

**Review of the
February 16, 2020
Childbirth at the
Chula Vista Border Patrol
Station**





OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

July 20, 2021

MEMORANDUM FOR: Troy Miller
Senior Official Performing the Duties of the
Commissioner
U.S. Customs and Border Protection

FROM: Joseph V. Cuffari, Ph.D.
Inspector General

SUBJECT: *Review of the February 16, 2020 Childbirth at the
Chula Vista Border Patrol Station*

JOSEPH V
CUFFARI

Digitally signed by
JOSEPH V CUFFARI
Date: 2021.07.20
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Attached for your information is our final report, *Review of the February 16, 2020 Childbirth at the Chula Vista Border Patrol Station*. We incorporated the formal comments from CBP in the final report.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Thomas Kait, Deputy Inspector General for Inspections and Evaluations, at (202) 981-6000.

Attachment



DHS OIG HIGHLIGHTS

Review of the February 16, 2020 Childbirth at the Chula Vista Border Patrol Station

July 20, 2021

Why We Did This Review

On February 16, 2020, a pregnant woman in Border Patrol custody gave birth shortly after arriving at the Chula Vista station. We conducted this review to determine whether Border Patrol's actions in response to the childbirth complied with applicable policies and procedures.

What We Recommend

We made four recommendations to improve CBP's processes for tracking detainee childbirths, its practices for expediting release of U.S. citizen newborns, and its guidance to agents on providing interpretation for detainees.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

In reviewing the circumstances surrounding the childbirth at the Chula Vista station, we found Border Patrol provided adequate medical assistance to the mother and her newborn and complied with applicable policies. However, we found that Border Patrol's data on pregnant detainees is limited and the component lacks the necessary processes and guidance to reliably track childbirths that occur in custody. In addition, our review of a sample of childbirths in custody showed Border Patrol did not always take prompt action to expedite the release of U.S. citizen newborns, resulting in some being held in stations for multiple days and nights. Although some of these instances may have been unavoidable, Border Patrol needs reliable practices to expedite releases because holding U.S. citizen newborns at Border Patrol stations poses health, safety, and legal concerns.

Lastly, we found that Border Patrol agents do not have guidelines on interpreting for Spanish-speaking detainees at hospitals. As a result, an agent assigned to hospital watch for the detainee mother provided interpretation that may not have comported with CBP's language access guidance. Although the agent interpreted at the request of the detainee in this instance, Border Patrol personnel risk misinterpreting medical information, which may have serious health implications for detainees.

CBP Response

CBP concurred with our four recommendations, which are resolved and open.



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Abbreviations

CBP	U.S. Customs and Border Protection
C.F.R.	Code of Federal Regulations
e3	ENFORCE 3
GAO	Government Accountability Office
HHS	Department of Health and Human Services
ICE	U.S. Immigration and Customs Enforcement
MedPAR	Medical Payment Authorization Request Web System
NTA	Notice to Appear
SIR	Significant Incident Report
TEDS	National Standards on Transport, Escort, Detention, and Search
UAC	Unaccompanied Alien Children
U.S.C.	United States Code



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Background

The Department of Homeland Security is responsible for securing U.S. borders from illegal activity and regulating travel and legal trade. Within DHS, U.S. Customs and Border Protection (CBP) enforces immigration laws and safeguards approximately 6,000 miles of U.S. border. CBP's U.S. Border Patrol (Border Patrol) is responsible for apprehending individuals illegally crossing the border between ports of entry and providing short-term detention while Border Patrol agents determine the disposition of cases, such as repatriation, transfer to long-term detention, or release (through a practice known as "processing").¹ When long-term detention is required, U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations is responsible for detention of family units² and single adults,³ while the Department of Health and Human Services (HHS) Office of Refugee Resettlement takes custody of and arranges for the housing of unaccompanied alien children (UAC).⁴

CBP Holding Facilities

CBP's holding facilities are designed for short-term custody. These facilities hold detainees in locked cells that generally do not have beds, have a metal combined toilet and sink, and only some have showers. CBP's *National Standards on Transport, Escort, Detention, and Search* (TEDS), which govern the treatment of detainees in its custody, classify individuals who may require additional care or oversight as "at-risk populations," who may include juveniles, unaccompanied children, and pregnant individuals.⁵ TEDS requires CBP provide at-risk detainees reasonable accommodations and exercise special concern for their particular vulnerability plus expedited processing to minimize time in custody.⁶ TEDS standards also generally limit detention in CBP facilities to 72 hours, with the expectation that CBP will transfer family units

¹ Processing includes collecting biographical and biometric information, performing immigration and criminal history checks, verifying the individual's claimed identity, and screening for acute or emergent medical issues.

² When CBP apprehends a child younger than 18 years with his or her parent or legal guardian, the child and parent or guardian are classified as a family unit.

³ Individuals older than 18 years who are not part of a family unit are classified as "single adults."

⁴ UACs are migrants younger than 18 years of age with no lawful immigration status in the United States and without a parent or legal guardian in the United States available to take physical custody of, and to provide care for, them. 6 United States Code (U.S.C.) § 279(g)(2).

⁵ TEDS, Section 5.1, *At-Risk Populations*, Oct. 2015.

⁶ TEDS, Section 5.6, *Detention, Expeditious Processing*, states, "[w]henever operationally feasible, at-risk individuals will be expeditiously processed to minimize the length of time in CBP custody."



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and single adults to ICE custody⁷ and UACs to HHS within that timeframe.⁸

CBP is responsible for issuing policies, procedures, and guidance to govern the safety, security, and care of migrants while in CBP custody. In addition to TEDS, CBP has issued its directive, *Enhanced Medical Support Efforts*, which sets requirements for a three-phased medical screening process.⁹ In the first phase, during an initial encounter with detained migrants, agents are required to observe and identify potential medical issues. In the second phase, agents must ensure a health interview is conducted using the Alien Initial Health Interview Questionnaire (Health Questionnaire), at a minimum, on all individuals in custody under the age of 18 and any adult who self-reports an illness or injury during the initial encounter. The Health Questionnaire includes questions on detainees' medical and mental health history, medications, allergies, and pregnancy. In the third phase, subject to the availability of resources, juveniles aged 12 and younger, as well as any adult with a reported medical concern, receive a more in-depth medical assessment. When available, CBP-contracted medical providers conduct medical assessments.¹⁰

Detention and Release

If CBP determines the apprehended individuals are inadmissible,¹¹ they are processed for appropriate removal proceedings. CBP may refer these individuals to ICE for possible detention during proceedings.¹² Detention of inadmissible migrants is generally required,¹³ but CBP and ICE also have the authority to release inadmissible migrants into the United States with a Notice

⁷ See 6 U.S.C. § 211(c)(8)(B) and DHS Delegation 7030.2, *Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement*, Section 2(C).

