

Jenny L. Flores, et al. v. Merrick Garland, et al.
Case No. CV 85-4544-DMG (AGR_x)

Exhibit Index to Plaintiffs Motion to Enforce re Open-Air Detention Sites

| Exhibit | Exhibit Description |
|----------------|--------------------------------------------------------------|
| 1 | Declaration of Mishan Wroe, February 29, 2024 |
| 2 | Declaration of Pedro Rios, February 21, 2024 |
| 3 | Declaration of Flor De Luna Alvarez-Lopez, February 28, 2024 |
| 4 | Declaration of Erika Pinheiro, February 26, 2024 |
| 5 | Declaration of Dr. Theresa Cheng, February 23, 2024 |
| 6 | Declaration of Adriana Jasso, February 21, 2024 |
| 7 | Declaration of Sarah Kahn, February 27, 2024 |
| 8 | Declaration of Saulo, February 3, 2024 |
| 9 | Declaration of G., February 21, 2024 |
| 10 | Declaration of E.G, February 3, 2024 |
| 11 | Declaration of Lilian Serrano, February 26, 2024 |

EXHIBIT 1

1 CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
2 Carlos R. Holguín (Cal. Bar No. 90754)
3 Sarah E. Kahn (Cal. Bar No. 341901)
4 256 South Occidental Boulevard
5 Los Angeles, CA 90057
6 Telephone: (213) 388-8693
7 Email: crholguin@centerforhumanrights.email

8 *Attorneys for Plaintiffs*

9 *Additional counsel listed on following page*

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JENNY LISETTE FLORES, *et al.*,

Plaintiffs,

v.

MERRICK GARLAND, Attorney General
the United States, *et al.*,

Defendants.

No. CV 85-4544-DMG-AGR_x

DECLARATION OF MISHAN WROE IN
SUPPORT OF PLAINTIFFS' MOTION TO
ENFORCE SETTLEMENT RE OPEN-AIR
DETENTION SITES

Hearing: March 29, 2024

Time: 9:30 a.m.

Hon. Dolly M. Gee

1 NATIONAL CENTER FOR YOUTH LAW
2 Mishan Wroe (Cal. Bar No. 299296)
3 Diane de Gramont (Cal. Bar No. 324360)
4 1212 Broadway, Suite 600
5 Oakland, CA 94612
6 Telephone: (510) 835-8098
7 Email: mwroe@youthlaw.org

8 CHILDREN’S RIGHTS
9 Leecia Welch (Cal. Bar No. 208741)
10 88 Pine Street, Suite 800
11 New York, NY 10005
12 Telephone: (212) 683-2210
13 Email: lwelch@childrensrights.org

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Declaration of Mishan Wroe

I, Mishan Wroe, declare as follows:

1. This declaration is based on my personal knowledge. If called to testify in this case, I would testify competently about these facts.

2. I am a Senior Attorney at the National Center for Youth Law, and I am counsel of record for Plaintiffs in the above-captioned case.

3. On December 19, 2023, Plaintiffs emailed Defendants to describe Plaintiffs' concerns about class members detained at open-air detention sites and to request to meet and confer about this issue. That email is attached hereto as Exhibit A.

4. On January 4, 2024, Plaintiffs and Defendants met and conferred by phone to discuss Plaintiffs' concerns as outlined in Exhibit A.

5. On January 8, 2024, Defendants provided an email update regarding CBP encounters of noncitizens at the open-air sites. Plaintiffs responded to explain that we appreciated the update, but our concerns were not alleviated given the lack of policy change to protect class members at these sites. That email correspondence is attached hereto as Exhibit B.

6. On February 21, 2024, Plaintiffs emailed Defendants to reiterate their continued concerns regarding class members detained at open-air detention sites and to inform Defendants of Plaintiffs' intention to enforce the *Flores* Settlement Agreement as necessary. That email is attached hereto as Exhibit C.

7. As of 9:00 a.m. Pacific Standard Time on February 29, 2024, Plaintiffs have not received a response to the February 21, 2024, email communication.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 29th day of February, 2024, at Oakland, California.

/s/ Mishan Wroe

Mishan Wroe

EXHIBIT A



Mishan Wroe <mwroe@youthlaw.org>

Meet and Confer Request regarding Open Air Detention Sites

Mishan Wroe <mwroe@youthlaw.org>

Tue, Dec 19, 2023 at 10:59 AM

To: "Batool, Fizza (CIV)" <Fizza.Batool2@usdoj.gov>

Cc: "Fabian, Sarah B (CIV)" <sarah.b.fabian@usdoj.gov>, Carlos Holguín <crholguin@centerforhumanrights.email>, Leecia Welch <lwelch@childrensrights.org>, Neha Desai <ndesai@youthlaw.org>, Sarah Kahn <sarah@centerforhumanrights.org>, Andrea Sheridan Ordin <aordin@strumwooch.com>, Paul Wise <phwise100@gmail.com>

Dear Fizza,

We write to meet and confer regarding violations of the *Flores* Settlement Agreement (“Settlement Agreement”) occurring in open-air detention sites where CBP is holding class members and their families for extended periods of time in unsafe and unsanitary conditions.

For many months, CBP has been holding *Flores* class members in the open-air corridor at four sites between the primary and secondary walls west of the San Ysidro Port of Entry in California and four sites in Jacumba, California. It is our understanding that one of the sites in Jacumba is currently not in use. As detailed in the DHS Office for Civil Rights and Civil Liberties (CRCL) [complaint](#) submitted by Southern Border Communities Coalition (SBCC) on May 13, 2023 and the CRCL [complaint](#) submitted by Al Otro Lado (AOL), American Friends Service Committee (AFSC), Border Kindness, SBCC, Center for Gender and Refugee Studies (CGRS), International Refugee Assistance Project (IRAP), and National Immigration Law Center (NILC), on December 11, 2023, Border Patrol agents are not providing adequate water, food, shelter, sanitation or medical assistance to class members in these sites, in violation of paragraphs 11 and 12 of the Settlement Agreement. *Flores* counsel observed similar conditions in a visit to the San Ysidro Port of Entry on November 20, 2023.

Based on our own observations and our discussions with advocates, in addition to multiple publicly available sources, it is clear that CBP maintains custody of class members in these open-air detention sites and therefore is required, pursuant to the Settlement Agreement, to treat these “minors in its custody with dignity, respect and special concern for their particular vulnerability as minors” as well as to hold them “in facilities that are safe and sanitary” including providing them with, at a minimum, “access to toilets and sinks, drinking water and food..., medical assistance ..., [and] adequate temperature control...” Settlement Agreement ¶¶ 11, 12A. Inexplicably, CBP is failing to meet these essential requirements. Class members must immediately be moved from these detention sites to safety and CBP must immediately stop its policy of holding class members in these open-air sites.

Holding class members in this manner is fundamentally unsafe. We are aware of infants experiencing severe dehydration leading to vomiting, youth receiving nothing more than a single water bottle and granola bar per day as sustenance, and youth spending days outside exposed to the elements, being forced to sleep on the ground in increasingly colder temperatures.

These sites are inherently unsanitary. Advocates have reported piles of trash accumulating for days at a time without being cleared. In some of the detention sites, there is only one portable toilet provided for hundreds of people. The toilets are not cleaned regularly and create an unsanitary hazard for class members. Moreover, children do not have regular or adequate access to showers, toothbrushes, or hand washing.

Class members experience medical emergencies in these detention sites without adequate access to medical treatment. Earlier this month, a 13-year-old boy died at the Moon Valley Jacumba site after waiting more than an hour for emergency medical services to arrive. We are also aware of at least one child with asthma who was wheezing and spent several days at an open-air detention site without access to an inhaler. Children have also experienced head trauma, high fevers, seizures, and severe dehydration requiring immediate medical attention. Thankfully, in many of these instances, advocates were on site and able to help these

children access treatment. Without the advocates' intervention, there is no indication that these children would have received appropriate medical care.

We look forward to discussing these issues with you and, most importantly, to a prompt cessation of this policy and practice. To avoid court intervention, we request that we meet and confer about the issues raised in this letter and the CRCL complaints as soon as possible. We understand that scheduling is challenging this time of year, but due to the gravity of the situation and the likelihood that conditions will worsen in the coming weeks as winter weather approaches, we request that you provide options for a meeting as soon as possible and no later than January 5, 2024. I have copied Andrea Ordin and Dr. Wise so they are aware of our request.

Thank you,
Mishan



Mishan Wroe, [she/her](#)
Senior Attorney, Immigration
p: 510.920.3512
youthlaw.org



EXHIBIT B



Mishan Wroe <mwroe@youthlaw.org>

Meet and Confer Request regarding Open Air Detention Sites

Mishan Wroe <mwroe@youthlaw.org>

Tue, Jan 9, 2024 at 10:05 AM

To: "Batool, Fizza (CIV)" <Fizza.Batool2@usdoj.gov>

Cc: "Fabian, Sarah B (CIV)" <Sarah.B.Fabian@usdoj.gov>, Carlos Holguín <crholguin@centerforhumanrights.email>, Leecia Welch <lwelch@childrensrights.org>, Neha Desai <ndesai@youthlaw.org>, Sarah Kahn <sarah@centerforhumanrights.org>, Paul Wise <phwise100@gmail.com>, Andrea Sheridan Ordin <aordin@strumwooch.com>, "McCroskey, Joshua C. (CIV)" <Joshua.C.McCroskey@usdoj.gov>

Thank you, Fizza, for sharing this update. We understand the numbers of detained people varies considerably day to day and without a policy prohibiting youth from staying in any open air detention site for any significant period of time, our concerns are not met by this information. We will continue to confer about our next steps and we'll share an update with you all when we have one.

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Mishan Wroe, she/her

Senior Attorney, Immigration

p: 510.920.3512

youthlaw.org



On Mon, Jan 8, 2024 at 7:15AM Batool, Fizza (CIV) <Fizza.Batool2@usdoj.gov> wrote:

Dear Mishan,

This email is to provide an update to Plaintiffs' counsel that there are currently 6 areas where CBP has encountered noncitizens. There are 3 areas near San Ysidro and 3 areas near Jacumba. As of Friday, January 5th, there were no noncitizens (including minors) located in any of these areas. As communicated during our meet and confer, CBP continues to prioritize the transportation of vulnerable populations (including minors) to the nearest USBP Station for processing.

Kind regards,

Fizza

From: Mishan Wroe <mwroe@youthlaw.org>

Sent: Tuesday, January 2, 2024 4:37 PM

To: Batool, Fizza (CIV) <Fizza.Batool2@usdoj.gov>

Cc: Fabian, Sarah B (CIV) <Sarah.B.Fabian@usdoj.gov>; Carlos Holguín <crholguin@centerforhumanrights.email>; Leecia Welch <lwelch@childrensrights.org>; Neha Desai <ndesai@youthlaw.org>; Sarah Kahn <sarah@centerforhumanrights.org>; Paul Wise <phwise100@gmail.com>; Andrea Sheridan Ordin <aordin@strumwooch.com>; McCroskey, Joshua C. (CIV) <Joshua.C.McCroskey@usdoj.gov>

Subject: [EXTERNAL] Re: Meet and Confer Request regarding Open Air Detention Sites

Thank you, Fizza. We can meet on Thursday at 12pm ET. We look forward to your invite. Nice to meet you, Joshua!

--



Mishan Wroe, she/her
Senior Attorney, Immigration
p: 510.920.3512
youthlaw.org



On Tue, Jan 2, 2024 at 12:11 PM Batool, Fizza (CIV) <Fizza.Batool2@usdoj.gov> wrote:

Dear Mishan,

I hope you enjoyed the holidays, and Happy New Year. We are able to meet and confer on the below dates and times:

- Thursday (1/04) – 12-1pm (ET); 4-5pm (ET)
- Friday (1/05) – 1-3pm (ET)

We do not believe that involvement of the Juvenile Care Monitor and/or Dr. Wise is appropriate per the 2022 CBP Settlement for purposes of our discussion to address Plaintiffs' concerns below which fall outside the RGV and El Paso sectors. Please let me know what date/time works for Plaintiffs, and I can circulate an invite.

Separately, please include my colleague Joshua McCroskey (cc'd) on all Flores emails moving forward. He will be working on this case with me.

Kind regards,

Fizza

From: Andrea Sheridan Ordin <aordin@strumwooch.com>
Sent: Wednesday, December 27, 2023 8:15 PM
To: Mishan Wroe <mwroe@youthlaw.org>; Batool, Fizza (CIV) <Fizza.Batool2@usdoj.gov>
Cc: Fabian, Sarah B (CIV) <Sarah.B.Fabian@usdoj.gov>; Carlos Holguín <crholguin@centerforhumanrights.email>; Leecia Welch <lwelch@childrensrights.org>; Neha Desai <ndesai@youthlaw.org>; Sarah Kahn <sarah@centerforhumanrights.org>; Paul Wise <phwise100@gmail.com>
Subject: [EXTERNAL] Re: Meet and Confer Request regarding Open Air Detention Sites

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Mishan,

Thank you for including Dr. Wise and me on this Meet and Confer Request. The request raises serious issues. As you have noted, it is a challenging time of year for scheduling. Although Dr. Wise and I are not required for the meeting, I wanted you and Fizza Batool to know that Dr. Wise and I have made plans to monitor in Texas, traveling on January 3 and returning on the evening of January 5.

Best!

Andrea

From: Mishan Wroe <mwroe@youthlaw.org>
Sent: Tuesday, December 19, 2023 10:59 AM
To: Batool, Fizza (CIV) <Fizza.Batool2@usdoj.gov>
Cc: Fabian, Sarah B (CIV) <sarah.b.fabian@usdoj.gov>; Carlos Holguín <crholguin@centerforhumanrights.email>; Leecia Welch <lwelch@childrensrights.org>; Neha Desai <ndesai@youthlaw.org>; Sarah Kahn <sarah@centerforhumanrights.org>; Andrea Sheridan Ordin <aordin@strumwooch.com>; Paul Wise <phwise100@gmail.com>
Subject: Meet and Confer Request regarding Open Air Detention Sites

Dear Fizza,

We write to meet and confer regarding violations of the *Flores* Settlement Agreement (“Settlement Agreement”) occurring in open-air detention sites where CBP is holding class members and their families for extended periods of time in unsafe and unsanitary conditions.

For many months, CBP has been holding *Flores* class members in the open-air corridor at four sites between the primary and secondary walls west of the San Ysidro Port of Entry in California and four sites in Jacumba, California. It is our understanding that one of the sites in Jacumba is currently not in use. As detailed in the DHS Office for Civil Rights and Civil Liberties (CRCL) [complaint](#) submitted by Southern Border Communities Coalition (SBCC) on May 13, 2023 and the CRCL [complaint](#) submitted by Al Otro Lado (AOL), American Friends Service Committee (AFSC), Border Kindness, SBCC, Center for Gender and Refugee Studies (CGRS), International Refugee Assistance Project (IRAP), and National Immigration Law Center (NILC), on December 11, 2023, Border Patrol agents are not providing adequate water, food, shelter, sanitation or medical assistance to class members in these sites, in violation of paragraphs 11 and 12 of the Settlement Agreement. *Flores* counsel observed similar conditions in a visit to the San Ysidro Port of Entry on November 20, 2023.

Based on our own observations and our discussions with advocates, in addition to multiple publicly available sources, it is clear that CBP maintains custody of class members in these open-air detention sites and therefore is required, pursuant to the Settlement Agreement, to treat these “minors in its custody with dignity, respect and special concern for their particular vulnerability as minors” as well as to hold them “in facilities that are safe and sanitary” including providing them with, at a minimum, “access to toilets and sinks, drinking water and food..., medical assistance ..., [and] adequate temperature control...” Settlement Agreement ¶¶ 11, 12A. Inexplicably, CBP is failing to meet these essential requirements. Class members must immediately be moved from these detention sites to safety and CBP must immediately stop its policy of holding class members in these open-air sites.

Holding class members in this manner is fundamentally unsafe. We are aware of infants experiencing severe dehydration leading to vomiting, youth receiving nothing more than a single water bottle and

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granola bar per day as sustenance, and youth spending days outside exposed to the elements, being forced to sleep on the ground in increasingly colder temperatures.

These sites are inherently unsanitary. Advocates have reported piles of trash accumulating for days at a time without being cleared. In some of the detention sites, there is only one portable toilet provided for hundreds of people. The toilets are not cleaned regularly and create an unsanitary hazard for class members. Moreover, children do not have regular or adequate access to showers, toothbrushes, or hand washing.

Class members experience medical emergencies in these detention sites without adequate access to medical treatment. Earlier this month, a 13-year-old boy died at the Moon Valley Jacumba site after waiting more than an hour for emergency medical services to arrive. We are also aware of at least one child with asthma who was wheezing and spent several days at an open-air detention site without access to an inhaler. Children have also experienced head trauma, high fevers, seizures, and severe dehydration requiring immediate medical attention. Thankfully, in many of these instances, advocates were on site and able to help these children access treatment. Without the advocates' intervention, there is no indication that these children would have received appropriate medical care.

We look forward to discussing these issues with you and, most importantly, to a prompt cessation of this policy and practice. To avoid court intervention, we request that we meet and confer about the issues raised in this letter and the CRCL complaints as soon as possible. We understand that scheduling is challenging this time of year, but due to the gravity of the situation and the likelihood that conditions will worsen in the coming weeks as winter weather approaches, we request that you provide options for a meeting as soon as possible and no later than January 5, 2024. I have copied Andrea Ordin and Dr. Wise so they are aware of our request.

Thank you,
Mishan

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Mishan Wroe, she/her

Senior Attorney, Immigration

p: 510.920.3512

youthlaw.org



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EXHIBIT C



Mishan Wroe <mwroe@youthlaw.org>

Meet and Confer Request regarding Open Air Detention Sites

Mishan Wroe <mwroe@youthlaw.org>

Wed, Feb 21, 2024 at 11:04 AM

To: "Batool, Fizza (CIV)" <Fizza.Batool2@usdoj.gov>

Cc: "Fabian, Sarah B (CIV)" <Sarah.B.Fabian@usdoj.gov>, Carlos Holguín <crholguin@centerforhumanrights.email>, Leecia Welch <lwelch@childrensrights.org>, Neha Desai <ndesai@youthlaw.org>, Sarah Kahn <sarah@centerforhumanrights.org>, Paul Wise <phwise100@gmail.com>, Andrea Sheridan Ordin <aordin@strumwooch.com>, "McCroskey, Joshua C. (CIV)" <Joshua.C.McCroskey@usdoj.gov>

Fizza,

Plaintiffs remain very concerned about the open air detention sites we corresponded about in mid-December and discussed in early January. In particular, despite the apparent decrease in numbers, we remain deeply troubled by the unsafe and unsanitary conditions class members are held in for any period of time at the open air sites. Plaintiffs' position is that children held at open air detention sites are class members and as such CBP is violating Paragraph 12 of the Flores Settlement Agreement by failing to keep these children in safe and sanitary settings. We plan to take the necessary steps to enforce the Settlement.

When we last spoke in December 2023, it was Defendants' position that these children are not class members and that they are not in CBP custody. Unless Defendants' position has changed, there is unlikely to be anything left to meet and confer about but Plaintiffs remain open to talking if Defendants' position has changed and/or if you have any questions. We are available this week or next.

Thank you,
Mishan



Mishan Wroe, she/her
Senior Attorney, Immigration
p: 510.920.3512
youthlaw.org



[Quoted text hidden]

EXHIBIT 2

1 I, Pedro Rios, declare as follows:

2
3 1. The content of this declaration is based on my personal knowledge, my own
4 observations, information communicated directly to me by people detained at open-air
5 detention sites (“OADS”), and information I have learned through conversations with
6 Border Patrol officers. The following facts are true to the best of my understanding and
7 recollection. If called to testify in this case, I would testify competently about these facts.
8

9 **Personal Background**

10 2. I am the Director of the American Friends Service Committee’s (AFSC) US-
11 Mexico Border Program. I have been monitoring and advocating for human rights for
12 twenty years with AFSC. I am also a member of several organizations that advocate for
13 humane and dignified policies for the Southern Border, including the Southern Border
14 Communities Coalition (“SBCC”) and The National Network for Immigrant and Refugee
15 Rights.

16 3. I submitted a declaration in support of the complaint SBCC filed with the
17 Department of Homeland Security (“DHS”) Office of Civil Rights and Civil Liberties on
18 May 13, 2023. Attached hereto as Exhibit A is a true and correct copy of that declaration.
19 I filed an additional supplemental declaration to the same office in a renewed and
20 expanded complaint about continued violations of rights by U.S. Customs and Border
21 Protection (“CBP”) at OADS on December 11, 2023. Attached hereto as Exhibit B is a
22 true and correct copy of the supplemental declaration.

23 4. The first groups of people that I am aware of that were detained between the
24 primary and secondary barriers along the U.S.-Mexico border occurred in October 2022,
25 near Friendship Park. I first observed children at the OADS in February 2023. Though
26 the numbers of people detained at the OADS from October 2022 to present day has
27 varied, the numbers steadily increased in February 2023 and again more significantly in
28 April and May 2023. Since May 2023, the numbers of people have continued to fluctuate

1 from week to week, diminishing significantly from June to August, and increasing again
2 in September 2023 with highs of several hundred into October and November, and
3 decreasing slightly in December. More people now cross during the evening and spend
4 the night at OADS known as Whiskey 8, west of the San Ysidro Port of Entry.

5 5. Since April 2023 I have visited the border regularly, providing volunteer aid and
6 observing the conditions of the OADS near San Ysidro, California. I have been to the
7 Jacumba, California OADS only a handful of times. Between September 2023 and early
8 February 2024, I went to OADS at the border nearly every day, about 5 days a week, and
9 I spent between 3-6 hours during each visit. I am currently going to the OADS 3 times
10 per week for 4 hours at a time. In addition to these visits, sometimes I go to Whiskey 8 to
11 replenish drinking water, and I stay for about 30 minutes while I do a general review of
12 the area.

13 6. Since the spring of 2023, I have observed migrants trapped between the primary
14 and secondary border barriers on the western most segment of the US-Mexico border
15 near San Ysidro. There are at least four OADS west of the San Ysidro Port-of-Entry,
16 including Whiskey 4, Whiskey 8, Spooner's Mesa, and 91X, and all four sites are
17 between the primary and secondary border barriers. I have personally visited Whiskey 8
18 and Spooner's Mesa, and I have observed Whiskey 4 from an adjacent parking lot. The
19 91X OADS is near the beach and seems to be used less frequently than the others, though
20 I have occasionally heard a Border Patrol agent indicate that migrants are being held at
21 91X.

22 7. At Whiskey 8, AFSC and other volunteer groups have set up four different
23 stations, including a water station, food station, phone charging station, and a medical
24 station. We have also added a food pantry at Whiskey 8. When Border Patrol permits us
25 to do so, we prepare food for the Whiskey 4 and Spooner's Mesa OADS.

26 8. Since May 2023, I have observed migrants, including young children, held in
27 various OADS near Jacumba, California including a site called Valley of the Moon (also
28 known as Moon Valley) that is along highway 8; Tower 177 which is located on private

1 land isolated at the bottom of a hill; and Willows, a gated-off site located on private land
2 abutting a wall along the U.S.-Mexico border.

3 9. I have spoken with migrants who have identified themselves as being from many
4 different countries, including Afghanistan, Jamaica, India, and Colombia. Most of the
5 migrants I have spoken with are seeking asylum because of dangers they face in their
6 home countries.

7
8 **CBP Controls the Flow of Migrants to Open-Air Detention Sites and Transfer and**
9 **Release from the Sites.**

10 10. When I visit the OADS near San Ysidro and Jacumba, I see CBP agents patrol the
11 corridor with vehicles and ATVs. The areas are also monitored by cameras. I have
12 observed that Border Patrol directs migrants where they must go, where they must stay,
13 and where they must wait.

14 11. For example, I have observed Border Patrol telling migrants they must sit in rows
15 and stay seated within the OADS. On occasion, I have seen agents drive through the
16 OADS with an ATV or cars, to check that the migrants were seated. Migrants have told
17 me they believe this is in anticipation of being processed, but the agents will make them
18 all sit for hours on end and do not pick them up for processing. Migrants state, and I have
19 observed, that if people are not sitting, agents sometimes yell at the migrants. This
20 includes children, who do not understand what is happening. These individuals sit under
21 full sun, rain, and sometimes extreme cold.

22 12. In Jacumba, I have spoken with migrants who were directed to the site by Border
23 Patrol. For example, on December 3, 2023, I spoke with three people at the Valley of the
24 Moon site who had walked nearly three hours to get to the site, following Border Patrol
25 agents' directions to go there. One of these individuals said that they were walking in one
26 direction, and a Border Patrol agent redirected them in another direction to keep walking
27 eastward toward the Valley of the Moon site.

1 13. Near San Ysidro, CBP holds migrants in an area bounded by a secondary barrier to
2 the north of the primary barrier. This corridor between the barriers comprises the OADS
3 and is fully controlled by CBP. Border Patrol agents tell migrants they must remain in
4 this area. Often Border Patrol agents will instruct migrants to remove their shoelaces.

5 14. I have observed Border Patrol agents ushering migrants from Whiskey 4, near Las
6 Americas, to the Whiskey 8 OADS. Agents also directed single men to the Spooner's
7 Mesa, which is approximately 1.5 miles from Whiskey 8.

8 15. In San Ysidro, I witnessed Border Patrol agents tell some migrants that they must
9 remain at Whiskey 8 and wait to be picked up there, while telling other migrants to walk
10 to Spooner's Mesa. I have spoken to migrants at Whiskey 8 who told me that the men in
11 their group were separated from them and told to remain at Spooner's Mesa. This has
12 included partners who traveled together from their country of origin. It also has included
13 18-year-old teenagers who must leave their mothers at Whiskey 8 while they are told to
14 walk to Spooner's Mesa. In these latter scenarios, the family members separated may be
15 released at different hours and different days, which may complicate their onward travel.

16 16. Border Patrol often transports people from one area of the corridor between the
17 primary and secondary barriers along the U.S.-Mexico border to another. In 2023, nearly
18 every day I that I spent at the Whiskey 8 site, I observed Border Patrol vans dropping off
19 people at Whiskey 8 that Border Patrol had picked up after these individuals crossed the
20 border wall. For example, on December 7, 2023, I witnessed Border Patrol transporting
21 two vanloads of people to the Whiskey 8 site; I personally heard a Border Patrol agent
22 tell these transported individuals to eat food that volunteers like me were providing.

23 17. Migrants at the OADS are forced to wait at the sites for hours and even days at a
24 time, without being allowed to freely leave. In February 2023, at San Ysidro OADS, I
25 spoke to migrants who had been in the OADS for several days hoping to be processed by
26 border agents. They told me that although CBP agents had seen them and spoken to them,
27 the agents had not processed them out of the OADS.

1 18. In April 2023, more women and children began to appear in the corridor and the
2 number of migrants grew until it was regularly around 700 people who were visible to me
3 at the Whiskey 8 area. I knew there were more people at other OADS in the corridor. In
4 conversations with Border Patrol agents on site and migrants at Whiskey 8, they
5 confirmed that more people were at Whiskey 4 and Spooner's Mesa.

6 19. In May 2023, I spoke to several people at Whiskey 8 who were held for up to 7
7 days at the OADS. These included children who stayed at Whiskey 8 for days at a time.
8 At this time, Border Patrol instituted the use of wristbands to identify people's arrival
9 based on the agent's first official interaction with them, which might be a day or two after
10 they actually arrive at the OADS. Though the wristbands are no longer being used at
11 Whiskey 8, they resemble the ones used at music concerts. They are different colors, and
12 some have the day of the week printed on them.

13 20. In December 2023, people, including children, were held at Whiskey 8 for up to 18
14 hours and men held at Spooner's Mesa were usually forced to wait for at least 24 hours.
15 On December 5, 2023, I spoke with two families who had spent the night at the Valley of
16 the Moon site near Jacumba.

17 21. Between May 2023 and February 2024, I saw Border Patrol regularly take count of
18 people detained at the Whiskey 8 OADS. I observed agents direct people to stand in a
19 row and count everyone present. Sometimes they tell the families to stand separately and
20 the single men and the single women to stand together to get a count of those present,
21 including families.

22 22. My organization provides basic necessities to migrants at OADS, including water,
23 food, and blankets. Initially when we started providing humanitarian aid, an agent
24 scolded me, telling me that we needed to alert Border Patrol every time we came to
25 Whiskey 8. As the press began to cover what was unfolding at the OADS in late Spring
26 2023, I saw that they also told the media the same thing. As recently as February 13,
27 2024, a Border Patrol agent told an MSNBC crew that they were required to notify
28 Border Patrol about their plans to be in the area.

1 23. In my experience, Border Patrol maintains strict control over who enters the OADS
2 to assist migrants and asylum seekers. Usually, we are not allowed into the Spooner's
3 Mesa site, but once, in early September 2023, after advocating with the supervising
4 Border Patrol agent, my colleague and I were permitted to feed people meals there. We
5 fed approximately 380 people during that visit.

6 24. Even when allowed in, volunteers like me are subject to Border Patrol's strict
7 orders. In September 2023, Border Patrol agents told me on at least two occasions that
8 they would arrest me and my group if we approached the secondary border wall at
9 Whiskey 8. On September 12, 2023, I reported one such incident to the Sector Chief by
10 email but got no response. The threats to arrest volunteers are surprising, given that on
11 more than three occasions, I have spoken with Border Patrol agents who have stated that
12 they appreciate our presence and work in the area.

13
14 **CBP's Use and Control of OADS Has Created Dangerous and Unsanitary**
15 **Conditions for Migrants**

16 25. Border Patrol does not provide basic human necessities to the migrants detained at
17 the OADS. At Whiskey 8, Border Patrol agents continue to fail to provide food or even
18 water, even to children. I spoke with several men who came to Whiskey 8 from
19 Spooner's Mesa, and they told me that they had not had water or food in the near 24
20 hours until they were directed by Border Patrol to wait at Whiskey 8.

21 26. In April 2023, I was regularly volunteering two to three times per week at Whiskey
22 8. At that time, most migrants had been at Whiskey 8 for at least 2 days. Some had mylar
23 blankets given to them by border agents, others had nothing to cover themselves at night.
24 During this time, it rained regularly and was cold day and night. The migrants told me
25 they were thirsty and hungry with little to nothing to eat or drink.

26 27. Migrants have told me they have had to wait up to 7 days with no shelter, minimal
27 water, and only a granola bar to eat. When I was visiting the OADS in the Spring of
28 2023, I communicated with the Border Patrol liaison about the conditions, and shortly

1 thereafter, agents placed a 5-gallon container of water at the OADS every morning, but
2 this would finish quickly. By mid-day there was no available water.

3 28. In 2023, San Diego was unusually cold and rainy. I recall a particularly rainy night
4 in mid-April 2023. The following morning, I came to the border and spoke to a group of
5 migrants who were all from Africa. They had not been given mylar blankets, but they had
6 regular blankets that were soaked. They had no other clothes or cover to protect them
7 from the weather. They told me they had been at Whiskey 8 for 5 days.

8 29. At the end of April 2023, I spoke to the Border Patrol community liaison as well as
9 the Department of Homeland Security Civil Rights and Civil Liberties liaison expressing
10 concerns about the conditions, including the lack of water and sanitation. Initially they
11 told me that the government was considering bringing in a buffalo water tank, but then
12 the Border Patrol liaison told me they would not install one at Whiskey 8 out of concern
13 that it would attract more migrants. They never brought the tank in.

14 30. On April 28, 2023, several months after I began witnessing the presence of
15 migrants in the corridor, agents brought in a single port-a-potty to the Whiskey 8 area,
16 but it was not enough for what was then about 70 people on average in that area. I don't
17 know if they brought additional port-a-potties to other parts of the corridor.

18 31. Two days after the port-a-potty arrived, it was full and unusable. It may have been
19 serviced, but I never personally observed that happen, and migrants regularly complained
20 that it was unusable. As of December 2023, there were two port-a-potties.

21 32. On May 1, 2023, I spoke with a group of men from India who told me they were
22 starving. They showed me the leaves they were eating. They had been there for 5 days.
23 During that time, I observed that border agents had removed the 5-gallon water jug. They
24 handed out one small water bottle per migrant every day, leaving migrants thirsty by the
25 afternoon.

26 33. Throughout my time monitoring the conditions in the corridor and volunteering, I
27 have witnessed some Border Patrol agents speaking aggressively towards migrants. For
28 example, I heard one agent say, "I don't give a fuck how long you've been here," and

1 another say, “get the fuck away from me” when a migrant approached to ask a question.
2 On February 8, 2024, I heard a Border Patrol agent yell, “No passport, no go! I don’t give
3 a fuck if you’re cold!” It was 51 degrees at that time at approximately 7:30 AM.

4 34. Border Patrol also fails to provide sufficient medical care to injured or ill migrants
5 at the OADS, relying on volunteers like me to provide first aid and other first responder
6 care. For example, in May 2023, I alerted the Border Patrol liaison that a Jamaican
7 woman had approached me to tell me she had suffered a miscarriage after being
8 kidnapped and raped in Mexico and was in what she described as excruciating pain.
9 Other human rights observers shared that they alerted Border Patrol to this woman’s
10 condition several days prior, but nothing was done.

11 35. One day in early October 2023, a Border Patrol agent notified me and my
12 colleague that a 12-year-old boy from Ecuador had a high temperature of about 101
13 degrees. The agent asked us to keep monitoring the boy. We monitored the boy’s
14 temperature every 30 minutes for about two hours, and when his temperature shot up to
15 103 degrees, I notified Border Patrol, who then called for an ambulance.

16 36. Several months ago, I spoke with a mother who had fallen from the border wall
17 with her one-year-old baby daughter strapped to her back. The mother agreed to have her
18 injuries inspected by paramedics, and the paramedics suggested she and her child get
19 further medical care at a hospital. I observed a Border Patrol agent threatened the mother
20 that if she agreed to be transported to the hospital, she would not be processed and would
21 suffer immigration consequences. The mother then refused medical treatment. This
22 incident, which I observed, occurred in the early evening.

23 24 **Families and Children Are Held in the Open-Air Detention Sites**

25 37. I have seen many children held in the OADS since I started visiting them regularly
26 in April 2023. Like the adults, these children do not have access to food, water, or
27 medical services and they must sit or stand for hours at a time in accordance with CBP
28 instructions.

1 38. I have observed many unaccompanied children at Whiskey 8. I have witnessed
2 when Border Patrol agents separate a child out of a group and place him or her into a van.
3 The remaining individuals were kept in a line and later transported in a bus out of
4 Whiskey 8.

5 39. In May 2023, I witnessed a child who was less than a year old whose mother said
6 was no longer taking her breast milk and was throwing up and listless. I called the Border
7 Patrol liaison for medical assistance, and they came to take the child and mother to the
8 hospital. But had I or another human rights observer not been there, that child might not
9 have received any assistance. Especially since agents are not making themselves
10 approachable and some are actively aggressive towards migrants.

11 40. In another instance, parents of an 8-year-old child approached me to tell me that
12 their child had had a seizure as a result of his medication being taken away by Mexican
13 authorities. They were concerned for the child's health. I left a message for the Border
14 Patrol liaison and agents came for him soon after. As with other incidents, if we had not
15 been there, the child may have fallen into greater danger.

16 41. On January 24, 2024, I spoke to a mother at Whiskey 8 at approximately 8:30 PM.
17 She stated that a Border Patrol agent pointed his service weapon at two young men in
18 Tijuana who were assisting her 11-year-old daughter scale the primary border wall.
19 Consequently, the men fled and the girl fell on the Tijuana side. The Border Patrol agent
20 yelled in English to the mother to walk west to Whiskey 8. She was forced to leave her
21 daughter behind on the other side of the wall and was crying not knowing what had
22 happened to her daughter. Though her daughter crossed to the United States at around
23 2:30 AM, the incident was traumatic for both.

24 42. One migrant told me that in the night, the children cry. He said that the adults have
25 a way to cope, but the children are scared.

1 I declare under penalty of perjury that the foregoing is true and correct to the best of my
2 knowledge.

3

4 Executed on this 21 day of February 2024, at Chula Vista, California

5

A handwritten signature in black ink, appearing to read 'P. Rios', is written above a horizontal line.

