



Testimony

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Security, House of Representatives

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SOUTHWEST BORDER

CBP Should Improve Oversight of Funds, Medical Care, and Reporting of Deaths

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Chairman Thompson, Ranking Member Rogers, and Members of the Committee:

We are pleased to be here today as you examine issues related to U.S. Customs and Border Protection's (CBP) care and custody of adults and children. Beginning in fall 2018, the Department of Homeland Security's (DHS) CBP experienced a significant increase in the number of individuals apprehended at or between U.S. ports of entry along the southwest border, resulting in overcrowding and difficult humanitarian conditions in its facilities.¹ From December 2018 through May 2019, three children—ages 7, 8, and 16—died in CBP custody, prompting questions about CBP's medical screening and care of those in its custody. In July 2019, an emergency supplemental appropriations act (2019 Emergency Supplemental) was enacted, providing additional funds to CBP to respond to the significant increase in southwest border apprehensions, including approximately \$112 million for "consumables and medical care."²

CBP is the lead federal agency charged with, among other things, ensuring the detection and interdiction of persons unlawfully entering or exiting the United States.³ Within CBP, the U.S. Border Patrol (Border Patrol) apprehends individuals between ports of entry, and CBP's Office of Field Operations (OFO) encounters inadmissible individuals who arrive at ports of entry. Border Patrol and OFO detain individuals at short-term holding facilities to complete processing, which involves collecting information about the apprehended individual, including any potential health concerns. While individuals are held at CBP facilities—either by Border Patrol or by OFO—CBP personnel typically place individuals in a

¹See, for example, Department of Homeland Security, Office of Inspector General, *Management Alert – DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley (Redacted)*, OIG-19-51 (Washington, D.C.: July 2, 2019); *Management Alert - DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center (Redacted)*, OIG-19-46 (Washington, D.C.: May 30, 2019); and *Acting Secretary McAleenan's Prepared Remarks to the Council on Foreign Relations* (Washington, D.C.: Sept. 23, 2019).

²See Pub. L. No. 116-26, title III, 133 Stat 1018, 1019-1020 (2019). Supplemental appropriations are laws enacted to address needs that arise after annual appropriations have been enacted. In the context of CBP's appropriation, the term "consumable" refers to goods that are exhausted by use, and the phrase "medical care" includes goods and services used to provide assistance related to the diagnosis and treatment of disease or injury and maintaining health. [B-331888](#), June 11, 2020, at 4.

³See 6 U.S.C. § 211(c).

secure holding cell or room while these individuals await transfer of custody to another agency, removal from the country, or release into the United States.⁴

Our remarks are based on our report, released today, entitled *Southwest Border: CBP Needs to Increase Oversight of Funds, Medical Care, and Reporting of Deaths*.⁵ Specifically, we will summarize the report's key findings on (1) the extent to which CBP obligated and conducted oversight of funds for consumables and medical care; (2) steps CBP took to enhance medical care; (3) the extent to which CBP implemented and oversaw its medical care efforts; and (4) the extent to which CBP has reliable information on, and reported, deaths, serious injuries, and suicide attempts of individuals in custody. For the report, we reviewed CBP documentation, including financial reports; directives, policies, and training related to screening individuals for medical issues; and directives and policy documentation on reporting deaths in custody. We interviewed CBP officials in headquarters and two field locations and observed medical efforts in facilities in field locations, selected based on higher volumes of apprehensions. Additional information on our scope and methodology is available in our report.⁶ The work on which this statement is based was performed in accordance with generally accepted government auditing standards.

CBP Obligated Some Consumables and Medical Care Funds for Other Purposes in Violation of Appropriations Law

We found that, as of May 2020, CBP had obligated nearly \$87 million of the approximately \$112 million it received specifically for consumables

⁴CBP policy states that individuals should generally not be held for longer than 72 hours in CBP custody. CBP refers individuals to DHS's U.S. Immigration and Customs Enforcement (ICE) for long-term detention. If CBP apprehends a child that is designated as an unaccompanied alien child, that child is transferred to the custody of the Office of Refugee Resettlement within the Department of Health and Human Services (HHS).

⁵GAO, *Southwest Border: CBP Needs to Increase Oversight of Funds, Medical Care, and Reporting of Deaths*, [GAO-20-536](#) (Washington, D.C.: July 14, 2020).