⁸ HHS Office of Refugee Resettlement is responsible for custody of UACs. See 6 U.S.C. § 279(a).

⁹ CBP Directive No. 2210-004, *Enhanced Medical Support Efforts*, Dec. 30, 2019.

¹⁰ As of March 2021, 53 of 73 Border Patrol stations along the Southwest border had contracted medical support.

¹¹ Inadmissible migrants are persons who are not U.S. citizens or nationals and are determined to be inadmissible on one of several statutory grounds. See 8 U.S.C. §§ 1101(a)(3), 1182(a).

¹² See 8 U.S.C. § 1225(b)(2)(A) and 8 Code of Federal Regulations (C.F.R.) § 235.3(b)(2)(iii), (b)(4)(ii), (c); see also 8 U.S.C. § 1226(a)(1). However, certain inadmissible migrants from contiguous countries (i.e., Mexico and Canada) can be returned to their country instead of being detained. See 8 U.S.C. § 1225(b)(2)(C).

¹³ Migrants who arrive in, attempt to enter, or have entered the United States without having been admitted or paroled following inspection by an immigration officer at a designated port of entry shall be detained pending determination of their admissibility or removal. See 8 U.S.C. §§ 1225(b)(2)(A), 1226(a)(1) and 8 C.F.R. § 235.3(b)(2)(iii), (b)(4)(ii), (c).



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to Appear (NTA)¹⁴ in court at a future date.¹⁵ Individuals in custody who are pregnant, elderly, or seriously ill may be released for humanitarian reasons. CBP and ICE also have discretion for other types of releases.

Childbirth at Chula Vista Border Patrol Station

On February 16, 2020, Border Patrol apprehended a woman who gave birth almost immediately upon arriving at the Chula Vista Border Patrol station in San Ysidro, CA.¹⁶ The mother and baby were taken to the hospital and after being discharged on February 18, 2021, they were returned to the Border Patrol station. CBP released the mother and baby on February 19, 2020, with an NTA. According to a complaint filed with DHS Office of Inspector General (OIG) on her behalf on April 8, 2020, the woman's husband asked CBP for medical attention but was denied, and the woman partially delivered her baby into her pants while standing and holding onto the edge of a garbage can for support.¹⁷ Also on April 8, 2020, we received a letter from 13 U.S. Senators requesting an investigation into "recent reports that U.S. Customs and Border Protection (CBP) personnel are severely mistreating pregnant people in their custody."

On April 13, 2020, the DHS OIG Office of Investigations initiated an investigation into the treatment of the detainee before, during, and following the childbirth. The investigation did not substantiate the allegation that Border Patrol and unnamed Border Patrol agents assigned to the Chula Vista station mistreated the detainee. Office of Investigations reviewed law enforcement reports, video footage, and dispatch records, and interviewed numerous individuals regarding this incident. Table 1 provides a summary of the events leading up to and following the childbirth.

¹⁴ An NTA is a document ICE, CBP, or U.S. Citizenship and Immigration Services issues to an inadmissible or removable migrant instructing the individual to appear before an immigration judge on a certain date. Issuance of an NTA notifies the recipient of the nature of the proceedings, the legal authority under which the proceedings shall be conducted, the acts or conduct alleged to be in violation of law, the charges against the person and the statutory provisions alleged to have been violated, the right to secure counsel, and other aspects of the immigration court system. See 8 U.S.C. § 1229(a).

¹⁵ In this context, release means parole. Parole allows an inadmissible migrant to enter and temporarily remain in the United States pending the outcome of his or her immigration proceeding. See 8 U.S.C. §§ 1182(d)(5)(A), 1226(a)(2) and 8 C.F.R. § 212.5(b).

¹⁶ Border Patrol first apprehended the woman, her husband, and two children in May 2019. At that time, the family was placed in the Migrant Protection Protocols program and returned to Mexico.

¹⁷ The American Civil Liberties Union (ACLU) announced the filing of its complaint in a press release. See <https://live-aclu-san-diego.pantheonsite.io/en/press-releases/aclu-and-jewish-family-service-file-administrative-complaint-behalf-migrant-woman-who>.



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Table 1. Timeline of the February 16, 2020 Childbirth at Chula Vista Station

Date and Time	OIG Analysis of the Events
February 16, 2020	
2:30 PM	Border Patrol agents arrested the pregnant detainee and her family for illegally entering the United States about 3 miles east of the Otay Mesa Port of Entry and subsequently transported them to the Chula Vista station for processing.
3:00 PM	The detainee and her family arrived at the Chula Vista station.
3:01 PM	A Border Patrol agent directed the detainee to the “alien baggage” area for processing.
3:09 PM	The station’s video footage shows the pregnant woman began delivering her baby.
3:17 PM	The baby was born.
3:19 PM	Video footage shows emergency medical service personnel arrived at the Border Patrol station.
February 16–18, 2020	The woman and her newborn received medical care at the Sharp Chula Vista Medical Center.
February 18, 2020	
6:10 PM	Once the woman and her newborn were medically cleared from Sharp Chula Vista Medical Center, they were booked back into custody at the Chula Vista station.
February 19, 2020	
2:03 PM	Custody logs show the woman and child were released from Border Patrol’s custody.

Source: OIG analysis of CBP data

Concurrent to the investigation, we began our review to determine the circumstances surrounding the childbirth and whether CBP’s actions complied with applicable policies and procedures.

Results of Review

In reviewing the circumstances surrounding the childbirth at the Chula Vista station, we found Border Patrol provided adequate medical assistance to the mother and her newborn and complied with applicable policies. However, we found that Border Patrol’s data on pregnant detainees is limited and the agency lacks the necessary processes and guidance to reliably track childbirths that occur in custody. In addition, our review of a sample of childbirths in custody showed Border Patrol did not always take prompt action to expedite the release



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of U.S. citizen newborns, resulting in some being held in stations for multiple days and nights. Although some of these instances may have been unavoidable, Border Patrol needs reliable practices to expedite releases as the holding of U.S. citizen newborns at Border Patrol stations poses health, safety, and legal concerns.

