



HRW.org

Written Testimony of:

Clara Long
Deputy Washington Director (Acting)
Senior Researcher, US Program
Human Rights Watch

Submitted to the
U.S. House Committee on Oversight and Reform
Subcommittee on Civil Rights and Civil Liberties

For a Hearing on:

“Kids in Cages: Inhumane Treatment at the Border”

July 10, 2019

On behalf of Human Rights Watch, I thank the U.S. House Committee on Oversight and Reform, Subcommittee on Civil Rights and Civil Liberties, for the opportunity to submit this statement for its hearing addressing inhumane treatment at the border.

Human Rights Watch is a non-profit, independent organization that investigates allegations of human rights violations in more than 90 countries around the world, including in the United States, by interviewing victims and witnesses, gathering information from a variety of sources, and issuing detailed reports. Where human rights violations have been found, Human Rights Watch advocates for the enforcement of those rights with governments and international organizations and mobilizes public pressure for change.

Background

I am the acting Deputy Washington Director and Senior Researcher on Immigration in the US Program at Human Rights Watch.

I have over a decade of experience monitoring and reporting on prison and detention conditions both globally and in the United States. I graduated with honors from Harvard Law School in 2012 and have Masters degrees from the London School of Economics and from Stanford's Graduate Program in Journalism. From 2012 to 2013, I taught as a clinical fellow at Stanford Law School's International Human Rights and Conflict Resolution Clinic. I joined Human Rights Watch five and half years ago and have since researched and authored a series of in-depth reports and other materials on issues such as deaths in immigration detention linked to poor medical care, mistreatment and dismissal of asylum seekers at the US border, US border policing abuses, the detention and separation of families, harmful deportations of deeply rooted long-term US residents, and returns of Central American and other asylum seekers to Mexico.

I have served as a detention monitor and consultant with the Flores Settlement legal team since 2016, visiting children detained in the Brownsville, Texas Casa Padre facility; the now-closed tent facility in Tornillo, Texas; in Homestead, Florida; and those held in Border Patrol stations in California, Arizona and most recently Texas. The Flores Settlement Agreement is one of the only means by which external, non-governmental monitors are able to directly review detention conditions for migrant children in the United States.

Among other protections, the Flores Settlement Agreement requires the government to release migrant children expeditiously to sponsors and hold them in the least restrictive environment. It requires the government to house the children it does detain in facilities that are "safe and sanitary" and provide "access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, [and]

adequate temperature control and ventilation.”¹ The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) limits the time that children unaccompanied by their parents can be in CBP custody to 72 hours, “[e]xcept in the case of exceptional circumstances.”² It also requires that these children “be promptly placed in the least restrictive setting that is in the best interest of the child,” subject to considerations of flight and danger.³

From June 17 to June 19, 2019, I was part of a team of lawyers, doctors and interpreters monitoring conditions for children in Border Patrol stations in the El Paso, Texas area on behalf of the class of children protected by the Flores Settlement Agreement.⁴ On June 17 and 19 I interviewed children detained at the Clint Border Patrol Station, and on June 18, I interviewed children and their families at the El Paso Station (also known as Station 1) and the Santa Teresa Border Patrol Station. I personally interviewed 16 detained children in these three facilities, while our monitoring team interviewed over 50 children throughout our visit.

Inhumane Conditions at the Border

Our in-depth interviews with children revealed that the US Border Patrol is holding many children, including some who are much too young to take care of themselves, in jail-like border facilities for weeks at a time without contact with family members, or regular access to showers, clean clothes, toothbrushes, or proper beds. Many were sick. Many, including children as young as 2 or 3, were separated from adult caretakers without any provisions for their care besides that provided by unrelated older children also being held in detention. These conditions are consistent with those Human Rights Watch documented in our February 2018 report, “In the Freezer.”⁵ In contrast with the conditions as of February 2018, the harms of CBP detention for children are now compounding over weeks instead of days.

¹ Stipulated Settlement Agreement, *Flores v. Meese*, 2:85-cv-4544 (C.D. Cal. 1997).

² 8 U.S.C. § 1232(b)(3).

³ 8 U.S.C. § 1232(c)(2)(A).