⁶[GAO-20-536](#).

and medical care in the 2019 Emergency Supplemental.⁷ CBP obligated some of these funds for consumable goods and services, like food and hygiene products, as well as medical care goods and services such as defibrillators, masks, and gloves. However, in June 2020, we concluded that CBP violated an appropriations law, known as the purpose statute, when it obligated funds from the 2019 Emergency Supplemental consumables and medical care line item appropriation for some goods and services that were not consistent with the purpose of that line item.⁸ Specifically, we found that some of the goods and services did not clearly fall within the ordinary meaning of the terms “consumable” or “medical care,” nor did they bear a reasonable and logical relationship to the purpose of the line item. For example, we found that CBP violated the purpose statute when it obligated some of these funds for goods and services for its canine program; equipment for processing individuals apprehended by CBP, like printers and speakers; and various upgrades to computer networks used for border enforcement activities. CBP also obligated the consumables and medical care line item for transportation items. We concluded that obligations for certain transportation-related items that were not primarily used to provide medical services violated the purpose statute.⁹

We identified two factors that contributed to CBP’s purpose statute violations—insufficient guidance to CBP offices and components before obligations were made and lack of oversight roles and responsibilities for reviewing obligations once made.

- **Insufficient guidance on the purpose of the funds.** After the 2019 Emergency Supplemental was enacted, CBP did not provide sufficient guidance explaining how offices and components could obligate funds for consumables and medical care and, as a result, some offices and components may not have understood that there were limitations on how they could use those funds. For example, officials from one CBP component stated they believed they could use the consumables and medical care funds for any goods or services they considered to be in

⁷In general, an obligation is a commitment by the government that creates a legal liability to pay for goods or services it orders or receives.

⁸GAO, *U.S. Customs and Border Protection—Obligations of Amounts Appropriated in the 2019 Emergency Supplemental*, [B-331888](#) (Washington, D.C.: June 11, 2020). Under the purpose statute, appropriations are to be used only for the purposes for which they are made, except as otherwise provided by law.

⁹[B-331888](#), June 11, 2020, at 5-6.

the interest of individuals in custody or that would help ensure the efficient processing of individuals.

- **Lack of oversight roles and responsibilities.** CBP offices and components took some steps to conduct oversight of obligations from the 2019 Emergency Supplemental funds, but we identified gaps in CBP's roles and responsibilities for reviewing obligations to ensure they were consistent with the intended purpose of the funds.¹⁰ For example, officials from CBP's Office of Finance stated that they were not responsible for determining whether obligations were consistent with the purpose of the line item and relied on components to make such determinations. However, of the five components that obligated funds from the consumables and medical care line item appropriation, only one—Border Patrol—reviewed obligations to determine whether they were consistent with the purpose. Further, Border Patrol's review was limited in scope because it did not include all obligations Border Patrol made using this line item. For example, Border Patrol did not request obligation data on goods and services purchased by its canine office.¹¹

DHS and CBP officials stated that the agency experienced challenges managing some aspects of the funds from the 2019 Emergency Supplemental due to a lack of experience with these line items and the large increase of apprehensions on the southwest border occurring at the time. Specifically, officials from DHS's Office of the General Counsel and CBP's Office of Chief Counsel noted that CBP typically receives an annual lump-sum appropriation, which provides the agency with broader discretion in determining the use of funds as compared to the 2019 Emergency Supplemental, which specified how CBP could use the funds through line items. As such, these officials stated that CBP did not have systems in place to ensure that the funds were obligated consistent with the purpose of the line item. Our report recommended that CBP develop and implement additional guidance for ensuring that funds appropriated for a specific purpose are obligated consistent with their purpose, and establish oversight roles and responsibilities to ensure that such funds are obligated consistent with their purpose. DHS agreed with these recommendations and said it plans to issue additional guidance and

¹⁰While CBP officials stated that individual components had processes in place to review individual obligations before they were made, the agency had not provided guidance regarding the purpose of the individual line items, as noted above.

¹¹CBP's canine program is responsible for terrorist detection and apprehension and the detection and seizure of controlled substances and other contraband, among other functions.

outline new oversight roles and responsibilities within its standard operating procedures document.

CBP Increased Contracted Medical Providers, Issued New Screening Policies, and Engaged Entities with Medical Expertise in 2019

We found that, throughout 2019, CBP took various steps to enhance medical care and services to individuals apprehended and held at its facilities. These steps included increasing the number of facilities that have onsite contracted medical providers from six locations in December 2018 to 42 in December 2019 and issuing new health screening policies. In particular, in January 2019, CBP issued an interim directive which, among other things, required health interviews and medical assessments for certain individuals in its custody.¹² CBP updated this directive in December 2019 and issued corresponding implementation plans in March 2020.