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Pedro Rios

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EXHIBIT A

DECLARATION OF PEDRO RIOS

I, Pedro Rios, declare the following:

1. I am the director of the American Friends Service Committee (AFSC) US-Mexico Border Program. I have been monitoring and advocating for human rights at AFSC for twenty years.
2. For the last several months, I have observed migrants trapped between the primary and secondary barriers on the western most segment of the US-Mexico border near San Ysidro. Migrants have identified themselves as from many different countries including Afghanistan, Jamaica, India and Colombia, and they state they are seeking asylum because of dangers they face in their home countries.
3. The area in which they are trapped is north of the primary barrier abutting Mexico. That area north of the barrier is in the United States. The migrants state they have crossed the barrier to turn themselves in to border agents and are doing so out of desperation, because they seek safety. Once over the barrier, they await to be processed by border agents.
4. The migrants are trapped in an area bounded by a secondary barrier to the north of the primary barrier. This corridor between the barriers is fully controlled by the U.S. Border Patrol. Agents pass along this corridor with vehicles and ATVs. The area is also monitored by cameras. Anyone in this corridor is under their control and in their custody.
5. In February 2023, I first spoke to migrants trapped in the corridor, while I was at an event we held near the border walls. About a dozen migrants approached the northern barrier to talk to me and told me that they had been in the corridor for several days hoping to be processed by border agents, but had not yet been, even though agents were regularly passing by. The agents had given them mylar blankets but little else. During this time, it rained regularly in San Diego.
6. I have continued to see migrants in the corridor since, and have monitored their conditions. I have seen them in several locations in the corridor identified as follows from east to west: near the Las Americas mall, at the section known as Whiskey 8, and closer to the beach.
7. The number of people that I have been able to see has varied from dozens to hundreds. In March, I began coming 2-3 times a week to talk to migrants and monitor the conditions. In most cases, they had been there for at least 2 days. Some had mylar blankets given to them by border agents, others had nothing to cover themselves at night. During this time it rained regularly and was cold day and night. They told me they were thirsty and hungry with little to nothing to eat or drink.
8. In April, the number of migrants in the corridor seemed to grow until it was regularly around 70 people who were visible to me at the Whiskey 8 area, and I knew there were more at other locations in the corridor. More women and children appeared in the corridor. Because Whiskey 8 is most accessible from the U.S. side, this is where I came to speak to migrants.
9. Migrants reported waiting up to 7 days with no shelter, minimal water, and only a granola bar to eat. I communicated with the Border Patrol liaison about the conditions, and shortly thereafter,

agents placed a 5 gallon container of water every morning, but this would finish quickly. By mid day there was no available water.

10. This year, San Diego has been unusually cold and rainy. I recall a particularly rainy night in mid April. The following morning, I came to the border and spoke to a group of migrants who were all from Africa. They had not been given mylar blankets, but had regular blankets that were soaked. They had no other clothes or cover to protect them from the weather. They told me they had been there for 5 days.
11. In the last week of April, I spoke to the Border Patrol community liaison as well as the Department of Homeland Security Civil Rights and Civil Liberties liaison expressing concerns about the conditions, including the lack of water and sanitation.
12. Initially they told me that the government was considering bringing in a buffalo water tank, but then the Border Patrol liaison told me they would not out of concern that it would attract more migrants. They never brought the tank in.
13. On April 28, several months after I began witnessing the presence of migrants in the corridor, agents brought in a single port-a-potty to the Whiskey 8 area, but it was not enough for what was then about 70 people on average in that area. I don't know if they brought additional port-a-potties to other parts of the corridor.
14. Two days after the port-a-potty arrived, it was full and unusable. It may have been serviced, but I never saw that happen, and migrants have regularly complained since that it is unusable. As of today, there is only one port-a-potty, even though the number of migrants has grown to an estimated 400.
15. Beginning in May, I began coming to the border nearly every day, spending several hours at a time. On May 1st, I spoke with a group of men from India who told me they were starving. They showed me the leaves they were eating. They had been there for 5 days. During that time, I observed that border agents had removed the 5 gallon water jug. They handed out one small water bottle per migrant every day, leaving migrants thirsty by the afternoon.
16. On May 3rd, migrants told me that border agents had taken their shoelaces, and they did not know why, but believed it was in preparation for agents to take them in. I am familiar with this practice, a tactic that border agents have previously said they use to prevent migrants from running away. I took photos of their shoes without laces.
17. Out of grave concern for the condition of migrants, my organization began to provide basic necessities to migrants, including water, food, and mylar blankets. Initially, an agent scolded me, telling me that we needed to alert Border Patrol every time we came. They told the media that was starting to cover the encampment the same thing. This is not a requirement, but something they suggested we must do nonetheless. I believe this was meant to dissuade us from coming, especially as the media began to arrive.
18. After the first article in the San Diego Union-Tribune was published, stating that migrants were there up to 7 days, the Border Patrol liaison told me that this was not true, that migrants were exaggerating and were conflating their days in Tijuana with their days in the corridor. But I had been witness to migrants trapped in the area, waiting to be processed for many days. I asked

migrants to clarify and confirm the number of days they had been in the corridor, and they continued to tell me they had been there 2, 3, 4 and up to 7 days.

19. At the end of the first week of May, the number of migrants grew significantly to around 400. I worked with my organization to alert the media. Migrants shared with them what they had told me — that agents were waiting days to process them, but not providing them with basic necessities including sufficient water, food, and shelter.
20. With the arrival of the media, Border Patrol told the migrants they had to sit in rows and stay seated. Occasionally, the agents would drive through with an ATV or cars, to check that they were seated. This would happen at various times of the day. Migrants have told me they believe this is in anticipation of them being processed, but the agents will make them all sit for hours on end and not process any of them. Then they will come with vans and take a few people or sometimes 20, but there are hundreds of people.
21. I have observed Border Patrol agents ushering migrants from the area near Las Americas to the Whiskey 8 area. Agents also directed single men to the area closer to the beach. Between the direction for them to sit in rows to ushering them from one part of the corridor to another, agents are controlling the movement of migrants.
22. This week, Border Patrol instituted the use of wristbands to identify people's arrival based on the agent's first interaction with them, which might be a day or two after they actually arrive in the corridor. The wristbands are like the ones used for concerts. They are different colors and some have the day of the week printed on them.
23. Migrants have now organized themselves in rows based on their wristband, hoping that the more organized they are, the more quickly they will be processed, but they are still waiting for days. Migrants state, and I have observed, that agents come through every so often to see if people are sitting and if they are not, they sometimes yell at the migrants. This includes children, who don't understand what is happening. They sit under full sun and then rain and cold, they sit and they wait.
24. One of the migrants who took the initiative to organize the other migrants shared his frustrations that agents come to scold the migrants, but not to process them. He told me he had not slept for 3 days and was concerned that the other migrants thought he was colluding with the agents and felt he was in danger, and that the agents are not there to protect him or anyone, but to leave them waiting.
25. Throughout my time monitoring the conditions in the corridor, I have also witnessed some Border Patrol agents speaking aggressively towards migrants. For example, I heard one agent say, "I don't give a fuck how long you've been here," and another say, "get the fuck away from me" when a migrant approached to ask a question.
26. My overarching concern is the inhumane treatment that I have witnessed since February, the ongoing lack of water, food, and shelter, the degrading treatment, and overall lack of respect or compassion for the migrants who are seeking safety from the dangers they face in their home countries.

Pedro Rios



May 12, 20223

I affirm that the statements in this affidavit are true to the best of my knowledge and belief.

- That is not what's happening.
- As such, they should be treated with dignity and decency pursuant to human rights standards.
31. In conclusion, there is no doubt that the migrants in the corridor are in Border Patrol custody.
 30. I am deeply concerned about other vulnerable migrants. Today, I alerted the Border Patrol liaison that a Jamaican woman had approached me to tell me she had suffered a miscarriage after being kidnapped and raped in Mexico and is now in what she described as excruciating pain. Other human rights observers shared that they alerted Border Patrol to this woman's condition several days ago, but nothing was done.
 30. One migrant told me that in the night, the children cry. He said that the adults have a way to cope, but the children are scared.
 29. In another instance, parents of an 8 year old child approached me to tell my colleague that their child had had a seizure as a result of his medication being taken away by Mexican authorities. They were concerned for the child's health. I left a message for the Border Patrol liaison and agents came for him soon after. As with other incidents, I am concerned that if we had not been there, the child would have fallen into greater danger.
 28. I'm also concerned about the children. Two days ago, I witnessed a child who was less than a year old whose mother said was no longer taking her breast milk and was throwing up and listless. I called the Border Patrol liaison for medical assistance, and they came to take the child and mother to the hospital. But had I or another human rights observer not been there, that child might not have received any assistance. Especially since agents are not making themselves approachable and some are actively aggressive towards migrants.
 27. I am especially concerned about the treatment of migrants who are out of sight from us, especially the area where the men have been directed to, closer to the beach. Last night, I spoke with two men who came to the Whiskey 8 area hoping volunteers would charge their phones. They told me they were hungry and freezing. One was from a Spanish speaking country (not sure which) and one appeared to be from Eastern Europe.

EXHIBIT B

SUPPLEMENTAL DECLARATION OF PEDRO RIOS

I, Pedro Rios, declare the following:

1. I am the director of the American Friends Service Committee (AFSC) US-Mexico Border Program. I have been monitoring and advocating for human rights at AFSC for twenty years.
2. This declaration supplements the declaration I previously submitted in support of the Civil Rights and Civil Liberties complaint filed by the Southern Border Communities Coalition on May 13, 2023.
3. I provide this declaration based on my personal observations, the observations and experiences of my colleagues that they have communicated to me, my conversations with migrants we assist, and my conversations with Border Patrol officers in the course of my work volunteering at the border since May 2023.
4. Since May 2023, I have visited the border many times, providing volunteer aid and observing the conditions of the open air detention sites (OADS) near San Ysidro and Jacumba, California. Since September 2023, I have gone to the OADS at the border nearly every day, about 5 days a week, and I spend 5-6 hours there each visit.
5. In San Ysidro, CBP traps migrants in various OADS between primary and secondary barriers on the western most segment of the U.S.-Mexico border. There are at least four OADS near San Ysidro, including Whiskey 8, Whiskey 4, Spooner's Mesa, and 91X. I have personally visited Whiskey 8 and Spooner's Mesa, and have observed Whiskey 4 from an adjacent parking lot. The 91X site is by the beach and seems to be used less frequently than the others, though I have occasionally heard a Border Patrol agent indicate that a migrant is being held at 91X. All four of these sites are fully controlled by U.S. Border Patrol; anyone held at these sites is under CBP's control and custody.
6. In Jacumba, CBP traps migrants in various OADS, including a site called Valley of the Moon (also sometimes called Moon Valley) that is along the highway; Tower 177 which is located on private land isolated at the bottom of a hill; and Willows, a gated-off site located on private land abutting a wall along the U.S.-Mexico border. These sites are fully controlled by U.S. Border Patrol, and anyone held at these sites is under CBP's control and custody.
7. The OADS near Jacumba emerged in or near May 2023, around the same time the Southern Border Communities Coalition filed the Civil Rights and Civil Liberties Complaint dated May 13, 2023. At the time, it was too early for coalition members, including my organization AFSC, to know the gravity or extent of the situation in Jacumba, as the OADS were then emerging. In recent weeks, Border Patrol agents have spoken with my colleague indicating they recognize that more people are passing through the Jacumba OADS.
8. We do not know with precision the total number of people that have been forced to wait at the OADS in southern California since May 2023. The first documented groups of people that were held between the primary and secondary barriers along the U.S.-Mexico border occurred in October 2022, near Friendship Park. Though the numbers of people detained at the OADS from October 2022 and January 2023 varied, the number steadily increased in February and again more significantly so in April and May 2023.

9. The numbers of people who CBP has released into the community after processing serve as the best estimate of the total number of people who have been detained at the OADS. Typically, CBP forces people to wait at the OADS, transfers them into a CBP detention facility, and then releases them to the community after processing. Since September 13, 2023, approximately 50,000 people have been released to the community after processing. This figure, though enormous, does not account for the numbers of people that passed through the OADS between May and September 2023, when large numbers of people were held at the OADS.

Border Patrol Controls the Flow of Movement at and Within the OADS

10. Border Patrol directs migrants where they must go, where they must stay, and where they must wait, underscoring Border Patrol's strict control and custody over the migrants held at the OADS. In San Ysidro, Border Patrol agents tell some migrants that they must remain at Whiskey 8 and wait to be picked up there, whereas they tell other migrants to head to another location. I have spoken to migrants at Whiskey 8 who told me that the men in their group were separated and told to remain at Spooner's Mesa.
11. There have been few unaccompanied children that I have observed at Whiskey 8. On one occasion, Border Patrol separated a child out of a group and into a van. The remaining individuals were kept in a line and later transported in a bus out of Whiskey 8.
12. Border Patrol often transports people from one area of the corridor between the primary and secondary barriers along the U.S.-Mexico border to another. Nearly every day I am at the Whiskey 8 site, I have observed Border Patrol vans dropping off people to different areas of the open-air corridor. For example, on December 7th, I witnessed Border Patrol transporting two vanloads of people to the Whiskey 8 site; the Border Patrol agent told these transported individuals to eat food that volunteers were providing.
13. Border Patrol regularly takes count of people detained in the open-air corridor. The agents direct people to stand in a row and count everyone present. Sometimes they tell the families to stand separately and the single men and the single women to stand together to get a count of those present, including families.
14. In Jacumba, migrants are directed by Border Patrol to walk to the OADS location. On December 3, 2023, I spoke with three people at the Valley of the Moon site who had walked nearly three hours to get to the site, following Border Patrol agents' directions to go there. During the walk, one person said that they were walking in one direction, and a Border Patrol agent redirected them in another direction and to keep walking eastward. Migrants are not free to wander, and are periodically being monitored and directed by Border Patrol agents.
15. Migrants at the OADS are forced to wait at the sites for hours and even days at a time, without being allowed to freely leave. In May 2023, I spoke to several people at Whiskey 8 who were held for up to 7 days at the site. As of December 2023, at Whiskey 8, people are held there anywhere between 2 hours and 18 hours, while men held at Spooner's Mesa are forced to wait usually for at least 24 hours. On December 5th, I spoke with two families who had spent the night at the Valley of the Moon site near Jacumba.
16. Border Patrol also maintains strict control over who enters the OADS to assist migrants and asylum seekers. Usually, we are not allowed into the Spooner's Mesa site, but only once, in early

September 2023, after advocating with the supervising Border Patrol agent, my colleague and I were permitted to feed people meals there. We fed approximately 380 people during that visit.

17. Even when allowed in, volunteers like me are subject to Border Patrol's strict orders. In September 2023, Border Patrol agents told me on at least two occasions that they would arrest me and my group if we approached the secondary border wall at Whiskey 8. On September 12, 2023, I reported one such incident to the Sector Chief by email, but got no response. The threats to arrest volunteers are surprising, given that on more than three occasions, I have spoken with Border Patrol agents who have stated that they appreciate our presence and work in the area.

Lack of Basic Human Necessities, Water, Sanitation, and Medical Care

18. Border Patrol does not provide basic human necessities to the migrants detained at the OADS. At Whiskey 8, Border Patrol agents continue to fail to provide food or even water. I spoke with several men who came to Whiskey 8 from Spooner's Mesa, and they told me that they had not had water or food in the near 24 hours since they were directed to wait at Whiskey 8.
19. Border Patrol neglects to provide sufficient sanitation and adequate toilets. The sanitation and servicing of the portable toilets have gotten a bit better following AFSC's advocacy on the issue with state Senator Steve Padilla's office. It is our understanding that Senator Padilla's office is working with CBP to improve sanitation and trash conditions. However, at Whiskey 8, although portable toilets are supposed to be consistently serviced on Mondays, Wednesdays, and Fridays, sometimes the portable toilets still go for a week without servicing.
20. Border Patrol also fails to provide sufficient medical care to injured or ill migrants at the OADS, relying on volunteers like me to provide first aid and other first responder care. One day in early October 2023, a Border Patrol agent notified my colleague and me that a boy from Ecuador had a high temperature of about 101 degrees. The agent asked us to keep monitoring the boy. We monitored the boy's temperature every 30 minutes for about two hours, and when his temperature shot up to 103 degrees, I notified Border Patrol, who then called for an ambulance.
21. Border Patrol even leverages injuries and illness to maintain control and custody over migrants. Several months ago, I spoke with a mother of a one-year-old baby who had fallen from the border wall with her baby daughter strapped to her back. The mother agreed to have her injuries inspected by paramedics, and the paramedics suggested she and her child get further medical care at a hospital. But a Border Patrol agent threatened the mother that if she agreed to be transported to the hospital, she would not be processed and would suffer immigration consequences. The mother then refused medical treatment.
22. Due to Border Patrol's failure to provide a basic level of care, I and other volunteers visit the OADS regularly, almost every day to respond to the basic needs of the migrants. At Whiskey 8, we have set up four different stations, including a water station, food station, phone charging station, and a medical station. We have also added a food pantry at Whiskey 8. When Border Patrol permits us to do so, we also travel to other OADS locations to deliver water and food.

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I affirm that the statements are true to the best of my knowledge and belief.

December 10, 2023

/s/ Pedro Rios

Pedro Rios

EXHIBIT 3

1 I, Flor De Luna Alvarez-Lopez, declare as follows:

2
3 1. The content of this declaration is based on my personal knowledge, my own
4 observations, data collected by volunteers I oversee, and information communicated
5 directly to me by people detained at open-air detention sites (“OADS”) and Border Patrol
6 officers working at OADS. The following facts are true to the best of my understanding
7 and recollection. If called to testify in this case, I would testify competently about these
8 facts.

9
10 **Professional Background**

11 2. I am a Co-Founder and one of the Co-Directors at Universidad Popular, a
12 grassroots community organization that supports immigrants in the San Diego, California
13 region. Universidad Popular uses education as a vehicle to empower and uplift the
14 community. Universidad Popular specializes in popular education pedagogy, a
15 methodology known to be effective in communities with low literacy rates. I have over
16 fifteen years of experience in community empowerment work. I was trained by the
17 American Friends Service Committee in or around the year of 2013 to conduct human
18 rights documentation. I have been participating in human rights observation and
19 documentation work ever since. In recent years, I have participated in a California state
20 initiative called Listos, which is a program designed to support communities with disaster
21 preparedness and emergency response. I have completed Listos trainings, classes and I
22 am a certified trainer in the Listos curriculum. With this training and with my experience,
23 Universidad Popular felt confident deploying me to provide humanitarian aid at the open-
24 air detention sites in San Diego.

25 3. I submitted a declaration in support of the complaint Southern Border
26 Communities Coalition (“SBCC”) filed with the Department of Homeland Security
27 (“DHS”) Office of Civil Rights and Civil Liberties on May 13, 2023. Attached hereto as
28 Exhibit A is a true and correct copy of that declaration. I filed an additional supplemental

1 declaration to the same office in a renewed and expanded complaint about continued
2 violations of rights by U.S. Customs and Border Protection (“CBP”) at OADS on
3 December 11, 2023. Attached hereto as Exhibit B is a true and correct copy of the
4 supplemental declaration.

5 4. In May of 2023, I began volunteering at OADS near San Ysidro and in the
6 Jacumba region of San Diego. I began providing humanitarian assistance to migrants
7 facing terrible conditions trapped by Border Patrol on U.S. soil. The OADS near San
8 Ysidro are distinct in that people are held in between the primary and secondary border
9 walls. The best way I can describe the section in between the border walls where people
10 are detained is to compare it to a human mouse trap. In May of 2023, I slept on site at
11 OADS “Whiskey 8” near San Ysidro for a few days before I made my way to OADS
12 “O’Neal” in Jacumba. The OADS in Jacumba people are detained in areas where there is
13 no secondary border wall but they are still exposed to the outdoor elements.

14 5. Since September 2023, I have been providing direct aid at various OADS
15 controlled by Border Patrol agents almost every single day, six or seven days a week.
16 Universidad Popular is part of a collective of organizations providing humanitarian aid to
17 people at the OADS. Our role is also to document what is occurring at the U.S.-Mexico
18 border. For months I rotated through all the accessible known OADS in San Diego. I
19 would begin my day at Whiskey 8 and then move to the Jacumba OADS later in the day.

20 6. In addition to Whiskey 8, there are three other open-air detention sites located near
21 San Ysidro: “Whiskey 4”, “91X,” and “Spooner’s Mesa”. Spooner’s Mesa is also known
22 as “The Men’s Camp”. 91X is the OADS closest to the beach access and the farthest
23 West of the OADS. You must cross hilly terrain to access Spooner’s Mesa and 91X.
24 Whiskey 4 is next to a popular outdoor mall called Las Americas Outlets. Whiskey 4 is
25 connected to a channel of canals and known for the contaminated black waters. In the San
26 Ysidro region, volunteers have direct access to Whiskey 8. Individuals held at the OADS
27 that volunteers do not have direct access to go longer without food or water. In addition
28 to O’Neal, there are another three known open-air detention sites in the Jacumba region:

1 “Boulevard Tower 177”, “Willows” and “Valley of the Moon”. Valley of the Moon is the
2 farthest East OADS nearing the border of Imperial County. Upon information and belief,
3 CBP is no longer using O’Neal to detain migrants.

4 7. Since I began working at the OADS, Border Patrol has routinely held children,
5 families, and pregnant women at OADS. I have seen hundreds of children held at OADS
6 since May 2023. The children are not treated any differently than the adults. They must
7 endure the harsh conditions and comply with Border Patrol instructions along with the
8 adults.

9
10 **CBP Controls Access to the OADS And Directs or Transports Migrants to Specific**
11 **OADS**

12 8. Border Patrol does not permit volunteers to enter the Whiskey 4, 91X, or
13 Spooner’s Mesa OADS to provide humanitarian aid. Since September, Border Patrol has
14 made limited exceptions on about four occasions to allow us to bring humanitarian aid
15 into Spooner’s Mesa. I was present three of these times. Each of these times, a superior
16 officer from the Imperial Beach Border Patrol Sector escorted us onto the site.

17 9. Upon information and belief, only one volunteer has been allowed to provide
18 humanitarian assistance to migrants detained at the Whiskey 4 site. I have no knowledge
19 of anyone else being allowed to enter Whiskey 4 on any other occasion. Upon
20 information and belief, no one from our collective has ever accessed 91X.

21 10. I have seen and heard Border Patrol agents at Whiskey 8 direct single men to walk
22 to Spooner’s Mesa. I have heard Border Patrol agents refer to “Spooner’s Mesa” as “the
23 men’s camp”. Sometimes agents will point in the direction of Spooner’s Mesa and tell
24 migrant men to just keep walking. I have also seen ATV or Border Patrol vehicles lead
25 groups of men to Spooner’s Mesa. I would estimate that it takes approximately an hour
26 and a half to walk from Whiskey 8 to Spooner’s Mesa. The reason it is called “the men’s
27 camp” is because Border Patrol sends males 18-years-old or older who are traveling
28 without minor children or a legal spouse to this site.

1 11. A Border Patrol agent told me that they created a men's camp because some
2 women and families were complaining about harassment from men. Whether or not men
3 are separated from women and children is at the discretion of the field officer on duty. I
4 have observed that some agents allow partners who are not legally married to stay
5 together at Whiskey 8, for example. While others require proof of legal marriage or birth
6 certificates that confirm parental status to avoid separation. Routinely, any male over the
7 age of 18 without a biological child or legal spouse is sent to the men's camp.

8 12. I have witnessed Border Patrol agents wake men up in the middle of the night and
9 ask if they are traveling with their biological children or a legal spouse. I have witnessed
10 agents asking men to show copies of birth certificates or marriage certificates to prove
11 parent-child or marital relationship in order to be able to stay with their families.

12 13. Some of the most difficult separations I have witnessed are when CBP separates
13 barely 18-year-old sons from their families and sends them to Spooner's Mesa. I have
14 witnessed mothers clinging to their sons who are barely adults and begging Border Patrol
15 not to separate them.

16 14. I have also witnessed CBP vehicles drop off groups of migrants to OADS.
17

18 **CBP Exercises Control Over Migrants Held at OADS**

19 15. Border Patrol agents regularly take a count of the number of people at Whiskey 8
20 and at the OADS in Jacumba. Border Patrol agents have also given volunteers head count
21 numbers for the other sites near San Ysidro so that we know how many hot meals to have
22 ready for Border Patrol to bring there.

23 16. At Whiskey 8, I have seen these counts occur at almost every shift change, which
24 normally occurs about three times a day. I have observed the Border Patrol agents make
25 everyone stand up and get in a line. The agents will then make everyone stay in line while
26 they patrol the site to make sure that everyone is standing and that no one is lying down.
27 They then go along the line and take a headcount.
28

1 17. In other circumstances, I have seen Border Patrol agents yell at migrants to remain
2 seated or lying down and not to get up. If they try to move, Border Patrol agents yell at
3 them and tell them to stay where they are.

4 18. CBP also used colored wristbands to organize migrants for processing based on
5 their arrival at the OADS.

6 19. When Border Patrol agents are preparing to transport people out of the sites, the
7 agents line them up and order them to remove shoelaces, jewelry, coins, extra layers of
8 clothing, etc. The agents only allow people to keep one article of clothing on top and one
9 on the bottom, even in the cold weather. They are also only allowed one bag. On their
10 person they are only allowed dollar bills, their passport and sponsor information plus the
11 property bag tag receipt they receive from Border Patrol after their property bag is
12 tagged.

13 20. I have also witnessed Border Patrol photographing individuals before they are
14 transported off the site. They are then mainly transported out in transport vehicles such as
15 large vans or buses. I have seen the private transportation company put handcuffs or zip
16 ties on individuals including young men before getting on the bus to be taken for
17 processing.

18
19 **CBP Does Not Provide Sufficient Food, Water, Sanitation, or Basic Medical Services**
20 **to Migrants it Holds at OADS**

21 21. When I first began visiting the sites, Border Patrol agents would provide limited
22 and insufficient offerings of food and water, but in recent months Border Patrol agents
23 have stopped providing any food rations at Whiskey 8 or the site known as “Tower 177”
24 in Jacumba at all. Since September 2023, our team has not witnessed Border Patrol
25 handing out any food rations at these sites.

26 22. On about four occasions, a Border Patrol field officer approached me with boxes of
27 small Cheez-it snack bags or small cookie bags and water bottles and asked me if I would
28

1 hand them out along with the hot meals that our group was providing. The officer seemed
2 embarrassed by the small snacks that they were offering.

3 23. When I began working at the OADS, Border Patrol agents did not provide any
4 blankets or shelter for the migrants it held there. Now they occasionally provide mylar
5 blankets, but still no shelter from the extreme conditions. It gets extremely cold at night
6 at the OADS because it is the desert. During the recent rains, people have been forced to
7 wait for hours, drenched and soaking, in the rain.

8 24. People, including families, babies, and children, have to sleep on the ground. We
9 have been working to provide shelter and tents so that the migrants held in the OADS do
10 not have to sleep in the dirt and gravel like they did when I first arrived in May 2023.

11 25. There are piles of trash at the OADS. Border Patrol agents do not clear trash and
12 trash pick up service does not happen on any consistent schedule. I and other members of
13 our collective have complained and advocated for trash pick up, as it often makes the
14 whole area smell and is unsanitary. It is common for the trash to not get cleaned up for
15 days.

16 26. At the OADS, it is common for portable restrooms to go days without getting
17 properly cleaned for the hundreds of migrants held there. It is not cleaned regularly and
18 frequently overflows, making it unusable.

19 27. There are no showers or hand washing stations at the OADS. CBP does not
20 provide any basic hygiene items like feminine hygiene products, baby wipes,
21 toothbrushes, or soap to the migrants it holds in the OADS.

22 28. Border Patrol does not provide any type of medical support at the sites and
23 volunteers are left to medically triage people and provide the limited first aid.

24
25 **CBP Does Not Provide Emergency Medical Care at OADS and Discourages**
26 **Migrants from Seeking Necessary Medical Care**

27 29. At Whiskey 8, I have seen many migrants with medical emergencies that people
28 tell us they sustained from falling from the border wall. When I see a person with a

1 medical emergency, I notify Border Patrol so that we can try and get the individual to the
2 hospital as quickly as possible.

3 30. On multiple occasions, I have told Border Patrol agents that a person is in medical
4 distress and agents have told me to let the person know that if they leave the site in an
5 ambulance, they won't get the documents they need and they won't get processed for
6 their immigration case. Sharing this information has dissuade people from seeking
7 medical care.

8 31. I have received basic emergency medical training and I triage and provide first aid
9 to people with terrible injuries at the sites. I ask multiple triage questions and then I bring
10 an extensive list of symptoms to Border Patrol agents to advocate as to why the person
11 requires immediate medical attention. I usually have to approach Border Patrol agents
12 multiple times to advocate on behalf of people in medical distress in order to convince
13 Border Patrol to call an ambulance. Whether Border Patrol will call an ambulance is at
14 the discretion of the individual agent who is on site and there isn't always an agent at all
15 times. Agents have repeatedly denied requests for an ambulance, stating that the migrant
16 is faking their condition. There is no procedure or protocol to ensure that people receive
17 the medical care they need in the OADS.

18 32. I have observed that most of the time when Border Patrol agents call ambulances,
19 they tell the ambulance to wait down the road, out of sight of the OADS. Then Border
20 Patrol agents will transport the person in medical distress from the OADS in a vehicle
21 and transfer them from their custody into the ambulance further down the road. Agents
22 have told me that they do this because they don't want people at the site to see
23 ambulances coming into the site as this might make them fake injuries in order to leave
24 the site.

25 33. At 11:33 pm on Sunday, September 24, 2023, a volunteer called me from Whiskey
26 8 to ask for help because a woman had arrived with a deep laceration on her leg that she
27 sustained after she was cut by concertina wire climbing over the border wall. Upon
28 information and belief, Border Patrol had sent her to the volunteers to get medical help

1 instead of providing her with medical attention or calling an ambulance. Over the phone,
2 I instructed the volunteer on how to flush and pressure wash the wound to prevent
3 infection. I then told him to apply direct pressure to stop the bleeding and told him how to
4 bandage the wound. At Whiskey 8, volunteers don't have direct access to the other side
5 of the fence where the migrants are physically located, so he couldn't help her through
6 the fence. Instead, over the phone I heard him guiding someone else inside the OADS on
7 what to do while he provided the materials including the gloves, flush, water, gauze etc.
8 through the fence to the person helping the wounded woman. The wounded woman was
9 traveling with her young minor daughter. Volunteers described the child to be
10 approximately nine years old and in tears. They described the child holding onto the
11 mothers arm while her leg laceration was flushed, cleaned and bandaged.

12 34. One morning in early October 2023, I encountered an 11-year old boy from
13 Ecuador who had arrived the night before with his mother. He had a rising fever and had
14 been vomiting throughout the night. I asked a Border Patrol agent how high his
15 temperature would have to be in order to get medical help and he told me it had to be 102
16 degrees. I went to CVS and bought a thermometer to measure his temperature. I
17 approached Border Patrol agents multiple times on the boy's behalf as his condition
18 worsened. When his temperature reached 103.5 degrees, his mother was reluctant to ask
19 Border Patrol to call an ambulance because she feared that her son might be separated
20 from her indefinitely. She also heard that, if they leave, even in an ambulance, they will
21 not get processed. She told me that they had made it this far and she didn't want to get
22 deported for not being processed properly. When I asked Border Patrol to confirm that
23 she could travel with her son in the ambulance he said that was the ambulance driver's
24 decision. We had to persuade her to seek the medical care her son needed and eventually
25 she agreed to allow Border Patrol to call an ambulance. When the ambulance arrived they
26 did not have a Spanish speaking first responder on the rig. I provided Spanish-English
27 interpretation for the communication between the mother, child, first responders and
28

1 Border Patrol agent for this situation. The mother was allowed to accompany her son in
2 the ambulance.

3 35. On November 17, 2023, I encountered a man from Colombia with a laceration on
4 his forehead, which he told me he sustained from falling after being chased by Border
5 Patrol. When he arrived at Whiskey 8 he told me he was too afraid to seek medical help
6 because he feared that his case would not be processed. After showing the Border Patrol
7 agent a picture of his laceration, Border Patrol called an ambulance for him. I took his
8 phone number because I wanted to check in with him and make sure he got the medical
9 assistance that he needed. He later texted me to let me know that he received stitches at
10 the hospital and he sent me a photograph of the stitched wound on his forehead.

11 36. On November 25, 2023, I assisted four people in a single night who had injuries
12 they sustained from falling from the wall. We suspected one woman had fractures in both
13 her feet from falling from the wall. She was transported off the site in an ambulance and
14 the next morning she texted me a photograph from the hospital showing both her feet in
15 bandages.

16 37. Another day that stood out for me was Sunday, November 26, 2023, when multiple
17 Border Patrol transport vans dropped off groups of people at Whiskey 8. A man ran out
18 of one of the vehicles and told us that an elderly woman had fallen 16 feet from the
19 border wall. He brought her over and I evaluated her. She had fallen on her back and hit
20 her head 60-90 minutes prior and had been unconscious for 5 to 10 minutes.

21 38. She was traveling with her two grandchildren, ages 11 and 8 years old. I notified
22 an agent of the medical emergency and that I was very concerned that the family would
23 get separated so I asked whether both children could travel with their grandmother in the
24 ambulance. The agent called his supervisor who said that they would process her quickly.
25 We waited about 15 minutes for the supervisor to arrive on site, he took all three of them
26 in his vehicle off site, and the grandmother was admitted to hospital. She was
27 subsequently processed and released; however the children were separated from their
28 grandmother and placed in ORR custody. The children were reunited with their family on

1 December 23, 2023 with the support from community organizations including
2 Universidad Popular.

3 39. The conditions at the OADS are inhumane. The detention of migrants, especially
4 children, for an unknown amount of time, without being provided sufficient water to
5 drink, food to eat, restrooms or sanitation measures in the open air desert has led to daily
6 medical emergencies. The trauma of the OADS experience for the children, women, and
7 men detained and for the volunteers who are trying to provide basic life sustaining
8 resources to those detained is wholly preventable. The OADS continue to be a violation
9 of basic human rights and a community public health risk that must be addressed
10 immediately.

11
12 I declare under penalty of perjury that the foregoing is true and correct to the best of my
13 knowledge.

14
15 Executed on this 28 day of February, 2024, at San Marcos, CA

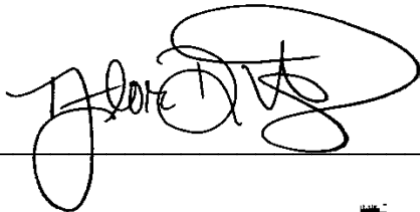
16
17  A handwritten signature in black ink, appearing to be 'John D. [unclear]', written over a horizontal line. The signature is stylized and somewhat illegible.

EXHIBIT A

DECLARATION OF FLOWER ALVAREZ LOPEZ

I, Flower Alvarez Lopez, declare the following.

1. My name is Flower Alvarez Lopez and I am a Co-Director at Universidad Popular.
2. Around 12 pm on May 11, I went to the border wall near San Ysidro to find hundreds of people in an encampment between two fences, unable to leave. Border Patrol provided the migrants with wristbands of different colors to indicate when they arrived and have created some sort of a system for when they will process them.
3. I stayed overnight at the encampment and observed and talked to Border Patrol agents around 2:00 am during a big round up. I saw Border Patrol agents ask those who had children to raise their hands. I saw them yelling at folks that were sitting down telling them to not get up. If they tried to move, they would be immediately yelled at. I tried to gather information from the agents about how many people they were taking and where they were taking them. They said 60 people and didn't say anything else. Border Patrol has not communicated their plans for the individuals who are trapped in the corridor between the border walls.
4. They are being treated inhumanely. The government has not provided any blankets or shelter for these individuals. At night, it is cold and everyone is exposed to the elements including our most vulnerable populations: children, pregnant women and the elderly.
5. There is a pile of trash that has not been picked up in days. There is only one portable restroom for all 300-450 people to use and it has not been cleaned at all. There are no showers, hand washing stations, nor basic personal hygiene items like feminine hygiene products, baby wipes, toothbrushes, etc. I see families, babies, children, women with children, and people of all ages in here and they don't have the basic necessities. They are sleeping on the ground with few clothes to keep them warm. Border Patrol has only provided one water bottle and one granola bar per person per day. A lot of them have been sleeping directly on the dirt and gravel ground except for those who we were able to provide cardboard boxes to use as mattresses.
6. Border Patrol is not providing medical support on site. We are providing the limited first aid we can, but we don't have any medics on site. We know a few people have been taken by ambulance to other hospitals.
7. This is devastating. We should not have to bear witness to what is happening today. Folks are showing up and they are very emotional to what they are seeing because it is a devastating sight. To see babies and children here in this type of setting, it's heartbreaking. We need to do better. Our government needs to do better.

