evidence” of “egregious conditions” in CBP holding cells, in finding that US immigration authorities “materially breached” the settlement’s requirement of safe and sanitary holding cells:

- “These conditions include extreme cold. Numerous declarants referred to CBP facilities as *hieleras* or ‘iceboxes’ and described being given coverings of aluminum foil that were inadequate to keep them warm.”¹⁴⁸

¹⁴² 8 U.S.C. § 1232(b)(3) (emphasis added).

¹⁴³ 6 C.F.R. 115-114(a).

¹⁴⁴ *Flores* Settlement Agreement, para. 12.A.

¹⁴⁵ *Ibid.*, para. 10.

¹⁴⁶ 2015 *Flores* Order at 6 (“Given the regulatory context in which the parties formed the Agreement, it is reasonable to infer that the parties contemplated the release of an accompanied minor together with a relative in detention.”), affirmed by *Flores v. Lynch*, 828 F.3d 898, 901 (9th Cir. 2016) (“the Settlement unambiguously applies both to accompanied and unaccompanied minors”).

¹⁴⁷ 2015 *Flores* Order at 18.

¹⁴⁸ *Ibid.* at 16.

- Overcrowded cells, inadequate nutrition, and unhygienic conditions.¹⁴⁹ “With respect to the overcrowded and unhygienic conditions of the holding cells, all that [immigration authorities] have done is point to their own policies requiring sufficient space, an appropriate number of toilets, and regular cleaning and sanitizing. The mere existence of those policies tells the Court nothing about whether those policies are actually implemented, and the current record shows quite clearly that they were not.”¹⁵⁰

In June 2017, the same court found that CBP holding cells in Texas’ Rio Grande Valley continued to breach the *Flores* settlement. Its 2017 ruling found “ample evidence” of “unsafe and unsanitary conditions at the CBP facilities.”¹⁵¹ These shortcomings included:

- CBP’s failure to comply with its standards that detained children receive a snack upon arrival, a meal at least every six hours during regular meal times (including two hot meals a day), and regular access to snacks, milk, and juice.¹⁵²
- Inadequate access to clean drinking water.¹⁵³
- Dirty cells and lack of access to personal hygiene items, leading the court to observe: “There is an apparent disconnect between the CBP’s standards and class members’ experiences, all of whom describe unsanitary conditions with respect to the holding cells and bathroom facilities, and lack of privacy while using the restroom, access to clean bedding, and access to hygiene products (i.e., toothbrushes, soap, towels).”¹⁵⁴ The court specifically rejected US immigration authorities’ argument that the *Flores* agreement does not explicitly require access to personal hygiene products or showers, stating that while the agreement “certainly makes no mention of the words ‘soap,’ ‘towels,’ ‘showers,’ ‘dry clothing,’ or ‘toothbrushes . . . the Court finds that these hygiene products fall within the rubric of the Agreement’s language requiring ‘safe and sanitary’ conditions and Defendants’ own established standards.”¹⁵⁵

¹⁴⁹ *Ibid.* at 16-17.

¹⁵⁰ *Ibid.* at 18.

¹⁵¹ 2017 *Flores* Order at 8. The 2017 order did not apply to the CBP’s Ursula processing facility in McAllen, Texas, commonly known as the “*perrera*” (“kennel”).

¹⁵² *Ibid.* at 8-9. See CBP, National Standards on Transport, Escort, Detention, and Search, section 5.6.

¹⁵³ 2017 *Flores* Order at 11.

¹⁵⁴ *Ibid.* at 12.

¹⁵⁵ *Ibid.* at 13.