Lastly, we found that Border Patrol agents do not have guidelines on interpreting for Spanish-speaking detainees at hospitals. As a result, an agent assigned to hospital watch for the detainee provided interpretation that may not have comported with CBP's language access guidance. Although the agent interpreted at the request of the detainee in this instance, Border Patrol personnel risk misinterpreting medical information, which may have serious health implications for detainees.

Border Patrol Does Not Have Full Visibility into the Number of Pregnant Women It Detains and Childbirths that Occur in Custody

Border Patrol's limited tracking of pregnancies and unreliable records on childbirths hinder its ability to effectively and safely manage one of its most vulnerable and potentially at-risk detainee populations. Although Border Patrol has implemented processes to screen individuals it apprehends for medical concerns, it relies on detainees to self-report pregnancies. Further, Border Patrol does not have clear policies or guidance requiring agents to document childbirths and pregnancy-related complications that occurred in custody resulting in inconsistent and incomplete records.

Border Patrol Data on Pregnant Women in Custody

When Border Patrol agents apprehend individuals illegally crossing the border, agents are required to observe and identify potential medical issues using the phased approach outlined in CBP's *Enhanced Medical Support Efforts Directive*, implemented in December 2019. Border Patrol officials said that as a best practice, stations along the Southwest border with medical contract personnel¹⁸ go beyond the requirement to administer the Health Questionnaire to all individuals in custody younger than 18 and instead administer the questionnaire to all individuals in custody. For women who answer positively to the pregnancy question on the Health Questionnaire, Border Patrol's contracted medical providers ask about issues or concerns identified with the

¹⁸ As noted previously, 53 of 73 Border Patrol stations along the Southwest border had medical contract personnel as of March 2021. Chula Vista station is one of the 53 stations with medical contract personnel. The woman who gave birth at the station went into labor before medical contract personnel could administer the questionnaire.



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pregnancy. Border Patrol does not routinely conduct pregnancy tests of women in its custody.¹⁹

We requested data on the number of pregnant women in Border Patrol custody since fiscal year 2016, but Border Patrol could not provide complete data because it did not consistently track pregnancies. Based on the information Border Patrol provided, we found that in FY 2019,²⁰ on the Health Questionnaire, 3,134 women reported being pregnant and 1,449 of these women were in their third trimester. For October 1, 2019 through September 11, 2020, on the Health Questionnaire, 1,109 women reported being pregnant and 499 were in their third trimester. Because these numbers are based on incomplete data and mostly self-reporting, they do not provide an accurate account of how many pregnant women Border Patrol handles in its custody. As a result, Border Patrol does not have full visibility of one of the most vulnerable and potentially at-risk populations it manages, inhibiting its ability to make policy and custody decisions.

Border Patrol Lacks Guidance to Reliably Track Childbirths and Pregnancy-Related Complications that Occur in Custody

Border Patrol does not have a policy or guidance requiring employees to record childbirths and pregnancy-related complications that occur in custody. Without clear requirements or instructions, Border Patrol employees use their own discretion to record these occurrences, which results in incomplete and inconsistent data. Further contributing to the unreliable tracking of childbirths and pregnancy-related complications is the use of three different systems in which this information can be recorded:

- ENFORCE 3(e3) – The e3 system transmits for identification and verification biographic and biometric data of individuals encountered at the border and checkpoints. Border Patrol agents complete the Health Questionnaire in e3, which allows for the entry of free-text medical

¹⁹ Border Patrol can have medical personnel conduct pregnancy tests in certain circumstances when medically indicated. For example, if Border Patrol takes a detainee to a medical facility for an X-ray search, medical personnel will determine whether a pregnancy test is necessary prior to the X-ray.

²⁰ Border Patrol did not start using the Health Questionnaire at once across all stations. According to a senior Border Patrol official, the form was available in November 2019. On June 12, 2019, CBP issued a memorandum providing instruction for use of the Health Questionnaire. See Memorandum from Marty P. Chavers, Deputy Executive Director, to John P. Sanders, Chief Operating Officer and Senior Official Performing the Functions and Duties of the Commissioner, “Alien Initial Health Interview Questionnaire & Instructions,” June 12, 2019. Border Patrol issued guidance on the Health Questionnaire on January 14, 2020. See Memorandum from Carla L. Provost, Chief, to All Chief Patrol Agents and Directorate Chiefs, “Enhanced Medical Efforts Directive,” Jan. 14, 2020.



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comments to record self-reported medical issues and Border Patrol agents' observations, including pregnancies and childbirths.

- Significant Incident Report (SIR) – CBP requires the reporting of significant incidents, terrorism-related events, and emerging issues to DHS and CBP leadership. CBP's policy for reporting significant incidents does not specifically require employees to report childbirths,²¹ although some CBP officials report childbirths using SIRs.
- Medical Payment Authorization Request Web System (MedPAR) – ICE maintains this application for submitting treatment requests when a detainee requires healthcare, services, or equipment beyond what the detention facility can provide. Before an external healthcare provider treats a detainee, the facility medical staff creates a MedPAR request and determines what treatment is medically necessary. CBP uses the system to request non-emergency care for detainees in their custody. Border Patrol may record information about the requested emergency service, including the date of the service and whether the individual stayed in the hospital, in e3.

We requested childbirth records from all three sources for FY 2016 to September 2020 and found the information to be incomplete and inconsistent across the systems used. This inconsistent data prevented us from identifying the total number of childbirths that occurred during the time period reviewed based on systems' entries. Table 2 shows the different childbirth data we received from all three sources.

Table 2. Childbirths in Border Patrol Custody from FY 2016 to September 2020, Based on e3, SIR, and MedPAR Records

	e3	SIR	MedPAR
Clear Indication of Childbirth	93	40	36
Statement Referring to Birthing Process	95	10	-
Total Possible Childbirths	188	50	36

Source: OIG analysis of CBP data

To identify childbirths from e3 data, we reviewed free-text medical comments from Border Patrol agents and medical personnel. From these comments, we identified 188 entries in which a childbirth may have occurred in Border Patrol

²¹ CBP Directive Number: 3340-025E, *Reporting Significant Incidents to the Commissioner's Situation Room*, May 21, 2018.



