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**“Children in CBP Custody: Examining Recent Deaths and Assessing Medical Care Procedures”**

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**Introduction**

In December of 2018, two young children fleeing entrenched poverty in their rural Guatemalan villages became the first migrant children without underlying medical conditions to die in U.S. custody in a decade. Jakelin Caal Maquin, age 7, died from septic shock which, because it went untreated over many hours, cascaded into multiple organ failure. Felipe Gomez-Alonso, age 8, died from untreated influenza complicated by pulmonary hemorrhage in the context of bacterial pneumonia and sepsis. Both children suffered terrifying and painful deaths that could potentially have been prevented by timely access to pediatric medical care. Their deaths, as well as those of four other children in government custody between September 2018 and May 2019, underscore the deficiencies in an immigration system poorly designed to protect the wellbeing of vulnerable children.

**Systemic inadequacies**

Review of the circumstances surrounding Jakelin and Felipe’s deaths suggests that multiple systemic inadequacies in CBP’s management of child detainees align to place them at risk for grave harm.

- *Inadequate screening:* Initial medical screening for Jakelin consisted of one agent shouting to the large group of migrants with whom she was apprehended that those who were sick should come forward. This cursory process assumed that all the migrants would hear the agent, understand Spanish, and feel comfortable disclosing their medical concerns in front of many other people. Not surprisingly, Jakelin was not the only sick child in the group who went unidentified as a result. Completing any further health screening at the forward operating base where she was apprehended was not standard operating procedure at the time. Additional screening did not occur until after the first bus, which was supposedly reserved for medically vulnerable migrants, had already left the remote base for the border patrol

station. The screening form used for the health interview did not ask about specific symptoms of illness like fever or vomiting, nor did it ask about chronic medical conditions. The CBP agents who completed Jakelin's health interview while she waited for the second bus did not have appropriate qualifications to do so, did not base their finding that Jakelin was "mentally alert" on the child's current presentation (she was asleep), and did not conduct the interview in the family's native language.

It is unclear from available records whether Felipe received any medical screening during the six days in CBP custody before he began to show signs of illness.

- *Inadequate training:* In both Jakelin and Felipe's cases, CBP agents' lack of basic understanding of pediatric disease processes led to deadly delays in accessing medical care. Jakelin was suffering from sepsis, an overwhelming, systemic infection that can rapidly progress to multiple organ failure. Early signs of sepsis can be subtle and particularly challenging to identify in children, who compensate well for the ensuing cascade of organ dysfunction until their bodies have exhausted all metabolic reserves. It is well established in emergency and critical care medicine that every hour of delay in accessing treatment for sepsis dramatically increases mortality risk, such that it is standard of care for patients to receive antibiotics within one hour of presentation. The remote forward operating base where Jakelin was apprehended was not staffed with any EMTs, and standard operating procedure at the time was to defer health interviews until detainees could be transferred to a border patrol station nearly 100 miles away. Given the poor screening Jakelin received at the base, it is impossible to know at what point she became critically ill in the approximately seven hours that elapsed between her apprehension and her father's request for medical assistance, but because the agents did not recognize the urgency of the situation or call an ambulance to meet them en route to the border patrol station, an additional two hours elapsed before she received any medical attention. By the time she finally received antibiotics—which appears not to have happened until she reached the hospital nearly 12 hours after apprehension and more than four hours after her father sought help—she was too sick to be saved.

The agents at the highway checkpoint where Felipe was detained also seem not to have recognized the severity of his illness. He was observed having abdominal pain and difficulty breathing hours before he became critically ill, yet agents did not push for Felipe to return to the hospital at that time. As he grew sicker, Felipe undoubtedly experienced significant respiratory distress and excruciating pain. Both he and his father stated they thought he was going to die, yet the agents still interpreted no urgency to the situation, allowing 73 minutes to elapse from his father's request for medical care until arrival of transport. Felipe became unconscious as he was loaded into the CBP cruiser and was pulseless by the time he reached the hospital.