⁴ Our team of interviewers consisted of Dr. Nancy Ewen Wang, M.D., of Stanford University; Professors Warren Binford of Willamette University, Bill Ong Hing of the University of San Francisco, Kathleen O’Gorman of Illinois Wesleyan University; Nicole Austin-Hillery, Michael Bochenek, of Human Rights Watch; Elora Mukherjee of Columbia Law School, Natasha Quiroga of the Lawyers’ Committee for Civil Rights Under Law; Chapman Noam, who worked for years as a paralegal at the Center for Human Rights and Constitutional Law; and Katherine Hagan, a student pursuing her doctorate in psychology.

⁵ Human Rights Watch, “In the Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells.” February 28, 2018, <https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells>.

Lack of Adult Caregivers

On my first day at Clint, I spoke with an 11-year-old boy who was caring for his 3-year-old brother. Both were fending for themselves in cinder-block cells with dozens of other children for three weeks.⁶ When I met them, the little one was quiet with matted hair, a hacking cough, muddy pants and eyes that fluttered closed with fatigue. As we spoke, he fell asleep on two office chairs drawn together. “I am the one who takes care of him here,” the older brother told us. “There was a teenage girl with curly hair who was helping me take care of him for a while. I don’t know her name. But she’s gone now. Now, no one helps me to take care of him.”

A 14-year-old told our team she was taking care of a 4-year-old girl who had been placed in her cell with no relatives. “I take her to the bathroom, give her my extra food if she is hungry, and tell people to leave her alone if they are bothering her,” she said. “She has been sick the whole time I have been taking care of her, and is coughing and has mucous. She doesn’t talk hardly at all, just ‘yes’ and ‘no.’ She wears diapers and I change them for her.”

An 11-year-old boy detained with his 9-year-old brother and 7-year-old sister told us, “Nobody takes care of us here. I try to take care of my little brother and sister since no one will take care of them. There are little kids here who have no one to take care of them, not even a big brother or sister. Some kids are only 2 or 3-years-old and they have no one to take care of them.”

Hygiene and Health

The children I met with at Clint were visibly dirty, mucous or mud-stained, and nearly all wearing the same clothes they wore when they crossed the border. They told us they were not given regular access to soap or toothbrushes and were given access to showers only once or twice in a period of weeks, if at all. When they were given access to showers, they told us, they were limited to a mere three minutes.

Upon our arrival at Clint, Customs and Border Protection attorney Lisa Donaldson provided us with a list of children currently detained there. On June 17, there were 351 children on this roster, from under a year old to age 17. We requested to see children from this list successively. In several cases, agents told us they could not bring children we requested to

⁶ For a helpful reconstruction of the Clint Border Patrol Station’s detention areas, please see recent *New York Times* reporting based on our interviews and interviews with Border Patrol agents. Simon Romero et al., “Hungry, Scared and Sick: Inside the Migrant Detention Center in Clint, Tex.” July 6, 2019, *New York Times*, <https://www.nytimes.com/interactive/2019/07/06/us/migrants-border-patrol-clint.html>.

the interview rooms because they were in quarantine. We requested access to children in the quarantine cells and were denied. On June 18, CBP facilitated a telephone interview of three older children in quarantine, though we were unable to verify whether these interviews occurred out of the earshot of guards.

We also spoke with children who had been held for some period of time in quarantine cells.

A 14-year-old girl told us:

I was in the first cell for seven days, sleeping with no mattress. It is hard to sleep when you don't have a mattress. I then came down with the flu. I then went into the flu cell for seven days. When you are in the flu cell, you also sleep on the floor, but you have a mattress. There were 21 other kids in that space with the flu. I had a fever in there and I was shaking. Some of the other kids were vomiting. They all had fevers. No one was taking care of the kids with the flu. ... We were not allowed to leave the flu cell, ever. It was very boring. I did nothing to entertain myself, nor was anything offered. It was sad, very sad. I felt locked up and closed in.

An 11-year-old boy held in CBP custody for 12 days, despite having parents in New Jersey, said:

About three days ago I got a fever. They moved me alone to a flu cell. There is no one to take care of you there. They just give you pills twice a day. I also am having an allergic reaction all over my skin. My skin is itchy and red and my nose is stuffed up. Two times they gave me a pill for it but not anymore.

