

**Testimony of Assistant Inspector  
General for Special Reviews and  
Evaluations Diana R. Shaw**

**Before the Committee on the  
Judiciary**

**U.S. House of Representatives**

**“Oversight of Family Separation  
and CBP Short-Term Custody under  
the Trump Administration”**





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Chairman Nadler, Ranking Member Collins, and members of the Committee, thank you for inviting me today to discuss family separation and short-term custody in U.S. Customs and Border Protection (CBP) holding facilities and ports of entry. My testimony today will focus on our two recent Management Alerts regarding conditions at CBP facilities: [\*DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center \(OIG-19-46\)\*](#) and [\*DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley \(OIG-19-51\)\*](#). These alerts describe conditions that we observed on May 7 and 8, 2019, and June 10 through 12, 2019, respectively.

We issued two recent Management Alerts because in the course of our review we identified issues that posed a serious, imminent threat to the health and safety of CBP personnel and detainees requiring immediate action by the Department. Management Alerts are a unique product issued by DHS OIG in relatively rare circumstances in which we identify an issue so serious that we deem it necessary to report on the issue before completing our standard inspection or review process. In such instances, we prepare a “Management Alert” to notify the Department of the issue so it can take immediate action to mitigate and/or correct the situation. Often, because we have not completed our standard inspection or review process at the time we issue a Management Alert on a particular issue, we are not yet in a position to offer recommendations for corrective action.

While DHS OIG generally strives to improve the efficiency and effectiveness of DHS programs and operations through concrete, implementable recommendations, Management Alerts present a unique situation in which we may not be able to do so given the nature and urgency of the issue(s) uncovered. The dangerous overcrowding and prolonged detention we observed on our recent unannounced visits to CBP facilities on the southern border presented just such a situation.

### **Background on Unannounced Inspections and Past Work**

DHS Office of Inspector General (OIG) initiated our unannounced inspection program in response to concerns raised by Congress about conditions for aliens in CBP custody. Our unannounced inspections of CBP holding facilities evaluate compliance with CBP’s National Standards on Transport, Escort, Detention and Search (TEDS)<sup>1</sup>, which govern CBP’s interaction with detained individuals. Our inspections also determine whether CBP provides reasonable care from apprehension to holding. During our visits to ports of entry and Border Patrol facilities, we focus on elements of the TEDS standards that can

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<sup>1</sup> [\*U.S. Customs and Border Protection, National Standards on Transport, Escort, Detention, and Search, October 2015.\*](#)



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be observed and evaluated by OIG inspectors without specialized law enforcement or medical training. We inspect CBP's compliance with standards such as whether adequate drinking water, food, blankets, and hygiene supplies are being provided to detainees. We also review how long detainees have been in custody and whether unaccompanied alien children (UACs) are given access to telephones to call relatives or their consulates.

CBP Office of Field Operations ports of entry, Border Patrol stations, and processing centers are intended solely for short-term detention. In fact, TEDS standards provide that "[d]etainees should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities. 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." Additional legal protections are in place for children DHS deems to be UACs, who by law should be transferred to Health and Human Services (HHS) Office of Refugee Resettlement (ORR) within 72 hours.<sup>2</sup> The TEDS standards also outline protocols for CBP on how to treat vulnerable populations, defined as "at risk" by CBP, such as UACs, families and pregnant, elderly, or disabled detainees, and specify requirements for general care and conditions for such vulnerable populations in temporary custody. While ICE is responsible for providing long-term detention, TEDS standards require that CBP provide safe and sanitary short-term holding facilities for all detainees.