- *Inadequate equipment and supplies:* The medical room at the border patrol station where Jakelin first received treatment was not stocked with basic medical equipment like oxygen, airway kits, trauma kits, or defibrillators, forcing EMT agents to leave her side to find them. The station lacked pediatric-sized equipment like a pulse oximeter or blood pressure cuff to assess Jakelin's vital signs. The highway checkpoint where Felipe stayed was not stocked with basic medications like acetaminophen or ibuprofen, and MedPAR would not cover them, forcing CBP agents to pay out of pocket for medications to manage Felipe's fever and pain.
- *Inadequate access to pediatric expertise:* Before receiving medical attention, Jakelin was transferred almost 100 miles out of the way to a border patrol station that was another 160

miles from the nearest children’s hospital. Weeks after Jakelin’s death, the Hidalgo County Manager sent an urgent request for assistance to the New Mexico congressional delegation and governor-elect, noting, “Our Hidalgo County Emergency Medical Services team consists of seven full-time employees and five volunteers” to cover 5,000 square miles.<sup>1</sup> About 10% of an EMT’s training hours in New Mexico are dedicated to pediatrics, amounting to just four hours for an EMT Basic or 6 hours for a paramedic.<sup>2</sup> The Hidalgo County Emergency Medical Services director stated, “Border Patrol needs more than EMTs. They need... someone of a higher level, so people get proper screenings. But they are not set up for it. They were never set up for families coming across.”<sup>1</sup>

Gerald Champion Regional Medical Center, the local hospital where Felipe received care, does not have a dedicated pediatric emergency department, inpatient unit or ICU. This lack of pediatric expertise is reflected in the management he received during his first emergency room visit, including failure to recognize troubling vital signs, failure to reassess him prior to discharge, prescription of an antibiotic for a viral infection at a dose that would be subtherapeutic for a child even if treating a bacterial infection, failure to prescribe antiviral medication for influenza, and failure to notify CBP of the child’s diagnosis despite knowing he was returning to a congregate setting where other detainees might be placed at risk for contracting the disease.<sup>3</sup>

- *Prolonged detention in conditions that promote illness:* Felipe was detained in CBP facilities for six days, twice as long as the 72 hour maximum generally permitted under CBP’s National Standards on Transport, Escort, Detention, and Search (TEDS).<sup>4</sup> The maximum incubation period for influenza is 4 days, so Felipe unquestionably contracted influenza while he was in CBP detention. Felipe passed through multiple crowded CBP facilities, and records suggest that he was cold and sleep deprived, all of which likely contributed to development of his illness. Multiple published reports indicate that conditions which promote vulnerability to infection are common in CBP facilities: overcrowding, abnormally cold temperatures, inadequate access to shower facilities and basic hygiene products (e.g., soap, toothbrushes, sanitary napkins), open toilets, poor sleep conditions (sleeping on mats, cement benches or floors under mylar blankets with 24 hour artificial light exposure, in some cases without adequate space to lie down), inadequate nutrition, inadequate access to clean drinking water, and confiscation of needed medications without supplying replacements.<sup>5,6,7,8,9</sup> Such conditions not only promote disease, but also inhibit recovery. As the American Academy of Pediatrics has stated, children like Felipe who are diagnosed with illness or special health care needs should not be returned to CBP facilities, as “the conditions in the centers themselves exacerbate children’s suffering” and are not conducive to recuperation.<sup>10</sup>
- *Inability to appropriately isolate and monitor ill detainees:* The agents responsible for monitoring Felipe when he returned from his first trip to the hospital had limited options for doing so safely: they could either observe him closely in the “bubble” processing area, where he potentially exposed staff and other detainees to infection, or place him in a rear cell where observation was more challenging. It seems that once he was back in his cell, agents only checked on him through the door, even after they were made aware that his condition was declining. (Publicly released video footage of the influenza-related death of Carlos Gregorio Hernandez Vasquez, another child in CBP custody who was placed in a cell to convalesce, suggests that documented wellness checks may not always in fact occur.)<sup>11</sup>

- *Frequent transfers between crowded facilities promote disease spread:* Felipe passed through four overcrowded facilities in six days. Studies have demonstrated that “frequent interfacility transfers, influence disease transmission dynamics. Rapid turnover creates an inflow of people in rapidly consecutive cohorts (a ‘revolving doors’ effect). An inflow of susceptible people within a closed or semi-open community experiencing an outbreak, has been shown to slow the creation of herd immunity and can act as a transmission amplifier, while interfacility transfers can facilitate disease spread.”<sup>12</sup> The infection control challenges posed by overcrowding and frequent transfers are underscored by the fact that Felipe’s young cellmate developed influenza symptoms the day after Felipe’s death.
- *Bureaucratic barriers to care and release:* Paperwork seems to have delayed medical evaluation in both Jakelin and Felipe’s cases. When Jakelin’s group was apprehended, agents at the forward operating base decided to complete the I-779 health interview forms but had to wait for them to be delivered from the border patrol station two hours away, so the first bus of migrants was already loaded by the time the forms arrived. When an agent first attempted to take Felipe to the hospital, agents had to make multiple phone calls to determine how to find the appropriate paperwork, which was being kept at a station 15 miles away. His second presentation to the emergency room was also delayed because agents collected paperwork before checking in on him.