Additionally, CBP engaged with various entities to leverage their expertise and coordinate efforts. Two entities with medical expertise—the Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS) and the American Academy of Pediatrics (AAP)—also provided recommendations or assistance with the development of training. At the request of DHS, CDC teams visited Border Patrol facilities in December 2018 and January 2019 to assess conditions and make recommendations for the collection of data on, and to reduce the spread of, infectious diseases, particularly respiratory diseases such as influenza. Based on these visits, CDC provided DHS with recommendations to address immediate needs for protection and care related to respiratory infections and to prepare for future influenza seasons.¹³ In addition, CBP requested, and the AAP developed, a short training video on recognizing the signs of a child in medical distress. CBP issued the training in late September 2019 as part of a 35-minute training for CBP emergency medical technicians and paramedics.

¹²A health interview is a standardized medical questionnaire for individuals in CBP custody. A medical assessment is an evaluation of an individual by a health care provider to assess medical status.

¹³These recommendations are summarized in our report. See [GAO-20-536](#).

CBP's Implementation and Oversight of Medical Care Efforts Has Been Inconsistent

While CBP has taken steps to enhance medical care for those in its custody, we found gaps in CBP's implementation and oversight of its efforts. For example, we found the following:

- **Inconsistent implementation of enhanced medical care policies and procedures.** Through facility visits and analysis of CBP data, we found that some CBP facilities along the southwest border were not consistently conducting health interviews and medical assessments, as required by the medical directives. Our review of Border Patrol records from a 1-week period in February 2020 found that 143 of 373 apprehended children under age 18 who were processed at Border Patrol stations without contracted medical providers did not receive a health interview or medical assessment referral at those stations. This included 116 children under age 13, and 27 children ages 13 through 17. When we notified CBP of these issues, CBP officials said that they found that most of the 143 children in question had received a health interview or medical assessment elsewhere, though some children had not. CBP officials indicated they were previously unaware of these issues and had not determined why they occurred.
- **CBP did not document how it weighed costs and benefits in deciding not to offer the influenza vaccine.** CBP decided not to implement a recommendation from CDC to offer influenza vaccines to individuals in custody but did not document how it arrived at this decision. For example, CBP documentation cited operational, medical, legal, and logistical challenges to vaccinating apprehended individuals for influenza. CBP officials told us that they considered these factors with DHS and that the department overall decided not to offer the vaccine to apprehended individuals. However, CBP did not document how the agency weighed the costs or potential benefits of offering the influenza vaccine. For example, CBP could not provide documentation on how it determined that costs—such as providing cold storage at CBP facilities to support vaccines, hiring additional medical staff, or maintaining additional medical records related to offering influenza vaccination—would be significant. CDC officials we spoke with stated that they believed these challenges and costs could be addressed.

CBP officials also stated that they believed that offering the influenza vaccine to individuals in custody would provide little benefit to the agency since it is CBP's goal to transfer individuals out of its custody within 72 hours, while the influenza vaccine requires 14 days to take effect. However, CBP officials also stated that they have no control over how long individuals may remain in CBP custody when there is a lack of capacity at ICE facilities. In May and June 2019, the DHS Office of

Inspector General found serious overcrowding and prolonged detention in Border Patrol facilities in Texas because CBP could not transfer individuals in custody out of its facilities in a timely manner, as both ICE and HHS were operating at or above capacity.¹⁴ For example, the DHS Office of Inspector General found that some adults were held as long as a month and some children held for 2 weeks.

CBP made its initial decision not to offer vaccines to those in its custody prior to the Coronavirus Disease 2019 (COVID-19) pandemic. Since that time, CDC has noted additional benefits of offering the influenza vaccine. Additionally, since CBP made its initial decision, CBP officials stated that they continue to meet with other DHS officials on public health issues, including how to prevent the spread of influenza in its facilities. Officials told us that they will use this forum to continually reassess whether to offer influenza vaccines to individuals in its custody.

- **CBP does not provide officers and agents with training to identify medical distress in children.** CBP policies require officers and agents to identify potential medical issues in all individuals, including children, but CBP has not developed and implemented training for agents and officers on identifying medical distress in children. According to AAP representatives, recognizing medical distress in children in a timely fashion is important because children can fall severely ill faster than adults and are less able to communicate about their illness. CBP officers and agents take two first aid courses as part of their initial training, but these courses do not include information specifically related to identifying medical distress in children—such as through changes in skin tone or crying patterns.

