

# 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