In the past, when we had reviewed CBP holding facilities, conditions were generally compliant with existing hold-room policies. However, starting in 2014 with the influx of UACs in CBP custody, DHS has struggled with compliance with certain *Flores* Agreement provisions, such as holding children no longer than 72 hours. This generally continued to be the case in 2018, during which implementation of the Administration's Zero Tolerance Policy was followed by an increase in the number of individuals held in CBP custody for longer than 72 hours.<sup>3</sup>

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<sup>2</sup> The *Flores* Agreement generally permits detention of minors no longer than 72 hours, with a provision that in an influx of minors, placement should be as expeditious as possible. In addition, the *Trafficking Victims Protection Reauthorization Act of 2008* requires DHS to meet this timeline unless there are "exceptional circumstances." 8 U.S.C. § 1232(b)(3). The *Flores* Agreement also includes a requirement that immigration officials hold minors immediately following arrest in facilities that provide: (1) access to food and drinking water; (2) medical assistance in the event of emergencies; (3) toilets and sinks; (4) adequate temperature control and ventilation; (5) adequate supervision to protect minors from others; (6) separation from unrelated adults whenever possible; and (7) contact with family members who were arrested with the minor.

<sup>3</sup> [Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy, OIG-18-84, September 27, 2018](#); [Results of Unannounced Inspections of Conditions for Unaccompanied Alien Children in CBP Custody, OIG-18-87, September 28, 2018](#). The CBP facilities we inspected between June 26 and June 28, 2018 appeared to be operating



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Our more recent unannounced inspections reveal a worsening situation, which the Department has characterized as “an acute and worsening crisis.” Specifically, in May and June of this year, we observed dangerous overcrowding and prolonged detention in CBP facilities in both El Paso and the Rio Grande Valley. We also documented instances of non-compliance with TEDS standards, including lack of access to hot meals and showers for minors. The conditions we observed, which put the health and safety of both DHS personnel and detainees at risk, prompted us to publish two Management Alerts raising the issues to the attention of DHS leadership and requesting immediate action.

### **Overcrowding and Prolonged Detention Have Resulted in Non-Compliance with TEDS Standards**

Early in May 2019, our inspectors conducted spot inspections of five Border Patrol stations and two ports of entry in the El Paso area. One month later in June 2019, our inspectors conducted spot inspections of five Border Patrol facilities and two ports of entry in the Rio Grande Valley. In both instances, we observed dangerous overcrowding and prolonged detention at Border Patrol facilities resulting in non-compliance with TEDS standards.

We chose these locations based on a review of CBP statistics on apprehensions, complaints received by the OIG hotline, unannounced inspections from previous years, and consultation with our investigators who work in OIG field offices on the southern border and are familiar with conditions in the facilities. According to CBP data, the El Paso sector experienced the sharpest increase in apprehensions – 619 percent<sup>4</sup> comparing the first seven months of FY 2019 to the same period in FY 2018. The Rio Grande Valley Sector had the highest overall volume of apprehensions<sup>5</sup> on the southwest border, with nearly a quarter million apprehensions in the first eight months of FY 2019.

### Overcrowding and Prolonged Detention of Single Adults at El Paso Del Norte Processing Center

During the week of May 6, 2019, we observed dangerous holding conditions at the El Paso Del Norte Processing Center (PDT) Border Patrol processing facility, located at the Paso Del Norte Bridge. Despite having a maximum capacity of 125 detainees, CBP custody logs indicated that approximately 750 detainees were on-site on May 7 and 900 detainees were on-site on May 8. Although the

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in compliance with the 2015 TEDS standards we evaluated; however, we determined that CBP exceeded the 72-hour period in many instances during our fieldwork.

<sup>4</sup> This represents an increase in apprehensions of 82% of single adults, 347% of UACs, and 1,816% of family units.

<sup>5</sup> This represents an increase in apprehensions of 32% of single adults, 62% of UACs, and 269% of family units.



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majority of these detainees were held in outdoor space for processing and transfer, many of those inside the facility were held in severely overcrowded cells. TEDS standards provide that “under no circumstances should the maximum [cell] occupancy rate, as set by the fire marshal, be exceeded.” Yet, at the facility, single adults were being held in cells designed for one-fifth as many detainees. Specifically, we observed:

- a cell with a maximum capacity of 12 held 76 detainees;
- a cell with a maximum capacity of 8 held 41 detainees; and
- a cell with a maximum capacity of 35 held 155 detainees.