I affirm that the statements in this affidavit are true to the best of my knowledge and belief.

May 12, 20223

Flower Alvarez Lopez

EXHIBIT B

SUPPLEMENTAL DECLARATION OF FLOWER ALVAREZ LOPEZ

I, Flower Alvarez Lopez, declare the following:

1. My name is Flower Alvarez-Lopez. I am a Co-Director at Universidad Popular, a grassroots community organization that supports immigrants in the San Diego, CA region.
2. This declaration supplements the declaration that I provided on May 12, 2023 in support of the Civil Rights and Civil Liberties complaint filed by the Southern Border Communities Coalition on May 13, 2023.
3. I first went to the open air detention site near San Ysidro, known by Border Patrol agents as "Whiskey 8", in May 2023. I camped out for several days providing humanitarian assistance to migrants facing terrible conditions trapped by Border Patrol between the border walls on U.S. soil.
4. Since September 2023, I have been assisting at open air detention sites controlled by Border Patrol agents almost every single day, six or seven days a week. Our organization is part of a collective of organizations providing humanitarian aid to people at the open air detention sites. I would usually begin my day at Whiskey 8 and then move to Jacumba later in the day. Recently, I have spent more time at Whiskey 8.
5. As a result of my work over the past few months, I have gained significant personal knowledge about the devastating conditions at the sites and have triaged dozens of medical emergencies. I also interact multiple times a day with the Border Patrol agents controlling the sites.
6. The content of this declaration is based on my own observations, the observations and experiences of my colleagues and other volunteers that have been communicated directly to me by them, information communicated directly to me by people detained at open air detention sites and their family members, and my communications with Border Patrol agents at the sites.

Border patrol control at the open air detention sites

7. In addition to Whiskey 8, there are three other open-air detention sites located near San Ysidro: "Whiskey 4", "91X" and "Spooner's Mesa". Border Patrol does not permit volunteers to enter these sites to provide humanitarian aid. Since September, Border Patrol has made limited exceptions on about four occasions to allow us to bring humanitarian aid into Spooner's Mesa. I was present three of these times. Each of these times, a superior officer from the Imperial Beach Border Patrol Sector escorted us onto the site. On one occasion, a fellow volunteer reported that Border Patrol escorted them onto the Whiskey 4 site to provide humanitarian assistance. I have no knowledge of anyone else being allowed to enter Whiskey 4 on any other occasion. To my knowledge, no one from our collective has ever accessed 91X.
8. One of the sites near San Ysidro, "Spooner's Mesa", is also referred to by Border Patrol agents as "the men's site". This site is more remote and you have to cross hilly terrain to access the site. Individuals at this site do not have direct access to humanitarian aid from volunteers so they go longer without food or water. The reason it is called "the men's site" is because Border Patrol

sends men over 18-years-old who are traveling without minor children or a legal spouse to this site.

9. I have seen and heard Border Patrol agents at Whiskey 8 direct single men to walk to Spooner's Mesa. Sometimes agents will point and tell them to just keep walking. I have also seen ATV or Border Patrol vehicles lead groups of men to Spooner's Mesa. I would estimate that it takes approximately an hour and a half to walk from Whiskey 8 to Spooner's Mesa.
10. I have witnessed Border Patrol agents wake men up in the middle of the night and ask if they are traveling with their children or legal spouse. I have witnessed agents asking men to show copies of birth certificates or marriage certificates to prove parent-child or marital relationship in order to be able to stay with their families. Some of the most difficult separations I have witnessed are when barely 18-year-old sons get separated from their families and sent to Spooner's Mesa. I have witnessed mothers clinging to their sons who are barely adults and begging Border Patrol not to separate them.
11. Border Patrol agents regularly take a count of the number of people at Whiskey 8 and at the sites out in Jacumba. Border Patrol agents have also given us head count numbers for the other sites near San Ysidro so that we know how many hot meals to have ready for Border Patrol to bring there. At Whiskey 8, I have seen the counts occur at almost every shift change, which normally occurs about three times a day. Generally, what I observe is that the Border Patrol agents will make everyone stand up and get in a line. The agents will then make everyone stay in line while they patrol the site to make sure that everyone is standing and that no one is lying down. They then go along the line and take a headcount. We often ask Border Patrol to give us their headcount once they are done and then we document the head counts.
12. When Border Patrol agents are preparing to transport people off the sites for processing, the agents line them up and order them to remove shoelaces, jewelry, coins, extra layers of clothing etc. The agents only allow people to keep one article of clothing on top and one on the bottom, even in the cold weather. They are also only allowed one bag. On their person they are only allowed dollar bills, their passport and sponsor information. I have also witnessed Border Patrol photographing individuals before they are transported off the site. They are then mainly transported out in transport vehicles such as large vans or buses. I have seen the private transportation company put handcuffs or zip ties on individuals including young men before getting on the bus to be taken for processing. See photograph attached at Exhibit 1.

Lack of food and water provided by Border Patrol

13. When I first began visiting the sites, Border Patrol agents would provide limited insufficient offerings of food and water, but in recent months Border Patrol agents have stopped providing any food rations at Whiskey 8 or the site known as "Boulevard Tower 177" in Jacumba at all. Since September, our team has not witnessed Border Patrol handing out any food rations at these sites.
14. Prior to that, Border Patrol agents would hand out meager offerings only. On about four occasions, a Border Patrol field officer approached me with boxes of small cheez-it snack bags or small cookie bags and water bottles and asked me if I would hand them out along with the hot meals that our group was providing. The officer seemed embarrassed by the small snacks that

they were offering. Officers have also told me that they don't have money in their budget to buy meals.

Lack of medical care and insufficient response to medical emergencies

15. Border Patrol continues to fail to provide any type of medical support at the sites and volunteers are left to triage people and provide the limited first aid we can. At Whiskey 8 we deal with a high rate of medical emergencies that people tell us they have sustained from falling from the border wall. On multiple occasions, I have told Border Patrol agents that a person is in medical distress and agents have told me to let the person know that if they leave the site in an ambulance they won't get the documents they need and they won't get processed for their immigration case.
16. I have received basic emergency medical training and I triage and provide first aid to people with terrible injuries at the sites. I ask multiple triage questions and then I bring an extensive list of symptoms to Border Patrol agents to advocate as to why the person requires immediate medical attention. I am very persistent and often I have to approach Border Patrol agents multiple times to advocate on behalf of people in medical distress in order to convince Border Patrol to call an ambulance.
17. One morning in early October 2023 I triaged an 11-year old boy from Ecuador who had arrived the night before with his mother. He had a rising fever and had been vomiting throughout the night. I asked a Border Patrol agent how high his temperature would have to be in order to get medical help and he told me it had to be 102 degrees. I ran to CVS and bought a thermometer to measure his temperature. I approached Border Patrol agents multiple times on the boy's behalf as his condition worsened. When his temperature reached 103.5 degrees, the boy's mother told us that she was afraid to ask Border Patrol to call an ambulance because they had made it this far and she didn't want to get deported for not being processed properly. She also told me she was scared they would just take her son in the ambulance and she would get separated from him. When I asked Border Patrol to confirm that she could travel with her son in the ambulance he said that was the ambulance driver's decision. We had to persuade her to seek the medical care her son needed and eventually she agreed to allow Border Patrol to call an ambulance.
18. On November 17, 2023 I encountered a man from Colombia with a laceration on his forehead, which he told me he sustained from falling after being chased by Border Patrol. When he arrived at Whiskey 8 he told me he was too afraid to seek medical help because he feared that his case would not be processed. He asked me if I would suture the wound for him, despite knowing I wasn't a medic. I eventually convinced him to have Border Patrol call an ambulance. I took his phone number because I wanted to check in with him and make sure he got the medical assistance that he needed. He later texted me to let me know that he received stitches at the hospital and he sent me a photograph of the stitched wound on his forehead. See attached photograph at Exhibit 2.
19. On November 25, 2023 I assisted four people in a single night who had injuries they told us they sustained from falling from the wall. One woman was reported during wall triage to have suspected fractures in both feet from falling from the wall. She was transported off the site in an ambulance and the next morning she texted me a photograph from the hospital showing both her feet in bandages. See attached photograph at Exhibit 3.

20. At 11:33 pm on Sunday, September 24, 2023 I received a call from a fellow volunteer, Roberto. He told me he was at Whiskey 8 and that a woman had arrived with a deep laceration on her leg that she sustained after she was cut by concertina wire climbing over the border wall. He told me that she reported to him that Border Patrol had sent her to volunteers to get help. He asked me to walk him through what to do over the phone. I walked him through how to flush and pressure wash the wound to prevent infection. I then told him to apply direct pressure to stop the bleeding and told him how to bandage the wound. Since we don't have direct access to the other side of the fence where the migrants are physically located and he couldn't help her through the fence, I heard him guiding someone else inside the open air detention site on what to do. Roberto told me he provided the materials including the gloves, flush, gauze etc. He also sent me a photo of her wound which is attached as Exhibit 4.
21. I have observed that most of the time when Border Patrol agents call ambulances, they tell the ambulance to wait down the road and then they transport the person in medical distress from the open air detention site in a vehicle and transfer them from their custody into the ambulance further down the road. Agents have told me that they do this because they don't want people at the site to see ambulances coming into the site as this might make them fake injuries in order to leave the site. When a person has suspected spinal injuries from falling from the wall or is unable to walk, Border Patrol agents will allow the ambulance to enter the site through the gate.

Family separation

22. One day that stood out for me was Sunday, November 26, 2023, when multiple Border Patrol transport vans dropped off groups of people at Whiskey 8. A man ran out of one of the vehicles and told us that an elderly woman had fallen 16 feet from the border wall. He brought her over and I triaged her. She was nauseous and sleepy and had been unconscious for 5 to 10 minutes, which was a red flag. She was traveling with her two grandchildren, ages 11 and 8 years old. We were able to call the children's father who lives in the U.S. and speak with him and I have remained in contact with him via phone since. I was very concerned that the family would get separated so I asked an agent whether both children could travel with their grandmother in the ambulance. The agent called his supervisor to the site and eventually they said that they would process her very quickly and transport the family together. The family was transported off the site in a transport vehicle, but I later learned from their father that the grandmother was admitted to hospital and subsequently processed and released. He informed me that his children were separated from their grandmother and placed in ORR custody. Our organization hosted the grandmother after she was discharged. To my most recent knowledge, the children have not been released to either their father or grandmother's custody.

I affirm that the statements in this affidavit are true to the best of my knowledge and belief.

December 10, 2023

/s/Flower Alvarez Lopez
Flower Alvarez Lopez

Exhibit 1

Photograph of private transportation company handcuffing asylum seekers at Whiskey 8, dated November 25, 2023



Exhibit 2

Photograph of stitched head wound, dated November 17, 2023



Exhibit 3

Photograph of bandaged feet injured after falling from wall, dated November 26, 2023



Exhibit 4

Photograph of leg laceration, dated September 24, 2023



EXHIBIT 4

1 I, Erika Pinheiro, declare as follows:

2

3 1. The content of this declaration is based on my personal knowledge, my own
4 observations, data collected by staff who I supervise and volunteers with whom my
5 organization coordinates, and information communicated directly to me by people
6 detained at open-air detention sites (“OADS”) and Border Patrol officers working at
7 OADS. The following facts are true to the best of my understanding and recollection. If
8 called to testify in this case, I would testify competently about these facts.

8

9 Professional Background

10 2. I am the Executive Director of Al Otro Lado (AOL), a nonprofit advocacy and
11 legal services organization incorporated in California and based in Los Angeles, with
12 offices in San Diego, California, and Tijuana, Mexico. As the Executive Director, I
13 supervise attorneys and other staff who work directly with migrants on both sides of the
14 U.S.-Mexico border. I am currently based in San Diego, CA and Tijuana, Mexico. I
15 oversee programs and operations in all AOL locations.

16 3. I have worked in the immigration legal field since 2003. I hold a J.D. degree from
17 the Georgetown University Law Center, a Master’s of Public Policy from the Georgetown
18 Public Policy Institute, and a Certificate in Refugee and Humanitarian Emergencies from
19 the Georgetown University Institute for the Study of International Migration.

1 4. Throughout my legal career, I have specialized in high-volume legal representation
2 and education for noncitizens detained in immigration or criminal custody, as well as
3 those seeking asylum at the U.S.-Mexico border.

4 5. AOL provides legal and humanitarian support to indigent refugees, deportees, and
5 other migrants, including providing free direct legal services on both sides of the
6 U.S.-Mexico border and beyond. AOL's Border Rights Project, established in 2017,
7 provides legal education, representation, accompaniment, and human rights monitoring
8 for approximately 15,000 asylum seekers in Tijuana each year. The project also
9 documents human rights violations committed by U.S. and Mexican government officials
10 against refugees at the U.S.-Mexico border. The project also documents human rights
11 violations committed by U.S. and Mexican government officials against refugees at the
12 U.S.-Mexico border. We use this data to demonstrate unlawful patterns or practices in our
13 advocacy with U.S. policy makers, international human rights monitoring bodies, and
14 nongovernmental human rights organizations. Since 2020, we have provided substantial
15 humanitarian assistance to asylum seekers stuck on the Mexican side of the border,
16 including emergency housing, medical care, food, hygiene supplies, and educational
17 services for refugee children.

18 6. On May 13, 2023, Southern Border Communities Coalition submitted a complaint
19 to the U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties
(CRCL) regarding the inhumane and dangerous conditions at the OADS. On December
11, 2023, AOL joined other advocacy and volunteer organizations in submitting an

1 updated complaint given the continued and worsening conditions at the OADS. A true
2 and correct copy of that supplemental complaint is attached hereto as Exhibit A.

3
4 Providing Aid at the San Ysidro Open-air Detention Sites

5 7. In May 2023, shortly before the end of Title 42 expulsions, I observed the growth
6 of the open-air detention site at “Whiskey 8,” a site between the border walls dividing
7 Tijuana from San Diego/San Ysidro, CA. I observed several hundred people being
8 detained there, including children as young as breastfeeding infants. At the time, I was on
9 the Tijuana side of the wall. On May 11, 2023, I went to the border wall to talk to the
10 migrants being held at the site. I spoke to a Colombian woman holding an infant; she told
11 me that she had been there for several nights, that there were a lot of children, and that
12 they were not being given food, bottles, formula, diapers, or any other supplies by Border
13 Patrol. I went to the grocery store several times that day in Tijuana to buy the items that
14 she and other migrants requested, including baby formula and yogurt snacks for small
15 children. Over the next few days, I went back and forth from the store to the border wall
16 to provide supplies for families with children. Over the next few days and weeks, we
17 coordinated with nonprofits and volunteers providing aid to the “Whiskey 8” camp on the
18 north side of the border. At that time, I spoke to migrants who had stayed in the open-air
19 detention site at Whiskey 8 for over a week.

18 Providing Aid at the Jacumba Open-air Detention Sites

1 8. AOL began providing aid to migrants and asylum seekers held in OADS in
2 Jacumba, California in September 2023. AOL coordinates with several other nonprofits,
3 mutual aid groups, and individual volunteers to provide support at three OADS in
4 Jacumba: Moon Valley, Tower 177, and Willows. Moon Valley and Willows are both
5 located in the Boulevard Border Patrol sector. Tower 177 is located in the Campo Border
6 Patrol sector. Since September 2023, I have traveled to Jacumba once or twice a week.
7 An AOL staff member is generally on site at these OADS three to four times a week.
8 Since November of 2023, AOL has paid anywhere from two to four independent
9 contractors to make and distribute food, document conditions, coordinate with volunteers,
10 and identify vulnerable migrants at the Jacumba OADS on a daily basis.

11 9. AOL provides staff, contractors, and volunteers with a reporting form in which
12 they document in real time conditions at the Jacumba camps. For example, the
13 questionnaire includes: how many people are processed out of the OADS during their
14 rotation, and who transported them (Border Patrol or a private contractor); whether there
15 are children, pregnant persons, elderly persons, or persons with medical emergencies on
16 site; whether people detained at the OADS have wristbands issued by Border Patrol (BP)
17 agents; whether BP is handing out food and water; whether Border Patrol agents were on
18 site; and whether people are shackled when transported out of the OADS. The form also
19 has space to include any other incident of note, such as whether there was a medical issue
that required emergency medical response, whether Border Patrol or the volunteer called
911, and how the agents or medical staff responded to the incident.

1 10. There are multiple organizations and local volunteers that provide aid at the
2 Jacumba OADS. The organizations and mutual aid groups currently providing aid in
3 Jacumba include AOL, Border Kindness, Universidad Popular, American Friends Service
4 Committee (AFSC), Free Shit Collective, Borderlands Relief Collective, and Detention
5 Resistance. A significant number of individual volunteers residing in or near Jacumba
6 also coordinate with the nonprofits and mutual aid groups to provide aid at OADS.

7 Border Patrol Holds Children, Families, and Pregnant Woman in OADS

8 11. The number of migrants and asylum seekers at the Jacumba OADS has fluctuated
9 significantly since AOL began monitoring conditions and providing aid in September
10 2023. During this period, the number of asylum seekers at the Jacumba OADS on a
11 single day has ranged between less than 100 to over 750 people. And the number of
12 children at the Jacumba OADS has ranged between less than 20 and up to nearly 60
13 children at a single camp. The number of pregnant persons also varies but has reached
14 over 60 people.

15 12. It is common to see families staying overnight at the Jacumba OADS. Sometimes,
16 Border Patrol takes out women and children first, but this can mean separating them from
17 other family members such as spouses or adult children. Families are forced to make the
18 difficult choice of staying overnight at an OADS or keeping their families together.
19 Between Thanksgiving 2023 and early January 2024, the average time that migrants
spent in the Jacumba OADS increased, and it was more common for families with young

1 children to stay overnight, sometimes for multiple nights. During that time period, I
2 visited the Jacumba camps on multiple occasions and spoke with families with very
3 young children who had stayed in the OADS for multiple nights. Following the new year,
4 there was a reduction in the number of migrants crossing the border, so they were
5 generally not staying overnight at the OADS. However, starting in the last week of
6 January, we began to observe families staying overnight again, including very young
7 children.

7 13. I have seen many unaccompanied children at the Jacumba sites. Generally,
8 unaccompanied children travel with extended family members like uncles, cousins, or
9 friends, but I have met several children ranging from ages 15-17 who were traveling
10 alone. Volunteers have documented instances of unaccompanied children staying
11 overnight at the camps. Our practice is to inform Border Patrol agents about
12 unaccompanied children when we come across them in the hopes that they'll be moved
13 out of the OADS faster. CBP does not supervise unaccompanied children in the OADS
14 and I am not aware of any formal CBP policy limiting the length of time a child can
15 remain at an OADS.

15 14. On December 6, 2023, I spoke with 8 unaccompanied children, three of whom
16 were traveling alone. I alerted the Border Patrol officers onsite between noon and 1:00
17 PM. A previously scheduled Border Patrol van came to transport families out around that
18 time, but the agents told me they couldn't take the unaccompanied children because
19 families with young children had stayed the night before. I observed families with

1 toddlers and infants lining up for transport. The agents onsite told me the unaccompanied
2 children would likely be transported out after they changed shifts around 4:00 PM. The
3 agent asked me how old the children were, and when I told him the ones traveling alone
4 were all 15 and older, the agent told me that they prioritize young children, meaning
5 children under the age of five or babies, not adolescents or older children. I observed
6 about 40 children total in the camp that day, many under the age of 5, so I was not sure
7 whether the unaccompanied children would be processed that evening. I left around 4:30
8 PM, and asked volunteers who stayed on site to alert Border Patrol as to the location of
9 the unaccompanied children when they brought the next transport van. The volunteers
10 reported that the unaccompanied children still had not been processed when they left a
11 few hours later. I am not sure whether they were processed out that night or the following
12 day.

13 15. Volunteers have observed children experiencing medical issues in recent weeks due
14 to their overnight stays in OADS. On Saturday, February 3, 2024, our volunteers
15 encountered two children at the Moon Valley camp who needed to be transported to the
16 hospital to receive treatment for hypothermia. One of the minor children had been
17 sheltering in a port-o-potty from the cold wind. That same day, a five-month-old baby in
18 the Tower 177 OADS had a high fever, for which volunteers called an ambulance. Since
19 the weather has gotten colder and often drops close to or below freezing, our volunteers
have observed migrants, including children, sheltering in port-o-potties and dumpsters

1 when forced to stay in OADS overnight, especially when there are strong winds and
2 precipitation.

3
4 Border Patrol Causes Family Separation at OADS

5 16. I have witnessed Border Patrol agents separate families and send some family
6 members to different OADS. Migrants have also told me this happened when they first
7 encountered Border Patrol, and that they have family members who they believe are
8 being held at different OADS. For example, in May 2023, I spoke to multiple women
9 being held at Whiskey 8 who told me that their husbands and adult sons were being held
10 about a mile west; we know this camp as "Spooners Mesa." Spooners Mesa is not
11 accessible to volunteers on the U.S. side of the border, and it is extremely difficult to
12 access on the Tijuana side. In May, an AOL staff member accessed the camp from the
13 Tijuana side and observed several dozen men being held there. The practice of separating
14 men and women between Whiskey 8 and Spooners Mesa continued throughout 2023. In
15 Jacumba, our staff, volunteers, and I have observed Border Patrol separating families
16 while transporting migrants offsite; sometimes, it is a function of prioritizing children
17 over adults, so men are left behind while women and children are processed out. Other
18 times, family groups are transported out on the same day, but in different vans.

19 17. On November 29, 2023, I accompanied researchers from Amnesty International to
the Jacumba OADS. While the researchers were observing Border Patrol agents
processing migrants out of the Tower 177 camp, one agent told another that there was a

1 family group that wanted to travel together, but who were not together in the line. The
2 other agent replied, “I don’t care. Border Patrol separates families.” This exchange was
3 documented by the Amnesty International observers. The family ultimately was separated
4 and loaded into different vans.

5 18. The chaos of processing migrants out of OADS has also led to frequent separations
6 of family groups who managed to stay together until that point. Between September 20,
7 2023, and December 7, 2023, Al Otro Lado documented over 1,000 separations of family
8 groups. We document family separations at street release sites, where migrants often
9 describe being separated from their families at the OADS or while being processed.
10 Approximately 18 percent of separations involve at least one parent being separated from
11 a minor or adult child.

12 19. Families are also separated if a family member seeks emergency medical care. If a
13 person experiences a medical emergency while at one of the OADS and is taken in an
14 ambulance, they are usually only able to take one family member with them to the
15 hospital, if they are able to take anyone at all.

16 20. Migrants sent to the hospitals are released directly from the hospitals and are not
17 processed by Border Patrol. Sometimes, migrants released from hospitals return to a
18 Border Patrol station to try and turn themselves in, and in other cases, they are able to
19 connect with volunteers, nonprofits, or respite shelters in San Diego that are able to either
help them get processed by ICE or travel onward so that they can apply for asylum
affirmatively. In general, it is very challenging trying to reunify migrants with their

1 family members once they are sent to and released from hospitals. The collective of
2 organizations and volunteers helping at OADS have tried for months to adequately
3 address the needs of this population, but the situation has not improved.

4 21. Between September 20 and December 7, 2023, at least 37 individuals were sent to
5 ICE detention facilities in Texas and Louisiana while their families were released to
6 San Diego. These types of separations seem to happen randomly, but I have observed
7 several cases of young adult children (18 - 20 years old) being sent to detention facilities
8 in Texas or Louisiana while their family members are released to San Diego. One mother
9 and daughter I worked with in September and October were sent to a Louisiana ICE
10 detention facility after they were sent to a hospital from a Jacumba OADS, then went to a
11 Border Patrol station to turn themselves in after being discharged from the hospital. It
12 took us over a week to locate them in Louisiana and over a month to obtain their release
13 and effectuate their reunification with the rest of their family members.

14 22. When families get separated, they usually are able to reunify within 72 hours in
15 San Diego, if all family members are released. When family members are detained or
16 transferred to Texas, it often takes AOL weeks to locate a missing family member
17 because Border Patrol has not responded to numerous requests for information and will
18 not even confirm whether the missing individual is in Department of Homeland Security
19 (DHS) custody. AOL has staff at the location where single adults are released in San
20 Diego, and we speak with individuals who have been separated from their family
21 members. With their consent, we submit G-28s on behalf of the missing family members

1 to attempt to locate them in custody; we also ask for A numbers so that we can check the
2 ICE detainee locator. However, Border Patrol refuses to provide any information. Border
3 Patrol leadership claims that they provide the G-28 to the detained person if they are in
4 custody and that they are given an opportunity to call us, but we have submitted over
5 1,000 G-28s and not received a single call from a missing family member in BP custody.
6 It has also taken an average of ten days or longer until the missing family members'
7 information is available in the ICE detainee locator.

8 23. Child migrants I have spoken with do not have any information about where they
9 are going when Border Patrol agents instruct them to prepare for transport to processing,
10 or when Border Patrol agents separate them from their family members. They do not
11 know whether they are going to be deported or to be reunified with family members. They
12 do not know if separations from family members are permanent or temporary. Border
13 Patrol agents do not provide children or families with any information about what is
14 happening to them or why they are being held, moved, or transported for processing.
15 Children and families being held in OADS are particularly distressed because they do not
16 know how long they will have to stay there and what will happen to them after they are
17 processed. The organizations and volunteers providing assistance try to provide
18 information about the asylum process generally, but we are unable to effectively assist
19 separated families because Border Patrol withholds information from us, as described
above.

1 Border Patrol Directs or Transports Migrants to the Jacumba OADS and Controls If and
2 When Migrants Can Leave

3 24. I have personally observed, and AOL has documented, numerous instances in
4 which Border Patrol transports migrants into OADS in CBP vehicles, including trucks,
5 vans, and buses. Moreover, as a co-facilitator of the California Welcoming Task Force, I
6 have been in numerous meetings with DHS leadership where they unequivocally stated
7 that they could not transport migrants unless they were in their custody.

8 25. I have spoken to dozens of migrants about what happens when they turn
9 themselves in to CBP after crossing the border. In May and between September and
10 December of 2023, Migrants repeatedly told me that Border Patrol agents gave them a
11 wristband when they first turned themselves in, indicating the date and time of their
12 arrival. Then, Border Patrol agents direct them to one of the three Jacumba OADS, or
13 into one of the OADS located between the border walls in San Diego/San Ysidro. Some
14 migrants report being told by Border Patrol to walk in a certain direction toward an
15 OADS, other migrants report that a Border Patrol truck accompanied them while they
16 walked to the OADS. Some migrants told me they have walked several miles into the
17 OADS. I have also personally observed Border Patrol officers bringing small groups of
18 migrants into the Jacumba OADS in their vehicles, including children. Separately,
19 migrants have told me they were transported into the camps in a Border Patrol van or bus.

20 26. Since September 2023, migrants have consistently told me that Border Patrol
21 agents tell them that they have to stay in the camps, or they will be deported. Border

1 Patrol agents also tell migrants that they must stay in the OADS in order to be processed
2 for asylum.

3 27. In some OADS, migrants have told me that Border Patrol indicates a limit line that
4 they are not allowed to cross. For example, in the Willows OADS, there is a train track
5 running between the camp and the road; migrants told me that Border Patrol agents say
6 they cannot cross the railroad track, or they will be deported.

7 28. Each of the three Jacumba OADS has an Anduril Autonomous Surveillance Tower
8 (AST). I have seen these towers and conducted research to learn about each tower's
9 capabilities, including by referencing announcements on CBP's and Anduril's websites
10 describing the towers and their capabilities. Each AST uses an AI system that can detect
11 and track humans and other movement in a 360-degree radius up to more than a mile
12 away. When an "object of interest" is detected, the tower sends an alert to Border Patrol,
13 with an image of the person or vehicle of interest. Each AST stands either in the middle
14 of the camp or at another point where it can detect who comes in and out of the camps.
15 Even if Border Patrol agents are not physically onsite, they can utilize the AST to alert
16 them if a migrant leaves.

17 29. If migrants leave the OADS, CBP will bring them back. Contractors and volunteers
18 have observed migrants being apprehended and brought back to the OADS. For example,
19 in October 2023, two migrants walked out of the Moon Valley OADS to a nearby gas
station to buy supplies. They were apprehended by Border Patrol and brought back to the
Moon Valley OADS.

1 30. In general, whenever I drive in and out of Jacumba to access the camps, I see at
2 least two to five Border Patrol trucks patrolling the vicinity. It would not be possible for a
3 migrant to walk out of the camps without encountering an agent, and if they did, the
4 Autonomous Surveillance Towers would send an alert to Border Patrol agents with a live
5 image of the individual leaving the camps, to which Border Patrol could quickly respond.
6 Multiple migrants have told me that if they try to leave or ask Border Patrol if they can
7 leave, they are told they must stay in the OADS to be processed.

7 31. In May 2023 and between September 2023 and January of 2024, CBP provided
8 wristbands to individuals at OADS in Jacumba consistently, either before or after they
9 entered the camps upon their initial encounter with Border Patrol. Based on my
10 observations, conversations with migrants, and data from volunteers, CBP generally
11 processed individuals out of the camps in order of arrival, but prioritized families with
12 children, pregnant women, and the acutely medically vulnerable. Although I have
13 observed this to be CBP's practice, I am not aware of any formal policy to prioritize
14 certain groups of people for processing.

14 32. Between approximately November 28 and December 5 of 2023, Border Patrol
15 agents in the Boulevard sector stopped providing wristbands to migrants at the Moon
16 Valley and Willows camp. Chaos ensued. Migrants complained that they had been there
17 for days while others who had arrived recently were picked up. We started to see a higher
18 number of families, some with infant children, staying overnight at those OADS during
19 that time. Even agents complained onsite about the difficulty in processing migrants

1 unless they were able to distribute wristbands. By December 5th, I saw migrants with
2 wristbands in all three Jacumba OADS again. Volunteers reported seeing wristbands on
3 migrants in Jacumba OADS consistently until around December 19.

4 33. It is unrealistic to think migrants could easily or safely cross back into Mexico
5 from the OADS. The area south of the border near Jacumba is extremely remote, with
6 unforgiving terrain and few population centers. Additionally, there are several criminal
7 groups fighting to control migrant access to the border, and migrants often face danger if
8 they pay the “wrong” group. According to Mexican media reports, there have been at
9 least one dozen migrants attacked or murdered in Mexico near Jacumba since September
10 2023. Migrants also often recount stories of being extorted by officials in Mexico or
11 falling victim to crimes like robbery, extortion, or rape. Recently, Mexican media
12 reported that several migrants were assassinated by Mexican National Guard soldiers
13 while they were attempting to cross the border into the United States in the mountains
14 east of Tijuana. Migrants I have talked to about their experiences in Mexico frequently
15 report feeling traumatized and afraid to ever return.

16 34. Since February 1, 2024, Mexican migration authorities and National Guard soldiers
17 have established two detention camps directly south of the Jacumba OADS. Any migrant
18 attempting to cross back into Mexico from the Jacumba OADS would run a high
19 likelihood of being apprehended by Mexican immigration and National Guard officials
20 posted along the border. Migrants who are apprehended at these new detention camps are

1 sent to Southern Mexico, detained in Tijuana, or deported, depending on their country of
2 origin and legal status in Mexico.

3 35. To my knowledge, very few migrants have attempted to leave the OADS in
4 Jacumba. The migrants I've spoken to almost universally believe the best way to seek
5 protection in the United States is to cross the border and turn oneself in to Border Patrol.
6 Then Border Patrol agents then tell them that they must wait in the OADS to seek asylum
7 so they wait. The only recent exception to this rule was in late December of 2023, when
8 migrants were forced to wait in the Jacumba OADS for up to six days to be processed.
9 The number of migrants in the OADS were very high and we ran low on food and water
10 as a result. A few dozen migrants decided to leave the OADS in search of food, water,
11 shelter, and Border Patrol agents willing to process them.

11 Border Patrol Can Process Migrants Out of OADS Quickly

12 36. On October 1, 2023, I emailed DHS headquarters to inform them of the potentially
13 life-threatening conditions at the Jacumba OADS. My email described Border Patrol's
14 practice of using wristbands to indicate when people arrive; ways in which Border Patrol
15 prevents people from leaving the sites; the average number of people at the sites; the
16 separation of family units; and the lack of food, water, hygiene products, adequate
17 bathroom facilities, and medical assistance. My email asked DHS to provide food, water,
18 shelter, bathrooms, and medical assistance in accordance with its own detention
19 standards.

1 37. The following week, around October 10-13, DHS headquarters staff visited the San
2 Diego sector and visited the OADS in San Ysidro/San Diego and Jacumba. In the two to
3 three days before their arrival, Border Patrol agents processed most migrants out of the
4 Jacumba OADS. Border Patrol agents also cleaned the camps of some of the garbage,
5 dismantled some of the makeshift shelters built by migrants, and threw out tents and
6 other shelters our collective had built. When DHS headquarters officials arrived in
7 Jacumba around October 10-11, the OADS looked very different from before Border
8 Patrol cleaned them up and cleared out most of the migrants.

9 38. Immediately following the DHS headquarters visit in October 2023, migrants were
10 transported out of the OADS at a faster rate, including with buses which I believe were
11 provided by ISS, a private transportation contractor used by Border Patrol. For about a
12 week, we saw a reduction in the number of people at the sites and in the length of time
13 people were staying there. Volunteers also witnessed an increase in transportation
14 services provided by CBP to remove people from the OADS. But by mid- to late October,
15 the number of individuals waiting at the sites for longer periods of time had spiked again.

16 39. In December of 2023, I observed another instance where Border Patrol cleared the
17 Jacumba OADS in advance of a scheduled DHS headquarters visit. On December 11,
18 2023, Al Otro Lado and partner organizations filed a complaint with DHS' Office of
19 Civil Rights and Civil Liberties (CRCL) concerning the agency's failure to follow its own
detention standards at OADS. On Tuesday, December 12, 2024, investigators and staff
from CRCL traveled to San Diego to meet with me and other advocates working at

1 OADS in the region. On December 13, 2024, I met the CRCL investigators in Jacumba as
2 they visited the camps. I met them at the Moon Valley camp, where we spoke with
3 several families with young children, including multiple children under 5 years old, who
4 had spent several nights at OADS waiting to be processed. All of the migrants had
5 wristbands indicating their date and time of arrival. Then, around 2:00 PM, I escorted the
6 CRCL investigators to the Tower 177 OADS; it had again been cleared by Border Patrol
7 agents in the days before the CRCL visit, including by agents telling migrants to
8 dismantle the shelters we had built. I showed the CRCL investigators photos of the
9 shelters that had been there days before. While we were standing in the camp, a
10 construction truck drove by and the driver told us that several hundred migrants were
11 walking into the camp from the border wall about a quarter mile to the south. I got into
12 the car with the CRCL investigators to guide them up to the border wall. While driving to
13 the wall, we saw migrants walking down the hill into the camp, including some carrying
14 small children. When we arrived near the border wall, we observed two Border Patrol
15 trucks parked next to about 80 - 100 migrants, including children, who were lined up. I
16 saw agents placing wristbands on each migrant and telling them to walk down into the
17 camp and wait there to be processed. We drove back into the camp and the investigators
18 spoke with some of the Border Patrol agents while I spoke with some of the migrants.
19 After a few minutes, one of the CRCL investigators told me that an agent had told her
something like, "You were supposed to be here earlier so we cleared the camp." The
CRCL investigator told me that they had originally told Border Patrol that they would

1 visit the camp at 10:00 am. In her subsequent conversation with the agent, the agent
2 confirmed that they had “cleared” the camp in anticipation of their visit.

3
4 Border Patrol Creates Dangerous Conditions by Holding Migrants at OADS

5 40. The Jacumba OADS are in remote locations in harsh desert environments. The
6 camps themselves are on unpaved roads. Tower 177 in particular is difficult to access
7 without a high-clearance vehicle.