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custody. Of these 188 potential childbirths, 93 entries included phrases in the free-text field clearly indicating that a childbirth occurred. These phrases included “gave birth,” “childbirth,” and “gave birth to a healthy baby.” The remaining 95 indicated a potential childbirth by stating phrases describing the birthing process, such as the detainee was in labor or was experiencing contractions.

Our review of SIRs identified 50 potential childbirths. In 40 incidents, the reports clearly indicated a childbirth occurred. The remaining 10 of these reports indicated a potential childbirth by stating the detainee was in labor or was experiencing contractions. Although CBP policy for reporting significant incidents does not require employees to report childbirths,²² some were reported at the discretion of CBP officials. Of the 50 potential childbirths identified in SIRs, we only found 3 also recorded in e3.

We reviewed CBP billing records from MedPAR and identified 36 childbirths, based on billing codes indicating childbirth. Of the 36 childbirths identified through MedPAR records, we found only 7 were also in SIR and 13 were in e3. The absence of identical data between MedPAR and e3 is particularly concerning because the MedPAR privacy impact assessment²³ states Border Patrol agents are to record information about the service requested in MedPAR in the e3 system. However, as described earlier, Border Patrol has no guidance or policies on what it requires agents to enter in e3 when medical treatment necessitates billing through MedPAR.

The inconsistencies in CBP’s own data limit its insight into a uniquely vulnerable population in its custody. Establishing a policy to record all detainee childbirths in Border Patrol custody ensures the agency has oversight and provides appropriate care to a potentially at-risk population.

Border Patrol Occasionally Held U.S. Citizen Newborns for Days and Did Not Always Take Prompt Action to Expedite Releases

After being discharged from the hospital, the detainee who gave birth at the Chula Vista station returned to the station with her newborn where they slept overnight on a bench, without a sleep space for the baby such as a crib or bassinet. Border Patrol released them the following day with an NTA. When we reviewed additional Border Patrol records, we identified 23 other instances of newborns held at Border Patrol stations after a childbirth between 2016 and

²² CBP Directive Number: 3340-025E, *Reporting Significant Incidents to the Commissioner’s Situation Room*, May 21, 2018.

²³ The Privacy Impact Assessment is a decision tool DHS uses to identify and mitigate privacy risks. It notifies the public what personally identifiable information DHS is collecting, why and how it is collected, used, accessed, shared, safeguarded, and stored.



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September 2020. Although Border Patrol released most detainees with their U.S. citizen newborns on the day of hospital discharge, we found instances when Border Patrol held detainees and their newborns overnight, some for multiple days and nights. In some of these instances, Border Patrol provided reasonable explanations why it could not avoid the overnight detentions, but in other cases Border Patrol did not take prompt action to expedite releases. Holding U.S. citizen newborns in custody at Border Patrol stations poses health, safety, and legal concerns.

Children born in the United States are U.S. citizens, even when the birth takes place in Border Patrol's custody.²⁴ Border Patrol does not have long-term detention options for families in such circumstances because stations are not intended for long-term detention of any migrants, including families. ICE has family residential centers that can accommodate migrant families with children, but it will not accept U.S. citizen newborns.²⁵ Without a possibility to transfer a family with a U.S. citizen newborn to ICE, Border Patrol can exercise its authority to release mothers and their newborns on their "own recognizance" with an NTA.²⁶

At the time of the childbirth at the Chula Vista station, Border Patrol's guidance for releasing detainees on their own recognizance with an NTA required station personnel to submit requests to sector staff for review.²⁷ According to this guidance, Border Patrol had to receive a declination of custody from ICE and ensure that "every alternative be explored" prior to any release. The Chief Patrol Agent, the highest-ranking sector official, had to approve release requests and submit them to Border Patrol headquarters for final approval. Even though this process required sector and headquarters approval, Border Patrol conducted this process via email, and it could be quick when the required steps and documentation were completed. The San Diego Sector, to which the Chula Vista station belongs, also had an alternative release process whereby it transferred detainees to the Brown Field Border Patrol station, which served as a centralized location where ICE personnel

²⁴ The Citizenship Clause of the Fourteenth Amendment of the U.S. Constitution states that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." Section 301(a) of the *Immigration and Nationality Act* states that "a person born in the United States, and subject to the jurisdiction thereof" is a "national[] and citizen[] of the United States at birth." 8 U.S.C. § 1401(a).

²⁵ ICE's immigration detention authority is limited to migrants and does not include authority to detain U.S. citizens.

²⁶ In this context, release means parole. Parole allows inadmissible migrants to enter and temporarily remain in the United States pending the outcome of their immigration proceedings. See 8 U.S.C. §§ 1182(d)(5)(A), 1226(a)(2); 8 C.F.R. § 212.5(d).

²⁷ Memorandum signed by Carla L. Provost for Ronald D. Vitiello, Chief, U.S. Border Patrol to all Chief Patrol Agents and Directorate Chiefs, "Executive Orders 13767 and 13768 and the Secretary's Implementation Directions of February 20, 2017," Feb. 21, 2017.



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served release paperwork to detainees. ICE served releases at the Brown Field station once-a-day at noon, and Border Patrol had to complete processing and include detainees on a morning list for release that day.

Border Patrol Held the February 16, 2020 Newborn at the Chula Vista Station Overnight

Shortly after the detainee delivered her baby at the station on February 16, 2020, an ambulance took her and her newborn to a hospital where they received medical attention until their discharge on February 18, 2020. Once the woman and her newborn were medically cleared from Sharp Chula Vista Medical Center, Border Patrol transported the detainee and her newborn back to the Chula Vista station where they stayed overnight. Video footage of the cell where Border Patrol held the detainee and newborn showed that the newborn slept on a bench next to her mother without a sleep space such as a crib or bassinet, as shown in Figure 1. The next morning, Border Patrol transferred the detainee and her newborn to Brown Field Border Patrol station where ICE served them release paperwork. Border Patrol then transported them to a nongovernmental organization.