Lengths of Stay, Inadequate Efforts to Release and Reunite Children, Children Held Incommunicado

US law prohibits holding children in Border Patrol custody for more than 72 hours in typical circumstances,⁷ and yet the children we met in Clint told us they had been there for weeks. "Sometimes when we ask, we are told we will be here for months," said one 14-year-old girl who said she had been at Clint for three weeks.

Despite these prolonged lengths of stay, we found no evidence that anyone had made any attempts to reunite children with their family members in the United States. Many of the children with whom I spoke said they had parents or close relatives in the US.

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

A 7-year-old girl I attempted to interview entered the room silently but burst into tears when we asked whom she traveled with to the US. "My aunt," she said, with a keening cry. She was so upset we decided not to attempt to interview her, a situation that happened several times during our visit. A bracelet on her wrist had the words "US parent" and a phone number written in permanent marker. We called the number on the spot and found out that no one had informed her desperate parents where she was being held. Some of the most emotional moments of our visit came witnessing children speak for the first time with their parents on an attorney's phone.

Based on our interviews, US officials at the border seem to be making no discernable effort to release children to caregivers while children are in Customs and Border Protection custody – though many have parents in the US – rather than holding them for weeks in overcrowded cells, incommunicado from their desperate loved ones. When I directly asked CBP lawyer Lisa Donaldson if children could be released from Clint to their parents she stated, "I do not know."

Separations from Family Members

Many of the children held at Clint said that they were separated from family members and sometimes their primary caregivers at the border, in clear contradiction of their best interest. This is the regular practice of US Customs and Border Protection. Not only do such separations render children "unaccompanied" and expose them to prolonged detention, they wreak psychological harm comparable to separation from a parent.

An inconsolable 14-year-old boy I met at the Homestead detention center in late March summed up the impact of these kinds of separations. He had traveled from Guatemala with his 29-year-old sister and her son. "She's my oldest sibling in Guatemala and has always been there for me," he said. "She's like my mother. Sometimes I call her 'mom' because she's taken care of me my entire life." When they crossed the border into Texas and turned themselves into the Border Patrol they were detained in different cages. "On the third day they took me out of my cage and said I would be separated from my sister, but they didn't tell me where I was going. I don't understand why they separated us. They didn't give me a chance to say goodbye."

Under US law and international human rights law, the "best interest of the child" should govern the state's actions toward children.⁸ Separating families, which is not required by US

⁸ The United Nations Convention on the Rights of the Child (CRC) 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. CRC, art. 3(1). The United States has signed but not yet ratified the convention, meaning that it is prohibited from acting contrary to the object and purpose of the treaty. The Committee on the Rights of the

law or regulation, will normally not be in the best interest of the child. The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 and the Homeland Security Act vest CBP with the authority to make an initial determination of whether a child is “unaccompanied,” defined as a child who has no lawful immigration status in the United States; has not attained 18 years of age; and has no parent or legal guardian in the United States available to provide care.⁹ Although many of the children we met at Clint said they have parents inside the United States, current practice by the Department of Homeland Security (DHS) classifies children as unaccompanied if neither a parent or legal guardian (with a court-order to that effect) is with the child at the time of apprehension, or within a geographical proximity to care for the child.¹⁰ Under the TVPRA, if a child is designated as unaccompanied after the 72-hour period they should typically be transferred to Office of Refugee Resettlement (ORR) custody.¹¹ If parents present inside the United States were instead considered “available” for the purposes of the TVPRA, many of the children we met at Clint could have been released immediately to their families.

Human Rights Watch has also documented family separation in the context of the implementation of the Migrant Protection Protocols (MPP), a Trump administration program to return asylum seekers to Mexico to wait for their immigration court hearings in the United States.¹² In the context of the MPP, agents split apart families who had been traveling together at the border. Children, including some with mental health concerns, were separated from non-parental guardians by Border Patrol, classified as “unaccompanied alien children,” and detained alone.¹³ Meanwhile, their adult family members were sent to Mexico for the duration of their lengthy asylum cases. Staying in contact is especially difficult for families separated under the MPP, since those forced to wait in Mexico may not have access to a cell phone or landline.¹⁴

Child, which monitors state 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. Although the United States has yet to ratify the CRC, the US Supreme Court has recognized its “nearly universal” acceptance. See *Roper v. Simmons*, 543 U.S. 551, 576–78 (2005) (noting that the universal ratification of the CRC demonstrates international agreement with the laws contained therein). The Court has also recognized its persuasive authority. See *id.* at 578 (“The opinion of the world community, while not controlling...does provide respected and significant confirmation...”).