8 41. Temperatures at the Jacumba OADS are extreme; it can be very hot and dry during
9 the day and drop below freezing at night. It is often extremely windy and dusty, with high
10 winds exacerbating dry or cold conditions. I have seen migrants exposed to these
11 conditions experience dehydration, sunburn, and cracked lips. As stated above, I am
12 aware of at least two children who were hospitalized for hypothermia as a result of the
13 freezing temperatures. Migrants with pre-existing medical conditions are often at risk of
14 complications when forced to endure this extreme environment for days at a time.

15 42. When I started going to the Jacumba OADS in September 2023, temperatures were
16 extremely hot during the day. There was no shade or shelter at the Moon Valley camp,
17 and the only vegetation was scrub brush under which asylum seekers could not protect
18 themselves from the sun or wind.

19 43. At Willows and Tower 177 OADS, asylum seekers had cut down trees and
gathered brush and garbage to construct makeshift shelters to protect themselves against
the sun and wind. Migrants often told me that they slept in the dirt, where they were

1 exposed to scorpions, snakes, and insects. Our collective brought tarps and tents to help
2 the migrants survive these harsh conditions. Once the weather turned cold, our collective
3 constructed shelters and provided tents to prevent asylum seekers from having to sleep in
4 the dirt and protect against the wind and cold. There was not enough shelter for everyone
5 and there are migrants who still had to sleep in the dirt, exposed to insects, snakes, and
6 the elements, for days at a time while they are forced to wait in the OADS. Since January
7 2024, all of the shelters at the Tower 177 have been dismantled, and the tents at the
8 Willows OADS were damaged from the large storms we experienced in the region. Our
9 collective has built a few small shelters at the Moon camp, but they can only
10 accommodate about a dozen people. Migrants have taken to sheltering in port o potties
11 and dumpsters when it is cold.

11 44. Personally, I have never seen Border Patrol provide any water to the migrants at
12 the Jacumba OADS. However, other volunteers and the migrants say that sometimes,
13 Border Patrol will provide one bottle of water and a small bar or crackers when they
14 initially turn themselves in, receive a wristband, and are told to wait in the camps.

15 45. Near the Willows OADS, there are Border Patrol trucks always parked under a
16 shade canopy. However, I am not aware of any instance in which Border Patrol has
17 provided any shade or any other shelter to the migrants they force to wait in the Jacumba
18 OADS.

19 46. Now that the weather has turned cold, I have seen migrants burn brush and garbage
in an attempt to stay warm. Much of the brush they cut down is still "green" and produces

1 a lot of smoke when burned. The asylum seekers also burn large amounts of creosote
2 (“chaparral”), which, upon information and belief, is toxic to humans while burned. I am
3 familiar with the creosote bush after living in the San Diego/Tijuana border region for
4 about seven years, and have spoken to several local Jacumba residents who pointed out
5 the creosote bushes in the field and told me that locals do not burn them because it is
6 toxic to humans. I later conducted my own research and confirmed via multiple online
7 governmental and scientific sources that the plant can be toxic. I have seen several fires
8 of creosote burning when I am in the camps, which causes my eyes to water and a
9 burning sensation in my throat. Volunteers report expelling black mucous from their
10 noses and throats after spending a significant time in the camps. Asylum seekers and
11 volunteers with asthma or other respiratory ailments have told me directly that their
12 conditions worsen significantly when exposed to creosote fires.

13 47. At each camp, I have only seen a few port-o-potties for up to several hundred
14 migrants. The port-o-potties are not serviced often enough to prevent them from filling to
15 overflowing with excrement on a regular basis. Migrants have expressed concern to me
16 that they will contract disease or a bacterial infection if they use the port-o-potties. For
17 this reason, many migrants tell me that rather than using the overflowing port-o-potties,
18 they relieve themselves in the area around the OADS. When the weather is very hot, the
19 smell makes it evident that the area is surrounded by human waste. It was only in
February of 2024 that hand washing stations were installed by Border Patrol contractors

1 in the Jacumba OADS. The water at these hand washing stations is not potable, but CBP
2 has not installed signs in various languages to warn migrants that the water is not potable.

3
4 Lack of Emergency Medical Assistance at the Jacumba OADS

5 48. CBP does not provide medical attention to individuals at the Jacumba OADS. To
6 fill the void, medical volunteers have visited the sites regularly to provide basic first aid
7 and to identify migrants who are in need of emergency services. Volunteers include
8 licensed physicians, nurses, medical students, individuals with EMT certifications, and
9 others with first-aid training. Medical volunteers provide asylum seekers with
10 over-the-counter medication, including Tylenol, and materials for basic wound care, like
11 bandages and Neosporin.

12 49. Volunteers have told me that they have experienced a lot of push back for
13 providing basic medical care. Volunteer doctors, nurse practitioners, and medical students
14 told me that they have been asked to leave the OADS by Border Patrol, even though
15 Border Patrol is not providing any medical triage or treatment onsite.

16 50. On or around October 11, 2023, a 29-year-old migrant from Guinea died at
17 Whiskey 4, one of the OADS in San Diego. At the time, we did not have many details
18 because volunteers are not allowed access to the Whiskey 4 OADS. Later, we learned that
19 the woman needed emergency medical care shortly after crossing the border into
Whiskey 4, but that she later died either in the camp or at the hospital.

1 51. On November 7, 2023, volunteers reported to me that Border Patrol told a Turkish
2 man with likely appendicitis that he would be deported if he went to the hospital.

3 52. On December 6, 2023, I was at Willows OADS and had a conversation with a
4 Border Patrol officer. He asked me if I was giving out pharmaceuticals, and I said “I am
5 not a doctor, I am a lawyer.” I told him that there would be a licensed physician volunteer
6 on site all week, plus a mobile medical unit. He said I should call the Boulevard Border
7 Patrol station and let them know, and that I should provide a schedule with physician
8 medical license numbers. I called the Boulevard Border Patrol station as I was leaving
9 Jacumba around 4:00 PM that same day, and spoke to the agent who answered the phone.
10 I explained who I was, that there would be medical volunteers on site that week, and said
11 that I wanted to know what Border Patrol’s procedures were for having volunteer medical
12 staff in the camp. I told the agent that I wanted to provide medical license information.
13 The agent told me, “that is not how it works.” When I asked how it was supposed to
14 work, he told me I needed to speak to a supervisor. He took my number and told me a
15 supervisor would call me back, but I never received a call.

16 53. I meet and communicate often with volunteer medical professionals providing
17 basic care and triage at Jacumba OADS, who have told me that they have encountered
18 multiple serious and emergency medical issues, including but not limited to COVID,
19 chickenpox, scabies, hypertension, asthma, COPD, HIV, high-risk pregnancies with
20 complications, including lack of fetal movement and bleeding, individuals with serious
21 disabilities, individuals recovering from recent heart surgeries, strokes, and organ

1 transplants, infants with severe vomiting and diarrhea, and a host of other ailments.
2 Often, migrants' pre-existing conditions are exacerbated by the fact that they do not have
3 their prescribed HIV, blood pressure, inhaler, or other medication that would keep the
4 condition from becoming critical. I have observed migrants with serious medical
5 conditions myself at OADS, including individuals with severe hypertension, uncontrolled
6 diabetes due to a lack of medication, HIV, asthma, individuals recovering from recent
7 strokes, individuals with various forms of heart disease, and individuals with respiratory
8 illness, as well as individuals who suffered injuries while crossing the border such as cuts
9 and leg and foot injuries. I have also spoken directly to multiple migrants in OADS who
10 appeared to be experiencing panic attacks (i.e. hyperventilating, chest pain, anxious
11 speech, etc.) and whose anxiety was focused on the fact that they did not know how long
12 they would have to remain at the OADS.

11 54. Not only does Border Patrol fail to provide any medical services in the OADS, but
12 the agents also have actively discouraged access to emergency care. Multiple migrants
13 and volunteers have told me that Border Patrol agents accuse individuals of "faking"
14 illness; they tell migrants that everyone in their group will be deported if any of them
15 fake an illness in an attempt to get out of the camps. For example, I have witnessed
16 Border Patrol agents refuse to prioritize processing a hypertensive woman because the
17 agents said, "the migrants fake illness to get processed out faster."

18 55. A lack of language capacity amongst the Border Patrol agents also contributes to
19 delays in accessing care. Many of the migrants come from China, Turkey, Afghanistan,

1 Uzbekistan, Brazil, and a host of other countries that do not speak Spanish or English.
2 Even Spanish-speaking migrants often report that they have trouble communicating their
3 ailments to Border Patrol agents with only a limited command of Spanish. Our volunteers
4 have documented several instances where non- English/Spanish speaking migrants
5 attempted to communicate the need for emergency assistance to agents but were unable to
6 do so. I have never seen Border Patrol agents call for an interpreter to better communicate
7 with migrants with whom they do not share a common language.

7 56. Volunteers have observed Border Patrol agents in OADS frequently tell migrants
8 that their asylum process will be “stopped” if they go to the hospital. During multiple
9 incidents documented by volunteers, migrants experiencing a medical emergency refused
10 to be transported to a hospital based on Border Patrol’s erroneous statements that they
11 will no longer have access to asylum.

11 57. In Jacumba, between September and December of 2023, I observed that
12 ambulances would not come into the camps, so the migrants had to be transported out to
13 the paved road in order to access care. While some Border Patrol officers were helpful
14 and transported the migrants to the ambulance themselves, some refused. Volunteers have
15 told me that some agents have asked volunteers to transport medically vulnerable
16 migrants to the paved road to access care.

17 58. In our collective, volunteers will immediately inform Border Patrol if they
18 encounter an individual who needs an ambulance. While some Border Patrol officers will
19 readily call for emergency medical services if our volunteers encounter an individual

1 requiring care, others have refused, minimizing the illness or injury and accusing the
2 individual of faking illness. Volunteers will often call 911 to help an individual,
3 sometimes because Border Patrol asks them to, and sometimes because Border Patrol
4 refuses to call themselves.

5 59. On Saturday, December 2, 2023, volunteers at the perimeter of the Moon Valley
6 camp called 911 after a 13-year old boy was brought over the border and dropped near
7 them. He had apparently been involved in an auto accident south of the border and badly
8 injured; his traveling companions thought he could get more rapid care in the U.S., so
9 they brought him to the Moon Valley camp. The volunteers also called Border Patrol,
10 who were not onsite at the Moon Valley camp at the time and took around 30 minutes to
11 respond. About ten minutes later, one of the volunteer doctors arrived on the scene. She
12 reported that Border Patrol had not been administering CPR when she arrived, and
13 despite her best efforts to help the boy with CPR, he died. EMS did not respond for over
14 an hour after volunteers had initially called. Within 24 hours of the boy's death, Border
15 Patrol agents told volunteers that EMS will only respond to calls from CBP and will not
16 respond to emergency calls made directly by asylum seekers or volunteers at the OADS.
17 Our collective has since been advocating with EMS locally to avoid implementation of
18 this disastrous policy.

19 60. Frequently, in my experience, response times from EMS have been very long,
either because EMS takes a long time to arrive, or because Border Patrol officers delay or

1 refuse to call 911. The remote location of Tower 177 is also a factor, from which it takes
2 at least 10 or 15 minutes to transport a migrant to the pavement to meet EMS.

3 61. Most of the time, people transported in an ambulance are not allowed to bring
4 anyone else with them, or sometimes they can only bring one person. As such, some
5 people hesitate to get on an ambulance because they will be separated from family
6 members who remain at the camps. This fear is very real, as migrants are discharged by
7 hospitals to the streets as “homeless,” often without phones or with phones that do not
8 work in the U.S.

9 62. For example, on September 13, 2023, I met a Chinese man and his son in San
10 Diego, where he had been released from Border Patrol custody. His wife had been
11 transported by EMS out of the Willows OADS a few days earlier, and their daughter had
12 gone to the hospital with her. We called multiple area hospitals to try to find them, but no
13 one had a record. After about a week of not having heard from them, we helped the
14 family file a missing person’s report with the San Diego Police Department, fearing that
15 they may have been abducted after being released to the streets. After another week, we
16 finally learned that the wife and daughter had gone back to the border to turn themselves
17 in, and instead of being released, were transferred to an ICE detention facility in
18 Louisiana, where they remained until October 5, 2023.

19 63. The conditions I have observed at the OADS, including the lack of food, water,
shelter, medical care, and sanitation facilities, have been shocking and disturbing and
unlike any other detention facility or refugee camp in which I have worked. I have

1 worked with asylum seekers since 2002, and have years of experience working in ICE
2 detention facilities, Office of Refugee Resettlement shelters, and Los Angeles County
3 jails. Although conditions vary greatly depending on the context, each detained person I
4 have ever worked with throughout my career had access to shelter, food, water, and some
5 form of medical attention. In Tijuana, I have provided legal and humanitarian services in
6 a variety of migrant shelters, encampments, and emergency migrant influx facilities,
7 which were often set up in tents or sports complexes. Even though there are extremely
8 limited resources for migrants in Tijuana, I have never seen any shelter or detention
9 facility that comes close to having the same lack of food, water, hygiene, and medical
10 care that I have observed in the OADS located in San Diego County. Even when migrants
11 formed a tent encampment in Tijuana outside of the U.S. port of entry in 2021, the
12 Tijuana and Baja California governments coordinated with civil society groups to provide
13 food, water, and robust medical services. In contrast, the dearth of services and sanitation
14 I observed at the OADS has been heartbreaking and dangerous to the health of the
15 migrants held there. It has been especially difficult working with families with children
16 and unaccompanied children who might not understand why they are being held in
17 horrific conditions, and watching them struggle to survive in extreme temperatures,
18 exposed to the elements for extended periods of time. I have tried advocating with San
19 Diego County and California state elected officials to get them to provide minimum
services at the OADS, but they have refused, saying that the migrants are being detained
by the Federal government and that it is DHS' responsibility to care for the migrants held

1 in OADS. It has been frustrating to hear DHS officials claim that their agency, which has
2 an annual budget of over \$100 billion dollars, does not have the resources to provide
3 humane and dignified conditions for migrants seeking safety in the United States,
4 especially when children are left for days at a time to suffer without the basic items they
5 need to survive.

6
7 I declare under penalty of perjury that the foregoing is true and correct to the best
8 of my knowledge.

9
10 Executed on this 26 day of February 2024, at San Diego, California.

11 

EXHIBIT A



American
Friends
Service
Committee



#48989

Border Kindness
Bondad Frontera



Center for Gender & Refugee Studies



International Refugee
Assistance Project



NATIONAL
IMMIGRATION
LAW CENTER

December 11, 2023

Officer Shoba Sivaprasad Wadhia
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Compliance Branch, Mail Stop # 0190
2707 Martin Luther King, Jr. Ave., SE
Washington, DC 20528-0190

Via Electronic Mail: CRCLCompliance@hq.dhs.gov

RE: CBP Violations of Custody Standards and Human Rights of Individuals Detained in Open-Air Detention Sites in the San Diego Sector Require Immediate Attention to Save Lives

Dear Officer Wadhia:

We are writing to file a renewed and expanded formal complaint with the Office for Civil Rights and Civil Liberties (CRCL) about the continued gross violations of rights by U.S. Customs and Border Protection (CBP), specifically, Border Patrol, which has now for nearly a year forced asylum seekers to remain in CBP custody in open-air detention sites along the U.S.-Mexico border in California. The sites are located in the open-air corridor between the primary and secondary border walls west of the San Ysidro port of entry and in open-air encampments near the town of Jacumba, California.

As detailed in the original complaint filed by the Southern Border Communities Coalition (SBCC)—and since corroborated by numerous media reports and accounts from organizations providing asylum seekers with minimal supplies to survive—Border Patrol agents are still detaining asylum seekers in dangerous, exposed conditions, and are failing to provide the adequate food, water, sanitation, shelter, and medical care required under the law. Since your office completed its review of the previous complaint, at least one individual has died at an open-air detention site despite CRCL having “raised concerns about conditions” and suggesting

that “CBP have humanitarian assistance plans in place to ensure these conditions do not recur.”¹ The situation is increasingly dire, as the cold and rainy winter season is beginning. CRCL must exercise its oversight function to ensure CBP takes immediate corrective action if it continues to detain asylum seekers at these open-air detention sites, including providing the basic shelter, food, water, and medical care required under the law.

The undersigned organizations are located at the border where they provide essential services and have documented conditions at the open-air detention sites in California. Based on our first-hand observations, it is indisputable that individuals held at the open-air detention sites are under CBP’s custody and control, and that the conditions continue to violate CBP’s National Standards on Transport, Escort, Detention, and Search (“TEDS Standards”) and violate the human rights of asylum seekers and other migrants, which the United States is bound to uphold. Thus, the undersigned organizations renew the demands in the previous complaint and implore CRCL to take immediate and meaningful action to address these ongoing and increasingly grave violations by CBP.

The open-air detention sites near San Ysidro were the subject of the previous complaint filed with your office on May 13, 2023. Section I, below, describes current conditions at those sites. In Section II, the sites near Jacumba are described for the first time in this complaint, given the government’s expanded reliance on these more remote locations. The undersigned organizations are aware of open-air detention sites at other points along the border including outside of California, which are beyond the scope of this complaint. We urge CRCL to ensure oversight and compliance with basic human rights standards at *all* such sites.

¹ U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties, *Letter responding to Complaint No. 006336-23-CBP* (Sept. 28, 2023) [hereinafter CRCL Response to SBCC Complaint] (on file with the undersigned organizations).

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I. San Ysidro Sites: The Ongoing Operations of Open-Air Detention Sites West of the San Ysidro Port of Entry Continue to Violate CBP's Own Standards, as Described in a May 2023 Complaint

In May 2023, the Southern Border Communities Coalition (SBCC) filed a complaint documenting CBP's use of open-air detention sites between the primary and secondary walls located west of the San Ysidro port of entry in California.² In the complaint and its supporting declarations, SBCC documented Border Patrol agents' failure to provide adequate water, food, shelter, sanitation, and medical assistance to asylum seekers and other migrants at the open-air detention sites.³ It also provided examples of Border Patrol agents verbally mistreating individuals.⁴

Based on the conditions documented by advocates, SBCC established that CBP was violating its TEDS Standards⁵ and violating migrants' rights under the International Covenant on Civil and Political Rights (ICCPR),⁶ including Article 7 which provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment."⁷ Accordingly, SBCC sought an investigation into the violations of the TEDS Standards and the ICCPR.⁸ More specifically, SBCC asked CRCL to ensure that violations cease, that human rights be protected, and that the conditions not recur in California or anywhere else along the border.⁹ CRCL completed its investigation with a September 28, 2023 letter indicating that it understood individuals in the open-air detention sites outside the San Ysidro port of entry "had since been processed" but that it would work with CBP to ensure that such conditions did not occur again.¹⁰

In November 2023, the U.N. Human Rights Committee ("the Committee") concluded its review of the United States' compliance with its obligations under the ICCPR. The United States is a signatory to the ICCPR, which it ratified in 1992, giving the ICCPR the status of the supreme law of the land per the U.S. Constitution's Supremacy Clause. The Committee expressed concern about the U.S. government's treatment of migrants, specifically "poor conditions of detention, including overcrowding and inadequate access to food, water and medical care," and stated that the United States "should take all measures necessary to enhance protection of migrants,

² Southern Border Communities Coalition, [Civil Rights Civil Liberties Complaint](#), 1 (May 13, 2023) [hereinafter SBCC CRCL Complaint].

³ SBCC CRCL Complaint at 2-8.

⁴ *Id.* at 9 (citing Decl. of Pedro Rios ¶ 25).

⁵ CBP, [National Standards on Transport, Escort, Detention, and Search](#) (2015), [hereinafter TEDS Standards].

⁶ SBCC CRCL Complaint at 8.

⁷ International Covenant on Civil and Political Rights Art. 7.

⁸ SBCC CRCL Complaint at 9.

⁹ *Id.* at 10.

¹⁰ CRCL Response to SBCC Complaint.

refugees and asylum seekers” and ensure that immigration policy is aligned “with international human rights and humanitarian standards.”¹¹ It further directed the United States to take measures to remedy the violations, as required under Article 2 of the ICCPR.¹² Despite raising these concerns at both the domestic and international levels, violations of the ICCPR and the TEDS Standards—and severe ongoing harm to asylum seekers and migrants—persist at the open-air detention sites. The inhumane conditions migrants face at the open-air detention sites will become even more dire, if not more deadly, as the rainy, freezing winter weather continues.

A. Asylum Seekers and Migrants at Open-Air Detention Sites Near San Ysidro Remain in CBP Custody

CBP has established four open-air detention sites along the open-air corridor west of the San Ysidro port of entry. Listed from east to west they are known as: Whiskey 4; Whiskey 8 (where volunteers maintain a site providing migrants with food, water, and basic necessities); Spooner’s Mesa (where it is believed predominantly single adult men are detained);¹³ and 91X (closest to the beach).¹⁴ CBP officers have stated that they are only present at the open-air detention sites to monitor for medical emergencies until their stations have capacity to process individuals.¹⁵ But their interactions with individuals between the walls suggest otherwise. SBCC’s May 2023 complaint explained that asylum seekers and migrants in the open-air detention sites are in CBP custody because of the extent of CBP’s control over their environment, movement, and treatment.¹⁶ CBP continues to exercise the same control now.

First and foremost, the area between the primary Tijuana wall and the secondary wall (about 75 yards north) is located on U.S. soil, as is evidenced by a sign posted on the secondary wall.¹⁷ CBP regularly patrols and monitors this area¹⁸ and exercises control over migrants by, for example: directing them from one area of the corridor to another,¹⁹ and in some cases, transporting them from one area of the corridor to another in Border Patrol vehicles;²⁰ taking

¹¹ U.N. Human Rights Comm., [Concluding Observations on the Fifth Periodic Report of the United States of America](#) ¶¶ 54-55 (Nov. 3, 2023), U.N. Doc. CCPR/C/USA/CO/5.

¹² *Id.*

¹³ Supp. Decl. of Flower Alvarez Lopez ¶ 8.

¹⁴ Supp. Decl. of Pedro Rios ¶ 5.

¹⁵ WRC Report at 3.

¹⁶ SBCC CRCL Complaint at 3.

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ *Id.* See also Supp. Decl. of Pedro Rios ¶ 12; Supp. Decl. of Flower Alvarez Lopez ¶ 9.

²⁰ Supp. Decl. of Adriana Jasso ¶ 10; Supp. Decl. of Lilian Serrano ¶ 10; Supp. Decl. of Pedro Rios ¶ 12.

counts of people in the corridor;²¹ issuing color coded or labeled wristbands;²² directing people to remain seated;²³ subjecting them to invasive body searches;²⁴ providing inadequate amounts of water and food, portable toilet facilities, and garbage collection;²⁵ and not allowing anyone, including those in need of medical attention, to leave the corridor without authorization from CBP agents.²⁶ Individuals only leave the corridor in Border Patrol vehicles or privately owned buses contracted by CBP, unless they are in a medical crisis so grave that they have to be picked up in an ambulance.

Recent reporting confirms that CBP officers tell migrants that they need to stay in the open-air detention sites; otherwise, they will be deported.²⁷ CBP officials place paper wristbands on individuals labeled with the day they entered custody, indicating the rough order in which they will be picked up.²⁸

When CBP officers arrive to take asylum seekers on the sites for processing, they exert control over people in numerous ways. CBP officers order people to remove any additional clothing beyond a shirt or other article of clothing on top and pants or another article of clothing on the bottom.²⁹ People are forced to remove or discard blankets, jackets, and coats. CBP only allows people to have one small bag, and orders them to remove all shoelaces, hair ties, and other accessories. Often, CBP outsources transport to a private transportation company, which picks up and transports asylum seekers for processing. CBP officers are present and monitor the private company during transport. The private transport company often handcuffs asylum seekers before they board the bus.³⁰

²¹ Supp. Decl. of Flower Alvarez Lopez ¶ 11; Supp. Decl. of Adriana Jasso ¶¶ 11-12; Supp. Decl. of Lilian Serrano ¶¶ 14-15; Supp. Decl. of Pedro Rios ¶ 13.

²² SBCC CRCL Complaint at 3.

²³ *Id.* at 2; Decl. of Pedro Rios ¶ 20.

²⁴ Supp. Decl. of Adriana Jasso ¶¶ 13-15.

²⁵ SBCC CRCL Complaint at 2; Decl. of Adriana Jasso ¶ 8; Supp. Decl. of Adriana Jasso ¶¶ 20-23; Supp. Decl. of Lilian Serrano ¶ 9.

²⁶ SBCC CRCL Complaint at 3.

²⁷ Jasmine Garsd, [Border Patrol sending migrants to unofficial camps in California desert, locals say](#), NPR (Nov. 21, 2023), [hereinafter NPR Story].

²⁸ Women's Refugee Commission, [People Seeking Asylum Confined Outside in Appalling Conditions: Findings and Recommendations from a Monitoring Visit to San Diego](#) 3 (Nov. 2023) [hereinafter WRC Report]. See also Gustavo Solis, [Border Patrol once again puts migrants in outdoor San Ysidro camp with no bathrooms](#), KPBS (Sept. 12, 2023), [hereinafter KPBS San Ysidro open-air detention sites]. As discussed below, some volunteers have reported that CBP has stopped issuing wristbands in the Jacumba sites as of early December. Decl. of Jacqueline Arellano ¶¶ 20-22.

²⁹ Supp. Decl. of Flower Alvarez Lopez ¶ 12.

³⁰ *Id.*

CBP continues to detain people in the open-air corridors for anywhere between a few hours to multiple days, although average time in detention at the corridor sites has dropped following the death of an asylum seeker. On October 11, 2023, a 29-year-old Guinean woman died after suffering a medical emergency at the Whiskey 4 site.³¹ Before her death, advocates witnessed CBP regularly detaining migrants in the open-air detention sites for over 72 hours, in violation of the TEDS Standards.³² Since her death, the average time a person is at Whiskey 8 has decreased.³³ However, without proper treatment, individuals still experience violations of their rights that are sometimes fatal. This decrease in detention time does not absolve CBP from complying with its duties.

B. CBP is Still Not Adequately Responding to Medical Emergencies in San Ysidro

Notwithstanding that migrants at the open-air detention sites are within CBP's custody and control, CBP fails to satisfy its own minimum standards for providing for migrants' basic care. The TEDS Standards require CBP to provide individuals with medical attention, meals at regularly scheduled times, adequate water, restroom accommodations, and personal hygiene items.³⁴ TEDS Standards § 4.10 provides that "[e]mergency medical services will be called immediately in the event of a medical emergency."³⁵ Yet, advocates have witnessed CBP's delayed response in providing medical attention to detained asylum seekers and migrants,³⁶ including to a person on the verge of dying.³⁷

Advocates have observed many people who sustained injuries from falling from the border walls.³⁸ Volunteers have tended to the medical needs of migrants because CBP has failed to do so. A volunteer reported providing first aid to a woman who suffered a deep laceration to her leg after being cut by concertina wire while climbing over the border wall in September 2023.³⁹ The woman had reported her injury to CBP, but the officer told her to go to the volunteers

³¹ Alexandra Mendoza, [Migrant woman dies after waiting to be processed at the border near San Ysidro](#), THE SAN DIEGO UNION-TRIBUNE (Oct. 13, 2023); Salvador Rivera, [Female migrant dies after crossing the border in California](#), BORDER REPORT (Oct. 13, 2023).

³² SBCC CRCL Complaint at 7-8 (describing detention of migrants for up to a week). See TEDS Standards § 4.1 ("Detainees should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities. Every effort must be made to hold detainees for the least amount of time required for their processing, transfer, release, or repatriation as appropriate and as operationally feasible.").

³³ WRC Report at 3.

³⁴ SBCC CRCL Complaint at 4. See also TEDS Standards at 17-18.

³⁵ TEDS Standards § 4.10 ("Medical Emergencies").

³⁶ SBCC CRCL Complaint at 4-5.

³⁷ Decl. of Adriana Jasso ¶ 11.

³⁸ Supp. Decl. of Flower Alvarez Lopez ¶ 19.

³⁹ *Id.* ¶ 20.

instead.⁴⁰ Volunteers also supported an Ecuadorian woman who feared calling an ambulance for her 11-year-old son with a fever because she was told that she would not be able to move forward with her case.⁴¹ Volunteers helped the mother call for medical assistance when her son's fever reached 103.5 degrees.⁴² These examples show that CBP is not following the TEDS Standards, which require CBP to call for emergency medical services "immediately."⁴³ Rather, CBP is creating an environment that delays or discourages individuals from receiving medical services altogether.⁴⁴

CBP does not adequately respond to medical emergencies, and when it does respond, it fails to account for the processing of individuals after they are discharged from local hospitals.⁴⁵ Without coordinated plans from CBP, individuals who are discharged from local hospitals have had to figure out how to return to the open-air detention sites on their own because they are unsure of what else to do.⁴⁶ According to a volunteer doctor providing medical services to asylum seekers, including through the slats of the border wall, there will be more injuries and deaths unless adequate medical care and additional support is provided.⁴⁷

C. CBP is Still Not Providing Sufficient Food and Water in San Ysidro

The May 2023 complaint describes CBP agents providing migrants with "a single small water bottle per person, and a granola bar"⁴⁸ after arrival even though the TEDS Standards require "regularly scheduled meal times" for adults⁴⁹ and "a snack upon arrival and a meal at least every six hours thereafter, at regularly scheduled meal times" for children and pregnant individuals.⁵⁰ In direct contravention of the TEDS Standards, CBP was also not providing adequate amounts of water.⁵¹

⁴⁰ *Id.*

⁴¹ *Id.* ¶ 17.

⁴² *Id.*; Supp. Decl. of Pedro Rios ¶ 20.

⁴³ TEDS Standards § 4.10 ("Medical Emergencies").

⁴⁴ Supp. Decl. of Flower Alvarez ¶ 15.

⁴⁵ WRC Report at 6.

⁴⁶ *Id.*; see also Paul Sisson, [Federal government mum on why less-severe medical needs are not better coordinated](#), THE SAN DIEGO UNION-TRIBUNE (Sept. 23, 2023).

⁴⁷ Alexander Mendoza, [Migrant woman dies after waiting to be processed at the border near San Ysidro](#), THE SAN DIEGO UNION TRIBUNE (Oct. 13, 2023).

⁴⁸ SBCC CRCL Complaint at 5; Supp. Decl. of Lilian Serrano ¶ 9; Decl. of Jacqueline Arellano ¶ 13.

⁴⁹ TEDS Standards § 4.13.

⁵⁰ TEDS Standards § 5.6.

⁵¹ SBCC CRCL Complaint at 6 (describing the use of a 5-gallon container of water that would be finished by mid-day). See TED Standards § 4.14 ("Functioning drinking fountains or clean drinking water along with clean drinking cups must always be available to detainees.").

CBP continues to commit blatant violations of these standards. CBP is still only providing—at best—a single bottle of water and one small snack per day.⁵² In response to CBP’s inadequate food provision, organizations and volunteers on both sides of the border have been supplying migrants with basic necessities.⁵³ In fact, CBP has stopped regularly providing even this minimal food and water to migrants at Whiskey 8, where volunteers have a constant presence and have direct access to provide supplies through the slits in the border wall.

D. CBP is Still Not Providing Adequate Restroom Facilities at the Open-Air Detention Sites in San Ysidro

The May 2023 complaint discussed CBP’s failure to provide adequate restroom facilities⁵⁴ and basic hygiene items.⁵⁵ Six months later, there continues to be a dearth of restroom facilities at the open-air detention sites. To address the urgent need for restroom facilities, the American Friends Service Committee (AFSC) brought the issue to the attention of state Senator Steve Padilla’s office, which advocated bringing portable restrooms to three open-air detention sites located west of the San Ysidro port of entry.⁵⁶ And, in fact, all of the open-air detention sites accessible to public view now appear to have at least one portable toilet provided by CBP. But this is not adequate sanitation for the number of individuals passing through these sites, which can include up to a hundred or more people daily.⁵⁷

The TEDS Standards further require restrooms that afford a reasonable amount of privacy.⁵⁸ Yet, women at the open-air detention sites are forced to go to the restroom in groups for protection and use pieces of cardboard to provide a degree of privacy.⁵⁹ In addition, CBP does not provide any menstrual products, such as sanitary pads and tampons, or diapers for babies,⁶⁰ which violates TEDS Standard § 4.11.

⁵² Supp. Decl. of Lilian Serrano ¶ 9; KPBS San Ysidro open-air detention sites.

⁵³ Decl. of Adriana Jasso ¶ 8; Supp. Decl. of Lilian Serrano ¶ 9.

⁵⁴ SBCC CRCL Complaint at 6 (describing use of a single port-a-potty for hundreds of migrants and lack of maintenance of the port-a-potty). See TEDS Standards § 4.15 (requiring restroom accommodations made available to “all detainees and a reasonable amount of privacy . . .”).

⁵⁵ SBCC CRCL Complaint at 7 (describing a lack of showers, hand washing stations, and basic personal hygiene items despite some individuals being detained for up to a week). See TEDS Standards § 4.11 (requiring that detainees be provided with “basic personal hygiene items, consistent with short term detention and safety and security needs” and for families with small children to have “access to diapers and baby wipes,” and requiring reasonable efforts to “provide showers, soap, and a clean towel to detainees who are approaching 72 hours in detention.”).

⁵⁶ Pedro Rios, [Update: AFSC U.S.-Mexico Border Program staff responds to Border Patrol’s open-air detention sites](#), AFSC NEWSROOM (Oct. 2, 2023) hereafter “AFSC Update”]. See also Supp. Decl. of Pedro Rios ¶ 19.

⁵⁷ KPBS San Ysidro open-air detention sites.

⁵⁸ See TEDS Standards § 4.15 (requiring restroom accommodations made available to “all detainees and a reasonable amount of privacy . . .”).

⁵⁹ KPBS San Ysidro open-air detention sites.

⁶⁰ SBCC CRCL Complaint at 7 (citing Decl. of Flower Alvarez Lopez ¶ 5).

E. Volunteers are Addressing the Needs of Migrants at Open-Air Detention Sites in San Ysidro Because CBP is Not Providing Adequate Food, Water, Medical Care, or Other Necessities

Because CBP is not addressing the basic needs of asylum seekers at the open-air detention sites, where they are exposed to the elements in the desert, organizations and volunteers have set up a volunteer station to provide water, food, and medical assistance.⁶¹ AFSC, Al Otro Lado, and Border Kindness, among others, have committed to providing asylum seekers at the open-air detention sites with meals, water, and sources of warmth where CBP has failed to do so.⁶² CBP does not provide blankets, jackets, umbrellas, ponchos, or shelter—even though TEDS Standards require CBP to provide clean bedding to children and clean blankets, when available, to adults upon request.⁶³ Instead, nongovernmental organizations have taken it upon themselves to provide food, water, blankets, tarps, informal translation services, clothing, medicine and first aid, diapers, and personal hygiene products to asylum seekers at the open-air detention sites.⁶⁴

Volunteers responding to the needs of migrants use Whiskey 8 as a headquarters, where they prepare food and other items to distribute to people at the four sites near San Ysidro. Nonprofit organizations and volunteers advocated with CBP to be able to provide aid directly at one publicly accessible site through the wall; however, there are three other open-air detention sites where CBP generally does not allow nonprofit organizations and volunteers to go.⁶⁵ Volunteers give food to CBP agents, who presumably distribute it to individuals at the other sites.⁶⁶ The food provided by volunteers and organizations is the only substantial food that individuals at the open-air detention sites receive, given that CBP only provides them water and occasional snack foods, such as granola bars.⁶⁷ Men from Spooner's Mesa have repeatedly requested permission from Border Patrol to leave and hike to Whiskey 8 to bring back food for the men there.⁶⁸ CBP has generally denied them permission.⁶⁹ On at least one occasion, Border

⁶¹ AFSC Update; Supp. Decl. of Pedro Rios ¶ 22; Supp. Decl. of Lilian Serrano ¶ 9.

⁶² AFSC Update; Decl. of Jacqueline Arellano ¶ 17. *See also* Jacob Aere, [Migrants detained near Jacumba Hot Springs now face cold, wet weather](#), KPBS (Nov. 15, 2023) [hereinafter KPBS Jacumba Report].

⁶³ *See* TEDS Standards § 4.12. *See also id.* § 8.0 (defining bedding as “[a] (or any combination of) blanket, mat, or cot”).

⁶⁴ AFSC Update. *See also* KPBS San Ysidro open-air detention sites.

⁶⁵ WRC Report at 3; *see, e.g.*, Supp. Decl. of Adriana Jasso ¶¶ 8, 20-22.