Border Patrol agents also told our inspectors that some of the detainees had been held in standing-room-only conditions for days or even weeks. The Border Patrol’s custody logs confirmed this prolonged detention. When we visited PDT on May 7, of the total 756 detainees on-site during our visit, 66 percent of detainees had been held for longer than the 72 hours generally permitted under TEDS standards, with 4 percent held for more than two weeks. When we returned to PDT for another unannounced inspection the next day, we observed that, while some family units and adult females had been transferred the day before, additional detainees had arrived for processing, increasing the total number of detainees on-site to approximately 900.

### “At-Risk” Populations are Subject to Overcrowding and Prolonged Detention in Border Patrol Facilities in the Rio Grande Valley Sector, Resulting in Non-Compliance with Applicable Standards

During the week of June 10, 2019, we traveled to the Rio Grande Valley in Texas and we observed serious overcrowding at four of the five Border Patrol facilities and prolonged detention at all five facilities. At the time of our visit, Border Patrol was holding about 8,000 detainees in custody in the Rio Grande Valley sector, with 3,400 held longer than the permitted 72 hours. Of those 3,400 detainees, Border Patrol held 1,500 for more than 10 days. With respect to UACs and families – populations defined as “at-risk” in TEDS standards – Border Patrol’s custody data indicated that 826 (31 percent) of the 2,669 children at these facilities had been held longer than the 72 hours generally permitted under the TEDS standards and the *Flores* Agreement. For example, at the Centralized Processing Center in McAllen, TX, of the 806 UACs who had already been processed and were awaiting transfer to HHS custody, 165 had been in CBP custody longer than a week. Additionally, there were more than 50 UACs younger than 7 years old, and some of them had been in custody more than two weeks while awaiting transfer.

In addition to holding roughly 30 percent of minor detainees for longer than 72 hours, several Rio Grande Valley facilities struggled to meet other TEDS standards for UACs and families. For example, children at three of the five



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Border Patrol facilities we visited had no access to showers, despite the TEDS standards requiring that “reasonable efforts” be made to provide showers to children approaching 48 hours in detention. Children had limited access to a change of clothes as Border Patrol had few spare clothes and no laundry facilities. While all facilities had infant formula, diapers, baby wipes, and juice and snacks for children, we observed that two facilities had not provided children access to hot meals – as is required by the TEDS standards – until the week we arrived.

### Overcrowding and Prolonged Detention for Adults in the Rio Grande Valley Sector Resulted in Non-Compliance with TEDS Standards

The conditions in the Rio Grande Valley for single adults were similar to those faced by detainees in the El Paso facility. Detainees were also held in cells that exceeded maximum occupancy rates, resulting in non-compliance with TEDS standards. Overcrowding at one facility led to some single adults being held in standing room only conditions for a week and, at another facility, some single adults were held more than a month in overcrowded cells.

CBP was also unable to meet TEDS standards that require CBP to make a reasonable effort to provide a shower for adults after 72 hours; most single adults had not had a shower in CBP custody despite several being held for as long as a month. At some facilities, Border Patrol was giving detainees wet-wipes to maintain personal hygiene. Most single adult detainees were wearing the clothes they arrived in days, weeks, and even up to a month prior.

### **Overcrowding and Prolonged Detention Puts DHS Personnel and Detainees at Health and Safety at Risk**

We are concerned that the overcrowding and prolonged detention we observed in the El Paso and Rio Grande Valley sectors represent an immediate risk to the health and safety of DHS agents and officers, and to those detained.