⁹ 8 U.S.C. § 1232.

¹⁰ 8 U.S.C. § 1232.

¹¹ 8 U.S.C. § 1232.

¹² Human Rights Watch, “We Can’t Help You Here: US Returns of Asylum Seekers to Mexico.” July 2, 2019, <https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico>.

¹³ Human Rights Watch observation of immigration court hearings, El Paso, Texas, May 8, 2019.

¹⁴ Human Rights Watch, “We Can’t Help You Here: US Returns of Asylum Seekers to Mexico.” July 2, 2019, <https://www.hrw.org/report/2019/07/02/we-cant-help-you-here/us-returns-asylum-seekers-mexico>.

The US government should act swiftly to determine the best interest of unaccompanied children and release them promptly with a parent or legal guardian in the US or the adult family member with whom they were traveling with appropriate safeguards to ensure they appear for immigration proceedings. Indeed, the CBP National Standards on Transport, Escort, Detention and Search provides for temporary detention together with a non-parental adult family member during which time child welfare professionals could be employed to make an assessment of their best interest.¹⁵ US regulations already specifically provide for the release of children simultaneously with a parent, legal guardian or adult relative on a “discretionary case by case basis.”¹⁶

Recommendations

Congress should exercise strenuous oversight to ensure the safety and well-being of children in federal immigration custody. Children should be allowed to remain with their family members and be promptly released with appropriate safeguards to ensure they appear for immigration proceedings. Specifically:

- 1) Congress should ensure that children are being held in CBP custody for as little time as possible and certainly no longer than the 72-hour limit under US law. US authorities should release unaccompanied children to relatives or a responsible sponsor as expeditiously as possible.
- 2) Congress should urgently demand ongoing transparency on the length of time and conditions under which children are being held in DHS and ORR facilities.
- 3) While children are in DHS or ORR custody, they should be held in what is commonly recognized as safe and sanitary conditions, including being provided adequate bedding, hot food, access to proper hygiene, and medical care.
- 4) State-licensed professionals specially trained in the screening and care of children—not CBP agents—should immediately be deployed to the border to evaluate children’s needs and conduct all screenings that occur before a child is released or sent to ORR. These child welfare professionals should also coordinate with state authorities if there are ever allegations of abuse or mistreatment by accompanying family members or by immigration authorities. CBP should not be entrusted to routinely make and enforce family separation decisions.

¹⁵ “A juvenile may temporarily remain with a non-parental adult family member where: 1) the family relationship has been vetted to the extent feasible, and 2) the CBP supervisor determines that remaining with the non-parental adult family member is appropriate, under the totality of the circumstances.” National Standards on Transport, Escort, Detention and Search, §5.6.

¹⁶ 8 CFR § 236.3 - Detention and release of juveniles, available at <https://www.law.cornell.edu/cfr/text/8/236.3>.

CBP should maintain records reflecting when an adult or child in its custody claims relation to another migrant. This should include any extended family members including siblings, grandparents, and other relations and should be documented in the I-213 for each member of the family. This should also include documentation of US citizen children or family members who are encountered or apprehended at the same time.

- 5) Congress should prohibit CBP from separating children from parents and extended family members such as grandmothers, aunts, and older siblings – people who are in many cases their caregivers – if the separation is not in the child’s best interest.
- 6) Congress should fund community-based alternatives to detention for children who cannot quickly be placed with family members. That includes foster care arrangements and small, state-licensed group homes for teens, with appropriate supervision by social workers.
- 7) CBP should develop an access policy for independent oversight and allow attorneys access to migrants in its custody.

Ultimately, Congress should write child rights protections into law and provide proper oversight. CBP and its parent agency, DHS, have consistently treated their own standards as optional and have disregarded court orders. They have recently proposed regulations that would give them even greater discretion to detain children indefinitely in abusive conditions. While legislative reform is needed, Congress should act now to ensure compliance with existing standards and increased transparency.

Thank you.