CBP and AAP developed a training video on recognizing medical distress in children, which CBP included as part of its training for emergency medical technicians and paramedics as noted above.¹⁵ CBP officials told us that the agency has not provided the training video to all officers and agents because they believed it was too technical, though it is available to officers and agents as an optional continuing education course. CBP officials stated that they have considered offering training on recognizing medical distress in

¹⁴See OIG-19-46 and OIG-19-51.

¹⁵As of April 2020, CBP could not provide information on how many of its CBP emergency medical technicians and paramedics had taken this training. There are approximately 1,200 emergency medical technicians and paramedics that work on the southwest border.

children to all officers and agents who may come into contact with children in custody, but have not begun to take steps to develop and implement such training.

Our report recommended that CBP develop and implement oversight mechanisms for its policies and procedures relating to medical care; document what information it uses to assess whether to offer the influenza vaccine to individuals in custody; and develop and implement training on recognizing medical distress in children for all officers and agents who may come in contact with children. DHS agreed with our recommendations and said it plans to clarify performance metrics, targets, and corrective actions; consider how to best document whether to offer the influenza vaccine to individuals in custody; and develop and implement training on recognizing medical distress in children.

CBP Has Taken Steps to Clarify Responsibilities and Procedures for Reporting Deaths in Custody, but Reporting Gaps Remain

From fiscal year 2015 through fiscal year 2019, CBP was directed to report deaths of individuals in its custody to Congress.¹⁶ We reported that while CBP has taken steps to revise its policies and procedures for reporting deaths in custody, the agency has not consistently reported deaths to Congress, as directed, or maintained documentation of such reporting. Our review of CBP documentation and reports to Congress showed that 31 individuals died in custody along the southwest border from fiscal years 2014 through 2019, and CBP provided documentation that it reported 20 to Congress. Additionally, when CBP reported deaths to Congress, it did not always report them in a timely manner. For example, for fiscal years 2016 through 2019, CBP was directed to report all deaths in custody within 24 hours. However, CBP was unable to substantiate that the agency met the 24-hour requirement for fiscal years 2016 and 2017. Further, in December 2018, CBP reported to Congress the death of a 7-year-old girl who died in Border Patrol custody 4 days after the 24-hour window for notification had passed. Moreover, CBP was directed to provide annual information on deaths in custody for fiscal year 2017 but did not provide this information until March 2019.

CBP officials attributed these reporting issues to a lack of defined responsibilities and procedures. In December 2018—recognizing the

¹⁶The congressional reports accompanying annual Department of Homeland Security's appropriations acts for fiscal years 2015 through 2019 direct DHS to report certain information on deaths in custody within specific timeframes to the appropriations committees. For more information, see table 4 of our report, [GAO-20-536](#). Additionally, in fiscal year 2014, DHS was directed to provide information on deaths in custody in summary statistics to the appropriations committees. See House Rep. No. 113-91 (2013).

need for more consistent and timely reporting—the CBP Commissioner issued a memorandum outlining interim policy and procedures for notifications of a death in CBP custody. However, we found that field personnel have not consistently followed those procedures, which resulted in at least one late notification to Congress, and CBP could not provide documentation that it had notified Congress of an additional two deaths that had occurred after the issuance of the memorandum.¹⁷ Officials stated that this may have been due to a lack of awareness about the December 2018 memorandum reporting requirements. Our report recommended that CBP ensure that reliable information on deaths in custody is reported to Congress and that appropriate documentation on such reporting is maintained. DHS agreed with this recommendation and said it is reviewing and updating procedures to ensure deaths in custody are reported to Congress as appropriate.

In summary, CBP has taken some steps to improve its care and custody of adults and children, but the agency needs to increase oversight of the use of funds, medical care and reporting of deaths. By implementing our report's recommendations, CBP has the opportunity to provide additional guidance and oversight of appropriated funds; develop and implement oversight mechanisms related to medical care policies; document decisions made regarding offering the influenza vaccine; and provide guidance to ensure that deaths in custody are reported to Congress, as directed.

Chairman Thompson, Ranking Member Rogers, and Members of the Committee, this concludes our prepared remarks. We would be pleased to respond to any questions that you may have at this time.

GAO Contact and Staff Acknowledgments

For future contacts regarding this statement, please contact Rebecca Gambler at (202) 512-8777 or gablerr@gao.gov, or Mary Denigan-Macauley at (202) 512-7114 or deniganmacauleym@gao.gov. For questions regarding the related legal product that GAO issued, please contact Helen T. Desaulniers at (202) 512-4740 or desaulniersh@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this statement are Ashley Davis (Assistant Director), Lori Achman (Assistant Director),

¹⁷CBP officials stated they may have notified Congress by telephone.

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