Figure 1. Images of the Mother and Newborn Held Overnight at the Chula Vista Station



Source: Chula Vista station video footage

Border Patrol officials provided evidence of the following circumstances that may have limited its ability to release this family faster to avoid overnight detention:

- The detainee went into labor almost immediately after arriving at the Border Patrol station and agents were unable to complete the required processing and enter her information, including fingerprints, into e3.
- Agents took the detainee and her newborn back to the Chula Vista station because Border Patrol needed to complete processing in e3 before



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it could either release her directly from Border Patrol custody or facilitate release by ICE.

- Border Patrol brought the detainee and her child back to the station at approximately 6 p.m. on the day they were released from the hospital, which was too late in the day to facilitate release that evening.

Nevertheless, other information in this case revealed technology and practices that could help avoid overnight detention of newborns in similar circumstances. For example, the Chula Vista station had a mobile fingerprint unit that personnel can use to complete required processing in e3 while a detainee is at the hospital. Border Patrol agents explained that they were unable to use the mobile fingerprint unit for this detainee because it was not working at the time. If Border Patrol had been able to use the mobile fingerprint unit and complete required processing while at the hospital, Border Patrol might have been able to release the detainee and her newborn the same day the hospital discharged them.

In addition, Border Patrol relied on its practice of having ICE serve release paperwork at the Brown Field Border Patrol station rather than releasing the family directly from Border Patrol custody. An agent involved in coordinating the release explained that agents had not completed processing the detainee by the morning after she and her newborn returned to the Chula Vista station, and the agent had to go outside the normal process to have the family included on the list to be released that day by ICE. Had the agent not been able to do so, the detainee and newborn might have remained in Border Patrol custody until the following day (February 20). However, Border Patrol has the authority to release detainees directly from its custody, which could help expedite the release of detainees with newborns, instead of waiting for ICE to facilitate release.

Additional Instances of Border Patrol Holding U.S. Citizen Newborns Overnight

To determine the prevalence of Border Patrol holding U.S. citizen newborns overnight, we requested records related to the 36 childbirths we identified through the MedPAR data from FY 2016 to November 2020.²⁸ We were able to review a sample of custody logs for 31 childbirths²⁹ that we identified in the

²⁸ We used the childbirths identified in medical records as a sample because of the greater certainty that a childbirth actually occurred, whereas e3 records' free text was less reliable.

²⁹ We requested records for 36 childbirths, but in 5 instances Border Patrol could not find a record, or the record provided showed that a childbirth may not have occurred. It was unclear in these instances whether the discrepancies reflect errors in the billing records or custody log

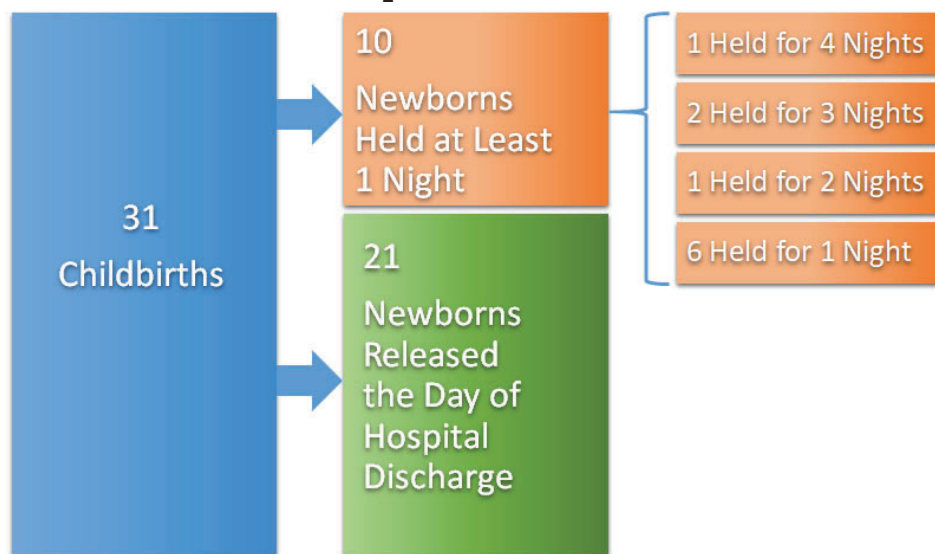


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medical billing records. In 21 of these instances (68 percent), the custody logs showed Border Patrol released the detainees and their newborns from custody on the same day as hospital discharge. In 10 instances (32 percent), however, Border Patrol returned the detainees and their newborns to a station after hospital discharge and held them in custody for at least 1 night. In four of these instances, Border Patrol held the detainees and their newborns for multiple nights. Figure 2 shows the breakdown of the 31 childbirths records we reviewed.

Figure 2. Timing of Release for 31 Newborns from FY 2016 to September 2020



Source: OIG analysis of Border Patrol data

For the 10 instances of overnight detention, Border Patrol’s explanations and records showed that at least 5 might have been unavoidable. For example, one detainee who was in custody for 4 nights with her newborn was a minor and Border Patrol had to arrange transfer to HHS. In another instance, a detainee held in custody for 3 nights with her newborn was a Mexican citizen who claimed fear of returning to Mexico and it took 3 days to adjudicate her fear claim.

In the other five instances, however, overnight detention may have been avoided if Border Patrol had standard practices to expedite such releases whenever possible.

records. For most, the “event number” in medical billing records was not a match to an “event number” in e3. These instances raise separate questions about whether CBP has adequate controls in place to ensure accuracy of custody records and medical billing to prevent fraud.



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- Border Patrol held one detainee and her newborn for 3 nights at the Chula Vista station in December 2019 — just a few months before the February 2020 childbirth incident. Border Patrol said that this detainee was taken to the hospital before “any paperwork could be completed” and had to return to the station after the childbirth to “complete ... paperwork in order to release her and her child on their own recognizance.” However, the custody log showed that Border Patrol held the detainee for more than 8 hours before being taken to the hospital, which provided substantial time to enroll her in e3 and complete processing. Further, Border Patrol did not provide any documentation or explanation why it held the detainee and her newborn for 3 nights before releasing them.
- Border Patrol held another detainee and her newborn for 2 nights in September 2020. Emails showed that Border Patrol began coordinating with ICE to facilitate her enrollment in ICE’s Alternatives to Detention program after the detainee had returned to the Border Patrol station with her newborn.³⁰ It is unclear whether Border Patrol could have begun its coordination with ICE earlier, while the detainee was still in the hospital, to avoid prolonging detention of the U.S. citizen newborn and the mother.
- Border Patrol held three detainees and their newborns for 1 night before releasing them. In each of these instances, records showed that Border Patrol began taking steps to facilitate the release process only after the mothers were discharged from the hospital with their newborns.