- Evidence of extremely cold temperatures and of CBP officers lowering the temperature in response to complaints.¹⁵⁶
- “[T]estimony attesting to conditions at the CBP stations—cold temperatures, overcrowding, lack of proper bedding (i.e., blankets, mats), constant lighting—that together ‘force [class members] to endure sleep deprivation.’”¹⁵⁷

In a separate legal action, a group of migrants filed a class-action lawsuit in June 2015 challenging the conditions of confinement in holding cells in CBP’s Tucson Sector, in Arizona.¹⁵⁸ A preliminary federal district court order issued in November 2016 requires that migrants placed in Tucson Sector holding cells for more than 12 hours be given a mat for sleeping and the opportunity to wash.¹⁵⁹ Issuing the order, the court observed:

[T]he harshness caused by the lack of mats and the inadequacy of the Mylar blankets is compounded by the Defendants’ practices of keeping holding-cells lights turned on 24-7, feeding one of the three regular hot meals to detainees at 4:00 a.m., moving detainees in and out of holding cells throughout the night for processing, overcrowding cells which causes people to lie cramped together and next to toilet facilities or to sit or stand up, and because the hard concrete floors and benches retain the cold caused by low thermostat temperatures and make it too hard and cold to sleep.¹⁶⁰

The US Department of Justice appealed the order, arguing in a June 2017 court submission that the requirement to provide sleeping mats for all migrants detained more than 12 hours is “overly rigid” and “significantly reduces the capacity” of CBP holding cells.¹⁶¹ A federal appellate court upheld the district court’s order in December 2017.¹⁶²

¹⁵⁶ Ibid. at 16.

¹⁵⁷ Ibid.

¹⁵⁸ Complaint, *Doe v. Johnson*, No. CV 15-00250-TUC-DCB (D. Ariz. filed June 8, 2015), https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/doe_v_johnson_complaint.pdf (accessed December 1, 2017).

¹⁵⁹ Order at 16, 21, *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DUB (D. Ariz. November 18, 2016).

¹⁶⁰ Ibid. at 13.

¹⁶¹ Defendants-Appellants-Cross-Appellants’ Reply Brief at 19-20, *Doe v. Kelly*, No. 17-15381.

¹⁶² Opinion at 22, 31, *Doe v. Kelly*, No. 17-15381.

Recommendations

To US Customs and Border Protection (CBP):

- In collaboration with US Immigration and Customs Enforcement (ICE) and, as appropriate, the Office of Refugee Resettlement of the US Department of Health and Human Services's Administration for Children and Families, CBP should ensure that holding cells are used for very short periods of confinement only, which should not exceed 10 hours. Pregnant women and girls, migrants who identify as lesbian, gay, bisexual, or transgender, and those with serious health conditions, including mental health conditions, should be immediately transferred to the least restrictive alternative to detention and provided with appropriate and comprehensive services.
- CBP should develop written guidance and implement it in practice to ensure that family members arriving together are subject to a presumption of liberty and not unnecessarily or intentionally separated. Immigration authorities should identify and implement alternatives to detention that keep families together.
- CBP should detain individuals overnight in holding cells only when it is unavoidable, and never for children. Those who are held overnight should receive sleeping mats as well as blankets.
- CBP should ensure that temperatures in holding cells are set at reasonable and comfortable levels.
- CBP officials should not coerce or attempt to dissuade detainees in holding cells from seeking asylum or to persuade them to accept voluntary departure.
- CBP should ensure that detainees in its custody enjoy basic dignity relating to personal hygiene, including through access to private toilets and showers out of sight of guards and other facility officials, soap for handwashing, and access to menstrual hygiene products.

To the Office of Inspector General of the US Department of Homeland Security (DHS):

- The DHS Office of Inspector General should continue to conduct unannounced spot inspections of CBP holding facilities and should publicly report its findings.

Acknowledgments

This report was written by Michael Garcia Bochenek, senior counsel on children's rights at Human Rights Watch, based on research he undertook from April to December 2017.

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Appendix

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February 2, 2018

Kevin K. McAleenan
Acting Commissioner
US Customs and Border Protection
1300 Pennsylvania Avenue, NW
Washington, DC 20229



HRW.org

Dear Commissioner McAleenan:

Human Rights Watch is in the process of preparing a report on detention practices in US Customs and Border Protection (CBP) holding cells, and we are writing to give CBP the opportunity to respond to our findings.

As background, for this research we interviewed 110 women and children who had been detained in CBP holding cells along or near the US-Mexico border, including holding cells in or near Hidalgo, McAllen, Laredo, Eagle Pass, and El Paso, Texas; Santa Teresa, New Mexico; Nogales, Tucson, Sonoita, and San Luis, Arizona; and Calexico and San Ysidro, California. Of this total, 103 were in CBP holding cells in 2017; the remainder were detained in 2016 or 2015.