### Overcrowding and Prolonged Detention Exacerbate Health and Safety Risks in El Paso Sector

During our May visits at PDT, we observed approximately 75 people being treated for lice and some detainees were in isolation with flu, chicken pox, and scabies. When the detainees in line waiting to be processed had to surrender their valuables, such as money and phones, to DHS staff, we observed DHS staff discarding all other detainee property, such as backpacks, suitcases, and handbags, in the nearby dumpster. Border Patrol personnel told us that these items might be wet, have bugs, and be muddy, and therefore, presented a “biohazard.” Border Patrol management at PDT and other facilities also raised concerns about the high incidence of illness among their staff, concerns about



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employee morale, and conditions that were elevating anxiety and affecting employees' personal lives.

CBP was also struggling to maintain hygienic conditions in the holding cells. With limited access to showers and clean clothing, detainees were wearing soiled clothing for days or weeks. While TEDS standards do not require a change of clothing for adults, Border Patrol agents said they were nevertheless trying to obtain clean clothing for adult females because the lack of clean clothes was "wearing down on them." Access to toilets was limited, because overcrowding caused detainees to stand on toilets in cells to make room and gain breathing space. Border Patrol agents said detainees who were not ill were raising medical complaints simply to obtain temporary release from the cells, adding to the medical staff's burden.

Border Patrol management at PDT also described an ongoing concern that rising tensions among detainees could turn violent. At the time of our visit, 140 adult male detainees were crowding the hallways and common areas of the facility while their cell was being cleaned. We observed staff having difficulty maneuvering around this crowd to perform their duties, and were told that staff feel they have limited options if detainees decide not to cooperate.

### Overcrowding and Prolonged Detention of Single Adults Have Resulted in Security Incidents in Rio Grande Valley Sector

The security incidents in the Rio Grande Valley facilities reflect an escalation of the security concerns we raised in our El Paso report. We were informed of multiple security incidents among adult males at multiple facilities. Incidents arise when detainees are moved from their cells for servicing and maintenance. At one facility, when detainees who had been moved from their cells during cleaning refused to return, Border Patrol brought in its special operations team to demonstrate it was prepared to use force if necessary. Additionally, detainees have attempted to escape while removed from their cells during maintenance. Detainees at one overcrowded facility had clogged the toilets with Mylar blankets and socks in order to be released from their cells while the toilets were repaired.

Senior managers at several facilities raised security concerns for their agents and the detainees. One senior manager described the situation as "a ticking time bomb." We had to end our site visit at one Border Patrol facility early because we noticed that our presence was agitating an already difficult situation. Specifically, when detainees observed us, they banged on the cell windows, shouted, pressed notes to the window with their time in custody, and pointed to the evidence of their time in custody, such as their beards.



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### **Department of Homeland Security Needs a Plan to Eliminate Overcrowding**

We recognize the extraordinary challenge CBP is currently facing to eliminate overcrowding. However, we remain concerned that DHS is not taking sufficient measures to address the issues outlined in our recent Management Alerts, particularly with respect to single adult detainees.

In our May 2019 Management Alert on conditions in the PDT facility, we recommended that CBP take immediate steps to alleviate the overcrowding there. CBP concurred with our recommendation and reported that they have constructed a 500-person soft-sided structure at El Paso Station and plan to construct an additional tent by July 31, 2019. CBP also plans to open a new Centralized Processing Center with an estimated completion date of November 30, 2020. While additional tents may reduce some of the overcrowding, we were concerned that CBP's plan would not eliminate the immediate risk to the health and safety of detainees and DHS employees, particularly the prolonged severe overcrowding of single adults, which can lead to outbreaks of communicable diseases and violence. Thus, the recommendation will remain unresolved and open until DHS offers an immediate corrective action plan to address the dangerous overcrowding.

In response to our July 2019 report on the conditions in the Rio Grande Valley sector, DHS cited measures it has taken to expand CBP's capacity on the southern border. DHS continues to add tents capable of holding 500 people and plans to add more tents to house single adults by July 29, 2019. Again, while additional tents may reduce overcrowding, we remain concerned that DHS is not taking sufficient measures to address prolonged detention in CBP custody, particularly among single adults.