In these cases, Border Patrol did not have comprehensive documentation of the circumstances or reasons that led to the prolonged detention. TEDS requires expeditious processing of at-risk individuals whenever operationally feasible.³¹ However, these cases suggest that Border Patrol does not have standard practices to complete processing of hospitalized pregnant detainees and to initiate the release process as soon as possible, such as while the detainees and their newborns are still at the hospital, rather than waiting until the hospital discharges them.

³⁰ ICE’s Alternatives to Detention program provides supervised release and enhanced monitoring for a subset of foreign nationals subject to removal whom ICE has released into the United States.

³¹ *TEDS Section 5.6, Detention, Expeditious Processing*, states “[w]henver operationally feasible, at-risk individuals will be expeditiously processed to minimize the length of time in CBP custody.”



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The Total Number of U.S. Citizen Newborns Held in Custody during the Period We Reviewed Was Unclear

Due to the limitations of Border Patrol's data on childbirths, we were only able to identify a portion of U.S. citizen newborns held in Border Patrol custody for the period we reviewed. In addition to the 10 instances identified in MedPAR records, we identified 13 other instances in e3 records of newborns held overnight from 2016 to September 2020. In nine of these instances, Border Patrol held the newborns at a station for 1 night and in four instances it held the newborns for 3 nights. Because of the limitations of e3 and SIRs data about childbirths and its unreliability, we did not evaluate custody logs on every possible childbirth identified in e3³² or in SIRs.³³ Nevertheless, it is reasonable to conclude that there were more than 23 U.S. citizen newborns held in Border Patrol's custody during the period we reviewed, and there may have been other instances of avoidable prolonged detention of U.S. citizen newborns.

Border Patrol Did Not Always Create Custody Logs for U.S. Citizen Newborns

Our review of custody logs also found that Border Patrol agents did not always create logs for U.S. citizen newborns because of confusion about whether a U.S. citizen newborn is considered to be in custody. Border Patrol guidance requires the use of the e3 Detention Module for all individuals in its custody, including juveniles.³⁴ Yet, we found two instances in which Border Patrol acknowledged that it did not create a custody log for U.S. citizen newborns when they were held with their mothers at a Border Patrol station. Personnel from one station where this occurred told us it was an error and they had taken corrective actions to address the issue. However, personnel at the other station explained that they did not create a custody log because the newborn was a U.S. citizen who had not been charged with any violation and the log was, therefore, not applicable. These two contradictory responses illustrate the need for clear guidance on custody logs for U.S. citizen newborns.

³² As previously discussed, the free-text medical comment field and hospital book-out field in e3 provided information to help us identify likely childbirths but the fields were not necessarily reliable. Consequently, we did not request custody logs for all 188 possible childbirths identified in e3 data from FY 2016 to September 2020. Instead, we selected 62 possible childbirth instances in which the permanent book-out date was more than 3 days after the book-out to hospital date and requested any custody logs for newborns within this sample.

³³ We did not request custody logs for these childbirths because SIRs did not have a unique identifier to easily associate the incident in the report with an incident in e3, where custody logs are maintained.

³⁴ Memorandum from Michael J. Fischer, Chief, U.S. Border Patrol to all Chief Patrol Agents and Division Chiefs, "Use of the Updated e3 Detention Module," Oct. 8, 2013.



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In the instances where Border Patrol did create custody logs for U.S. citizen newborns, these logs listed “immigration violation” in the “reason for detention” field even though these newborns had not committed any such violation. It was evident that Border Patrol personnel either did not know what to enter in the field or the system did not provide an appropriate option.

Holding U.S. Citizen Newborns in Border Patrol Custody Poses Health, Safety, and Legal Concerns

Border Patrol stations are intended for short-term detention and are not conducive to holding U.S. citizen newborns. Several Border Patrol officials, including station and sector leadership, explained that Border Patrol stations are not safe spaces for newborns. For example, on February 19, 2020, after learning of the mother and her newborn held in detention overnight at the Chula Vista station, one sector official wrote in an email to station personnel, “[p]lease find a way to get this infant ... out of our custody by the end of the day. A BP station is no place for an infant.” In addition, ICE Health Service Corps, which covers CBP’s medical expenses, has issued guidance that it will not cover medical expenses for newborn U.S. citizens.

Furthermore, an official from CBP’s Office of Chief Counsel expressed to us that there is no legal basis for holding U.S. citizen newborns in custody. This official and others explained that Border Patrol is taking custody of the parent, and is keeping the newborn with its parent, not taking the newborn into custody.

Given these concerns, Border Patrol should have clear practices and guidance to expedite the release of U.S. citizen newborns to avoid prolonged detention whenever possible as required by TEDS. Although the data we reviewed showed that in most cases Border Patrol released detainees with their newborns the same day the hospital discharged them, we also found several instances in which overnight detention occurred and may have been avoidable. To mitigate similar occurrences going forward, Border Patrol must provide station personnel with guidance on standard practices for expediting the release of detainees with newborns whenever possible.

Border Patrol Agents Do Not Have Guidelines on Interpreting for Spanish-Speaking Detainees at Hospitals

Border Patrol agents are required to speak Spanish and must demonstrate Spanish language proficiency before graduating the Border Patrol Academy by either scoring above an established benchmark on an initial test or completing an 8-week language training program. However, CBP policy and guidance indicate that Border Patrol’s Spanish proficiency standards may not be



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sufficient to qualify agents to interpret in some situations, including on health matters. CBP's Supplementary Language Access Plan stipulates that "staff who complete CBP language training ... are not necessarily bilingual."³⁵ Further, the Supplementary Language Access Plan and CBP's language access directive³⁶ both state:

Interpretation and translation require the interpreter or translator to be bilingual, and also require additional specific skills.... [A] contract interpreter or bilingual personnel may be required when the encounter involves complex information or the encounter lasts for a long period of time, and when rights, health, and safety are implicated. However, a contract interpreter or bilingual staff member is not always required for all situations.