In selecting women and children to interview, we did not specifically look for women and children who had been detained in holding cells. Instead, we identified women and children who had been in ICE family detention facilities and, in the course of our interviews, asked whether they had also spent any time in a CBP holding cell.

Below, we summarize our principal findings and include specific requests for comment.

Temperature in Holding Cells

CBP's National Standards on Transport, Escort, Detention, and Search state that temperatures in holding cells should be "within a reasonable and comfortable range for both detainees and officers/agents." Nevertheless, nearly all women and children we interviewed described

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CBP holding cells as “cold,” “very cold,” “extremely cold,” or in similar terms. They gave consistent accounts of detention in cold cells regardless of whether they were detained in late 2017, at earlier points in the year, or in earlier years. These accounts were also consistent regardless of the reported location of detention. In all, 107 of 110 women and children interviewed described the temperature in the holding cells as unpleasantly cold.

As an example of a typical account, a 23-year-old woman who spent one night in a CBP holding cell in Texas with her six-year-old daughter told us, “It was really cold. We slept right on the floor, with no mattress. The lights were on the whole time we were there. It was very, very cold.”

Many of the women and children who were apprehended by Border Patrol agents after irregular entry told us they were required to discard all but a single layer of clothing before entering the holding cells. Some of these women and children say that Border Patrol agents made them dispose of any additional layers of clothing; these items were thrown away rather than stored and returned to them, they told us.

We would appreciate your reaction to these accounts. In particular, it would be helpful if you would address the following points:

- How does CBP set and monitor temperatures in its holding cells?
- From the consistent and numerous accounts we received, it appears that CBP holding cells are not maintained at a level that is comfortable for women and children detained there. Is there a purpose in setting the temperature at a level that is not comfortable for many detainees?
- Is there a policy or practice in holding cells, either those maintained by the Border Patrol or those maintained by the Office of Field Operations, of restricting detainees to a single layer of clothing? If so, what is the policy or practice when people are apprehended wearing several layers of clothing?

Bedding

The women and children we interviewed were held in cells that do not have beds, although many have built-in concrete benches along the walls. Most of those we interviewed were issued Mylar blankets but not sleeping mats or mattresses, and slept directly on the floor.

We would appreciate your reaction to these accounts. In particular:

- Does CBP regularly issue sleeping mats to women and children detained in holding cells?
- If not, how does CBP ensure compliance with its National Standards on Transport, Escort, Detention, and Search, which states, “Clean bedding must be provided to juveniles” (section 4.12), and, for holding cells within the Tucson sector, the district court’s preliminary injunction in *Doe v. Johnson*, No. CV-15-00250-TUC-DCB, requiring CBP to provide clean bedding that “must include a mat and a Mylar blanket for all detainees being held longer than 12 hours”?

Personal Hygiene and Access to Soap and Showers

Nearly all of the women and children we interviewed told us that they did not have access to soap while in CBP holding cells, meaning that they could not wash their hands with soap or other disinfectant after using the toilet or before and after eating, changing diapers, or feeding younger children. None of the woman and child we spoke with told us that they received toothbrushes or toothpaste while in CBP holding cells.

Most of the women and children interviewed by Human Rights Watch said that they were not allowed to shower while in CBP holding cells. Some women told us that they were permitted a single shower during their time in the immigration holding cells, usually just before transfer to another detention facility.

We would appreciate your reaction to these accounts, in particular:

- Does CBP provide soap to detainees in its hold cells? If so, how does it provide soap? If not, what is the purpose for not doing so?
- Do some CBP holding cells have shower facilities designed for detainees’ use? If so, how many CBP holding cells have such shower facilities?
- How does CBP ensure compliance with the stipulated settlement agreement in *Flores v. Reno*, which requires that immigration authorities “hold minors in facilities that are safe and sanitary” (paragraph 12.A), and the order of the district court in *Doe v. Johnson* that CBP meet the personal hygiene needs of those detained longer than 12 hours, including “the need to wash or clean themselves” and that CBP “monitor for compliance . . . delivery to detainees of . . . toothbrushes and toothpaste”?

