

APRIL 9, 2021  
CBP JUVENILE  
COORDINATOR REPORT

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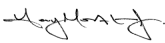
**U.S. Customs and  
Border Protection**

April 9, 2021

MEMORANDUM FOR: The Honorable Judge Gee  
District Judge  
U.S. District Court, Central District of California

FROM: Henry A. Moak, Jr.  
Chief Accountability Officer  
U.S. Customs and Border Protection

4/9/2021

X 

Signed by: HENRY A MOAK JR

SUBJECT: CBP Juvenile Coordinator April 9, 2021 Report

On March 19, 2021 this Court ordered the U.S. Customs and Border Protection (CBP) Juvenile Coordinator to file an interim report providing: “(i) a census of Class Members in CBP custody in the Rio Grande Valley sector, (ii) an update on CBP’s policies and capacity for processing minors in light of COVID-19, Title 42, and the recent influx, (iii) an update as to whether the conditions at the Donna Centralized Processing Center (CPC-DNT) or any other facility that serves as a hub for processing minors are safe and sanitary under FSA Paragraph 12, and (iv) a status update, if any, on the CPC Ursula renovation project and any other CBP construction or renovation projects related to processing Class Members.”

The CBP Juvenile Coordinator submits the following report in response to this Court’s March 19, 2021 Order. This report builds on information provided regarding COVID-19 guidance and status updates described in the previous interim reports submitted January 15, 2021 and March 5, 2021.

### Overview

Currently, CBP is facing unprecedented and unique challenges caused by the surge of unaccompanied children (UCs) and families. This surge is further exacerbated by the COVID-19 pandemic and limitations on HHS/ORR’s ability to accept transfers from CBP in a timely manner. CBP recognizes its duty to provide safe and sanitary conditions to all children in custody during this time, and the Agency continues to undertake extensive efforts to meet the requirements of the Flores Settlement Agreement (FSA) to the extent possible. The U.S. Border Patrol (USBP) Rio Grande Valley (RGV) Sector is the epicenter of the current influx and has taken extensive measures to mitigate increased time in custody and facilitate the expeditious transfer of individuals out of CBP custody.

My observations and takeaways from my inspections in RGV Sector the week of April 5 largely align with the findings outlined in the Special Master/Independent Monitor’s April 2, 2021

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report. CBP welcomes their continued engagement and feedback. The Agency will continue to work closely with the Independent Monitor and with Dr. Paul Wise to address these challenges.

#### Census of Class Members in CBP Custody in the USBP RGV Sector

In February 2021, there was a 28.8% overall increase in CBP's encounters with noncitizens along the Southwest Border, including single adults, family units, UCs, and accompanied minors, resulting in a total of 101,208 encounters.<sup>1</sup> Significantly, there was a 61% increase of UC encounters and 168% increase in family unit encounters from January.<sup>2</sup> Specifically, there were 19,587 CBP family unit encounters, including 19,286 USBP encounters.<sup>3</sup>

In RGV Sector, the average daily number of individuals in custody was 878 in February 2021, compared to 158 in January 2021.<sup>4</sup> There was a 114% increase in UC encounters and a 104% increase in family unit encounters in RGV Sector when compared to the same time-period in FY 2020 (October to February).<sup>5</sup> In February, RGV Sector encountered 10,489 family units, or 55% of all USBP family unit encounters.<sup>6</sup> In addition, RGV Sector encountered 3,945 UCs in February, or 42% of all USBP UC encounters.<sup>7</sup>

In March 2021, there was a 70.6% overall increase in encounters CBP-wide, including single adults, family units, UCs, and accompanied minors, resulting in a total of 172,331 encounters.<sup>8</sup> There was a 100.3% increase in UC encounters and 173.8% increase in family unit encounters across CBP from February to March 2021.<sup>9</sup> USBP accounted for 71,567 of the 72,672 encounters involving children.<sup>10</sup>

In RGV Sector, for the same time period (October-March) in FY 20 to FY 21, there was a 242.9% increase in encounters.<sup>11</sup> Specifically, there was a 488.9% increase in family unit encounters and a 230% increase in UC encounters.<sup>12</sup> RGV Sector encountered 35,250 family

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<sup>1</sup> See, Southwest Land Border Encounters, U.S. Department of Homeland Security, Customs and Border Protection, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last visited April 8, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See, Custody and Transfer Statistics FY2021, U.S. Department of Homeland Security, Customs and Border Protection, <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics> (last visited April 8, 2021).