An agent assigned to hospital watch for the detainee who gave birth on February 16, 2020, provided interpretation that may not have comported with CBP's language access guidance. Hospital notes of an interview between the detainee and a social worker indicated that a Border Patrol agent interpreted during the interview, at the detainee's request. This interview covered potentially sensitive medical information, and although the Border Patrol agent assisted at the detainee's request, the discussion may have required a qualified interpreter under CBP policy. Further it is unclear why the hospital did not provide interpretation services for this discussion, which is generally the practice.

Border Patrol agents do not have guidelines on interpreting for Spanish-speaking detainees at hospitals, including interpreting medical information. Of the Border Patrol agents we identified who were assigned to hospital watch for the detainee, only one acknowledged interpreting for her, and did not recall interpreting the discussion between the social worker and the detainee at the hospital. This Border Patrol agent and other Border Patrol officials we spoke with said that it is very common for agents to interpret for detainees while on guard duty at a hospital. They were not aware of any guidelines or limits on when agents can provide Spanish interpretation for detainees. Even though this instance was at the detainee's request, the practice of Border Patrol personnel interpreting medical information for detainees may not align with CBP's language access policy and guidance. Further, Border Patrol personnel risk misinterpreting medical information, which may have serious health implications for detainees.

³⁵ Supplementary Language Access Plan, Fiscal Years 2020-2021, p. 7, Feb. 7, 2020.

³⁶ CBP Directive Number: 2130-031, *Roles and Responsibilities of U.S. Customs and Border Protection Offices and Personnel Regarding Provision of Language Access*, footnote 1, Dec. 4, 2018.



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Recommendations

We recommend the Chief, U.S. Border Patrol:

Recommendation 1: Provide guidance to Border Patrol personnel about creating custody logs for newborn U.S. citizens held in Border Patrol custody.

We recommend the Commissioner, Customs and Border Protection:

Recommendation 2: Develop formal guidance with comprehensive processes for documenting childbirths that occur in custody.

Recommendation 3: Implement standard practices to expedite the release of U.S. citizen newborns in custody following detainee childbirths.

Recommendation 4: Develop written protocols for CBP personnel at hospital and healthcare facilities to defer, absent exigent circumstances, to hospitals and other local health-care providers to provide interpreter services for in-custody, limited-English proficiency individuals when discussing medical information.

Management Comments and OIG Analysis

We have included a copy of CBP's Management Response in its entirety in Appendix B. We also received technical comments to the draft report and revised the report where appropriate.

CBP concurred with our four recommendations, which are resolved and open. It also expressed concerns with our discussion of TEDS as it relates to at-risk detainees. Specifically, CBP stated that the report presumes all detainees who are pregnant or who are juveniles are at-risk, when those are only factors to be considered when determining if a detainee is at-risk. We agree with CBP's assessment that, according to TEDS, pregnancy and age are factors in determining whether a detainee is at-risk. We believe the report language accurately represents TEDS when it describes pregnant detainees as "potentially at-risk."

CBP also expressed concern that the report does not provide an accurate assessment of how Border Patrol documents medical and physical interactions with pregnant woman. However, in its response CBP also indicated that it is "working to improve the recordation and storage of medical records, including developing an electronic medical record program." This statement both acknowledges challenges consistent with our finding related to records of childbirths and other pregnancy-related complications, and indicates a



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possible step toward addressing our recommendation through the development of an electronic medical records program.

A summary of CBP's responses to our recommendations and our analysis follows.

CBP Comments to Recommendation 1: Concur. Border Patrol will develop field-level guidance on the procedures to intake, track, and manage custody actions of U.S. citizen newborns that are accompanied by a non-citizen parent. U.S. citizen newborns placed into custody will have all custody actions recorded in the system of record, and tracked through the Border Patrol's Detention Module, "e3DM." Border Patrol expects to complete these actions by November 30, 2021.

OIG Analysis: We consider these actions responsive to the intent of Recommendation 1, which is resolved and open. We will close this recommendation when we receive documentation showing that Border Patrol has developed field-level guidance on the procedures to intake, track, and manage custody actions of U.S. citizen newborns.

CBP Comments to Recommendation 2: Concur. CBP's Policy Directorate will work with the operational offices of Border Patrol and the Office of Field Operations to develop additional guidance related to childbirths that occur in CBP custody. CBP expects to complete these actions by December 21, 2021.

OIG Analysis: We consider these actions responsive to the intent of Recommendation 2, which is resolved and open. We will close this recommendation when we receive documentation showing that CBP has developed guidance with comprehensive processes for documenting childbirths that occur in custody.

CBP Comments to Recommendation 3: Concur. CBP's Policy Directorate will work with the operational offices of Border Patrol and Office of Field Operations to develop guidance on expediting the release of U.S. citizen newborns in custody following detainee childbirths. CBP expects to complete these actions by December 21, 2021.

OIG Analysis: We consider these actions responsive to the intent of Recommendation 3, which is resolved and open. We will close this recommendation when we receive documentation showing that CBP has developed guidance on expediting the release of U.S. citizen newborns in custody following detainee childbirths.



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CBP Comments to Recommendation 4: Concur. CBP Privacy and Diversity Office will update CBP Directive No. 2130-031, “Roles and Responsibilities of U.S. Customs and Border Protection Offices and Personnel Regarding Provision of Language Access,” or issue protocols through new policy development, on deferring, absent exigent circumstances, to hospitals and other local health care providers to utilize their own interpretation services to discuss medical information with detainees having limited English proficiency. CBP expects to complete these actions by July 31, 2022.

OIG Analysis: We consider these actions responsive to the intent of Recommendation 4, which is resolved and open. We will close this recommendation when we receive documentation showing that CBP has updated its existing directive, or issued new guidance on deferring, absent exigent circumstances, to hospitals and other local health care providers to utilize their own interpretation services to discuss medical information with detainees having limited English proficiency.



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Appendix A

Objective, Scope, and Methodology

The Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

Our objective was to determine whether CBP provided necessary medical care to the detainee and/or her family timely, and whether CBP's actions complied with CBP's TEDS Standards or other applicable policies and procedures.