⁶⁶ *See* Supp. Decl. of Lilian Serrano ¶ 13 noting that “Border Patrol agents tell volunteers at Whiskey 8 how many migrants are in Spooner's Mesa so that the volunteers can pack food lunches and Border Patrol takes those packages to the migrants in that site.”

⁶⁷ SBCC CRCL Complaint at 5. *See also* AFSC Update; Supp. Decl. of Pedro Rios ¶ 18; Supp. Decl. of Lilian Serrano ¶ 9.

⁶⁸ Supp. Decl. of Adriana Jasso ¶¶ 21-22.

⁶⁹ *Id.* ¶ 22.

Patrol allowed migrants detained at Spooner's Mesa to access food and water provided by volunteers only after the volunteers interceded on the migrants' behalf and negotiated for permission for the migrants to bring food to the site.⁷⁰ Response efforts from organizations including Border Kindness, Al Otro Lado, Universidad Popular, and mutual aid groups are driven by volunteers and funded by donations, and thus are not guaranteed to continue.⁷¹

Given the dire conditions facing asylum seekers at these sites, CRCL should reopen its investigation into the open-air corridor between the primary and secondary border walls west of the San Ysidro Port of Entry. Although CRCL "raised concerns about [these] conditions"⁷² with CBP, it does not appear that the agency has taken any meaningful action in response.

II. Jacumba Sites: CBP Fails to Address the Basic Needs of Asylum Seekers Detained near Jacumba, California, in Violation of the TEDS Standards

Open-air encampments emerged in Jacumba, California around May 2023.⁷³ According to recent reporting, currently on any given day there are an average of 500 asylum seekers and other migrants at the sites.⁷⁴ According to data collected by Al Otro Lado, between the end of October 2023 and the beginning of December 2023, the number of asylum seekers at the Jacumba open-air detention sites on a single day ranged between less than 100 to over 750.⁷⁵ During this period, the number of children at the Jacumba open-air detention sites ranged between less than 20 and up to nearly 60, and the number of pregnant persons has reached over 60.⁷⁶ Conditions in Jacumba are just as, if not more, deplorable⁷⁷ than the conditions in between the primary and secondary border walls west of the San Ysidro port of entry. Thus, the undersigned organizations request that CRCL expand its investigation of CBP's violations of TEDS Standards to include all open-air detention sites currently in use in California and beyond and to ensure that such violations cease.

⁷⁰ *Id.*; Supp. Decl. of Pedro Rios ¶ 16.

⁷¹ AFSC Update.

⁷² CRCL Response to SBCC Complaint.

⁷³ Soumya Karlamangla, [Scenes From a Migrant Camp at California's Southern Border](#), N.Y. TIMES (May 19, 2023). See also Melissa Gomez, [Migrants struggle against the elements in San Diego's open-air desert camps](#), L.A. TIMES (Nov. 28, 2023) [hereinafter L.A. TIMES Article]. See also Supp. Decl. of Pedro Rios ¶ 7; Supp. Decl. of Lilian Serrano ¶¶ 4-6.

⁷⁴ L.A. TIMES Article.

⁷⁵ Decl. of Erika Pinheiro ¶ 23; see also Supp. Decl. of Lilian Serrano ¶ 6.

⁷⁶ Decl. of Erika Pinheiro ¶ 23.

⁷⁷ Supp. Decl. of Lilian Serrano ¶ 6 ("While conditions in the other sites are deplorable, the conditions in Jacumba are particularly dangerous because migrants are exposed to extreme desert weather conditions, including intense heat waves and cold fronts.").

A. Individuals at the Sites Near Jacumba are in CBP Custody

There are four open-air detention sites in and near Jacumba, California, which are in remote locations in the middle of the desert. Three of the sites are presently in use: Valley of the Moon (also referred to as “Moon Valley” or “Moon”); Tower 177; and Willows.⁷⁸ While the sites vary in their precise location and geographic features, at each site, asylum seekers undoubtedly are—and understand themselves to be—under CBP’s custody and control.⁷⁹ In fact, a senior CBP official recently acknowledged to a reporter that the camp serves as a “sort of informal holding spot.”⁸⁰ Based on observations from advocates on the ground, asylum seekers and migrants at the Jacumba open-air detention sites are indeed in CBP custody, as detailed below.



Figure 1. CBP vehicles and officers at the Moon Valley Site. (Photo from November 14, 2023).

1. The Physical Location of the Jacumba Sites Coupled with CBP Control Prevents People from Leaving

The geography and operations of each site, as seen in the photos included in this complaint, prevent asylum seekers from leaving the sites. As an initial matter, all three sites are surrounded by desert, and any asylum seeker who leaves the sites will be at severe risk of dehydration, starvation, or death by exposure. The Moon Valley site is located by the shoulder of a highway and is bordered by mountains to the south and desert all around. When on site, CBP maintains its vehicles between the encampment and the highway.⁸¹ Tower 177 and Willows are both located on private property and are only accessible through a gated road. The Tower 177 site is bordered by mountains on the side opposite to the road and CBP maintains

⁷⁸ The fourth site is referred to as O’Neill.

⁷⁹ Tom K. Wong, [Lives in Danger: Seeking Asylum Against the Backdrop of Increased Border Enforcement](#), UC San Diego US Immigration Policy Center (May 16, 2023) [hereinafter “Immigration Policy Center Report”].

⁸⁰ L.A. Times Article.

⁸¹ See Figure 1.

vehicles at the top of the hill leading out from the encampment.⁸² And the Willows site is enclosed by the border wall on one side and by railroad tracks on the other side. CBP vehicles patrol the only road leading in and out of this site.⁸³ At each location, CBP monitors who may enter and interact with asylum seekers. At Willows, CBP has even installed a sign indicating the site is under CBP control and that only authorized personnel are allowed on the site.⁸⁴



Figure 2. A sign installed by CBP at the Willows site. (Photo from November 14, 2023).

In addition to physical barriers and in-person monitoring, there are Anduril Autonomous Surveillance Towers (AST) at each of the three Jacumba open-air detention sites.⁸⁵ The ASTs use an artificial intelligence system that detects and tracks movement in a 360-degree radius up to more than a mile away from the site.⁸⁶ These ASTs alert Border Patrol when an “object of interest” is detected, meaning that it sends images of persons or vehicles of interest that have made movement at the sites.⁸⁷ Border Patrol therefore has capacity to monitor and surveil asylum seekers at the detention sites even when agents are not physically onsite.⁸⁸ When asylum seekers and migrants have attempted to leave the camp, Border Patrol agents have apprehended and returned them to the detention sites.⁸⁹



Figure 3. A CBP vehicle guards the road leading out of Tower 177. (Photo from November 14, 2023).

⁸² Supp. Decl. of Pedro Rios ¶ 6.

⁸³ *Id.*; Decl. of Jacqueline Arellano ¶ 11; Decl. of Erika Pinheiro ¶ 16.

⁸⁴ See Figure 6.

⁸⁵ Decl. of Erika Pinheiro ¶ 17.

⁸⁶ *Id.*

⁸⁷ Decl. of Erika Pinheiro ¶¶ 17-18.

⁸⁸ *Id.* ¶ 17.

⁸⁹ *Id.* ¶ 18.

Finally, CBP officers themselves consider the asylum seekers at Jacumba to be in custody. According to a report, a Border Patrol agent, when asked whether the asylum seekers were free to leave, said that they were not: "[W]hen asked what would happen if the migrants tried to leave Jacumba, the agent said they would be apprehended."⁹⁰



Figure 4. The Willows site abuts the border wall. (Photo from November 14, 2023).



Figure 5. CBP vehicles patrol the only road leading to the Willows site. (Photo from November 14, 2023).

2. CBP Directs Individuals to Remain at the Jacumba Sites

CBP directs asylum seekers from wherever they are apprehended along the border to the sites and orders them to wait there to be taken for processing.⁹¹ In some instances, CBP directly transports asylum seekers to the open-air detention sites in its vehicles.⁹² As at the San Ysidro sites, CBP requires individuals to wear paper wristbands indicating the day they arrived.⁹³ CBP officers tell asylum seekers that they can expect to be at the site for at least 1-3 days and warn them that leaving the site will be harmful to their asylum case, meaning



Figure 6. Asylum seekers with wristbands. (Photo from November 14, 2023).

⁹⁰ Immigration Policy Center Report at 4.

⁹¹ Supp. Decl. of Lilian Serrano ¶ 12.

⁹² Decl. of Jacqueline Arellano ¶¶ 9-10; Decl. of Erika Pinheiro ¶¶ 14-15. See also Steve Inskeep and Jasmine Garsd, [Many migrants entering the U.S. illegally land in makeshift camps in California](#), NPR MORNING EDITION (Nov. 21, 2023).

⁹³ See Paulina Velasco, [Detained in the desert: migrants stuck in camps in the extreme climate of the US-Mexico border](#), THE GUARDIAN (Nov. 27, 2023) [hereinafter "GUARDIAN Story"]. See also L.A. TIMES Article; Decl. of Erika Pinheiro ¶¶ 14, 30.

that they could be denied asylum and deported. Children and family groups are often picked up first, though they may still be required to wait overnight.⁹⁴

Asylum seekers at the Jacumba sites are not free to leave. As mentioned, when people venture out of open-air detention sites in search of food or other goods, CBP follows them and forces them to return, underscoring CBP’s control over the sites.⁹⁵

3. CBP Acknowledges its Duties at the Jacumba Sites by Providing Inadequate Levels of Care

CBP maintains a presence at the open-air detention sites: the agency has installed inadequate numbers of portable toilets at all the sites, and dumpsters at a few of the sites. Such infrastructure, however inadequate, further indicates that CBP’s open-air detention sites are custodial and that the agency is adhering to some—deeply inadequate—standard of confinement. CBP is not consistently present on site to provide humanitarian services, but instead guards the side closest to the road at all sites: monitoring for any individuals attempting to leave or enter the site. At Tower 177, for example, advocates have witnessed an additional CBP vehicle stationed on the road outside the site,⁹⁶ which would prevent anyone from leaving without being surveilled by CBP.



Figure 7. Portable toilets installed by CBP at the Tower 177 site (Photo from November 14, 2023).

B. CBP is Not Providing Sufficient Food and Water at the Jacumba Sites

Notwithstanding that migrants detained at the Jacumba open-air detention sites are in CBP’s custody and control, CBP also fails to provide for their basic needs, just as it fails to provide for migrants detained at the sites near San Ysidro. The TEDS Standards require “regularly scheduled meal times” for adults⁹⁷ and “a snack upon arrival and a meal at least every six hours

⁹⁴ L.A. TIMES Article; Decl. of Erika Pinheiro ¶¶ 42-43; Supp. Decl. of Pedro Rios ¶ 15.

⁹⁵ Decl. of Jacqueline Arellano ¶ 11.

⁹⁶ See Figure 2.

⁹⁷ TEDS Standards § 4.13.

thereafter, at regularly scheduled meal times” for children and pregnant individuals.⁹⁸ However, individuals staying at the Jacumba open-air detention sites rely exclusively on volunteers to provide them with food and water to survive.⁹⁹ In fact, CBP has even asked humanitarian organizations to bring certain items that CBP does not provide.¹⁰⁰ Like in San Ysidro, CBP provides just one bottle of water, and at most, a small snack-size pack of crackers.¹⁰¹ Some asylum seekers do not receive even these basic items on arrival.¹⁰²



Figure 8. Tents at the Willows site. (Photo from November 14, 2023).

People brought to these sites have often walked for hours through the desert and are tired, hungry, and dehydrated on arrival. Despite forcing people to remain at the sites for days at a time, CBP does not provide any meals. Only volunteers provide meals, traveling to all three sites twice a day to provide a meal in the morning and a meal in the afternoon.

C. CBP is Denying Medical Care at the Jacumba Sites

There are no medical facilities, supplies, or posted information about what to do in the event of a medical emergency at any of the described open-air detention sites. CBP does not assess medical needs or provide any emergency medical care.¹⁰³ Instead, medical volunteers regularly volunteer at the sites to address immediate needs.¹⁰⁴ Medical volunteers at the open-air detention sites include doctors, nurse practitioners, and medical students who are licensed to provide medical assistance.¹⁰⁵ Other volunteers, while not medical providers, have EMT or first aid training and provide care to address immediate needs.¹⁰⁶ People have required first aid care to address parasites, burns, broken bones, and other medical needs.¹⁰⁷ Volunteers have also seen people with significant medical conditions, including pregnant women or women in

⁹⁸ *Id.* § 5.6.

⁹⁹ NPR Story.

¹⁰⁰ GUARDIAN Story.

¹⁰¹ Decl. of Erika Pinheiro ¶ 8.

¹⁰² Decl. of Jacqueline Arellano ¶ 13.

¹⁰³ Decl. of Erika Pinheiro ¶ 39; Decl. of Jacqueline Arellano ¶ 18.

¹⁰⁴ Decl. of Erika Pinheiro ¶ 39; Decl. of Jacqueline Arellano ¶ 19.

¹⁰⁵ Decl. of Erika Pinheiro ¶ 39.

¹⁰⁶ Supp. Decl. of Flower Alvarez Lopez ¶ 16.

¹⁰⁷ NPR Story.

labor.¹⁰⁸ Given the recent change in weather, medical professionals are concerned that there may be an increase in cases of hypothermia and the flu, particularly among children and individuals with underlying medical conditions.¹⁰⁹ Since September, volunteers have already seen people at the open-air detention sites with hyperthermia and hypothermia.¹¹⁰

Yet, even as CBP deprives migrants of the basic necessities they need to survive, it threatens to bar or deter volunteers from assisting migrants detained at the open-air sites near Jacumba. In particular, medical volunteers have received pushback for the aid that they provide.¹¹¹ On December 4, 2023, two San Diego County sheriffs approached volunteers at Willows to inquire whether they were giving out pharmaceuticals.¹¹² Volunteers confirmed that they only provide over-the-counter medicine and wound care.¹¹³

Given the location of the detention sites, it is extremely difficult for migrants to receive appropriate medical attention in an emergency. Border Patrol agents often refuse to call local Emergency Medical Services (EMS),¹¹⁴ but when migrants or volunteers call, EMS sometimes delays responding to emergency calls or discourages migrants from seeking medical attention.¹¹⁵ Recently, Border Patrol has informed advocates that EMS will now only respond if CBP makes the 911 call.¹¹⁶ Yet even when CBP does call, EMS has generally refused to go into the Jacumba open-air detention sites.¹¹⁷ As a result, people experiencing medical emergencies need to be taken to the paved road next to the open-air detention sites to be treated by EMS, which at Tower 177 is a significant distance away.¹¹⁸ Moreover, the remoteness of the sites delays how fast an ambulance can take a person to the nearest hospital.¹¹⁹ Earlier this month, it took over an hour for EMS to respond after receiving an emergency call about a 13-year-old boy who was badly injured.¹²⁰ The boy died at the site.¹²¹

¹⁰⁸ Dani Miskell, [Freezing conditions at Jacumba border puts migrants at risk for hypothermia](#), ABC 10 NEWS SAN DIEGO (Dec. 1, 2023).

¹⁰⁹ KPBS Jacumba Report.

¹¹⁰ Decl. of Jacqueline Arellano ¶ 14.

¹¹¹ Decl. of Erika Pinheiro ¶ 40.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* ¶¶ 31, 35.

¹¹⁵ Decl. of Jacqueline Arellano ¶¶ 18-19; Decl. of Erika Pinheiro ¶¶ 36-37.

¹¹⁶ Decl. of Erika Pinheiro ¶ 37; Decl. of Jacqueline Arellano ¶ 19.

¹¹⁷ Decl. of Erika Pinheiro ¶ 34.

¹¹⁸ *Id.* ¶¶ 34, 37.

¹¹⁹ Supp. Decl. of Lilian Serrano ¶ 7.

¹²⁰ Decl. of Erika Pinheiro ¶ 37.

¹²¹ *Id.*

CBP actively discourages and blocks access to medical care.¹²² Some Border Patrol agents have falsely accused people of faking illnesses to get out of the open-air detention sites, and have told asylum seekers that they will be deported if they fake an illness, or that their asylum process will stop if they get into an ambulance.¹²³ Persons who are transported in an ambulance are often not allowed to bring anyone with them or are only allowed to bring one person.¹²⁴ Migrants in need of medical care express fear of having their asylum cases forestalled and of being separated from their families, and they hesitate to receive the medical aid that they need.¹²⁵ The fear of family separation is well founded, and volunteers have encountered instances where this fear has been realized.¹²⁶ Al Otro Lado has helped reunify families that have been separated under these circumstances.¹²⁷

CBP also fails to provide hygiene products of any kind, such as toothbrushes, soap, or sanitary pads and tampons—a violation of the TEDS Standards, which require the provision of basic personal hygiene items.¹²⁸ Volunteers sometimes provide basic supplies such as ibuprofen, bandages, and sanitary pads.

D. CBP is Failing to Provide Adequate Shelter at the Jacumba Sites

All of the sites are outdoors and completely exposed to the elements. There are no permanent shelters, and CBP has not set up any temporary structures or provided any protection from the weather.¹²⁹ Located in the desert, the sites are extremely dry, dusty, cold and windy—even in the middle of a sunny day.¹³⁰ Many asylum seekers are forced to sleep at the open-air detention sites overnight when temperatures drop considerably—recently as low as 20 degrees Fahrenheit.¹³¹ Asylum seekers build fires out of uprooted trees, brush, and sticks, and even trash on site to try to keep warm.¹³² And volunteers have reported that during the summer, temperatures often reach well over 100 degrees Fahrenheit, and that there is no shelter or protection from the sun.

¹²² *Id.* ¶ 31.

¹²³ Decl. of Erika Pinheiro ¶¶ 31, 33; Supp. Decl. of Flower Alvarez Lopez ¶ 15.

¹²⁴ Decl. of Erika Pinheiro ¶ 38.

¹²⁵ Supp. Decl. of Flower Alvarez Lopez ¶ 17.

¹²⁶ Supp. Decl. of Flower Alvarez Lopez ¶ 22.

¹²⁷ Decl. of Erika Pinheiro ¶ 38.

¹²⁸ See TEDS Standards § 4.11.

¹²⁹ Decl. of Erika Pinheiro ¶¶ 10, 11.

¹³⁰ *Id.* ¶ 9.

¹³¹ See Decl. of Jacqueline Arellano ¶ 15; see also TEDS Standards § 4.7 ("Temperature Controls: When it is within CBP control, officers/agents should maintain hold room temperature within a reasonable and comfortable range for both detainees and officers/agents. Under no circumstances will officers/agents use temperature controls in a punitive manner.").

¹³² L.A. Times Article.; Decl. of Jacqueline Arellano ¶ 15; Decl. of Erika Pinheiro ¶ 12.

At all three sites, people have built some rudimentary shelter for rest and privacy, either by setting up volunteer-provided tents or by building tent-like structures out of tarps and blankets.¹³³ Most of these structures are flimsy and built out of found materials—often dirty, dusty blankets—and do not provide adequate warmth or protection from the elements. At Tower 177, asylum seekers have also sought protection from the wind by huddling near large boulders.¹³⁴

Volunteers are making extraordinary efforts to distribute jackets, blankets, and hats to asylum seekers to try to ensure their basic survival.¹³⁵ However, the donations and distribution are necessarily haphazard, leaving some asylum seekers without the items they need to stay warm. Volunteers are not able to maintain a permanent presence at the sites to offer this support at all times nor do they have adequate supplies to provide these basic essentials on a large scale when there are hundreds of people arriving at the same time.

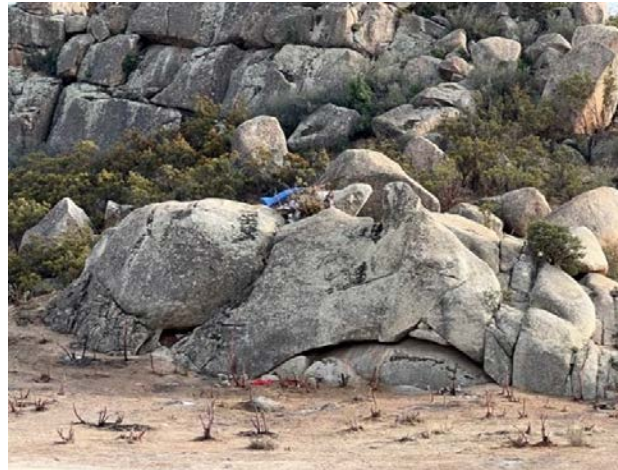


Figure 9. Asylum seekers seek protection from the elements at the Tower 177 site by sheltering near boulders. (Photo from November 14, 2023).

Volunteers, including physicians,¹³⁶ are very concerned about the upcoming wet weather and colder temperatures in the winter. As it is, people are huddling under dirty blankets and building fires out of brush and trash to try to stay warm. Smoke from these fires has exacerbated allergies and health problems for some asylum seekers.¹³⁷ In the event of rain, the sites are likely to become very muddy, and the rudimentary tents that asylum seekers and volunteers have built will be insufficient to provide protection and warmth.

¹³³ Decl. of Jacqueline Arellano ¶ 15; Decl. of Erika Pinheiro ¶ 10.

¹³⁴ See Figure 9.

¹³⁵ Decl. of Jacqueline Arellano ¶¶ 15, 17.

¹³⁶ See KPBS Jacumba Report (describing a Kaiser Permanente physician’s concern for asylum seekers and migrants, especially children, who do not have the “proper clothing” for 40-degree weather).

¹³⁷ Decl. of Erika Pinheiro ¶ 12.

III. CRCL Must Take Immediate Action to Address the Grave Violations Documented in this Complaint

Given CBP's persistent and increasingly concerning violations of domestic and international standards through its operation of the open-air detention sites in California, and elsewhere along the border, we implore CRCL to reopen its investigation of the open-air detention sites operated by CBP and ensure adequate oversight. The recent death at an open-air detention site provides a painful reminder that lives hang in the balance. More lives are at risk as we move into the winter months.

CBP has not put in place any humanitarian assistance plans in response to concerns raised by CRCL. In fact, were it not for the courageous and tireless work of volunteers and humanitarian aid organizations, the fatal nature of these operations would no doubt be more severe. If CBP is not able to process people promptly, it must at a minimum comply with the TEDS Standards and provide: 1) shelter, warm clothing, and blankets that provide protection from the elements; 2) adequate water, food, and sanitation; and 3) medical care, particularly to address life threatening emergencies and those issues that if left untreated would cause irreparable harm. Ultimately, the agency could eliminate unnecessary suffering by permitting individuals to request asylum at ports of entry instead of unlawfully turning away those who do not have CBP One appointments.¹³⁸

We welcome the opportunity to meet with your office to share more regarding the completely avoidable humanitarian crisis occurring at these sites. Further inquiries regarding this complaint may be directed to Lilian Serrano at lilian@alliancesd.org and Blaine Bookey at bookeybl@uclawsf.edu.

(Signatures on the following page)

¹³⁸ See *Al Otro Lado and Haitian Bridge Alliance v. Mayorkas*, 3:23-cv-01367-AGS-BLM (S.D. Cal., filed July 27, 2023).

Sincerely,

Erika Pinheiro
Al Otro Lado (AOL)

Pedro Rios
*American Friends Service Committee
(AFSC)*

Kelly Scott Overton
Jacqueline Arellano
Border Kindness

Lilian Serrano
*Southern Border Communities Coalition
(SBCC)*

Edith Sangüeza
Dulce Rodas
Blaine Bookey
Peter Habib*
Center for Gender & Refugee Studies (CGRS)

Mevlûde Akay Alp
Melissa Fich
Linda Evarts
*International Refugee Assistance Project
(IRAP)*

Sarah Kim Pak
Hilda Bonilla*
Michelle Lapointe
National Immigration Law Center (NILC)

*Law graduate

Complainants

Counsel for Complainants

Enclosures¹³⁹

1. Supplemental Declaration of Adriana Jasso
2. Supplemental Declaration of Flower Alvarez Lopez
3. Supplemental Declaration of Lilian Serrano
4. Supplemental Declaration of Pedro Rios
5. Declaration of Erika Pinheiro
6. Declaration of Jacqueline Arellano
7. SBCC May 2013 Complaint to CRCL and Attachments

¹³⁹ Original declarations on file and available upon request.

CC

Chairman Dick Durbin
Ranking Member Lindsey Graham
Senate Judiciary Committee

Speaker Mike Johnson
Minority Leader Hakeem Jeffries
United States House of Representatives

Chairman Jim Jordan
Ranking Member Jerrold Nadler
House Committee on the Judiciary

Attorney General Merrick Garland
U.S. Department of Justice

Chairman Alex Padilla
Senate Judiciary Committee
Subcommittee on Immigration, Citizenship,
and Border Safety

Assistant Attorney General Kristen Clarke
Civil Rights Division
U.S. Department of Justice

Secretary Alejandro Mayorkas
U.S. Department of Homeland Security

Chairman Gary Peters
Ranking Member Rand Paul
Senate Committee on Homeland Security &
Governmental Affairs

Acting Commissioner Troy A. Miller
Customs and Border Protection
U.S. Department of Homeland Security

Chairman Mark Green
Ranking Member Bennie Thompson
House Committee on Homeland Security

Nathaniel Kaine
Chief of Staff
Customs and Border Protection
U.S. Department of Homeland Security

Chairman James Comer
Ranking Member Jamie Raskin
House Committee on Oversight and
Accountability

Chief Jason Owens
United States Border Patrol
Customs and Border Protection
U.S. Department of Homeland Security

Chairman Tom McClintock
Ranking Member Pramila Jayapal
House Judiciary Committee
Subcommittee on Immigration Integrity,
Security, and Enforcement

Erin Barclay
Acting Assistant Secretary of State for
Democracy, Human Rights, and Labor
U.S. Department of State

Majority Leader Charles Schumer
Minority Leader Mitch McConnell
United States Senate

Attachment 1

SUPPLEMENTAL DECLARATION OF ADRIANA JASSO

I, Adriana Jasso, declare the following:

1. I have worked with the American Friends Service Committee for 17 years assisting migrants.
2. I previously submitted a declaration in support of the Civil Rights and Civil Liberties complaint that the Southern Border Communities Coalition filed on May 13, 2023.
3. Since early September, I have been running an open-air volunteer station supporting migrants alongside the border wall in the San Ysidro area—a location that is commonly referred to as “Whiskey 8.”
4. The migrants we assist are inside the United States between two border walls. At Whiskey 8 we provide the resources through the slats in the northern-most of the two walls.
5. Beginning on or about September 7, 2023 and continuing to the present, we have had an ongoing daily volunteer presence at Whiskey 8. I work at the site five days a week for five to six hours a day. Prior to September, I was involved in observations of the site in August 2023.
6. I provide this declaration based on my personal observations, the observations and experiences of my colleagues that they have communicated to me, my conversations with migrants we assist, and my conversations with Border Patrol agents in the course of my volunteer work at the site from August 2023 to the present. I keep contemporaneous notes of my observations and information I receive from other volunteers, migrants, and Border Patrol.
7. The volunteers and I assist migrants, including by providing food, water, clothing, female hygiene products, diapers, blankets, a phone-charging station, and tarps. We also identify migrants with medical emergencies and other medical needs and do our best to get them medical care.
8. We provide assistance to migrants at two nearby open-air sites as well: Whiskey 4 and Spooner’s Mesa. Generally, Border Patrol does not allow us to visit these sites, and we identify the needs of migrants there by speaking with their family members who are at Whiskey 8, as discussed more below. I am aware, however, of a handful of occasions when Border Patrol has permitted a volunteer to visit these sites with a Border Patrol escort.

Migrants are in Border Patrol Custody at the Open-Air Sites

9. As I discussed in my prior declaration, the migrants at these open-air sites are in the custody and control of Border Patrol. Unless otherwise specified, the information I provide below reflects ongoing Border Patrol practices between August 2023 and the present day.

Agents direct migrants to the sites

10. Border Patrol agents make contact with migrants in the United States and instruct them to walk to the open-air sites, or the agents actually drive them to the open-air sites in their vehicles. Agents also frequently transport migrants in their vehicles from one open-air site to another.

Agents subject migrants to the count

11. Every day at Whiskey 8, multiple times a day, Border Patrol agents hold a “count” of the migrants present, just as they would in a detention facility. But the practice is more brutal given the outdoor conditions. Agents conduct the “count” at any time of day or night. Not infrequently counts are held in the middle of the night when temperatures are cold, it is raining, and people are sleeping. Migrant families often try to construct makeshift shelters out of tarps, and volunteers have witnessed parents asking Border Patrol agents if their children can remain asleep under their tarps during the count. The agents have said no and demanded that everyone stand to be counted, even small children and even in the rain and freezing weather. The migrants and their children must stand for the count until the agents give them permission to go back to their tarps.
12. We have heard from migrants that their family members are subject to the count at the Whiskey 4 and Spooner’s Mesa sites as well.

Agents subject migrants to body searches

13. Border Patrol agents regularly conduct invasive searches of migrants at the open-air sites. Specifically, agents conduct body searches of all male migrants, during which they require the migrants to put up their hands and spread their legs, and agents pat their legs, back, chest, and waist. The agents also search inside the migrants’ pockets and require migrants to remove their shoes and the shoelaces from their shoes. When a female Border Patrol agent is present, female migrants are also body searched.
14. Even when a female Border Patrol agent is not available, female migrants are required to stand in a line and are subjected to the “one layer” rule—that is, Border Patrol agents inform them that the migrants can wear only one layer of clothing and they must remove all other layers before they are transported away from the open air site. As a result of this rule, I have observed female migrants removing their t-shirts and other inner layers of clothing in public view of male Border Patrol agents. I have seen the female migrants trying to cover each other with their bodies so that the male agents will not see them undressed. Female migrants are also required to let down their hair during these body inspections.
15. On or about November 9, 2023 at Whiskey 8, a male agent forced a female migrant to remove her hijab and then he touched the female migrant’s hair. The female migrant and her husband

appeared to be deeply uncomfortable when the agent engaged in this culturally inappropriate act. I was present and witnessed the incident.

Agents subject migrants to harsh verbal treatment

16. I have also seen Border Patrol agents screaming and swearing at migrants at the open-air sites. For example, on or about December 4, 2023, I observed an agent checking migrants' passports. A female migrant informed him that she did not have her passport in her hand because it was in her bag, and the agent began to scream and swear at her, repeatedly using the F word.

Agents subject migrants to family separation

17. Border Patrol agents routinely separate families at the open-air sites, requiring men to leave their female and minor child relatives who they are traveling with. Border Patrol agents detain the men at the more remote Spooner's Mesa site. Male siblings and male cousins are routinely separated from their female siblings and cousins. And frequently fathers are separated from their spouses and children. Border Patrol agents ask the male migrants if they are legally married to their spouses, and if the answer is no, the agents typically separate the families.
18. On or about October 2, 2023, I spoke with a migrant mother who said she was very worried about her 17-year-old son who had been separated from her and sent to Spooner's Mesa. I asked a Border Patrol agent about this case, and the agent was dismissive of the concerns about separating the mother and her minor child.
19. Volunteers are generally not permitted by Border Patrol agents to enter or approach Spooner's Mesa where the men are detained. Spooner's Mesa is a hike into the canyon away from Whiskey 8, as I described in my earlier declaration. We cannot see what is happening there, but we hear from the family members of the detained men about the needs of the migrants at that site.

Agents Fail to Provide Migrants Basic Life Necessities at the Open-Air Sites

20. For example, we have heard from family members, who are communicating by cell phone with male migrants at Spooner's Mesa, that there are times when there is no food or water at that site. Sometimes Border Patrol has asked for food or water from our volunteers and transported it to the site, which only Border Patrol is allowed to access.
21. At other times, the migrants at Spooner's Mesa have been desperate for food and water, and Border Patrol has not provided it. We have then communicated with Border Patrol agents to try to get permission for some men who are detained at Spooner's Mesa to hike to our volunteer station at Whiskey 8 so they can get food and water and then hike back to provide the food and water to the detained men at Spooner's Mesa.
22. On or about September 23, 2023, we had to negotiate with Border Patrol to get food and water for about 120 men at Spooner's Mesa. The lack of food and water for many hours is very

dangerous. These men had to ask for the agents' permission because Border Patrol does not otherwise allow the men to leave Spooner's Mesa. I and other volunteers have heard that many times men at Spooner's Mesa have requested permission to leave to get food and water and their requests have been denied. I am not aware of any time that a man left Spooner's Mesa without permission.

23. Border Patrol agents frequently do not have the basic necessities they need to provide migrants detained in the open-air sites. For example, they do not appear to carry extra water in their vehicles. And agents have repeatedly asked our volunteer station to borrow water for Spooner's Mesa and Whiskey 4. We have provided the water.

24. At times the Border Patrol agents have appeared embarrassed to have to rely on us and have promised to "pay us back" with water. But it is unclear why they are not able to stock sufficient water in the first place. Agents have told me that they need to provide projected migrant numbers in advance for the following week, and they say they have repeatedly had too few supplies to meet the demand. But I do not know why they cannot ask for more water than they anticipate needing to ensure they do not fall short.

I affirm that the statements in this declaration are true, correct, and complete to the best of my knowledge and belief.

December 9, 2023

/s/ Adriana Jasso

Adriana Jasso

Attachment 2

SUPPLEMENTAL DECLARATION OF FLOWER ALVAREZ LOPEZ

I, Flower Alvarez Lopez, declare the following:

1. My name is Flower Alvarez-Lopez. I am a Co-Director at Universidad Popular, a grassroots community organization that supports immigrants in the San Diego, CA region.
2. This declaration supplements the declaration that I provided on May 12, 2023 in support of the Civil Rights and Civil Liberties complaint filed by the Southern Border Communities Coalition on May 13, 2023.
3. I first went to the open air detention site near San Ysidro, known by Border Patrol agents as "Whiskey 8", in May 2023. I camped out for several days providing humanitarian assistance to migrants facing terrible conditions trapped by Border Patrol between the border walls on U.S. soil.
4. Since September 2023, I have been assisting at open air detention sites controlled by Border Patrol agents almost every single day, six or seven days a week. Our organization is part of a collective of organizations providing humanitarian aid to people at the open air detention sites. I would usually begin my day at Whiskey 8 and then move to Jacumba later in the day. Recently, I have spent more time at Whiskey 8.
5. As a result of my work over the past few months, I have gained significant personal knowledge about the devastating conditions at the sites and have triaged dozens of medical emergencies. I also interact multiple times a day with the Border Patrol agents controlling the sites.
6. The content of this declaration is based on my own observations, the observations and experiences of my colleagues and other volunteers that have been communicated directly to me by them, information communicated directly to me by people detained at open air detention sites and their family members, and my communications with Border Patrol agents at the sites.

Border patrol control at the open air detention sites

7. In addition to Whiskey 8, there are three other open-air detention sites located near San Ysidro: "Whiskey 4", "91X" and "Spoooner's Mesa". Border Patrol does not permit volunteers to enter these sites to provide humanitarian aid. Since September, Border Patrol has made limited exceptions on about four occasions to allow us to bring humanitarian aid into Spoooner's Mesa. I was present three of these times. Each of these times, a superior officer from the Imperial Beach Border Patrol Sector escorted us onto the site. On one occasion, a fellow volunteer reported that Border Patrol escorted them onto the Whiskey 4 site to provide humanitarian assistance. I have no knowledge of anyone else being allowed to enter Whiskey 4 on any other occasion. To my knowledge, no one from our collective has ever accessed 91X.
8. One of the sites near San Ysidro, "Spoooner's Mesa", is also referred to by Border Patrol agents as "the men's site". This site is more remote and you have to cross hilly terrain to access the site. Individuals at this site do not have direct access to humanitarian aid from volunteers so they go longer without food or water. The reason it is called "the men's site" is because Border Patrol

sends men over 18-years-old who are traveling without minor children or a legal spouse to this site.