Equally troubling are the bureaucratic and technological barriers leading to Felipe’s prolonged detention in the first place. Had he been released sooner, his exposure to influenza—which occurred at least two days into his detention—might have been prevented.

- *Inadequate language capabilities:* All verbal communication between CBP agents and Felipe and Jakelin’s fathers occurred in Spanish, despite the fact that neither are native Spanish speakers. CBP does not systematically utilize effective tools for identifying speakers of indigenous languages, who often understand limited Spanish but feel pressured to communicate in the language.<sup>13</sup> Felipe’s medical providers utilized a CBP agent rather than their own certified medical interpretation service to communicate information in Spanish regarding Felipe’s care, significantly increasing the risk of medical errors.<sup>14</sup> All consents and discharge paperwork were provided in English and verbally translated by the CBP agent, which raises the question of how much Felipe’s father understood about reasons to seek additional medical care. (Despite documenting in the medical record that Felipe’s father verbalized understanding of the discharge instructions, Felipe’s nurse later acknowledged to CMS investigators that he could not confirm if the father actually comprehended.)<sup>3</sup> Jakelin’s health interview was similarly conducted in Spanish, which likely contributed to delays in identifying her illness.
- *Lack of privacy:* Expecting detainees to disclose potentially sensitive medical information in front of large groups of other migrants upon apprehension at the border is unrealistic. Despite an agent shouting to the group of migrants with whom Jakelin traveled for those who were ill to come forward, none did, and at least two sick children were missed as a result. A recent OIG report includes photographs which suggest that medical screenings in border patrol stations also occur in large groups, affording detainees no privacy.<sup>7</sup> Some may hesitate to disclose their medical conditions in front of other migrants with whom they share close quarters, for fear of being stigmatized or receiving blame when other migrants fall ill.
- *Lack of autonomy:* When Jakelin’s father sought assistance for his sick daughter from multiple agents at the forward operating base, he was repeatedly told he would have to wait until they reached the border patrol station, so he ceased to advocate during transit even as

she began to experience trouble breathing. Detaining families robs parents of the autonomy to make independent decisions about accessing medical care for their children. Families in detention depend upon CBP agents for all necessities and for timely processing; they may even think that their familial integrity depends upon CBP agents' good graces, given CBP's recent history of separating thousands of families under the previous Zero Tolerance Policy. This power dynamic engenders fear and poses a significant barrier to requesting and accessing help.

### **CBP response: enhanced medical directives**

In January 2019, CBP responded to Jakelin and Felipe's deaths by issuing an Interim Enhanced Medical Efforts Directive to ensure that all children under the age of 18 received health interviews and medical screenings while in CBP custody.<sup>15</sup> However, the final Enhanced Medical Support Efforts Directive issued by CBP in December 2019 removed many of the safeguards instituted under the interim guidance.<sup>16</sup> The final directive:

- Does not explicitly require the health interview to occur upon initial processing unless a detainee volunteers a medical concern;
- Narrows the scope of a basic medical screening to no longer specify inclusion of vital signs;
- Mandates medical screenings only for children under 12 or those with identified medical issues "subject to availability of resources and operational requirements," instead of for all children under 18—despite the fact that two of the children who died in CBP custody in 2019 were 16 years old;
- Seems to reduce the qualifications required for performing medical screenings, stating they will be conducted by health care providers "where available," and that CBP EMS personnel may conduct them "in exigent circumstances and based on operational requirements";
- Permits "basic, acute medical care, referral, and follow up" to occur onsite, which would further limit access to health care providers with pediatric expertise. (CBP has contracted with a small number of pediatric advisors to offer consultation and training along the southwest border, but the advisors generally do not provide direct patient care to detainees.)<sup>10</sup>

Neither directive specifies the time frame within which children must receive medical screening, and the final directive again places the onus on parents to advocate to CBP agents for their children to receive timely medical attention.

### **Imminent risks**

The limited scope of the protocols vaguely outlined in CBP's final Enhanced Medical Support Efforts Directive will do little to protect children in its custody from the threats posed by the upcoming influenza season, the current COVID-19 outbreak, and other medical emergencies that children will undoubtedly experience.