<sup>5</sup> See, U.S. Border Patrol Southwest Border Apprehensions by Sector, U.S. Department of Homeland Security, U.S. Customs and Border Protection, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters/usbp-sw-border-apprehensions> (last visited April 8, 2021).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See, Southwest Land Border Encounters, U.S. Department of Homeland Security, Customs and Border Protection, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last visited April 8, 2021).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See, Southwest Land Border Encounters (by Component), U.S. Department of Homeland Security, Customs and Border Protection, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters-by-component> (last visited on April 8, 2021).

<sup>12</sup> *Id.*

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units, or 66.6% of all USBP family unit encounters along the Southwest Border.<sup>13</sup> In addition, RGV Sector encountered 9,726 UCs, or 52% of all USBP UC encounters.<sup>14</sup>

### CBP Status Updates

This section provides relevant updates related to CBP policies and capacity for processing and holding children, considering COVID-19, Title 42, and other significant developments. This report does not include the CBP and RGV Sector COVID-19 policies previously discussed in my January 15, 2021 and March 5, 2021 reports.

#### *Capacity for Processing Minors*

CBP continues to assist the Centers for Disease Control and Prevention (CDC) in enforcing its *Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists* (October 13, 2020).<sup>15</sup> As of the filing date of this report, the government may still expel single adults and families in the United States traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be held in ports of entry or USBP stations for immigration processing.

All UCs in the United States are processed under Title 8 in accordance with the Trafficking Victims Protection Reauthorization Act of 2008 and transferred to the custody of U.S. Health and Human Services (HHS), Office of Refugee Resettlement (ORR) or repatriated to a contiguous country. On or about January 30, 2021, the CDC issued a Notice temporarily excepting from expulsion unaccompanied noncitizen children encountered in the United States.

Families may be processed in several ways. In RGV Sector, some families may be processed for Title 42 expulsion, generally dependent on family makeup and country of citizenship. Families for whom expulsion is not appropriate will be processed under Title 8. In general, such families may be transferred to U.S. Immigration and Customs Enforcement (ICE) or processed for local release.

On March 20, due to the high-level of encounters and to alleviate the number of individuals in custody, RGV Sector began processing certain families for release without an immigration action as a matter of discretion. Families released without an immigration action as a matter of discretion are released from CBP custody and informed that they are required to report to the nearest ICE office within 60 days.

#### *COVID-19 Precautions*

CBP has taken comprehensive measures to respond to COVID-19 since the start of the pandemic, utilizing the hierarchy of controls model (elimination, engineering controls, administrative controls, and personal protective equipment (PPE)) through extensive guidance to the workforce. CBP encourages and promotes social distancing to the greatest extent possible.

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<sup>13</sup> March 2021 RGV Sector encounter statistics provided to JCO on April 8, 2021 by CBP STAT Division.

<sup>14</sup> *Id.*

<sup>15</sup> *See*, 85 Fed. Reg. 65806 (October 16, 2020).

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At some CBP facilities, due to the number of individuals in custody and delays in acceptance for transfer of persons in custody, social distancing is not possible; however, face masks are distributed and continually replaced for individuals in custody. CBP also requires agents to wear an N-95 respirator when processing, transporting, arresting, or performing any other duty that may require an agent to be in close and/or prolonged proximity to individuals in custody.

DHS and other entities are conducting targeted COVID-19 testing of specific populations at certain locations. For example, at CPC-DNT, HHS U.S. Public Health Services (PHS) were onsite providing COVID-19 tests to children as they were transferred out of CBP custody to other facilities.