Separation of Families

The women and children we interviewed told us that while young children are generally allowed to stay in the same cells as their mothers, teenage boys and sometimes teenage girls are held separately. They also told us that men are always held separately from women and children even when a family arrives together.

In some cases, we heard that immigration agents attempted to separate mothers and young children. For instance, one woman told us that after she went to the border post in El Paso, Texas, to request asylum in early September 2017, “They first told me there were going to separate me and my daughter. They also said this to the other mothers. We all began to cry. We said that our children were still very small. My daughter is six years old.” Border agents ultimately allowed her daughter to stay with her for the four nights they spent in the holding cell before being transferred to an ICE family detention center.

We would appreciate your reaction to these accounts, in particular:

- How does CBP ensure compliance with its National Standards on Transport, Escort, Detention, and Search, which states that “[g]enerally, family units with juveniles should not be separated” (section 5.6)?

Conduct of CBP Officials

Several women told Human Rights Watch that CBP officials pressured them to accept return to their home countries. Other women told us they were told to sign documents in English, a language they did not understand, under circumstances in which they did not believe they could refuse.

Others told us CBP officials mocked them or told them they did not deserve protection in the United States.

We would appreciate your reaction to these accounts, in particular:

- What steps does CBP take to comply with the district court’s injunction in *Orantes-Hernández v. González*, which bars immigration authorities from misrepresenting the standards for asylum or inducing migrants to waive their right to a removal hearing, and requires notice of rights in Spanish?

Compliance with Federal Court Orders to Enforce *Flores*

Overall, we would appreciate your comments on the steps CBP has taken to comply with the *Flores* settlement agreement and the 2015 and 2017 orders of the district court in *Flores v. Johnson* to enforce the settlement.

* * *

We would appreciate a response to this request for comment by February 16, 2018. We will not be able to include answers received after that date in our report.

Please do not hesitate to contact me at bochenm@hrw.org or at [REDACTED] if you have questions about any of the findings outlined above or our specific requests for comment.

Sincerely,



Michael Bochenek
Senior Counsel
Children's Rights Division

IN THE FREEZER

Abusive Conditions for Women and Children in US Immigration Holding Cells

Migrant women and children detained along the US border with Mexico usually spend one to three nights, and sometimes longer, in frigid holding cells, sleeping on floors or concrete benches before immigration authorities transfer them to other detention facilities. These holding cells are so notorious for their uncomfortably low temperatures that migrants and border agents alike refer to them as *hieleras* (“freezers”).

Women and children are usually not allowed to shower and often have no access to soap, meaning that they are not able to wash their hands with soap before and after eating or feeding infants, after using the toilet, and after changing diapers.

Families are often separated while in immigration holding cells, a practice that harms women and children’s mental well-being and may complicate their efforts to seek asylum.

All immigration detainees have the right to be treated with dignity and humanity, and children, unaccompanied or with family members, are entitled to additional safeguards. Conditions in immigration holding cells do not meet these standards, and the shortcomings identified in this report in many respects match those that US courts have found to violate immigration authorities’ obligations.

To address these serious concerns, immigration holding cells should be used for very short periods of confinement only. Detention overnight in holding cells should be employed only when it is unavoidable, and never for children. Those who are held overnight should receive sleeping mats, blankets, hygiene materials, and access to showers. Temperatures in holding cells should be set at reasonable and comfortable levels.

US immigration authorities should also avoid splitting up families. Instead, authorities should identify and implement alternatives to detention that keep families together.



Six women and children confined to an immigration holding cell in Douglas, Arizona, appear to share two sleeping mats, September 2015. Customs and Border Protection via American Immigration Council



A woman changes a child's diaper on top of Mylar sheets laid on the concrete floor of a trash-strewn immigration holding cell in Douglas, Arizona, September 2015. Customs and Border Protection via American Immigration Council



A boy paces in an immigration holding cell as other detainees sleep under Mylar blankets, Douglas, Arizona, September 2015. Customs and Border Protection via American Immigration Council