We continue to encourage the Department to take immediate steps to alleviate dangerous overcrowding and prolonged detention of children and adults at CBP facilities. We hope that leadership across the Department will work together to develop a strategic, coordinated plan to address these conditions and alleviate the pressure currently affecting CBP operations.

### **Ongoing OIG Oversight**

Our office will continue to help the Department meet its critical mission through independent and objective audits, inspections, and investigations. We plan to publish several DHS-wide reports this year and next year that will include reviews of CBP and ICE, including:

- DHS Tracking of Detainees to Support Migrant Family Reunification: We initiated a full-scale audit looking at the effectiveness of DHS' IT systems





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for tracking and supporting efforts to reunify UACs with separated families. Our audit will determine whether the IT systems and processes DHS relied upon were adequate to carry out specific border security operations, including tracking separated families, prior to and following the implementation of the Zero Tolerance Policy.

- CBP's Processing of Asylum Seekers: We are reviewing CBP's handling of asylum seekers at ports of entry. The objective of this work is to determine whether CBP Office of Field Operations is turning away those who present themselves for asylum at ports of entry. As part of its ongoing fieldwork, the team travelled to ports of entry in Texas, Arizona, and California, where it observed operations, gathered documents, and interviewed CBP officers, representatives of non-governmental organizations, and asylum seekers.
- Update on Family Separations: Our review will determine whether CBP was separating families seeking asylum at ports of entry during and after the Zero Tolerance Policy and documenting those separations appropriately.
- Review of Removal of Separated Alien Families: Our work will determine whether ICE removed any parents without first offering them the opportunity to bring their separated children with them. The review will identify why this may have happened and how many separated parents may have been removed without having that option.
- 72-hour CBP Custody Snapshot: Working in partnership with our Data Analytics group, we will try to determine the populations of detainees held in CBP facilities for longer than 72 hours, the total time in custody from apprehension to transfer or release, and where such holds occur most frequently.
- CBP's Holding of Detainees Beyond 72 Hours: This larger-scale evaluation's objective is to determine the factors impacting CBP's ability to comply with the general requirement to only hold detainees in its custody for up to 72 hours. CBP, ICE, and HHS all have responsibility for assuming custody of specific groups of detainees in various stages of the immigration proceedings. We will try to identify the primary DHS factors driving the delays in placement, and make recommendations to mitigate those issues.
- CBP's Use of FY 2019 Appropriated Funds for Humanitarian Assistance: Our objective is to determine whether CBP has adequately planned for



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deployment, and is deploying, FY 2019 appropriated funds quickly and effectively to address the humanitarian needs on the southern border.

- Unannounced Inspections of CBP Holding Facilities & ICE Adult Detention Facilities: Our objective is to continue conducting ongoing unannounced inspections of DHS and contract facilities to monitor DHS compliance with health, safety, and civil rights standards outlined in CBP's National Standards on Transport, Escort, Detention, and Search; and ICE's Performance-Based National Detention Standards.

### **Conclusion**

We understand that the Department is facing a difficult challenge; however, the Department has not developed a long-term plan to address the issues within detention centers along the southern border. The steps the Department has taken to implement our recommendation to alleviate dangerous overcrowding continue to fall short. For instance, the Department's proposal to address overcrowding at PDT by November 2020 was inconsistent with the immediate need for corrective action; accordingly, we consider the recommendation open and unresolved.

DHS OIG will continue to exercise diligent oversight over immigration enforcement, paying particular attention to the Department's progress in reducing overcrowding and prolonged detention at CBP facilities. Consistent with our obligations under the *Inspector General Act of 1978*, we will keep Congress fully and currently informed of our findings and recommendations.

Mr. Chairman, this concludes my testimony. I am happy to answer any questions you or other members of the Committee may have.