### *Current Challenges and Response*

The largest challenge facing RGV Sector is the significant numbers of UC and family units being encountered. The high volume of children and families entering USBP custody daily, coupled with delays in the ability of HHS/ORR to accept custody of UCs in a timely manner, has tested the limits of RGV Sector's capacity. RGV Sector established a temporary outdoor processing site (TOPS) to triage the processing of families to minimize time in custody and expeditiously transfer individuals out of CBP custody. However, options are more limited for UCs, and most must remain in USBP custody until HHS/ORR finds suitable placements and accepts custody.

To support the influx of children in USBP custody, 21 caregivers have been assigned to RGV Sector to provide supervision for children, and to assist with showering and laundry services. Additionally, RGV Sector has been assigned 21 Border Patrol Processing Coordinators to assist in processing migrants and conduct hospital watch, which will allow agents currently performing these duties to return to the field.<sup>16</sup> DHS volunteers from across the agency and the National Guard have also been deployed to RGV Sector to assist as needed, including replenishing supplies and picking up prescription medications for individuals in custody.

CBP has continued to significantly expand and enhance its contract medical support at CPC-DNT. Additionally, CPC-DNT began utilizing an HHS medical team of five to six persons, including two advanced practice providers with pediatric experience and two medical support personnel. The HHS medical team conducts roving health checks on UCs awaiting transfer to HHS custody to identify potential medical concerns. Any UCs identified with a medical issue of concern are referred to CBP contract medical personnel for a medical encounter as appropriate. JCO observed this team onsite during its inspection.

### Safe and Sanitary Conditions in USBP RGV Sector

On April 6 and 7, my team and I conducted inspections at the Donna Centralized Processing Center (CPC-DNT) and the temporary outdoor processing site (TOPS) near the Anzalduas International Bridge because these locations currently serve as the processing hubs for class members in RGV Sector.

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<sup>16</sup> See, U.S. Border Patrol Creates New Position to Support Border Patrol Agents, U.S. Department of Homeland Security, Customs and Border Protection, <https://www.cbp.gov/newsroom/national-media-release/us-border-patrol-creates-new-position-support-border-patrol-agents-0> (last visited April 8, 2021).

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*Donna CPC*

On April 6, my team and I conducted an inspection at CPC-DNT. At the time of the inspection, there were 3,508 children onsite: 3,116 unaccompanied children and 392 accompanied children.

The physical site inspection confirmed that CPC-DNT provided access to the following: meals and snacks; drinking water; functioning toilets; functioning sinks with soap; and mats and blankets. Changing tables with infant supplies were also available in the pods holding parents with infant children. JCO observed that the pods were within the required temperature of 66°F to 80°F. JCO noted that the storage area was fully stocked with clothing in multiple sizes, and supplies such as baby bottles, baby formula, baby diapers, diaper cream, baby wipes, hand sanitizer, soap, shampoo, toothbrushes and toothpaste, feminine hygiene products, juice, cups, and car seats. There was a separate designated caregiver area with toys where young UCs under the supervision of a caregiver could play; young, accompanied children remained with their parents in the pods where TVs were available. Contract medical providers and shower facilities were onsite. JCO observed contracted caregivers instructing UCs on how to utilize the shower facilities and passing out clean clothes.

JCO also observed the food service contractor distributing lunch to the individuals in custody. Lunch consisted of a burrito, apple, bag of chips, juice box, and bottle of water. Children had access to snacks and water in each pod.

The facility was over capacity, with the pods holding more than the intended number of children. However, the janitorial crews were actively cleaning the holding areas, including disinfecting the mats and cleaning the various toilets and sinks. The contracted janitorial crew cleans the pods three times per day and can spot clean an area if requested. Children received new blankets when the holding areas were cleaned. An agent informed JCO that, when possible, the contracted janitorial crew cleaned the pods while the children utilized the outdoor recreation area.

Given the number of individuals in custody, USBP could not maintain social distancing at the facility as originally intended. However, JCO and I observed that children were provided face masks and that the agents, officers, and contract personnel all wore face masks while in the facility. JCO also observed contract medical personnel instructing individuals on the proper way to use a face mask. Face masks were available in the pods for individuals to take as needed. The pods also had hand sanitizer available for use.