The OIG Office of Investigations conducted a separate investigation into allegations that Border Patrol mistreated the detainee and her family while in custody from February 16 to 19, 2020, and to the greatest extent possible, we relied and built on its work to avoid duplication. We reviewed law enforcement reports, video footage, dispatch records, and interviewed numerous individuals regarding this incident and the detention of the detainee and her family in May 2019 and from February 16 to 19, 2020.

We interviewed senior CBP officials from various offices including the Privacy and Diversity Office, the Office of Chief Counsel, and the Chief Medical Officer. We also interviewed Border Patrol personnel at headquarters, the San Diego Sector, and Chula Vista station. We reviewed DHS and CBP policies, procedures, guidance, and documents related to the provision of care, including medical care and pregnancy screenings for detainees in CBP custody and the treatment of pregnant detainees and newborns in CBP custody. We also reviewed data and documents from 2016 to November 2020 relating to:

- all instances of births, miscarriages, stillborn births, and other pregnancy-related complications in CBP custody; and
- the number of pregnant women apprehended and/or detained by CBP, including, if available, gestational age.

We conducted our fieldwork between August 2020 and April 2021 under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.



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Appendix B
CBP Comments to the Draft Report

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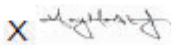
**U.S. Customs and
Border Protection**

June 29, 2021

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
Inspector General

FROM: Henry A. Moak, Jr.
Senior Component Accountable Official
U.S. Customs and Border Protection

SUBJECT: Management Response to Draft Report: "Review of the
February 16, 2020 Childbirth at the Chula Vista Border Patrol
Station" (Project No. 20-053-SRE-CBP)

6/29/2021
X 
Signed by: HENRY A. MOAK JR.

Thank you for the opportunity to comment on this draft report. U.S. Customs and Border Protection (CBP) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

CBP leadership is pleased to note that in reviewing the circumstances surrounding this childbirth at the Chula Vista station, the OIG "did not find deficiencies in Border Patrol's provision of access to medical assistance to the mother and her newborn, or non-compliance with applicable policies."

CBP leadership is, however, concerned with the OIG's overly broad generalization of CBP's "National Standards on Transport, Escort, Detention, and Search" (TEDS) as it relates to identifying at-risk subjects. Specifically, the draft report establishes a presumption that all detainees who are juveniles and/or pregnant are treated as "at-risk" subjects when, in fact, pregnancy and/or age are only one factor to be considered in determining if a person is "at-risk." TEDS, and other guiding documents, provide a more nuanced process than OIG's draft report suggests. The report also incorrectly states that accurate medical and physical interactions are not recorded regarding pregnant women. To the contrary, the United States Border Patrol (USBP) does maintain accurate records, including those related to status checks and medical exchanges. In short, CBP does not believe the draft report provides an accurate assessment of how USBP documents these interactions.

Nevertheless, USBP is taking action to better ensure the health, safety, security, and welfare of each adult and child in its custody as part of CBP's continuous improvement efforts. For example, on February 4, 2021, the then-Chief of USBP issued guidance entitled, "Implementation of Interim Revisions to Civil Immigration Enforcement and



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Removal Policies and Priorities,” which allows sector chief patrol agents to release individuals under the “Notice to Appear/Own Recognizance” (NTA/OR) process to help manage operations and prioritize medical care for at-risk populations. This new guidance helps ensure expedited releases of mothers with newborn children and minimizes the time these individuals are in USBP custody, reducing the lengths of stays for newborns that resulted from the prior requirement for USBP Headquarters level approval for the release of a subject processed as an NTA/OR. In addition, USBP working to improve the recordation and storage of medical records, including developing an electronic medical record program.

CBP takes its role in providing care and ensuring the health, safety, security, and welfare of each adult and child in its custody very seriously. CBP is committed to ensuring that:

- (1) officers and agents are trained to recognize medical distress of individuals in CBP custody;
- (2) field personnel understand and execute their reporting obligations accurately and diligently; and
- (3) there is robust medical oversight.

CBP is also committed to serving at the highest standard of federal law enforcement possible and continuing to enhance the nation’s security through innovation, intelligence, collaboration, and trust.

The draft report contained four recommendations with which CBP concurs. Attached find our detailed response to each recommendation. CBP previously submitted technical comments addressing several accuracy, contextual, and other issues under a separate cover for OIG’s consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions.

Attachment



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Attachment: Management Response to Recommendations Contained in Project No. 20-053-SRE-CBP

OIG recommended that the Chief, USBP:

Recommendation 1: Provide guidance to Border Patrol personnel about creating custody logs for newborn U.S. citizens held in Border Patrol custody.

Response: Concur. CBP USBP will develop field-level guidance on the procedures to intake, track, and manage custody actions of U.S. citizen newborns that are accompanied by a non-citizen parent. U.S. citizen newborns placed into custody will have all custody actions recorded in the system of record, and tracked through the USBP Detention Module, "e3DM." Estimated Completion Date (ECD): November 30, 2021.

OIG recommend that the Commissioner, CBP:

Recommendation 2: Develop formal guidance with comprehensive processes for documenting childbirths that occur in Border Patrol custody.

Response: Concur. CBP's Policy Directorate will work with the operational offices of USBP and the Office of Field Operations (OFO) to develop additional guidance related to childbirths that occur in CBP custody. ECD: December 31, 2021.

Recommendation 3: Implement standard practices to expedite the release of U.S. citizen newborns in custody following detainee childbirths.

Response: Concur. CBP's Policy Directorate will work with the operational offices of USBP and OFO to develop guidance on expediting the release of U.S. citizen newborns in custody following detainee childbirths. ECD: December 31, 2021.

Recommendation 4: Develop written protocol for CBP personnel at hospitals and health care facilities to defer, absent exigent circumstances, to the hospital or other local health care provider to provide interpreter services for in-custody, limited-English proficient individuals when discussing medical information.

Response: Concur. CBP Privacy and Diversity Office will update CBP Directive No. 2130-031, "Roles and Responsibilities of U.S. Customs and Border Protection Offices and Personnel Regarding Provision of Language Access," or issue protocol through new policy development, on deferring, absent exigent circumstances, to hospitals and other local health care providers to utilize their own interpretation services to discuss medical information with detainees having limited English proficiency. ECD: July 31, 2022.



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Appendix C

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Appendix D

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