9. I have seen and heard Border Patrol agents at Whiskey 8 direct single men to walk to Spooner's Mesa. Sometimes agents will point and tell them to just keep walking. I have also seen ATV or Border Patrol vehicles lead groups of men to Spooner's Mesa. I would estimate that it takes approximately an hour and a half to walk from Whiskey 8 to Spooner's Mesa.
10. I have witnessed Border Patrol agents wake men up in the middle of the night and ask if they are traveling with their children or legal spouse. I have witnessed agents asking men to show copies of birth certificates or marriage certificates to prove parent-child or marital relationship in order to be able to stay with their families. Some of the most difficult separations I have witnessed are when barely 18-year-old sons get separated from their families and sent to Spooner's Mesa. I have witnessed mothers clinging to their sons who are barely adults and begging Border Patrol not to separate them.
11. Border Patrol agents regularly take a count of the number of people at Whiskey 8 and at the sites out in Jacumba. Border Patrol agents have also given us head count numbers for the other sites near San Ysidro so that we know how many hot meals to have ready for Border Patrol to bring there. At Whiskey 8, I have seen the counts occur at almost every shift change, which normally occurs about three times a day. Generally, what I observe is that the Border Patrol agents will make everyone stand up and get in a line. The agents will then make everyone stay in line while they patrol the site to make sure that everyone is standing and that no one is lying down. They then go along the line and take a headcount. We often ask Border Patrol to give us their headcount once they are done and then we document the head counts.
12. When Border Patrol agents are preparing to transport people off the sites for processing, the agents line them up and order them to remove shoelaces, jewelry, coins, extra layers of clothing etc. The agents only allow people to keep one article of clothing on top and one on the bottom, even in the cold weather. They are also only allowed one bag. On their person they are only allowed dollar bills, their passport and sponsor information. I have also witnessed Border Patrol photographing individuals before they are transported off the site. They are then mainly transported out in transport vehicles such as large vans or buses. I have seen the private transportation company put handcuffs or zip ties on individuals including young men before getting on the bus to be taken for processing. See photograph attached at Exhibit 1.

Lack of food and water provided by Border Patrol

13. When I first began visiting the sites, Border Patrol agents would provide limited insufficient offerings of food and water, but in recent months Border Patrol agents have stopped providing any food rations at Whiskey 8 or the site known as "Boulevard Tower 177" in Jacumba at all. Since September, our team has not witnessed Border Patrol handing out any food rations at these sites.
14. Prior to that, Border Patrol agents would hand out meager offerings only. On about four occasions, a Border Patrol field officer approached me with boxes of small cheez-it snack bags or small cookie bags and water bottles and asked me if I would hand them out along with the hot meals that our group was providing. The officer seemed embarrassed by the small snacks that

they were offering. Officers have also told me that they don't have money in their budget to buy meals.

Lack of medical care and insufficient response to medical emergencies

15. Border Patrol continues to fail to provide any type of medical support at the sites and volunteers are left to triage people and provide the limited first aid we can. At Whiskey 8 we deal with a high rate of medical emergencies that people tell us they have sustained from falling from the border wall. On multiple occasions, I have told Border Patrol agents that a person is in medical distress and agents have told me to let the person know that if they leave the site in an ambulance they won't get the documents they need and they won't get processed for their immigration case.
16. I have received basic emergency medical training and I triage and provide first aid to people with terrible injuries at the sites. I ask multiple triage questions and then I bring an extensive list of symptoms to Border Patrol agents to advocate as to why the person requires immediate medical attention. I am very persistent and often I have to approach Border Patrol agents multiple times to advocate on behalf of people in medical distress in order to convince Border Patrol to call an ambulance.
17. One morning in early October 2023 I triaged an 11-year old boy from Ecuador who had arrived the night before with his mother. He had a rising fever and had been vomiting throughout the night. I asked a Border Patrol agent how high his temperature would have to be in order to get medical help and he told me it had to be 102 degrees. I ran to CVS and bought a thermometer to measure his temperature. I approached Border Patrol agents multiple times on the boy's behalf as his condition worsened. When his temperature reached 103.5 degrees, the boy's mother told us that she was afraid to ask Border Patrol to call an ambulance because they had made it this far and she didn't want to get deported for not being processed properly. She also told me she was scared they would just take her son in the ambulance and she would get separated from him. When I asked Border Patrol to confirm that she could travel with her son in the ambulance he said that was the ambulance driver's decision. We had to persuade her to seek the medical care her son needed and eventually she agreed to allow Border Patrol to call an ambulance.
18. On November 17, 2023 I encountered a man from Colombia with a laceration on his forehead, which he told me he sustained from falling after being chased by Border Patrol. When he arrived at Whiskey 8 he told me he was too afraid to seek medical help because he feared that his case would not be processed. He asked me if I would suture the wound for him, despite knowing I wasn't a medic. I eventually convinced him to have Border Patrol call an ambulance. I took his phone number because I wanted to check in with him and make sure he got the medical assistance that he needed. He later texted me to let me know that he received stitches at the hospital and he sent me a photograph of the stitched wound on his forehead. See attached photograph at Exhibit 2.
19. On November 25, 2023 I assisted four people in a single night who had injuries they told us they sustained from falling from the wall. One woman was reported during wall triage to have suspected fractures in both feet from falling from the wall. She was transported off the site in an ambulance and the next morning she texted me a photograph from the hospital showing both her feet in bandages. See attached photograph at Exhibit 3.

20. At 11:33 pm on Sunday, September 24, 2023 I received a call from a fellow volunteer, Roberto. He told me he was at Whiskey 8 and that a woman had arrived with a deep laceration on her leg that she sustained after she was cut by concertina wire climbing over the border wall. He told me that she reported to him that Border Patrol had sent her to volunteers to get help. He asked me to walk him through what to do over the phone. I walked him through how to flush and pressure wash the wound to prevent infection. I then told him to apply direct pressure to stop the bleeding and told him how to bandage the wound. Since we don't have direct access to the other side of the fence where the migrants are physically located and he couldn't help her through the fence, I heard him guiding someone else inside the open air detention site on what to do. Roberto told me he provided the materials including the gloves, flush, gauze etc. He also sent me a photo of her wound which is attached as Exhibit 4.
21. I have observed that most of the time when Border Patrol agents call ambulances, they tell the ambulance to wait down the road and then they transport the person in medical distress from the open air detention site in a vehicle and transfer them from their custody into the ambulance further down the road. Agents have told me that they do this because they don't want people at the site to see ambulances coming into the site as this might make them fake injuries in order to leave the site. When a person has suspected spinal injuries from falling from the wall or is unable to walk, Border Patrol agents will allow the ambulance to enter the site through the gate.

Family separation

22. One day that stood out for me was Sunday, November 26, 2023, when multiple Border Patrol transport vans dropped off groups of people at Whiskey 8. A man ran out of one of the vehicles and told us that an elderly woman had fallen 16 feet from the border wall. He brought her over and I triaged her. She was nauseous and sleepy and had been unconscious for 5 to 10 minutes, which was a red flag. She was traveling with her two grandchildren, ages 11 and 8 years old. We were able to call the children's father who lives in the U.S. and speak with him and I have remained in contact with him via phone since. I was very concerned that the family would get separated so I asked an agent whether both children could travel with their grandmother in the ambulance. The agent called his supervisor to the site and eventually they said that they would process her very quickly and transport the family together. The family was transported off the site in a transport vehicle, but I later learned from their father that the grandmother was admitted to hospital and subsequently processed and released. He informed me that his children were separated from their grandmother and placed in ORR custody. Our organization hosted the grandmother after she was discharged. To my most recent knowledge, the children have not been released to either their father or grandmother's custody.

I affirm that the statements in this affidavit are true to the best of my knowledge and belief.

December 10, 2023

/s/Flower Alvarez Lopez
Flower Alvarez Lopez

Exhibit 1

Photograph of private transportation company handcuffing asylum seekers at Whiskey 8, dated November 25, 2023



Exhibit 2

Photograph of stitched head wound, dated November 17, 2023



Exhibit 3

Photograph of bandaged feet injured after falling from wall, dated November 26, 2023



Exhibit 4
Photograph of leg laceration, dated September 24, 2023



Attachment 3

SUPPLEMENTAL DECLARATION OF LILIAN SERRANO

I, Lilian Serrano, declare the following:

1. I am the Director of the Southern Border Communities Coalition (SBCC), a program of Alliance San Diego. As part of that role, I monitor human rights conditions in the border region.
2. I previously submitted a declaration in support of a complaint filed by SBCC with the Office of Civil Rights and Civil Liberties (CRCL) on May 13, 2023.
3. I provide this declaration based on my personal observations, the observations and experiences of my colleagues that they have communicated to me, my conversations with migrants we assist, and my conversations with Border Patrol officers in the course of my work at the border since May 2023.
4. Since May 2023, I have witnessed the inhumane conditions in which migrants have been held in the open-air detention sites (OADS) near San Ysidro and Jacumba, California.
5. I have visited OADS in San Diego known as Spooner's Mesa and Whiskey 8; and four sites in Jacumba. We did not include the Jacumba sites in SBCC's May 2023 complaint because we had only learned about the Jacumba sites a few days before filing the complaint.
6. The situation in Jacumba is harrowing. Since May, the number of migrants at those sites has significantly increased. There are now reports that as many as 700 migrants are held at the Jacumba sites in one day. While conditions in the other sites are deplorable, the conditions in Jacumba are particularly dangerous because migrants are exposed to extreme desert weather conditions, including intense heat waves and cold fronts.
7. Additionally, the remoteness of Jacumba makes it harder for migrants to access basic necessities and services in a timely manner. For example, if someone needs medical services, it takes about an hour for an ambulance to take them to the nearest hospital. Further, given the remote location, it takes significantly more planning for the assisting organizations and volunteers to get out to the sites and bring any humanitarian aid to Jacumba.
8. In the San Ysidro area, I communicate with people assisting migrants on the ground throughout the day. I know from them that the number of migrants spending the night at one of these sites can be up to seventy (70) at a time. Waiting times for migrants to be taken from the OADS to a Border Patrol facility for processing can be up to and even beyond twenty-four hours.

Access to Food and Water

9. Border Patrol is very inconsistent with how it provides food and water to migrants. Every few days, Border Patrol shows up with cases of water and snacks — a granola bar or crackers. The agents hand out one bottle of water and one snack per migrant. If volunteers were not there to provide basic sustenance, migrants would go days without eating or drinking water. In fact, what

prompted our humanitarian efforts in May was finding out that migrants did not have access to basic necessities, and some were not eating for three days. Border Patrol agents tell migrants that volunteers will provide basic needs like food.

Border Patrol Transportation of Migrants to OADS

10. I have seen Border Patrol agents transport migrant family units in their vehicles from other locations along the border wall to the OADS known as Whiskey 8. When the family units arrive at Whiskey 8, Border Patrol agents tell them that they should wait there and that volunteers will provide food and water through the wall. Then, the agents leave.
11. Additionally, in November, I saw—on at least two separate occasions—Border Patrol agents guiding with their vehicle groups of about 40 migrants to the OADS known as Moon Valley in Jacumba. On one occasion, the migrants followed the Border Patrol vehicle and, on the other, the Border Patrol agent followed migrants in their vehicles to make sure migrants arrived at the OADS.
12. Migrants in Jacumba have also shared with me that when Border Patrol agents encounter migrants, the agents give them directions on how to get to the OADS and tell them to wait there to be taken for processing.
13. I have seen Border Patrol agents instruct male adults to walk west and, there, they encounter another site called Spooner's Mesa. Volunteers usually do not have access to this site. However, earlier this fall, I was driven there once by a Border Patrol supervisor. I have not been permitted to return or provide services directly to migrants there. Sometimes, Border Patrol agents tell volunteers at Whiskey 8 how many migrants are in Spooner's Mesa so that the volunteers can pack food lunches for Border Patrol to take to the migrants in that site.

Border Patrol Counts of Migrants

14. I know from volunteers that Border Patrol agents take counts of migrants in the OADS. In San Ysidro, the volunteers talk to Border Patrol agents in the Whiskey 8 area every morning, afternoon, and night (when the last volunteer leaves, usually at midnight) about the number of migrants in the OADS. Most of the time, Border Patrol shares numbers that are broken down by OADS, family units, and men.
15. In Whiskey 8, the counts happen late at night and Border Patrol wakes up migrants, including family units.
16. I also know that migrants were getting wristbands with the day they arrived at the OADS written on them. However, last week, Border Patrol stopped giving migrants wristbands at the Jacumba sites.

Threats from Border Patrol to Migrants in the OADS

17. When I visit the sites, I talk to migrants in Spanish and English. I also communicate in other languages by using Google Translate. Several migrants told me that they are here to seek asylum and that they want to do it the right way. Border Patrol agents often tell migrants that they need to follow instructions and wait at the OADS. The agents tell migrants that they will not be processed if they do not follow instructions. Consequently, many migrants are afraid their asylum claims won't be processed if they do not follow the officers' instructions.
18. At the Spooner's Mesa site, a Border Patrol agent told migrants that if they did not follow instructions, he would leave them outside to wait to be transported without access to food and water for as long as the agent wanted.

Threats from Border Patrol to Advocates

19. In September, once we saw the numbers go up in Whiskey 8 and our humanitarian efforts escalated, a Border Patrol agent threatened a group of four advocates, including me, with arrest for giving migrants food and water through the wall.
20. We had one table and some boxes against the border wall at around 10:00 or 11:00 PM with water and sandwiches. A Border Patrol agent told us to step away from the wall and that we were not allowed to give anything through the wall. I said I was with a group of humanitarian organizations providing humanitarian aid. The agent said he was the authority and advocates were not allowed to be there. We stepped away from the wall, but the agent demanded we leave the area or be arrested. We moved to a piece of land that does not belong to the federal government but to the City of San Diego. The agent contacted other agents and told them that their activities should shift from processing migrants to arresting us, the advocates.
21. The next morning, we had talks with sector leadership and we were allowed to continue to provide humanitarian aid.

Medical Emergencies

22. Border Patrol does not provide appropriate medical services to migrants held in the OADS, and non-medical and medical volunteers are the ones providing first aid and medical care to migrants. I received multiple reports from volunteers at Whiskey 8 about injuries, wounds, and concussions migrants have suffered. Some of these volunteer medical staff provide care through the border wall. Medical trauma experts take shifts to be at the sites in person. When the medical volunteers are not on site, other volunteers who are on site communicate with the medical volunteers via phone to triage emergencies and assess the gravity of a situation. When on site, the medical volunteers have reported to me seeing a lot of broken legs, open wounds, and people who lose consciousness. When the medical volunteers indicate that the person needs to go to an emergency room, the on-site volunteers call 911 and/or beg Border Patrol agents to call 911. But often, the agents say they do not believe the migrants when the migrants say they need medical care even if a trained medical expert is on site and telling them the migrant needs medical attention.

I affirm that the statements in this declaration are true to the best of my knowledge and belief.

December 10, 2023

/s/ Lilian Serrano

Lilian Serrano

Attachment 4

SUPPLEMENTAL DECLARATION OF PEDRO RIOS

I, Pedro Rios, declare the following:

1. I am the director of the American Friends Service Committee (AFSC) US-Mexico Border Program. I have been monitoring and advocating for human rights at AFSC for twenty years.
2. This declaration supplements the declaration I previously submitted in support of the Civil Rights and Civil Liberties complaint filed by the Southern Border Communities Coalition on May 13, 2023.
3. I provide this declaration based on my personal observations, the observations and experiences of my colleagues that they have communicated to me, my conversations with migrants we assist, and my conversations with Border Patrol officers in the course of my work volunteering at the border since May 2023.
4. Since May 2023, I have visited the border many times, providing volunteer aid and observing the conditions of the open air detention sites (OADS) near San Ysidro and Jacumba, California. Since September 2023, I have gone to the OADS at the border nearly every day, about 5 days a week, and I spend 5-6 hours there each visit.
5. In San Ysidro, CBP traps migrants in various OADS between primary and secondary barriers on the western most segment of the U.S.-Mexico border. There are at least four OADS near San Ysidro, including Whiskey 8, Whiskey 4, Spooner's Mesa, and 91X. I have personally visited Whiskey 8 and Spooner's Mesa, and have observed Whiskey 4 from an adjacent parking lot. The 91X site is by the beach and seems to be used less frequently than the others, though I have occasionally heard a Border Patrol agent indicate that a migrant is being held at 91X. All four of these sites are fully controlled by U.S. Border Patrol; anyone held at these sites is under CBP's control and custody.
6. In Jacumba, CBP traps migrants in various OADS, including a site called Valley of the Moon (also sometimes called Moon Valley) that is along the highway; Tower 177 which is located on private land isolated at the bottom of a hill; and Willows, a gated-off site located on private land abutting a wall along the U.S.-Mexico border. These sites are fully controlled by U.S. Border Patrol, and anyone held at these sites is under CBP's control and custody.
7. The OADS near Jacumba emerged in or near May 2023, around the same time the Southern Border Communities Coalition filed the Civil Rights and Civil Liberties Complaint dated May 13, 2023. At the time, it was too early for coalition members, including my organization AFSC, to know the gravity or extent of the situation in Jacumba, as the OADS were then emerging. In recent weeks, Border Patrol agents have spoken with my colleague indicating they recognize that more people are passing through the Jacumba OADS.
8. We do not know with precision the total number of people that have been forced to wait at the OADS in southern California since May 2023. The first documented groups of people that were held between the primary and secondary barriers along the U.S.-Mexico border occurred in October 2022, near Friendship Park. Though the numbers of people detained at the OADS from October 2022 and January 2023 varied, the number steadily increased in February and again more significantly so in April and May 2023.

9. The numbers of people who CBP has released into the community after processing serve as the best estimate of the total number of people who have been detained at the OADS. Typically, CBP forces people to wait at the OADS, transfers them into a CBP detention facility, and then releases them to the community after processing. Since September 13, 2023, approximately 50,000 people have been released to the community after processing. This figure, though enormous, does not account for the numbers of people that passed through the OADS between May and September 2023, when large numbers of people were held at the OADS.

Border Patrol Controls the Flow of Movement at and Within the OADS

10. Border Patrol directs migrants where they must go, where they must stay, and where they must wait, underscoring Border Patrol's strict control and custody over the migrants held at the OADS. In San Ysidro, Border Patrol agents tell some migrants that they must remain at Whiskey 8 and wait to be picked up there, whereas they tell other migrants to head to another location. I have spoken to migrants at Whiskey 8 who told me that the men in their group were separated and told to remain at Spooner's Mesa.
11. There have been few unaccompanied children that I have observed at Whiskey 8. On one occasion, Border Patrol separated a child out of a group and into a van. The remaining individuals were kept in a line and later transported in a bus out of Whiskey 8.
12. Border Patrol often transports people from one area of the corridor between the primary and secondary barriers along the U.S.-Mexico border to another. Nearly every day I am at the Whiskey 8 site, I have observed Border Patrol vans dropping off people to different areas of the open-air corridor. For example, on December 7th, I witnessed Border Patrol transporting two vanloads of people to the Whiskey 8 site; the Border Patrol agent told these transported individuals to eat food that volunteers were providing.
13. Border Patrol regularly takes count of people detained in the open-air corridor. The agents direct people to stand in a row and count everyone present. Sometimes they tell the families to stand separately and the single men and the single women to stand together to get a count of those present, including families.
14. In Jacumba, migrants are directed by Border Patrol to walk to the OADS location. On December 3, 2023, I spoke with three people at the Valley of the Moon site who had walked nearly three hours to get to the site, following Border Patrol agents' directions to go there. During the walk, one person said that they were walking in one direction, and a Border Patrol agent redirected them in another direction and to keep walking eastward. Migrants are not free to wander, and are periodically being monitored and directed by Border Patrol agents.
15. Migrants at the OADS are forced to wait at the sites for hours and even days at a time, without being allowed to freely leave. In May 2023, I spoke to several people at Whiskey 8 who were held for up to 7 days at the site. As of December 2023, at Whiskey 8, people are held there anywhere between 2 hours and 18 hours, while men held at Spooner's Mesa are forced to wait usually for at least 24 hours. On December 5th, I spoke with two families who had spent the night at the Valley of the Moon site near Jacumba.
16. Border Patrol also maintains strict control over who enters the OADS to assist migrants and asylum seekers. Usually, we are not allowed into the Spooner's Mesa site, but only once, in early

September 2023, after advocating with the supervising Border Patrol agent, my colleague and I were permitted to feed people meals there. We fed approximately 380 people during that visit.

17. Even when allowed in, volunteers like me are subject to Border Patrol's strict orders. In September 2023, Border Patrol agents told me on at least two occasions that they would arrest me and my group if we approached the secondary border wall at Whiskey 8. On September 12, 2023, I reported one such incident to the Sector Chief by email, but got no response. The threats to arrest volunteers are surprising, given that on more than three occasions, I have spoken with Border Patrol agents who have stated that they appreciate our presence and work in the area.

Lack of Basic Human Necessities, Water, Sanitation, and Medical Care

18. Border Patrol does not provide basic human necessities to the migrants detained at the OADS. At Whiskey 8, Border Patrol agents continue to fail to provide food or even water. I spoke with several men who came to Whiskey 8 from Spooner's Mesa, and they told me that they had not had water or food in the near 24 hours since they were directed to wait at Whiskey 8.
19. Border Patrol neglects to provide sufficient sanitation and adequate toilets. The sanitation and servicing of the portable toilets have gotten a bit better following AFSC's advocacy on the issue with state Senator Steve Padilla's office. It is our understanding that Senator Padilla's office is working with CBP to improve sanitation and trash conditions. However, at Whiskey 8, although portable toilets are supposed to be consistently serviced on Mondays, Wednesdays, and Fridays, sometimes the portable toilets still go for a week without servicing.
20. Border Patrol also fails to provide sufficient medical care to injured or ill migrants at the OADS, relying on volunteers like me to provide first aid and other first responder care. One day in early October 2023, a Border Patrol agent notified my colleague and me that a boy from Ecuador had a high temperature of about 101 degrees. The agent asked us to keep monitoring the boy. We monitored the boy's temperature every 30 minutes for about two hours, and when his temperature shot up to 103 degrees, I notified Border Patrol, who then called for an ambulance.
21. Border Patrol even leverages injuries and illness to maintain control and custody over migrants. Several months ago, I spoke with a mother of a one-year-old baby who had fallen from the border wall with her baby daughter strapped to her back. The mother agreed to have her injuries inspected by paramedics, and the paramedics suggested she and her child get further medical care at a hospital. But a Border Patrol agent threatened the mother that if she agreed to be transported to the hospital, she would not be processed and would suffer immigration consequences. The mother then refused medical treatment.
22. Due to Border Patrol's failure to provide a basic level of care, I and other volunteers visit the OADS regularly, almost every day to respond to the basic needs of the migrants. At Whiskey 8, we have set up four different stations, including a water station, food station, phone charging station, and a medical station. We have also added a food pantry at Whiskey 8. When Border Patrol permits us to do so, we also travel to other OADS locations to deliver water and food.

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I affirm that the statements are true to the best of my knowledge and belief.

December 10, 2023

/s/ Pedro Rios
Pedro Rios

Attachment 5

DECLARATION OF ERIKA PINHEIRO

I, Erika Pinheiro, declare the following:

1. I am the Executive Director of Al Otro Lado (AOL), a nonprofit advocacy and legal services organization incorporated in California and based in Los Angeles, with offices in San Diego, California, and Tijuana, Mexico. As the Executive Director, I supervise attorneys and other staff who work directly with migrants on both sides of the U.S.-Mexico border. I am currently based in San Diego, CA/Tijuana, Mexico and I oversee programs and operations in all AOL locations.
2. I have worked in the immigration legal field since 2003. I hold a J.D. degree from the Georgetown University Law Center, a Master's of Public Policy from the Georgetown Public Policy Institute, and a Certificate in Refugee and Humanitarian Emergencies from the Georgetown University Institute for the Study of International Migration.
3. Throughout my legal career, I have specialized in high-volume legal representation and education for noncitizens detained in immigration or criminal custody, as well as those seeking asylum at the U.S.-Mexico border. In each position I have held, I have created, maintained, and analyzed extensive databases to identify the effects of policies governing the admission, detention, transfer, and release of noncitizen adults and children. Since 2010, I have personally observed and tracked migration and detention trends, with a particular focus on individuals and families seeking asylum at the U.S.-Mexico border.
4. AOL provides legal and humanitarian support to indigent refugees, deportees, and other migrants, including providing free direct legal services on both sides of the U.S.-Mexico border and beyond. Our Border Rights Project, established in 2017, provides legal education, representation, accompaniment, and human rights monitoring for more than 15,000 asylum seekers in Tijuana each year. The project also documents human rights violations committed by U.S. and Mexican government officials against refugees at the U.S.-Mexico border. We use this data to demonstrate unlawful patterns or practices in our advocacy with U.S. policy makers, international human rights monitoring bodies, and nongovernmental human rights organizations. Since 2020, we have provided substantial humanitarian assistance to asylum seekers stuck on the Mexican side of the border, including emergency housing, medical care, food, hygiene supplies, and educational services for refugee children.
5. I provide this affidavit based on my personal observations, the observations and experiences of my colleagues that they have communicated to me, my conversations with migrants we assist, and my conversations with Border Patrol officers in the course of my work from September 2023 to the present.

Providing Aid at the Jacumba Open-air Detention Sites

6. AOL began providing aid to migrants and asylum seekers in Jacumba, California in September 2023. AOL provides support at three sites in Jacumba: Moon Valley, Tower 177, and Willows. Moon Valley

and Willows are both located in the Boulevard Border Patrol sector. Tower 177 is located in the Campo Border Patrol sector. Since September, I have traveled to Jacumba once or twice a week. An AOL staff member is generally on site three to four times a week. There are multiple organizations and local volunteers that provide aid at the Jacumba open-air detention sites (OADS). We all work together to provide aid; due to the volume of asylum seekers entering the Jacumba OADS, no single organization has the capacity or resources to provide aid alone. The organizations and mutual aid groups currently providing aid in Jacumba include AOL, Border Kindness, Universidad Popular, American Friends Service Committee (AFSC), Free Shit Collective, Borderlands Relief Collective, and Detention Resistance. A significant number of individuals residing in or near Jacumba also coordinate with the nonprofits and mutual aid groups to provide aid at OADS. AOL's Volunteer Coordinator helps coordinate the delivery of purchased items and donations and manages the volunteer schedule to ensure there is adequate coverage at the OADS.

7. Providing aid at the Jacumba sites presents logistical hurdles given their remote locations. The camps themselves are on unpaved roads that have damaged the cars of some volunteers. Tower 177 in particular is difficult to access without a high-clearance vehicle. We had to raise money to rent a van to continue providing aid because none of the local volunteers had a vehicle able to carry enough food and water to the migrants detained at that site. We have also had to purchase specialized catering equipment in order to safely transport enough hot food to serve hundreds of people at a time at each camp. Getting enough water out to the camps is a logistical nightmare. The volume of water needed makes it impossible for us to rely on volunteers. The number of volunteers or nonprofit staff traveling to Jacumba each day doesn't enable them to bring enough water in their vehicles, unless they are driving a large truck. There is nowhere to buy bulk water within an hour's drive of the Jacumba camps. We usually need at least one pallet of bottled water each day to provide the minimum migrants need to survive, so we have had to arrange for delivery, which has been extremely inconsistent due to the remote location of the Jacumba OADS. We have had a few times when we have come close to running out of water, but thankfully the volunteers are an extremely dedicated and resourceful group who has gone to great lengths to ensure we can at least provide enough food and water. Every organization and mutual aid group works hard to raise funds, and some individual volunteers have put in thousands of dollars of their own money to fill the gaps. Still, we are always behind in having enough money to provide the bare minimum of food and water necessary for survival.
8. Personally, I have never seen Border Patrol provide any water to the migrants at the Jacumba OADS. However, other volunteers and the migrants say that sometimes, Border Patrol will provide one bottle of water and a small bar or crackers when they initially turn themselves in, receive a wristband, and are told to wait in the camps. However, this is clearly insufficient to support survival for several days, especially in a harsh desert environment.
9. The Jacumba OADS are located in the high desert. This means that temperatures are extreme; it can be very hot and dry during the day, and drop below freezing at night. It is often extremely windy and dusty at the Jacumba OADS, with high winds exacerbating dry or cold conditions. Migrants exposed to those conditions often experience dehydration, sunburn, cracked lips, and in the case of freezing

temperatures, are at risk of hypothermia. Migrants with pre-existing medical conditions are often at risk of complications when forced to endure this extreme environment for days at a time.

10. When I started going to the Jacumba OADS in September, temperatures were extremely hot during the day. There was no shade or shelter at the Moon Valley camp, and the only vegetation was scrub brush under which asylum seekers could not protect themselves from the sun or wind. At Willows and Tower 177, asylum seekers had cut down trees and gathered brush and garbage to construct makeshift shelters to protect themselves against the sun and wind. Migrants often told me that they slept in the dirt, where they were exposed to scorpions, snakes, and insects. Our collective brought tarps and tents to help the migrants survive these harsh conditions. Once the weather turned cold, our collective constructed shelters and provided tents to prevent asylum seekers from having to sleep in the dirt and protect against the wind and cold. Due to cost and labor constraints coupled with the volume of asylum seekers, we have not been able to provide enough shelter for everyone and there are still migrants who have to sleep in the dirt, exposed to insects, snakes, and the elements, for days at a time while they are forced to wait in the OADS.
11. Near the Willows camp, there are Border Patrol trucks always parked under a shade canopy. However, Border Patrol has never provided any shade or any other shelter to the migrants they force to wait in the Jacumba OADS.
12. Now that the weather has turned cold, migrants burn brush and garbage in an attempt to stay warm. Much of the brush they cut down is still “green” and produces a lot of smoke when burned. The asylum seekers also burn large amounts of creosote (“chaparral”), which is toxic to humans while burned. When I am in the camps, there are usually several fires of creosote burning, which causes my eyes to water and a burning sensation in my throat. Volunteers report expelling black mucous from their noses and throats after spending a significant time in the camps. Asylum seekers and volunteers with asthma or other respiratory ailments report having their conditions worsen significantly when exposed to creosote fires. The private property owners on which these camps are located also complain that their land has been stripped bare, with the desert plants and shrubs being burned taking decades or longer to regenerate. Unfortunately, despite the toxic nature of the smoke and the environmental impact, the asylum seekers have no other choice but to burn toxic fires in order to stave off hypothermia.
13. At each camp, there are only a few port-o-potties for several hundred migrants. The port-o-potties are not serviced often enough to prevent them from filling to overflowing with excrement on a regular basis. Migrants have expressed concern that they will contract disease or a bacterial infection if they use the port-o-potties. For this reason, many migrants relieve themselves in the area around the camps. This practice presents a potential public health risk given that hundreds or thousands of migrants move through the camps each week. When the weather is very dry and the wind is high, excrement particles are blown around along with the toxic smoke from fires. When the weather is very hot, the smell makes it evident that the area is surrounded by human waste.

Transportation of Migrants and Asylum Seekers into the Jacumba Open Air Detention Sites

14. Migrants and asylum seekers cross the U.S.-Mexico border at multiple points in the Campo and Boulevard Border Patrol Sectors. Migrants have reported being told by smugglers that the proper way to seek asylum is to turn themselves in to Border Patrol so that they can be processed. They attempt to make contact with a Border Patrol officer as soon as possible after crossing to turn themselves in. I have spoken to dozens of migrants about what happens when they turn themselves in. Migrants report that they are given a wristband indicating the date and time of their arrival. Then, they are directed into one of the three Jacumba open air detention sites. Sometimes, they are told to walk in the direction of the nearest camp with their group. Sometimes, a Border Patrol truck will accompany them; they walk in a group behind a truck that drives into the camp. Some migrants report having to walk several miles into the camps. I have also personally observed Border Patrol officers bringing small groups of migrants into the camps in their vehicles. Some migrants report being transported into the camps in a Border Patrol van or bus. Several volunteers have witnessed and documented van or buses dropping migrants off in the camps.
15. As a co-facilitator of the California Welcoming Task Force, I have been in numerous meetings with Department of Homeland Security (DHS) leadership where they unequivocally stated that they could not transport migrants unless they were in their custody. This conversation happened numerous times in the context of nonprofits requesting that CBP transport released migrants to where they could receive nonprofit services. DHS' own practices and policies dictate that any migrant in a Border Patrol or CBP-contracted vehicle would be "in custody," and we have documented numerous instances in which Border Patrol brings migrants into OADS in vehicles. DHS' assertion that migrants in OADS are not in custody is clearly contradicted by their policies regarding transport.

CBP Custody and Control of Asylum Seekers and Other Migrants at the Jacumba Sites

16. Each time I go into the Jacumba OADS, I ask at least a dozen migrants about their interactions with Border Patrol, how they arrived at the camps, and what they understand about their obligation to stay there. The migrants and asylum seekers have told me that when they turn themselves in to Border Patrol, they are directed into the Jacumba camps, and that Border Patrol agents tell them that they have to stay in the camps or they will be deported. In some camps, Border Patrol indicates a limit line that migrants cannot cross; for example, in the Willows camp, there is a train track running between the camp and the road; Border Patrol agents tell migrants that they cannot cross the railroad track, or they will be deported. Most of the time, Border Patrol officers are onsite, with their trucks parked on the road that leads out of the camps. When Border Patrol is onsite, migrants could not walk out of the camps without passing an officer. If they try or ask Border Patrol if they can leave, they are told they must stay to be processed.
17. Each of the three Jacumba OADs has an Anduril Autonomous Surveillance Tower (AST). Each AST uses an AI system that can detect and track humans and other movement in a 360 degree radius up to more than a mile away. When an "object of interest" is detected, the tower sends an alert to Border Patrol, with an image of the person or vehicle of interest. Each AST stands either in the

middle of the camp or at another point where it can detect who comes in and out of the camps. Even if Border Patrol agents are not physically onsite, they can utilize the AST to alert them if a migrant leaves.

18. When migrants have left the camps, they are apprehended and brought back. In October, two migrants walked out of the Moon Valley camp to a nearby gas station to buy supplies. They were apprehended by Border Patrol and brought back to the Moon Valley camp. Border Patrol also stops individuals in the town of Jacumba who “look like migrants.” In the last week of November 2023, a Chinese-American volunteer doctor was walking near the Jacumba Hot Springs Hotel on Old Highway 80, taking photos of a vintage gas station painted in bright patterns. A Border Patrol truck pulled in front of her to block her path. The agents engaged with her, and during their conversation, told her they “thought she was a migrant” who had come from one of the camps. In general, whenever I drive in and out of Jacumba to access the camps, I see at least 2 to 5 Border Patrol trucks patrolling the vicinity. It would not be possible for a migrant to walk out of the camps without encountering an agent, and if they did, the Autonomous Surveillance Towers would send an alert to Border Patrol agents with a live image of the individual leaving the camps, to which Border Patrol could quickly respond.
19. Even in the unlikely event that a migrant managed to make it past Border Patrol and the surveillance towers located in the camps, they would be unlikely to safely reach any area from which they could travel further into the United States. Jacumba is surrounded by mountain ranges and deserts, with incredibly challenging terrain. It would be near impossible to traverse the mountains without specialized climbing equipment. A person could not survive crossing the Anza Borrego desert without more water than any migrant would be able to carry. Any migrant traveling on roads would be seen by Border Patrol or another law enforcement agency. Additionally, there are hundreds of Border Patrol’s Autonomous Surveillance Towers dotting the landscape, aside from those located in the OADS, and a Border Patrol checkpoint for vehicles traveling to San Diego on Highway 8.
20. It would be very dangerous for migrants to try and cross back into Mexico from the OADS. The area south of the border near Jacumba is extremely remote, with unforgiving terrain and few population centers. The area directly south of the border wall is frequently patrolled by the Mexican National Guard, which apprehends migrants they encounter to prevent them from crossing into the United States. Additionally, there are several criminal groups fighting to control migrant access to the border, and migrants often face danger if they pay the “wrong” group. There have been around a dozen migrants murdered in Mexico near Jacumba since September, a significant increase from what we have seen previously. Migrants also often recount stories of being extorted by officials in Mexico or falling victim to crimes like robbery, extortion, or rape. Migrants I have talked to about their experiences in Mexico report feeling traumatized and afraid to ever return.
21. To my knowledge, very few migrants or asylum seekers have attempted to leave the OADS in Jacumba. The hundreds with whom I have spoken include migrants from all over the world who have told me about the persecution and abuse they suffered in their countries of origin and on their way to the United States. They want to follow the law, and believe based on misinformation from

smugglers that the best way to seek protection is to cross the border and turn oneself in to Border Patrol. Border Patrol agents then tell them that they must wait in the OADS to seek asylum. They are largely committed to obtaining asylum in the United States and would not jeopardize their chances by leaving the OADS, despite the harsh conditions.