Since JCO's February inspection, the outdoor recreation area became operational and JCO observed that the posts had been covered to prevent injuries. We observed some children playing with hula hoops and balls, while other children ran around. The recreation area had portable toilets and sinks.

*Temporary Outdoor Processing Site (TOPS)*

On April 7, my team and I inspected TOPS. At the time of the inspection, there were approximately 200 accompanied children onsite. This is a temporary processing site that was set

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up to triage the high numbers of migrants encountered and limit the number of migrants entering facilities. TOPS provides social distancing space for those awaiting processing and helps prevent potential exposure to contagious illnesses. Migrants arrive at TOPS on their own via the Rio Grande River, or are bused in from other USBP stations after apprehension. Currently, this site typically processes families with children that are six years old or younger, since these families are generally not processed for expulsion to Mexico from RGV Sector. If UCs or families with older children arrive at this location, they are transported to other USBP facilities, including CPC-DNT.

The Acting Deputy Patrol Agent in Charge (DPAIC) informed me the goal is to keep families at TOPS for the least amount of time possible with many families arriving and being processed within a shift. USBP informed JCO that additional accountability measures have been taken to limit the time individuals spend onsite. Some are released locally, with assistance from non-governmental organizations (NGOs), while others may be transferred to other USBP Sectors. The DPAIC explained that the local NGOs will not accept families between 10:00 p.m. and 6:00 a.m., which may increase the time some families stay at TOPS.

Contracted medical personnel is available at TOPS. JCO observed individuals arriving at TOPS receive a health intake interview, which included a check for lice, scabies, or any emergent medical conditions. If an individual in custody is determined to have a medical condition requiring more medical care than available at TOPS, they are expeditiously transferred to another facility for appropriate medical treatment. If the individual is having a medical emergency, USBP will call 9-1-1.

While at TOPS, families receive amenities available at other USBP facilities. During the inspection, JCO noted that meals, water, snacks, clean clothing, baby diapers, face masks, and Mylar blankets were available; in addition, there was a changing station for infants. Portable toilets and sinks that are cleaned every day were located throughout TOPS. In addition to contract personnel maintaining the portable toilets and sink area, JCO observed agents removing garbage from the area. Heaters run by generators were also available for use during cooler nights. The site included a large fenced-in area, allowing families the freedom to move around and social distance, which was encouraged by agents to mitigate COVID-19 exposure, as well as providing ample space for children to play. Most of the site is covered by the bridge, providing shade. RGV Sector is exploring additional avenues to enhance conditions in anticipation of seasonal changes in weather and migrant flows. JCO observed some families moving from direct sunlight to a shaded area. USBP agents continuously monitored the families to ensure their wellbeing.

#### CBP/RGV Renovation and Construction

Construction at the Centralized Processing Center-Ursula is ongoing, and absent any unforeseen delays, will be completed in December 2021.



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### Conclusion

I have seen first-hand the extensive efforts DHS and CBP have taken to ensure the health and safety of children in custody. CBP has not only constructed soft-sided facilities with wrap around services, but also expanded its medical, caregiver, food, and supply contracts to support the growing number of individuals in custody. DHS has deployed temporary duty personnel, activated volunteers across the Department, and utilized National Guard and PHS teams at CBP facilities. Finally, CBP is closely coordinating with ORR and the Federal Emergency Management Agency to find suitable placements for UCs.

Through circumstances beyond its control, CBP continues to encounter large numbers of UCs and families daily. Currently, RGV Sector experiences this most profoundly. I am encouraged to learn that HHS ORR constructed a holding facility on the same property as CPC-DNT that is scheduled to go live the week of this report. I was informed that when fully operational, this facility will have a capacity of 1,500 beds. This is a welcomed development, and it is my hope that this will facilitate more expeditious transfers of UCs from RGV Sector custody.

Despite these challenges, CBP remains committed to the health and safety of all individuals in its custody. We understand our responsibilities under the FSA and have taken extensive efforts to anticipate and respond to the unique circumstances which we currently face. We will continue to work closely with our interagency partners as well as the Independent Monitor and Dr. Wise to proactively address challenges.