Half of the recent deaths of migrant children in government custody have been attributed to complications from influenza. Multiple evidence-based strategies exist for preventing such deaths, including offering the influenza vaccine to detainees, mandating vaccination for staff working with detained populations, instituting comprehensive screening and triage protocols, ensuring that those with potential cases of influenza receive antiviral therapy like oseltamivir as soon as possible and no more than 48 hours after onset of symptoms, offering antiviral chemoprophylaxis to vulnerable detainees who may have been exposed to index cases,

minimizing overcrowding, providing appropriate space for isolation and convalescence, and ensuring adequate access to basic hygiene supplies like soap, hand sanitizer, and face masks. Teams from the Centers for Disease Control and Prevention (CDC) visited CBP facilities shortly after Jakelin and Felipe’s deaths and made similar recommendations.<sup>17</sup> Yet CBP has explicitly stated it will not offer influenza vaccination to detainees in its custody, and just six months after Jakelin and Felipe’s deaths, the government argued in court that maintaining “safe and sanitary” conditions in CBP detention did not even require providing children with soap.<sup>18</sup>

The present COVID-19 epidemic lends even more urgency to improving detention conditions and medical screening protocols. COVID-19 is more contagious than influenza, and can cause extremely rapid and unpredictable deterioration even in previously healthy individuals. While children generally seem less vulnerable to the immediate effects of COVID-19 infection (with notable exceptions among infants and those with chronic medical conditions), some do become seriously ill with COVID-19 symptoms, and others go on to develop the recently recognized Multisystem Inflammatory Syndrome in Children (MIS-C) weeks after primary infection. MIS-C is a poorly understood, dangerous condition that can develop in children who may never have shown previous symptoms of COVID-19. Its symptoms are vague—fever and any of a broad array of cardiopulmonary, gastrointestinal, neurologic, mucocutaneous, and other systemic manifestations—and identifying the condition and its potentially life-threatening complications requires nuanced, pediatric-specific clinical acumen along with extensive laboratory testing. In a recent study of MIS-C cases across the U.S.—most of which (73%) occurred among previously healthy children—80% of children required intensive care, 48% required medications to maintain adequate blood pressure, 20% required mechanical ventilation, 8% developed coronary artery aneurysms, and 2% died.<sup>19</sup> Children detained in remote settings without adequate medical screening and rapid access to pediatric expertise will be at particular risk for poor outcomes from COVID-19 and MIS-C, including long-term disability and death. The CDC has issued interim guidance on management of COVID-19 in detention facilities—including social distancing, provision of personal protective equipment, and enhanced hygiene recommendations, along with other measures similar to those recommended for influenza prevention—to which CBP should adhere.<sup>20</sup>

## Conclusions

Jakelin and Felipe’s deaths could potentially have been prevented had CBP established better systems to ensure adequate medical screening and prompt access to pediatric medical care. The missed opportunities preceding their deaths highlight that:

- Children are not little adults. Their remarkable physiological resilience can mask severe disease from those untrained to recognize it.
- Any period of detention is inherently unhealthy for children’s long-term physical and emotional development, as the American Academy of Pediatrics has repeatedly stated, but detention in substandard conditions places children’s very lives at risk.
- If children are to be detained in CBP facilities, it is incumbent upon the agency to strengthen its medical infrastructure. CBP must eliminate bureaucratic hurdles that unnecessarily prolong detention and delay access to medical care; address detention conditions that promote illness and its spread; and provide timely access to comprehensive medical screenings in a detainee’s native language, conducted by clinicians with pediatric expertise, followed by referral as appropriate to pediatric

medical centers. Children diagnosed with illnesses or underlying medical conditions should not be returned to detention facilities, which are fundamentally unequipped to provide safe observation or promote children's recuperation.

- Teams of agents working in remote areas must include EMTs with enhanced pediatric training, and all forward operating bases and border patrol stations must be stocked with basic pediatric medical equipment and staff trained in its use.
- CBP must implement CDC's recommendations for the prevention of influenza and COVID-19 in its facilities.
- Independent oversight of the quality of medical care provided to detainees must occur regularly, as the OIG has indicated it does not possess the necessary medical expertise for the task.<sup>7</sup>

While CBP has increased the number of medical providers it employs at the border, few have specific pediatric training, and most screening continues to be performed by CBP agents.<sup>7</sup> CBP has yet to demonstrate any real commitment to improving the care it provides, as underscored both by the weakening of its Enhanced Medical Support Efforts Directive, and by recent revelations that the agency utilized line item appropriations for "consumables and medical care" to fund its canine program and purchase dirt bikes and riot helmets.<sup>21</sup> Action must be taken now to apply the lessons learned from Jakelin and Felipe's untimely deaths, so that other children do not meet similarly painful and preventable fates while in custody of the U.S. government.

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