Monitoring and Documenting Deteriorating Conditions at the OADS

22. AOL provides volunteers with a reporting form in which they document in real time conditions at the camps. For example, the questionnaire includes: how many people are processed out of the OADS during their rotation, and who transported them; whether there are children, pregnant persons, elderly persons, or persons with medical emergencies on site; whether people have wristbands issued by CBP; whether CBP is handing out food and water; whether Border Patrol agents were on site; and whether people are shackled when transported out of the sites. The form also has space to include any other incident of note, such as whether there was a medical issue that required emergency medical response, whether Border Patrol or the volunteer called 911, and how the agents or medical staff responded to the incident.
23. According to the data collected by AOL staff and volunteers, the number of asylum seekers at the Jacumba OADS has fluctuated between the end of October 2023 to the beginning of December 2023. During this period, the number of asylum seekers at the Jacumba OADS on a single day has ranged between less than 100 to over 750. And the number of children at the Jacumba OADS has ranged between less than 20 and up to nearly 60. The number of pregnant persons also varies but has reached over 60.
24. On October 1, 2023, I emailed DHS headquarters to inform them about Border Patrol's failure to provide for the basic survival of asylum seekers and the potentially life-threatening conditions at the Jacumba OADS. My email described Border Patrol's practice of using wristbands to indicate when people arrive; ways in which Border Patrol prevents people from leaving the sites; the average number of people at the sites; the separation of family units; and the lack of food, water, hygiene products, adequate bathroom facilities, and medical assistance. My email asked DHS to provide food, water, shelter, bathrooms, and medical assistance in accordance with its own detention standards.
25. The following week, around October 10-13, DHS headquarters staff visited the San Diego sector and visited the open air detention site in San Ysidro/San Diego and Jacumba. Immediately in advance of their arrival, Border Patrol processed most migrants out of the Jacumba OADS. At the same time, we saw an increased number of Mexican National Guard on the south side of the border immediately adjacent to the Jacumba OADS, where they prevented migrants from crossing through gaps in the wall. Border Patrol agents also cleaned the camps of some of the garbage, dismantled some of the makeshift shelters built by migrants, and threw out tents and other shelters our collective had built. When DHS headquarters officials arrived in Jacumba around October 10-11, the OADS looked very different from before they cleaned them up and cleared out most of the migrants.

26. On or around October 11, 2023, a 29 year old migrant from Guinea died at Whiskey 4, one of the OADS in San Diego. At the time, we did not have many details because volunteers are not allowed access to the Whiskey 4 OADS. Later, we learned that the woman needed emergency medical care shortly after crossing the border into Whiskey 4, but that she later died either in the camp or at the hospital.
27. On October 12, 2023, I met with Dr. Alexander Eastman, CBP's Chief Medical Officer, and Marc Olcott, a medical contractor with CBP, in San Diego. In our conversation, Dr. Eastman denied that migrants kept at OADS were "detained" such that DHS would be required to follow TEDS standards. They told me that moving forward, they would have agents with medical training onsite at OADS. They said that any responsibility for emergency medical services fell to the County of San Diego. They also said that "no one would be denied water," but did not commit to providing food, shelter, or triage medical services to prevent the need for emergency services.
28. However, after these meetings, the only notable difference was that people were being transported out of the OADS at a faster rate, including with buses provided by ISS, a private transportation contractor. For about a week, we saw a reduction in the number of people at the sites and in the length of time people were staying there. Volunteers also witnessed an increase in transportation services provided by CBP to remove people from the OADS. But in recent weeks, the number of individuals waiting at the sites for longer periods of time has spiked.
29. Before the meetings, I had never seen Border Patrol giving out water. After these meetings, Border Patrol began handing out water bottles and a small granola bar or crackers while providing the paper wristbands. Border Patrol does not provide additional food or water after this point.
30. CBP has been providing wristbands to individuals at OADS in Jacumba consistently, either before or after they enter the camps upon their initial encounter with Border Patrol. CBP would generally process individuals out of the camps in order of arrival, while prioritizing families with children, pregnant women, and the acutely medically vulnerable. Between approximately November 28 and December 5 of 2023, Border Patrol agents in the Boulevard sector stopped providing wristbands to migrants at the Moon Valley and Willows camp. What resulted was chaotic; migrants complained that they had been there for days while others who had arrived recently were picked up. We started to see a higher number of families, some with infant children, staying overnight at those OADS during that time. Even agents complained onsite about the difficulty in processing migrants unless they were able to distribute wristbands. By December 5th, I saw migrants with wristbands in all three Jacumba OADS.

Lack of Medical Assistance at the Jacumba Sites

31. Not only does Border Patrol fail to provide any medical services in the OADS, but the agents also actively discourage access to emergency care. Multiple migrants and volunteers have heard Border Patrol agents accuse individuals of "faking" illness, telling migrants that everyone in their group will be deported if any of them fake an illness in an attempt to get out of the camps. Volunteers reporting a medical emergency to Border Patrol officers in Jacumba on October 29, 2023, report the

agent refusing to call for assistance, saying “It’s not my problem.” On November 7, 2023, volunteers reported that Border Patrol told a Turkish man with likely appendicitis that he would be deported if he went to the hospital. I have witnessed Border Patrol agents refuse to prioritize a hypertensive woman because “the migrants fake illness to get processed out faster.” Volunteers have reported that sick migrants will hide in caves or behind rocks because they are afraid of being accused of faking illness.

32. A lack of language capacity amongst the Border Patrol agents also contributes to delays in accessing care. Many of the migrants come from China, Turkey, Afghanistan, Uzbekistan, Brazil, and a host of other countries that do not speak Spanish or English. Even Spanish-speaking migrants often report that they have trouble communicating their ailments to Border Patrol agents with only a limited command of Spanish. Our volunteers have documented several instances where non-English/Spanish speaking migrants attempted to communicate the need for emergency assistance to agents, but were unable to do so. I have never seen Border Patrol agents call for an interpreter to better communicate with migrants with whom they do not share a common language.
33. Border Patrol agents in OADS frequently tell migrants that their asylum process will be “stopped” if they go to the hospital, which is legally incorrect. Migrants are not processed by Border Patrol if sent to the hospital from OADS, but can apply for asylum affirmatively. Jewish Family Service has also established a mechanism through which migrants released from hospitals can be processed by Immigration and Customs Enforcement (ICE) if they do not have a valid passport and require their NTA for air travel. However, during multiple incidents, migrants experiencing a medical emergency will refuse to be transported to a hospital based on Border Patrol’s erroneous statements that they will no longer have access to asylum.
34. In Jacumba, ambulances will often refuse to come into the camps, so the migrant must be transported out to the paved road in order to access care. While some Border Patrol officers are helpful and transport the migrants to the ambulance themselves, some refuse, citing the aforementioned DHS policy dictating that because the migrants are not in their custody, they are not allowed to transport them. Some agents have asked volunteers to transport medically vulnerable migrants to the pavement.
35. In our collective, volunteers will immediately inform Border Patrol if they encounter an individual who needs an ambulance. While some Border Patrol officers will readily call for emergency medical services if our volunteers encounter an individual requiring care, others have refused, minimizing the illness or injury and accusing the individual of faking illness. Volunteers will often call 911 to help an individual, sometimes because Border Patrol asks them to, and sometimes because Border Patrol refuses to call themselves. Medical providers working across all seven OADS in San Diego County have documented dozens of these incidents.
36. Often, migrants themselves will call 911 because they are having a medical emergency, or because they feel they cannot endure the conditions in the camps, either due to an underlying medical issue, or because they fear they cannot survive the cold, heat, dehydration, hunger, and other issues they

confront while held at OADS. Jacumba's normal population is around 600, however local Emergency Medical Services (EMS) report receiving hundreds of emergency calls. This has caused tension between EMS and the migrants, as well as the volunteers advocating for their care. Individuals who form part of the EMS workers and leadership have made anti-immigrant comments, and acted with hostility toward volunteers and the migrants themselves. They, too, will accuse migrants of faking illness and send them back to the camps without adequate care. EMS workers and supervisors have complained that calls from the camps get in the way of "real emergencies."

37. Frequently, response times from EMS have been very long, either because EMS takes a long time to arrive, or because officers delay or refuse to call 911. The remote location of Tower 177 is also a factor, from which it takes at least 10 or 15 minutes to transport a migrant to the pavement to meet EMS. There are multiple documented instances of long response times that include the following. On November 21, 2023, an ambulance had just taken a woman who was in labor from the Moon Valley camp when volunteers identified another migrant who appeared to be having a heart attack. EMS was called and the licensed volunteer physician on site gave the man an aspirin. EMS did not arrive until more than 30 minutes later, and EMS staff berated the volunteers for having given the man aspirin, even though the volunteer doctor immediately reported the dosage to EMS and had correctly determined its administration to be medically sound given the situation. On November 26, 2023, a migrant in the Jacumba OADS with a pre-existing vascular disorder had a dangerously elevated heart rate and blood pressure. A volunteer onsite notified a CA National Guard officer to ask for EMS, but the National Guard officer put his hand on his weapon and shouted at the volunteer. The volunteer was able to make contact with a Border Patrol officer, who called EMS and transported the woman to the pavement. It took at least 30 minutes from when the volunteer first informed officials onsite for the ambulance to arrive. On Saturday, December 2, 2023, volunteers at the perimeter of the Moon Valley camp called 911 after a 13-year old boy was brought over the border and dropped near them. He had apparently been involved in an auto accident south of the border and badly injured; his traveling companions thought he could get more rapid care in the U.S., so they brought him to the Moon Valley camp. The volunteers also called Border Patrol, who were not onsite at the Moon Valley camp at the time and took around 30 minutes to respond. About ten minutes later, one of the volunteer doctors arrived on the scene. She reported that Border Patrol had not been administering CPR when she arrived, and despite her best efforts to help the boy with CPR, he died. EMS did not respond for over an hour after volunteers had initially called. Within 24 hours of the boy's death, Border Patrol agents told volunteers that EMS will only respond to calls from CBP and will not respond to emergency calls made directly by asylum seekers or volunteers at the OADS. Our collective has since been advocating with EMS locally to avoid implementation of this disastrous policy.
38. Most of the time, people transported in an ambulance are not allowed to bring anyone else with them, or sometimes they can only bring one person. As such, some people hesitate to get on an ambulance because they will be separated from family members who remain at the camps. This fear is very real, as migrants are discharged by hospitals to the streets as "homeless," often without phones or with phones that do not work in the U.S. Volunteers report that some individuals brought

to hospitals near El Campo, CA are put into a taxi by the hospital and dropped off near the OADS. Volunteers once encountered an elderly Turkish woman who had been dropped off on Old Highway 80 alone at night without a working phone, while her family remained in the camps. On September 13, 2023, I met a Chinese man and his son in San Diego, where he had been released from Border Patrol custody. His wife had been transported out of the Willows camp a few days earlier, and their daughter had gone to the hospital with them. We called multiple area hospitals to try to find them, but no one had a record. After about a week of not having heard from them, we helped the family file a missing person's report with the San Diego Police Department, fearing that they may have been abducted after being released to the streets. After another week, we finally learned that the wife and daughter had gone back to the border to turn themselves in, and instead of being released, were transferred to an ICE detention facility in Louisiana, where they remained until October 5, 2023. In another hospital release case, a woman turned herself back in at the border, only to be detained at the Otay Mesa Detention facility for several weeks. We are currently attempting to create systems to address the needs of individuals transported out of OADS so they do not end up homeless, detained, or separated from their families for extended periods of time, but progress has been slow and resources scarce.

39. CBP does not provide medical attention to individuals at the Jacumba sites. To fill the void, medical volunteers have visited the sites regularly to provide basic emergency services. Volunteers include licensed physicians, nurses, medical students, individuals with EMT certifications, and others with first-aid training. Medical volunteers provide asylum seekers with over-the-counter medication, including Tylenol, and materials for basic wound care, like bandages and Neosporin. Our collective receives these medications through donations or purchase basic wound care items and electrolytes for individuals experiencing acute dehydration. Medical volunteers have also provided blood pressure cuffs, COVID tests, glucose meters for diabetics, and other basic diagnostic equipment to measure heart rate and blood pressure. Generally, volunteers who are licensed physicians have their own kits with emergency inhalers, EpiPens, and other medical devices to monitor the conditions of diabetic persons and persons with respiratory conditions. Many of the medical volunteers have provided medical care at shelters in Tijuana or have worked in mobile medicine, and thus they have the adequate tools to respond to common medical needs. A mobile medical clinic from Operation Samaritan, a San Diego nonprofit medical provider, has provided care at the Jacumba OADS on at least two occasions.
40. Volunteers have experienced a lot of push back for providing basic medical care. Volunteer doctors, nurse practitioners, and medical students have been asked to leave the OADS by Border Patrol, even though Border Patrol is not providing any medical triage or treatment onsite. On December 4, 2023, I was at the Willows camp when our group was approached by two San Diego County sheriffs. They told us that it had "trickled down" that we were giving out "pharmaceuticals." I explained to the Sheriffs that volunteers only provide Tylenol and basic wound care, with licensed physicians sometimes providing an emergency inhaler or EpiPen in an emergency. At that time, there was a volunteer doctor onsite providing basic care, so the sheriffs approached her and confirmed that she was not dispensing prescription medication (even though she would legally be able to pursuant to

the rules of her medical license). On December 6, 2023, I was again at Willows camp and had a conversation with a Border Patrol officer. He asked me if I was giving out pharmaceuticals, and I said "I am not a doctor, I am a lawyer." I told him that there would be a licensed physician volunteer on site all week, plus a mobile medical unit. He said I should call the Boulevard Border Patrol station and let them know, and provide a schedule with physician medical license numbers. At around 4:30 PM that day, I called the Boulevard Border Patrol Station as instructed, and explained that I wanted to provide medical licenses for volunteers. The agent who answered told me "that's not how that works." He took my number and said a supervisor would call me back, but I never received a call back. On December 9, 2023, a volunteer who called 911 after being requested to do so by a Border Patrol officer on behalf of a migrant with a necrotic wound was berated by EMS workers, who asked things like "what are you doing here? Which organization is providing medical care? What drugs are you giving out?"

41. Volunteer medical professionals providing basic care and triage at Jacumba OADS have encountered multiple serious and emergency medical issues, including but not limited to the examples provided above, as well as COVID, chickenpox, scabies, hypertension, asthma, COPD, HIV, high-risk pregnancies with complications, including lack of fetal movement and bleeding, individuals with serious disabilities, individuals recovering from recent heart surgeries, strokes, and organ transplants, infants with severe vomiting and diarrhea, and a host of other ailments. Often, migrants' pre-existing conditions are exacerbated by the fact that they do not have their prescribed HIV, blood pressure, inhaler, or other medication that would keep the condition from becoming critical. Having medical volunteers at OADS saves lives, but Border Patrol and local officials seem committed to reducing or eliminating this volunteer service. Given that DHS claims that the migrants at Jacumba OADS are not in their custody, it is unclear under which authority they purport to prohibit volunteers from offering basic wound care, and under what authority they seek to regulate the practice of licensed physicians attempting to provide much-needed care and emergency triage to migrants trapped in OADS.

Families and Children at the Jacumba Sites

42. It is common to see families staying overnight at the Jacumba sites, although Border Patrol will prioritize their processing over that of single adults. Sometimes, Border Patrol takes out women and children first, but this sometimes means separating them from other family members such as spouses or adult children. Sometimes, families need to make the difficult choice of staying overnight to keep their family together. Since Thanksgiving, the average time that migrants spend in the Jacumba OADS has increased, and it has become more common for families with young children to stay overnight, sometimes for multiple nights.
43. Volunteers have seen many unaccompanied children at the Jacumba sites. Generally, unaccompanied children travel with extended family members like uncles, cousins, or friends, but I have met several children ranging from ages 15-17 who were traveling alone. Volunteers have documented instances of unaccompanied children staying overnight at the camps. Our practice is to inform Border Patrol agents about unaccompanied children when we come across them. On

December 6, 2023, I spoke with 8 unaccompanied children, three of whom were traveling alone. I alerted the Border Patrol officers onsite between noon and 1:00 PM. A van came to transport families out around that time, but the agents told me they couldn't take the unaccompanied children because families with young children had stayed the night before. I observed families with toddlers and infants lining up for transport. The agents onsite told me that they would likely be transported out after they changed shifts around 4:00 PM. The agent asked me how old the children were, and when I told him the ones traveling alone were all 15 and older, the agent told me that they prioritize young children, meaning children under the age of five or babies, not adolescents or older children. I observed about 40 children total in the camp that day, many under the age of 5, so I was not sure whether the unaccompanied children would be processed that evening. I left around 4:30 PM, and asked volunteers who stayed on site to alert Border Patrol as to the location of the unaccompanied children when they brought the next transport van. The volunteers reported that the children still had not been processed when they left a few hours later. I am not sure whether they were processed out that night or the following day.

44. The chaos of processing migrants out of OADS has led to frequent separations of family groups. Between September 20, 2023 and December 7, 2023, Al Otro Lado has documented over 1,000 separations of family groups. We document family separations at street release sites, where migrants often describe being separated from their families at the OADS or while being processed. Around 35% of separations involve legally married spouses, and around 18% involve at least one parent being separated from a minor or adult child. Migrants are often processed and released at different times, or separated if a family member seeks emergency medical care. At least 37 individuals have been sent to ICE detention facilities in Texas and Louisiana while their families are released to San Diego. It often takes us weeks to locate a missing family member because Border Patrol has not responded to numerous requests for information, and will not even confirm whether the missing individual is in DHS custody. I have worked with several families whose 18 and 20 year old children were separated and detained by ICE for weeks while we worked to secure their release. Although technically adults, these young migrants would otherwise be included on their parents' asylum application, and often do not know every detail of why the family fled, putting them at risk of failing a CFI and being separated from their families permanently.
45. Having watched Border Patrol process individuals out of the camps, it is no surprise that families get separated, especially when they do not provide wristbands to lend some order to processing. Even with the wristbands, processing can be haphazard; I once witnessed one Border Patrol officer ask another "what are the numbers on the bracelets for?", and the other replied that he did not know. I often encounter migrants who missed the time they should have been processed due to communication or other issues, who did not feel comfortable engaging with Border Patrol officers to let them know. On November 29, 2023, I accompanied researchers from Amnesty International to the Jacumba OADS. When they were observing Border Patrol agents processing migrants out of the Tower 177 camp, one agent told another that there was a family group that wanted to travel together, but who were not together in the line. The other agent replied, "I don't care. Border Patrol

separates families.” This statement is consistent with a general lack of care in ensuring that family groups encountered in OADS stay together.

I affirm that the statements in this affidavit are true to the best of my knowledge and belief.

December 10, 2023

/s/ Erika Pinheiro

Erika Pinheiro

Attachment 6

DECLARATION OF JACQUELINE ARELLANO

I, Jacqueline Arellano, declare as follows:

1. I am the Director of United States Programming for Border Kindness, a largely volunteer organization. Since 2016, Border Kindness has worked to provide food, water, and first aid to migrants along the California-Mexico border. Border Kindness also operates in Mexico to assist migrants and asylum seekers, including running a children's center in Mexicali and assisting migrants in Mexico with their immediate needs. As the Director of U.S. programming, I coordinate our work to provide direct aid to immigrant communities in the United States. In addition to my work at Border Kindness, I also work a full-time job as an acupuncturist.
2. I am providing this declaration based on my personal observations, the observations and experiences of my colleagues and volunteers that they have communicated to me, my conversations with migrants we assist, and my conversations with Border Patrol officers in the course of my work from May 2023 to the present.
3. I live in San Diego, and I first became aware of the open-air detention sites near Jacumba around May 2023. In May, I received a search and rescue call from a woman who contacted Border Kindness, saying that her father was at a site near Jacumba, California, and that he urgently needed water. She told me that he was with a group of about 100 other people who also needed water. I told the woman that she or the people in the group should contact Border Patrol, who would arrive to process them and would provide water. The woman I spoke with told me that her father and the other people had already been held at the site for two days without food and water.
4. That night, some volunteers from Border Kindness who do desert aid went out and dropped off food and water for the people at the site. The people were held at a site called O'Neill, near where the Moon Valley site is now. In May 2023, other members of Border Kindness and I provided food, water, first aid, and other basic supplies to people at the sites.
5. Over the next roughly week and a half, Border Kindness volunteers and I saw that there were approximately 1,800 people who were held at three sites—O'Neill, Tower 177, and Willows—before being processed by Border Patrol.
6. From late May 2023 until mid-September 2023, there were few people held in the desert near Jacumba. Occasionally while doing our border assistance work, we heard from or saw a few small groups who were being held at the three sites then in use, but there were rarely very many people.
7. On September 16, 2023, I heard about a group of about 100 people who were being held at one of the sites near Jacumba. Since approximately September 16, 2023, there have consistently

been hundreds of people every week detained at the three open-air detention sites near Jacumba: Moon Valley, Tower 177, and Willows. While the numbers of people fluctuate from day to day and week to week, I would estimate that there are usually 500 people per day waiting across all three sites.

Border Patrol maintains control of the Jacumba open-air detention sites and directs people to remain there.

8. I am familiar with all three sites and have been to all of them several times. Since mid-September, I regularly work 40 hours per week with Border Kindness, in addition to working a full-time job and caring for my toddler. I purchase and organize supplies at the Youth Center in Jacumba, coordinate our volunteers, communicate with other volunteer groups, deliver supplies, and work with migrants at the site. I am generally present at the open-air detention sites near Jacumba approximately three times a week: I spend one full weekend day working at the detention sites, and during the week I make shorter, intermittent trips to deliver supplies and provide assistance.
9. Border Patrol officers direct and in some instances directly transport migrants to the detention sites. I have personally observed Border Patrol officers round up groups of migrants between vehicles at other points along the border and then direct them in a caravan to the sites. One vehicle will drive in front and one vehicle will drive in back, with a group of migrants made to walk in between the vehicles to the detention sites. I have seen this happen going towards all of the sites.
10. I have also personally observed Border Patrol officers transport migrants in vehicles and then bring them to the sites, at both Moon and Willows. For example, on or about November 11, 2023, two Turkish men flagged me down while I was driving near Jacumba and asked me to call Border Patrol for them. As I was speaking to them, Border Patrol officers arrived. They handcuffed the two men, put them in the Border Patrol vehicle, and drove away. Less than an hour later, I was at the Moon Valley site, when I saw the same men arrive at the site with a larger group of migrants. I talked to the men later, who told me that the Border Patrol officers had taken them back near the border wall, rounded them up with another group of migrants, and walked them in a caravan between two vehicles to the Moon Valley site, where they were told to stay.
11. If a migrant tries to leave one of the detention sites, Border Patrol brings them back. I have heard from other volunteers that when a migrant leaves a site temporarily, for example to try to buy food, Border Patrol will transport them back to the sites. I have heard about this practice happening at all three sites. Border Patrol will also position their vehicles to restrict access to the sites. For example, I have seen Border Patrol officers angle their vehicle and set up traffic cones to partially block the entrance to Willows.

12. Border Patrol also discourages people from leaving if they need medical attention. At Moon Valley, I have personally heard Border Patrol agents threaten people if they request emergency medical care. More than once, I have heard agents tell migrants that if they leave the site in an ambulance, their case will automatically be over and they will be denied asylum. I have spoken with migrants who tell me that, after being threatened, they believe Border Patrol and will not seek medical attention.

Conditions at the open-air detention sites in Jacumba are extremely dangerous, and Border Patrol does not provide food, water, shelter, medical care, or basic hygiene items.

13. Border Patrol agents provide next to nothing in terms of food and water. Distribution of food and water is sporadic and even then, only upon entry. Border Patrol will provide a 16-ounce bottle of water and a small snack-pack of crackers or another snack, but does not do so consistently. Currently, the vast majority of asylum seekers at the detention sites are not even given one meager snack a day.
14. The conditions at all the sites are very harsh. All are on desert terrain, and the temperatures are extreme. In the months since September that I've been working at the detention sites, we've seen people with hyperthermia and now hypothermia.
15. Now that it's December, the temperature regularly falls below freezing. Last weekend, the temperatures in the evening and at night were in the 20s. There was frost on the ground, and water bottles froze overnight. The wind is often really strong, which makes the temperature feel much colder. Because it is so cold, people build fires out of any materials they can find to try to stay warm, including cutting down brush and trees on private property or even burning trash. The ground is dry and dusty, and it quickly turns into mud when it rains. There is no shelter at any of the sites, aside from some tents and tarps that volunteers have provided. We give out blankets, coats, hats, and warm clothing to try to keep people alive, but the cold, wind, and rain are very dangerous.
16. Border Patrol installed and maintains Port-a-Potties at all three detention sites. However, because Border Patrol agents don't have a consistent schedule at the sites, I am not sure how regularly they empty the toilets or replenish toilet paper, if there is even toilet paper in the first place. Border Patrol does not provide hand sanitizer, soap, water for washing hands, or other basic hygiene items like toothpaste and toothbrushes, diapers, and menstrual products. The only personal hygiene items provided at the sites are donations from volunteers. People sometimes go to the bathroom outside when the Port-a-Potties are not maintained and become too unpleasant to use. The lack of sanitation is dangerous, especially in the winter.
17. Border Kindness and other volunteer groups have taken responsibility for providing food, water, and other basic needs for survival to the asylum seekers at the open-air detention sites. Volunteers go to all sites regularly to provide water, blankets, and at least two meals each day.

18. Border Patrol generally does not assist people with medical emergencies. Since September, I have personally seen many people arrive with medical needs, including some people in crisis. One evening in September or early October, my husband and I were at the Tower 177 site providing food and other supplies. A woman at the site began having multiple, severe seizures. One of the volunteers working with us had to try to hold her and put her hand in the woman's mouth so she would not bite her tongue off mid-seizure. My husband approached Border Patrol officers who were on site and asked them to contact the county Emergency Medical Services (EMS) to dispatch an ambulance. The officers refused and told him to call an ambulance himself. Tower 177 is in a remote area with poor signal, so my husband had to run down the road to try to get a signal so he could call an ambulance. He was finally able to call emergency services, who sent an ambulance.
19. I have seen many other people who are medically fragile or who experience medical emergencies, including seizures, symptoms of smoke inhalation, severe kidney pain to the point of vomiting, diabetic emergencies, and people going into labor. Border Patrol will rarely, if ever, call for an ambulance. Recently, I've heard from some volunteers that local emergency services will now only respond to 911 calls at the sites if Border Patrol calls themselves. This is very concerning since Border Patrol generally refuses to call 911. The local emergency services' practices seem to be constantly changing, and my understanding is that their current practice is that they will not respond to 911 calls from migrants. Instead, volunteer medical students and local doctors and healthcare workers provide medical care when they are present. However, medical volunteers can only provide first aid and things like ibuprofen—they cannot dispense medication that would require a prescription.
20. Until very recently, in approximately early December, Border Patrol officers gave wristbands to migrants who arrived at the sites. The wristbands were color-coded and had the days of the week on them. Border Patrol used the wristbands as a rough way to know how long people had been held at the detention sites and when to pick them up for processing. With the wristband system, adults were usually kept at the sites between two and five days. Children and families with children were usually processed more quickly.
21. About a week ago, Border Patrol discontinued the use of wristbands. Since then, the conditions at the detention sites have become even more chaotic and dangerous. Without wristbands, it's not clear how long someone has been held at the sites, and there is no order to how long people have to stay there or when they will be picked up for processing. The lack of organization has led to more tension at the sites between the asylum seekers themselves, because no one wants to be left behind or to have to wait longer than another person. People are on edge waiting for Border Patrol to come pick them up, but Border Patrol does not have a regular schedule or any consistency in when they come to the sites. Instead of going into a tent to try to seek shelter and warmth, people wait outside in the freezing cold for agents to come.

22. Due to this new policy by Border Patrol, I have seen children forced to wait much longer at the detention sites. Previously, Border Patrol would usually pick up children and one parent in a family unit within a day of the family's arrival at the detention sites. Over the last week, I have seen children, including sick and vulnerable children, kept at the sites for much longer. Last weekend, a child was forced to stay at the Willows site for several days. She had asthma and was wheezing, but her family did not have an inhaler for her.

23. I am extremely concerned about the winter months with rain and freezing temperatures. The work that volunteers have been doing is not sustainable over the long term, and I am worried that conditions at the open-air sites will continue to deteriorate.

I affirm that the statements in this declaration are true to the best of my knowledge and belief.

December 10, 2023

/s/ Jacqueline Arellano
Jacqueline Arellano

Attachment 7



May 13, 2023

Shoba Sivaprasad Wadhia, Officer
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Compliance Branch, Mail Stop # 0190
2707 Martin Luther King, Jr. Ave., SE
Washington, DC 20528-0190

Via Electronic Mail: CRCLCompliance@hq.dhs.gov

RE: CBP Violations of Custody Standards and International Human Rights By Failing to Provide Water, Food, Shelter, Sanitation and Medical Assistance to Migrants Detained in Open-Air Corridor Between Border Wall Layers Near San Ysidro Port of Entry

Dear Officer Wadhia:

We write to file a formal complaint about grave violations of rights in the United States committed by U.S. Customs and Border Protection (CBP) agents, namely Border Patrol agents, who for months have used an open-air corridor between the primary and secondary walls west of the San Ysidro Port of Entry in California as a holding area for migrants in their custody without complying with custody standards. As detailed in this complaint and the attached witness declarations, Border Patrol agents are not providing adequate water, food, shelter, sanitation or medical assistance, exacerbating the trauma of already vulnerable migrants and undermining their basic human rights. Instead, they stand by with guns watching migrants in need.



Now, with the lifting of Title 42 exclusions, and the increase of migrants seeking asylum, it is imperative that CBP correct course to comply with custody standards and protect human rights. Your office, in conjunction with Congress, has an important oversight role to play. The violations of custody standards by CBP in this California corridor are systemic. They are not the actions of a few agents, but rather of an agency that has acted intentionally with full knowledge of the conditions they are subjecting migrants to while endangering their well being.

1. The migrants in the California corridor between walls are indisputably in CBP custody.



The area of concern in which CBP is violating rights is a space between the primary border wall that abuts Tijuana, Mexico, and the parallel secondary wall approximately 75 yards to the north. The area between the walls where CBP is holding migrants is U.S. soil. There is in fact a sign posted on the secondary wall in front of that space declaring it U.S. property. In that space, CBP exercises full control, patrolling it regularly with vehicles and ATVs. The area is also monitored by CBP cameras.

Civil society organizations who form part of the Southern Border Communities Coalition (SBCC) have borne witness to the treatment of migrants over the last several months in the California corridor. The migrants originate from countries all over the world, seeking refuge from the dangers they face at home. While visiting the site, our team observed and continues to observe Border Patrol agents clearly exercising control in the following ways:

- a. **CBP controls movement** — Agents drive in and out of the detention area, walk among detained migrants and occasionally direct them to different areas within the corridor. Pedro Rios observed “Border Patrol agents ushering migrants from the area near Las Americas to the Whiskey 8 area. Agents also directed single men to the area closer to the beach.”¹ Additionally, “Border Patrol told the migrants they had to sit in rows and stay seated. Occasionally, the agents would drive through with an ATV or cars, to check that they were seated.”²
- b. **CBP controls access to water and food** — Due to the migrants being detained in an area controlled by Border Patrol, agents control access to basic necessities. In Whiskey 8, our declarants have observed Border Patrol provided very limited water and only a granola bar that left them hungry and thirsty with no way to access more without the help of community members on the other side of the wall³ When Pedro Rios raised concerns about lack of access to water he was told “that the government was considering bringing in a buffalo water tank, but then the Border Patrol liaison told [him] they would not out of concern that it would attract more migrants. They never brought the tank in.”⁴

¹ Decl. of Pedro Rios at ¶ 21

² Decl. of Pedro Rios at ¶ 20

³ Decl. of Adriana Jasso at ¶ 8

⁴ Decl. of Pedro Rios at ¶ 12

c. **CBP controls migrant tracking system** — Border Patrol monitors migrants by issuing color coded or labeled wristbands. From Pedro Rios’ observations, “Border Patrol instituted the use of wristbands to identify people’s arrival based on the agent’s first interaction with them, which might be a day or two after they actually arrive in the corridor. The wristbands are like the ones used for concerts. They are different colors and some have the day of the week printed on them.”⁵



d. **CBP controls access to the area** — Border Patrol also controls access to the area, not allowing anyone to leave without the assistance of agents. Migrants “cannot leave the area because of the physical walls that stand in their way. Some of those arriving are suffering severe pain, diarrhea, headaches, etc. Many individuals are pregnant, have children with them, have no shoes, are muddy, wet and in terrible condition.”⁶ Individuals in need of medical attention are dependent on Border Patrol to transport them to a hospital, but they are slow to respond. For example, A 79-year old Colombian woman who fell off the border wall and suffered injuries to her leg and other distress because of a lack of medicine, was not provided medical attention by Border Patrol until after an entire day of advocacy by advocates.⁷

The control CBP has over every aspect of the migrant’s environment and well-being from where and how they are able to move, to the basic necessities they have access to, indisputably amounts to custody. CBP has the responsibility to follow the laws and protocols in place and uphold the human rights and dignity of all migrants in their custody.

2. **CBP is violating its own standards for conditions and length in custody.**

The U.S. Customs and Border Protection National Standards on Transport, Escort, Detention, and Search (“TEDS Standards”) dictate the custody standards that CBP must follow when they detain people in a holding facility.⁸ A holding facility is any “secure enclosure” that is “[u]nder the control of CBP; and [p]rimarily used for the short-term confinement of individuals who have recently been detained”.⁹ Individuals are detained when they are restrained from having freedom of movement.¹⁰ Border Patrol agents that hold migrants in the corridor between the walls are subject to the TEDS Standards.

⁵ Decl. of Pedro Rios at ¶ 22

⁶ Decl. of Adriana Jasso at ¶ 7

⁷ Decl. of Lilian Serrano at ¶ 2-4, 9-10

⁸ CBP National Standards on Transport, Escort, Detention, and Search (2015), <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf>. (“TEDS Standards”)

⁹ TEDS Standards at Pg. 29.

¹⁰ TEDS Standards at Pg. 28.

The TEDS Standards provide, among other things, that all detainees must be provided medical attention, meals at regularly scheduled times, adequate water, have restroom accommodations, and must be provided with personal hygiene items.¹¹ All efforts must be made to ensure care for migrants under the Standards.¹²

As described above and in the specific examples below, CBP is violating all of these standards at the open air detention site in the California corridor.

a. CBP does not provide medical assistance in violation of TEDS § 4.10

Observers have documented numerous examples of Border Patrol failing to provide medical attention to detained migrants, including at-risk populations.¹³ TEDS Standards provide that “[e]mergency medical services will be called immediately in the event of a medical emergency.”¹⁴ Adriana Jasso states in her declaration that she encountered an African man who collapsed and was described as dying by a Colombian nurse. Only after advocate intervention did Border Patrol come to assist.¹⁵ Additionally, she describes migrants “suffering severe pain, diarrhea, headaches, severe cuts and bruises. One Asian man’s leg was severely infected. He was in extreme pain with no way to communicate.”¹⁶



Lilian Serrano has various accounts of migrants needing medical assistance. In reaching out to the Border Patrol liaison she was told the liaison “was receiving our emergency flags and following up, but that when his agents went to take people to the hospital, the migrants were all of a sudden fine and that they didn’t have a medical need.”¹⁷ In another instance the liaison asked why she was calling him and not 9-1-1.¹⁸ Lilian also encountered a 79-year old Colombian woman who fell off the border wall and suffered injuries to her leg and other distress because of a lack of medication; she was not provided medical attention by Border Patrol until after an entire day of advocacy by multiple advocates.¹⁹ Additionally, she encountered an asylum seeking woman from Afghanistan who the Border Patrol took to the hospital after she suffered injury and infection to her arm. The woman was dumped at a hospital without any paperwork from

¹¹ TEDS Standards at Pgs. 17-18

¹² TEDS Standards at Pg. 3

¹³ TEDS Standards § 5.1 defines “at-risk populations” as including children, “pregnant individuals; those known to be on life-sustaining or life-saving medical treatment; those at higher risk of sexual abuse (including but not limited to gender nonconforming, intersex, and transgender); reported victims of sexual abuse; those who have identified mental, physical or developmental disabilities; those of advanced age; or family units.” The Standards provide such individuals “may require additional care or oversight”.

¹⁴ TEDS Standards § 4.10 (“Medical Emergencies”)

¹⁵ Decl. of Adriana Jasso at ¶ 11

¹⁶ Decl. of Adriana Jasso at ¶ 7

¹⁷ Decl. of Lilian Serrano ¶ 9.

¹⁸ Decl. of Lilian Serrano at ¶ 13

¹⁹ Decl. of Lilian Serrano at ¶ 2-4, 9-10

Border Patrol and was later denied access to agents so she could be processed.²⁰ In addition, Lilian encountered a 29-year old pregnant Somali woman suffering repeated vomiting without medical attention.²¹

Pedro Rios confirmed that a Jamaican woman who suffered a miscarriage after being kidnapped and raped in Mexico and remained in excruciating pain, was not provided medical attention by Border Patrol for days despite advocates raising the issue multiple times.²² Pedro also documented an infant no longer taking breastmilk who suffered vomiting and was listless and was only taken to a hospital after advocates' intervention.²³

b. CBP does not provide meals to detained migrants in violation of TEDS § 4.13

Border Patrol did not provide regular meals as required under the TEDS Standards, leaving migrants at risk of starvation while relying on the limited resources of NGOs providing emergency food aid. The TEDS Standards require that “[a]dult detainees, whether in a hold room or not, will be provided with food at regularly scheduled meal times.”²⁴ For children and pregnant individuals, the Standards require “a snack upon arrival and a meal at least every six hours thereafter, at regularly scheduled meal times. At least two of those meals will be hot. Juveniles and pregnant or nursing detainees must have regular access to snacks, milk, and juice.”²⁵



Instead, Border Patrol only provided migrants with a single small water bottle per person, and a granola bar.²⁶ Adriana Jasso observed that Border Patrol entered the corridor between the walls “[o]nce a day [to] provide a bottle of water and some kind of granola bar. To keep people from starving, NGOs, volunteers both on the Mexico and US side of the border, are supplying the basic necessities they can.”²⁷ One group of Indian men detained for five days were left to starve and resorted to eating leaves.²⁸

²⁰ Decl. of Lilian Serrano at ¶ 5-7

²¹ Decl. of Lilian Serrano at ¶ 13

²² Decl. of Pedro Rios at ¶ 30.

²³ Decl. of Pedro Rios at ¶ 16.

²⁴ TEDS Standards § 4.13.

²⁵ TEDS Standards § 5.6 (“Meals and Snacks – Juveniles, Pregnant, and Nursing Detainees”).

²⁶ Decl. Adriana Jasso at ¶ 3, Dec. Flower Alvarez Lopez at ¶ 5.

²⁷ Decl. of Adriana Jasso at ¶ 8

²⁸ Decl. of Pedro Rios at ¶ 15.

c. CBP does not provide adequate water to detained migrants in violation of TEDS § 4.14

CBP is required to make available clean drinking water along with clean drinking cups to detainees.²⁹ Pedro Rios stated that in April of 2023, “migrants reported waiting up to 7 days with no shelter, minimal water, and only a granola bar to eat. I communicated with the Border Patrol liaison about the conditions, and shortly thereafter, agents placed a 5 gallon container of water every morning, but this would finish quickly. By mid day there was no available water.”³⁰

The amount of water was wholly inadequate, requiring advocates to push Border Patrol to provide more water.³¹ The Border Patrol liaison said they considered bringing a buffalo water tank, but chose not to because they did not want to attract more migrants.³²

By May, Pedro stated, “Border agents had removed the 5 gallon water jug. They handed out one small water bottle per migrant every day, leaving migrants thirsty by the afternoon.”³³ As of May 12, declarants continue to report that Border Patrol is only providing one bottle of water per day.³⁴



d. CBP does not provide restroom facilities for detained migrants in violation of TEDS § 4.15 nor maintain cleanliness standards in violation of TEDS § 4.7

CBP is required to provide restroom accommodations to all detainees with a reasonable amount of privacy ensured.³⁵ Border Patrol agents have only provided one port-a-potty for hundreds of migrants.³⁶ The port-a-potty was brought into the area on April 28, 2023 when there were approximately 70 individuals in custody.³⁷ Within two days the port-a-potty was full and unusable.³⁸ Since that time, the number of migrants has grown to approximately 400 and no additional facilities have been added.³⁹ To date, we have not seen the one port-a-potty be cleaned and migrants have regularly complained since that is unusable.⁴⁰



²⁹ TEDS Standards § 4.14 (“Drinking Water”)

³⁰ Decl. of Pedro Rios at ¶ 9

³¹ Decl. of Pedro Rios at ¶ 12

³² Decl. of Pedro Rios at ¶ 12

³³ Decl. of Pedro Rios at ¶ 15.

³⁴ Decl. of Flower Alvarez Lopez at ¶ 5

³⁵ TEDS Standards § 4.15 (“Restroom Facilities”)

³⁶ Decl. of Flower Alvarez Lopez at ¶ 5

³⁷ Decl. of Pedro Rios at ¶ 13

³⁸ Decl. of Pedro Rios at ¶ 13

³⁹ Decl. of Pedro Rios at ¶ 14

⁴⁰ Decl. of Pedro Rios at ¶ 14; Decl. of Flower Alvarez at ¶ 5



Border Patrol fails to provide minimum standards of cleanliness; CBP TEDS standards require facilities “be regularly and professionally cleaned and sanitized.”⁴¹ Despite this, Flower Alvarez Lopez saw “a pile of trash that has not been picked up in days” and “one portable restroom for” hundreds of people that has “not been cleaned at all.”⁴²

e. CBP does not provide basic hygiene items and made no efforts to provide showers in violation of TEDS § 4.11

Additionally, CBP did not provide access to basic hygiene items as required under the Standards. TEDS provides that “Detainees must be provided with basic personal hygiene items, consistent with short term detention and safety and security needs” where “[f]amilies with small children will also have access to diapers and baby wipes” and restrooms must include “access to toiletry items, such as toilet paper and sanitary napkins.”⁴³ In contrast, Flower Alvarez Lopez found that “[t]here are no showers, hand washing stations, nor basic personal hygiene items like feminine hygiene products, baby wipes, toothbrushes, etc. I see families, babies, children, women with children, and people of all ages in here and they don’t have the basic necessities.”⁴⁴

CBP has made no effort to provide showers to migrants who were detained for up to a week, even though the Standards provide that “reasonable efforts will be made to provide showers, soap, and a clean towel to detainees who are approaching 72 hours in detention.”⁴⁵ Instead, Flower Alvarez Lopez confirmed no showers were available at the open air detention site.⁴⁶



f. CBP Detains Migrants Far Beyond 72 Hours in violation of TEDS § 4.1

The TEDS standards provide that migrants should not be detained for longer than 72 hours in holding facilities.⁴⁷ CBP is regularly detaining migrants in the corridor between the border walls for over 72 hours

⁴¹ TEDS Standards § 4.7 (“Cleanliness”)

⁴² Decl. Flower Alvarez Lopez ¶ 5

⁴³ TEDS Standards § 4.11.

⁴⁴ Decl. of Flower Alvarez Lopez at ¶ 5

⁴⁵ TEDS Standards § 4.11.

⁴⁶ Decl. of Flower Alvarez Lopez at ¶ 5

⁴⁷ CBP National Standards on Transport, Escort, Detention, and Search (2015) at Pg. 14

<https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf> (“TEDS Standards”)

and up to a week.⁴⁸ Every effort must be made to hold detainees for the least amount of time required.⁴⁹ Pedro Rios found that “migrants reported waiting up to 7 days.”⁵⁰ After a Border Patrol liaison claimed migrants were exaggerating their length of detention, Pedro Rios confirmed that migrants “continued to tell [him] they had been there 2, 3, 4 and up to 7 days.”⁵¹ The wristbands issued by agents to migrants are evidence of the length of detention.

For months, Border Patrol has continued to egregiously violate its basic obligations to people it detains under its own TEDS Standards in the California corridor between border walls.



3. CBP is violating international treaties on cruel, inhuman and degrading treatment.

The United States has signed and ratified the International Covenant on Civil and Political Rights (ICCPR), an international treaty that recognizes fundamental human rights. Under the U.S. Constitution's Article VI, treaties are the “supreme law of the land” governing the responsibilities of every part of government at the local, state, and federal level.⁵² Thus, CBP is bound by the ICCPR.

This year, the U.S. Government is under review by sister nations who are signatories to the ICCPR for compliance with the treaty's obligations. In fact, the U.S. Government led by the Department of State is preparing to appear before the ICCPR Human Rights Committee to answer questions from other nations about non compliance. Civil society groups, including SBCC, will be submitting reports to the Human Rights Committee to alert them to the violations we have witnessed, including those occurring now in the California corridor between the walls.

The ICCPR provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment.”⁵³ The violations of the TEDS Standards described above and detailed in the attached declarations also constitute violations of migrants' rights under the ICCPR. Pedro Rios, who has observed CBP human rights violations in the California corridor for months, summarized:

⁴⁸ Decl. Pedro Rios ¶ 9, 10, 18

⁴⁹ TEDS Standards § 4.1

⁵⁰ Decl. Pedro Rios ¶ 9

⁵¹ Decl. Pedro Rios ¶ 18

⁵² U.S. Constitution, Art. VI., International Covenant on Civil and Political Rights (ICCPR) Art 2

⁵³ International Covenant on Civil and Political Rights (ICCPR) Art. 7

My overarching concern is the inhumane treatment that I have witnessed since February, the ongoing lack of water, food, and shelter, the degrading treatment, and overall lack of respect or compassion for the migrants who are seeking safety from the dangers they face in their home countries⁵⁴.... [T]hey should be treated with dignity and decency pursuant to human rights standards. That is not what's happening.⁵⁵

In his declaration, Pedro details how border agents treat migrants in cruel, inhuman, and degrading ways, leaving them starving and freezing while in their custody.⁵⁶ He also describes how some agents treat migrants with complete disregard, for example, one agent told migrants, “I don’t give a fuck how long you’ve been here,” and another said, “get the fuck away from me” when a migrant approached to ask a question.⁵⁷

Flower Alvarez Lopez in her declaration echoed the statements by other declarants, speaking to the indignity of the situation facing migrants. “This is devastating. We should not have to bear witness to what is happening today.... To see babies and children here in this type of setting, it's heartbreaking. We need to do better. Our government needs to do better.”⁵⁸

The ICCPR states that if violations of human rights occur, as they have for some time and continue to occur, the government shall provide an effective remedy.⁵⁹ That could be an administrative, legislative, or judicial remedy. Despite the pleas of migrants and advocates, CBP has not provided an effective remedy. Through this petition, we hope to prompt a remedy — the cessation of the violations and the protection of human rights.

4. CRCL must act to investigate and address these violations with Congress.

The Office of Civil Rights and Civil Liberties (CRCL) was established to, among other things, “oversee compliance with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights and civil liberties of individuals affected by the programs and activities” of the Department of Homeland Security, including CBP,⁶⁰ in conjunction with Congress. You have the mandate to address both the violation of the TEDS custody standards and the ICCPR rights incorporated into U.S. law through the Constitution. We look to your office to end the harm caused by CBP in its treatment of migrants in the California corridor between walls west of the San Ysidro Port of Entry.

Those seeking safety at our border should be treated at all times with humanity, dignity, and respect. For months now, CBP has fallen short of this responsibility. We recognize that the challenges facing CBP are many, but that should never be an excuse for violating the rights of migrants. The violations that declarants describe have been going on for months. Since at least February 2023, migrants in the corridor have been left waiting for days without adequate water, food, shelter and other basic necessities. Long before that, CBP has taken custody of migrants in the corridor and used it as a pre-processing holding area, exercising control of migrants.

⁵⁴ Decl. of Pedro Rios at ¶ 26

⁵⁵ Decl. of Pedro Rios at ¶ 31

⁵⁶ Decl. of Pedro Rios at ¶ 27

⁵⁷ Decl. of Pedro Rios at ¶ 25

⁵⁸ Decl. of Flower Alvarez Lopez ¶ 7

⁵⁹ ICCPR Art. 2

⁶⁰ 6 U.S.C. § 345

CBP anticipated an increased number of migrants, especially asylum seekers. Congress increased CBP resources significantly, but those resources are not being used to comply with the agency's duties of care in the California corridor. If CBP is going to continue using the corridor as a holding area or a pre-processing area (as opposed to processing someone from the area that day), then the agency must stand up the infrastructure and engage in practices that honor the rights and dignity of migrants. That is what we committed to do as a nation when we signed the ICCPR and what the agency committed to do when it adopted the TEDS standards.

We call on CRCL to ensure that not only will the current violations cease and human rights be protected, but also that this situation will not be allowed to reoccur in California or anywhere else along the border. We stand ready to speak with your Office to discuss these claims further if needed. Please contact us to acknowledge receipt and discuss immediate next steps.

Sincerely,



Ricky Garza, Border Policy Counsel
Southern Border Communities Coalition⁶¹

Enclosures:

1. *Declaration of Pedro Rios*
2. *Declaration of Lilian Serrano*
3. *Declaration of Flower Alvarez Lopez*
4. *Declaration of Adriana Jasso*

CC:

Chairman Dick Durbin
Ranking Member Lindsey Graham
Senate Judiciary Committee

Chairman Jim Jordan
Ranking Member Jerrold Nadler
House Committee on the Judiciary

Chairman Gary Peters
Ranking Member Rand Paul
Senate Committee on Homeland Security & Governmental Affairs

Chairman Mark Green
Ranking Member Bennie Thompson

⁶¹ SBCC is a program of Alliance San Diego, which is based in San Diego, but staffs SBCC throughout the border region and in D.C. SBCC is governed by a steering committee of members from CA, AZ, NM, and AZ.

House Committee on Homeland Security

Chairman James Comer
Ranking Member Jamie Raskin
House Committee on Oversight and Reform

Majority Leader Mitch McConnell
Minority Leader Charles Schumer
United States Senate

Speaker Kevin McCarthy
Minority Leader Hakeem Jeffries
United States House of Representatives

Attorney General Merrick Garland
U.S. Department of Justice

Assistant Attorney General Kristen Clarke
Civil Rights Division
U.S. Department of Justice

Erin Barclay
Acting Assistant Secretary of State for Democracy, Human Rights, and Labor
U.S. Department of State

Acting Commissioner Troy A. Miller
Customs and Border Protection
Department of Homeland Security

Nathaniel Kaine
Chief of Staff
Customs and Border Protection
Department of Homeland Security

Chief Raul Ortiz
United States Border Patrol
Customs and Border Protection
Department of Homeland Security

DECLARATION OF PEDRO RIOS

I, Pedro Rios, declare the following:

1. I am the director of the American Friends Service Committee (AFSC) US-Mexico Border Program. I have been monitoring and advocating for human rights at AFSC for twenty years.
2. For the last several months, I have observed migrants trapped between the primary and secondary barriers on the western most segment of the US-Mexico border near San Ysidro. Migrants have identified themselves as from many different countries including Afghanistan, Jamaica, India and Colombia, and they state they are seeking asylum because of dangers they face in their home countries.
3. The area in which they are trapped is north of the primary barrier abutting Mexico. That area north of the barrier is in the United States. The migrants state they have crossed the barrier to turn themselves in to border agents and are doing so out of desperation, because they seek safety. Once over the barrier, they await to be processed by border agents.
4. The migrants are trapped in an area bounded by a secondary barrier to the north of the primary barrier. This corridor between the barriers is fully controlled by the U.S. Border Patrol. Agents pass along this corridor with vehicles and ATVs. The area is also monitored by cameras. Anyone in this corridor is under their control and in their custody.
5. In February 2023, I first spoke to migrants trapped in the corridor, while I was at an event we held near the border walls. About a dozen migrants approached the northern barrier to talk to me and told me that they had been in the corridor for several days hoping to be processed by border agents, but had not yet been, even though agents were regularly passing by. The agents had given them mylar blankets but little else. During this time, it rained regularly in San Diego.
6. I have continued to see migrants in the corridor since, and have monitored their conditions. I have seen them in several locations in the corridor identified as follows from east to west: near the Las Americas mall, at the section known as Whiskey 8, and closer to the beach.
7. The number of people that I have been able to see has varied from dozens to hundreds. In March, I began coming 2-3 times a week to talk to migrants and monitor the conditions. In most cases, they had been there for at least 2 days. Some had mylar blankets given to them by border agents, others had nothing to cover themselves at night. During this time it rained regularly and was cold day and night. They told me they were thirsty and hungry with little to nothing to eat or drink.
8. In April, the number of migrants in the corridor seemed to grow until it was regularly around 70 people who were visible to me at the Whiskey 8 area, and I knew there were more at other locations in the corridor. More women and children appeared in the corridor. Because Whiskey 8 is most accessible from the U.S. side, this is where I came to speak to migrants.
9. Migrants reported waiting up to 7 days with no shelter, minimal water, and only a granola bar to eat. I communicated with the Border Patrol liaison about the conditions, and shortly thereafter,

agents placed a 5 gallon container of water every morning, but this would finish quickly. By mid day there was no available water.

10. This year, San Diego has been unusually cold and rainy. I recall a particularly rainy night in mid April. The following morning, I came to the border and spoke to a group of migrants who were all from Africa. They had not been given mylar blankets, but had regular blankets that were soaked. They had no other clothes or cover to protect them from the weather. They told me they had been there for 5 days.
11. In the last week of April, I spoke to the Border Patrol community liaison as well as the Department of Homeland Security Civil Rights and Civil Liberties liaison expressing concerns about the conditions, including the lack of water and sanitation.
12. Initially they told me that the government was considering bringing in a buffalo water tank, but then the Border Patrol liaison told me they would not out of concern that it would attract more migrants. They never brought the tank in.
13. On April 28, several months after I began witnessing the presence of migrants in the corridor, agents brought in a single port-a-potty to the Whiskey 8 area, but it was not enough for what was then about 70 people on average in that area. I don't know if they brought additional port-a-potties to other parts of the corridor.
14. Two days after the port-a-potty arrived, it was full and unusable. It may have been serviced, but I never saw that happen, and migrants have regularly complained since that it is unusable. As of today, there is only one port-a-potty, even though the number of migrants has grown to an estimated 400.
15. Beginning in May, I began coming to the border nearly every day, spending several hours at a time. On May 1st, I spoke with a group of men from India who told me they were starving. They showed me the leaves they were eating. They had been there for 5 days. During that time, I observed that border agents had removed the 5 gallon water jug. They handed out one small water bottle per migrant every day, leaving migrants thirsty by the afternoon.
16. On May 3rd, migrants told me that border agents had taken their shoelaces, and they did not know why, but believed it was in preparation for agents to take them in. I am familiar with this practice, a tactic that border agents have previously said they use to prevent migrants from running away. I took photos of their shoes without laces.
17. Out of grave concern for the condition of migrants, my organization began to provide basic necessities to migrants, including water, food, and mylar blankets. Initially, an agent scolded me, telling me that we needed to alert Border Patrol every time we came. They told the media that was starting to cover the encampment the same thing. This is not a requirement, but something they suggested we must do nonetheless. I believe this was meant to dissuade us from coming, especially as the media began to arrive.
18. After the first article in the San Diego Union-Tribune was published, stating that migrants were there up to 7 days, the Border Patrol liaison told me that this was not true, that migrants were exaggerating and were conflating their days in Tijuana with their days in the corridor. But I had been witness to migrants trapped in the area, waiting to be processed for many days. I asked

migrants to clarify and confirm the number of days they had been in the corridor, and they continued to tell me they had been there 2, 3, 4 and up to 7 days.

19. At the end of the first week of May, the number of migrants grew significantly to around 400. I worked with my organization to alert the media. Migrants shared with them what they had told me — that agents were waiting days to process them, but not providing them with basic necessities including sufficient water, food, and shelter.
20. With the arrival of the media, Border Patrol told the migrants they had to sit in rows and stay seated. Occasionally, the agents would drive through with an ATV or cars, to check that they were seated. This would happen at various times of the day. Migrants have told me they believe this is in anticipation of them being processed, but the agents will make them all sit for hours on end and not process any of them. Then they will come with vans and take a few people or sometimes 20, but there are hundreds of people.
21. I have observed Border Patrol agents ushering migrants from the area near Las Americas to the Whiskey 8 area. Agents also directed single men to the area closer to the beach. Between the direction for them to sit in rows to ushering them from one part of the corridor to another, agents are controlling the movement of migrants.
22. This week, Border Patrol instituted the use of wristbands to identify people's arrival based on the agent's first interaction with them, which might be a day or two after they actually arrive in the corridor. The wristbands are like the ones used for concerts. They are different colors and some have the day of the week printed on them.
23. Migrants have now organized themselves in rows based on their wristband, hoping that the more organized they are, the more quickly they will be processed, but they are still waiting for days. Migrants state, and I have observed, that agents come through every so often to see if people are sitting and if they are not, they sometimes yell at the migrants. This includes children, who don't understand what is happening. They sit under full sun and then rain and cold, they sit and they wait.
24. One of the migrants who took the initiative to organize the other migrants shared his frustrations that agents come to scold the migrants, but not to process them. He told me he had not slept for 3 days and was concerned that the other migrants thought he was colluding with the agents and felt he was in danger, and that the agents are not there to protect him or anyone, but to leave them waiting.
25. Throughout my time monitoring the conditions in the corridor, I have also witnessed some Border Patrol agents speaking aggressively towards migrants. For example, I heard one agent say, "I don't give a fuck how long you've been here," and another say, "get the fuck away from me" when a migrant approached to ask a question.
26. My overarching concern is the inhumane treatment that I have witnessed since February, the ongoing lack of water, food, and shelter, the degrading treatment, and overall lack of respect or compassion for the migrants who are seeking safety from the dangers they face in their home countries.

Pedro Rios



May 12, 20223

I affirm that the statements in this affidavit are true to the best of my knowledge and belief.

- That is not what's happening.
- As such, they should be treated with dignity and decency pursuant to human rights standards.
31. In conclusion, there is no doubt that the migrants in the corridor are in Border Patrol custody.
30. I am deeply concerned about other vulnerable migrants. Today, I alerted the Border Patrol liaison that a Jamaican woman had approached me to tell me she had suffered a miscarriage after being kidnapped and raped in Mexico and is now in what she described as excruciating pain. Other human rights observers shared that they alerted Border Patrol to this woman's condition several days ago, but nothing was done.
30. One migrant told me that in the night, the children cry. He said that the adults have a way to cope, but the children are scared.
29. In another instance, parents of an 8 year old child approached me to tell my colleague that their child had had a seizure as a result of his medication being taken away by Mexican authorities. They were concerned for the child's health. I left a message for the Border Patrol liaison and agents came for him soon after. As with other incidents, I am concerned that if we had not been there, the child would have fallen into greater danger.
28. I'm also concerned about the children. Two days ago, I witnessed a child who was less than a year old whose mother said was no longer taking her breast milk and was throwing up and illstess. I called the Border Patrol liaison for medical assistance, and they came to take the child and mother to the hospital. But had I or another human rights observer not been there, that child might not have received any assistance. Especially since agents are not making themselves approachable and some are actively aggressive towards migrants.
27. I am especially concerned about the treatment of migrants who are out of sight from us, especially the area where the men have been directed to, closer to the beach. Last night, I spoke with two men who came to the Whiskey 8 area hoping volunteers would charge their phones. They told me they were hungry and freezing. One was from a Spanish speaking country (not sure which) and one appeared to be from Eastern Europe.

DECLARATION OF LILIAN SERRANO

I, Lillian Serrano, declare the following:

1. I am the director of the Southern Border Communities Coalition, a program of Alliance San Diego. As part of that role, I monitor human rights conditions in the border region.
2. On May 11, after hearing from colleagues about migrants trapped in the corridor between the two border walls, both of which are in the United States, near San Ysidro, California, I arrived at the border wall at 5:45 am. The first thing I saw was a group of migrants that had spent the night outdoors between the two border walls. When I approached the wall, a man called us over. His mother was in need of medical attention.
3. He had traveled with his 79 year old mother from Colombia. He told us she has several medical conditions and at that moment had been without her medication for 2-3 days, trapped in Border Patrol custody. Without her medication, she was falling ill. She was also suffering from an injury to her leg after falling from the wall she had climbed to turn herself in to border agents. Her son was also worried that she hadn't used the restroom in 5 days. The day before she was able to walk a little, but that morning she was just laying down and couldn't move.
4. I immediately contacted the Border Patrol community liaison for the San Diego sector. I called him to try to provide details about what was happening, but he didn't pick up. I sent him a text at 8:00 am with general information about the woman and that we needed to get her medical care. We didn't hear back from him. The son checked in with me on multiple occasions, but at one point I lost track of him amidst the hundreds of migrants.
5. Around the same time, I encountered another woman, who we later learned was an asylum seeker from Afghanistan, who was sleeping by herself on the US side of the border wall wrapped in blankets. She was wearing a hijab. I approached her with colleagues and asked her why she was there. She showed us documents from Scripps hospital. She was taken in an ambulance from the encampment the day before. She told us she wasn't feeling well, she showed us her arm and it was swollen, and had an infection.
6. She told us she had flagged this for Border Patrol, and they took her to Scripps hospital. When the hospital released her, they put her in a taxi. She didn't know where she was, she had no way of contacting anyone, she didn't have an address, so the taxi brought her back to the border wall. She didn't know what to do, she wanted to make sure Border Patrol knew she wasn't trying to sneak into the country. She was waiting for them, but they never arrived at the hospital.
7. She told us she arrived at this site at 2:00 am and knocked multiple times on the gate trying to get inside the encampment. The agents did not open it. She told us that she had family in New York, but didn't have a way to contact them. We had her take a nap in my car. It was the first time she slept indoors after 4 days.
8. She slept and our partner organization PANA (Partnership for the Advancement of New Americans) was able to pick her up around noon. They were able to get her placed in a Catholic Charities shelter. We believe they were able to get in contact with her family in New York, but she doesn't have any paperwork from Border Patrol that would allow her to travel on a plane.

9. In the evening, I eventually spoke with the Border Patrol liaison regarding the 79 year old Colombian woman described above. The liaison said he was receiving our emergency flags and following up, but that when his agents went to take people to the hospital, the migrants were all of a sudden fine and that they didn't have a medical need. I reiterated that the woman we were discussing needed medical attention and told him that the people we were talking to had medical needs. He said that he felt that migrants were taking advantage of this situation and that they were using this to get into the United States.
10. The Border Patrol liaison mentioned he was going to be on site last night because at 9:00 pm "migrants were going to rush the border." Because of this I came back to the site around 8-8:30 pm. At 9:45, I noticed that Border Patrol agents were carrying a woman to their truck who was accompanied by another woman. Her son told me he finally got the attention from the Border Patrol and that they were taking his mother to the hospital, but they would only let one person go with her. He decided to have his wife accompany his mother.
11. To follow up, my colleagues and I went to the hospital and we found his wife. She was confused. As soon as she arrived at the hospital, staff told her she couldn't go in and they left her outside. The Border Patrol left and gave her no instructions, so she was outside of the hospital, and she said she was waiting for them to come and give her instructions. We explained they were not coming back. She didn't get any documents from Border Patrol and was told she couldn't go inside. It was cold and late and she had no way to communicate with her mother-in-law inside. We stayed in the hospital past midnight and assisted her to communicate with the hospital staff to get information about her mother-in-law.
12. The mother-in-law was released this morning, and a family member in the United States was able to come and accompany her. The family member shared that the 79 year old woman was concerned about her Colombian passport, which Border Patrol agents had asked her for before transporting her to the hospital. She gave it to them and she saw an agent put it in his pocket. The passport was never returned to her. She now has no identity documents, nor does she have any paperwork from Border Patrol from her entry to apply for asylum. Her son is still in custody in the area between the walls, separated from his mother and wife, all of whom have a related asylum claim. It is uncertain whether he will be released or whether his asylum claim will be heard. For the moment, they face the prospect of indefinite separation far from a country they fear returning to.
13. In another incident, I was notified today at 4:15 pm that a 29 year old pregnant Somali woman had thrown up 5 times today. I contacted the Border Patrol liaison, and he told me that I should have just called 9-1-1. Then he said he would call them. Several hours have now passed and no one has arrived to assist the pregnant woman. We are keeping a close eye on her and hopefully she will receive help soon.

I affirm that the statements in this affidavit are true to the best of my knowledge and belief.

May 12, 20223

A handwritten signature in black ink, appearing to be 'LS' with a large flourish extending upwards and to the right.

Lilian Serrano

DECLARATION OF FLOWER ALVAREZ LOPEZ

I, Flower Alvarez Lopez, declare the following.

1. My name is Flower Alvarez Lopez and I am a Co-Director at Universidad Popular.
2. Around 12 pm on May 11, I went to the border wall near San Ysidro to find hundreds of people in an encampment between two fences, unable to leave. Border Patrol provided the migrants with wristbands of different colors to indicate when they arrived and have created some sort of a system for when they will process them.
3. I stayed overnight at the encampment and observed and talked to Border Patrol agents around 2:00 am during a big round up. I saw Border Patrol agents ask those who had children to raise their hands. I saw them yelling at folks that were sitting down telling them to not get up. If they tried to move, they would be immediately yelled at. I tried to gather information from the agents about how many people they were taking and where they were taking them. They said 60 people and didn't say anything else. Border Patrol has not communicated their plans for the individuals who are trapped in the corridor between the border walls.
4. They are being treated inhumanely. The government has not provided any blankets or shelter for these individuals. At night, it is cold and everyone is exposed to the elements including our most vulnerable populations: children, pregnant women and the elderly.
5. There is a pile of trash that has not been picked up in days. There is only one portable restroom for all 300-450 people to use and it has not been cleaned at all. There are no showers, hand washing stations, nor basic personal hygiene items like feminine hygiene products, baby wipes, toothbrushes, etc. I see families, babies, children, women with children, and people of all ages in here and they don't have the basic necessities. They are sleeping on the ground with few clothes to keep them warm. Border Patrol has only provided one water bottle and one granola bar per person per day. A lot of them have been sleeping directly on the dirt and gravel ground except for those who we were able to provide cardboard boxes to use as mattresses.
6. Border Patrol is not providing medical support on site. We are providing the limited first aid we can, but we don't have any medics on site. We know a few people have been taken by ambulance to other hospitals.
7. This is devastating. We should not have to bear witness to what is happening today. Folks are showing up and they are very emotional to what they are seeing because it is a devastating sight. To see babies and children here in this type of setting, it's heartbreaking. We need to do better. Our government needs to do better.

I affirm that the statements in this affidavit are true to the best of my knowledge and belief.

May 12, 20223

A handwritten signature in black ink, appearing to read 'Flower Alvarez Lopez', written in a cursive style.

Flower Alvarez Lopez

DECLARATION OF ADRIANA JASSO

I, Adriana Jasso, declare the following:

1. I have worked with the American Friends Service Committee for 16 years assisting migrants. I am currently working alongside a border wall in the San Ysidro area that is one of two parallel walls at the border of the United States and Mexico. The space between the first and second wall is inside the United States. In the space between the walls, there are approximately 400-500 individuals who are waiting with nothing but the clothes on their backs to be processed for asylum claims.
2. I first arrived at the San Ysidro border just south of South Bay Water Reclamation Plant about 2 weeks ago. Border agents refer to that area as Whiskey 8. When I arrived, I saw approximately 20 people. Then 20 quickly turned to 80 and 80 quickly turned into 120. Later on we started seeing 400-500 individuals. Not only have the numbers changed, but the demographics as well. Now we are seeing mainly women with children. As the encampment grew, Border Patrol moved males to an area approximately 20 minutes away on foot to a different canyon.
3. I have not been able to access the canyon, but have heard there are anywhere between 600-800 single men in the encampment. What we have heard is that the conditions there are a lot worse in terms of access to food and shelter. I took a statement from a Colombian family that said they only received a bottle of water for a whole day. We haven't been able to transport anything to them and we are not able to carry things over there. It would require us hiking to the location.
4. The individuals who come through the primary fence and who are then between the two walls are in the United States. For the last several weeks I have witnessed Border Patrol direct and control their movements, such as the movement of men to a different part of the corridor. Border Patrol agents are the only people who have access to the encampment. They are the only ones on site. These individuals are in their custody and Border Patrol is responsible for their fundamental well being. The individuals are being detained in dire conditions.
5. Border Patrol developed a system to track the individuals who are in the encampment by providing them with wrist bands to track when they entered into their custody. The wristbands vary in color from red, yellow, blue, green and gray to reflect the date they entered the encampment.
6. It appears they have different wristbands for the day of the week that border agents first identify them, and it appears to indicate the priority based on the days and nights that they have been here. But we have seen over and over again that the system isn't being followed and it depends on what officers they get on which wristband they are given. For example, migrants have told us they have been here for 4 days, but their wristband indicates less.
7. Individuals cannot leave the area because of the physical walls that stand in their way. Some of those arriving are suffering severe pain, diarrhea, headaches, severe cuts and bruises. One Asian man's leg was severely infected. He was in extreme pain with no way to communicate. We had to wait for Border Patrol to respond to our texts and.

Many individuals are pregnant, have children with them, have no shoes, are muddy, wet and in terrible condition. All they can do is wait for Border Patrol to take them to be processed for asylum.

8. Border Patrol agents do not come often to the site. Once a day, they provide a bottle of water and some kind of granola bar. To keep people from starving, NGOs, volunteers both on the Mexico and US side of the border, are supplying the basic necessities they can. It is a dire situation.
9. On Tuesday, May 9th, 2023, an incident happened where two Colombian women were traveling alone and were being sexually harassed. Four males became abusive towards them and the women decided to approach us (there were no agents to approach). We let the authorities know. Fortunately there was no sexual attack, but there was physical and verbal abuse. If we were not there, we don't know whether the attack would have been prevented.
10. We have seen several pregnant women come through. One woman, approximately a week ago, had a miscarriage. She has continually expressed the pain she is going through, especially at night.
11. In a particularly distressing incident, a man from Africa was walking and collapsed. A Colombian nurse tried to help and told us he was dying. We alerted the Border Patrol. Fortunately, the Border Patrol came and picked him up.
12. On a different occasion, a child suffered an epilepsy attack and we were able to get assistance from Border Patrol. I continue to be concerned that if we were not there bearing witness that children and adults would suffer harm while in Border Patrol custody.

I affirm that the statements in this affidavit are true to the best of my knowledge and belief.

May 12, 20223

A handwritten signature in black ink, appearing to read 'Adriana Jasso', with a large, stylized flourish at the end.

Adriana Jasso

EXHIBIT 5

1 I, Dr. Theresa Cheng, declare as follows:
2

3 1. The content of this declaration is based on my personal knowledge, my own
4 observations, and information communicated directly to me by people detained at open-
5 air detention sites (“OADS”). The following facts are true to the best of my
6 understanding and recollection. If called to testify in this case, I would testify
7 competently about these facts.
8

9 **Professional Background**

10 2. I am a California-barred civil rights attorney and a Board-Certified Emergency
11 Medicine doctor and professor at UC San Francisco, where I have worked for three years.

12 3. I attended UC Berkeley School of Law, where I obtained a J.D. with a
13 specialization in international law in 2014. I concurrently attended the Mayo Clinic Alix
14 School of Medicine for medical school and graduated in 2016. I completed my residency
15 training in emergency medicine at UCLA-Olive View in 2021. I also have training in
16 wilderness medicine first-aid.

17 4. I serve as a member of the Board of Directors for Border Kindness, with which I
18 frequently volunteer. I have been on the Board of Border Kindness for approximately five
19 years. Border Kindness is a nonprofit organization based in El Centro, California that
20 works to provide asylum-seekers, migrants, refugees, and displaced people with
21 comprehensive services that include food, shelter, clothing, medical care, and legal
22 services.

23 5. Between November 28, 2023, and December 4, 2023, I visited all three OADS
24 located in Jacumba, California every day. I spent a total of about seven to nine hours per
25 day at the OADS. The sites I visited are known as Willows, Valley of the Moon, and
26 Tower 177. While there, I helped provide aid for migrants held at the sites. Specifically, I
27 helped provide food, water, clothing, firewood, and tarp tents for migrants in these
28 outdoor sites. I also provided emergency medical care where possible and needed.

1 Because of my medical training, I brought basic medical supplies in addition to the water
2 and other aid that Border Kindness brings to help migrants at these sites.

3 6. On December 4, 2023, I also visited the site known as Whiskey 8 near San Ysidro.
4 While there, I helped provide food, water, basic necessities, and medical support.

5 7. Through my volunteer work, I have gained personal knowledge about the
6 dangerous conditions at the sites.

7 8. While at the OADS in Jacumba, I had personal interactions with both migrants and
8 with Border Patrol agents. I treated emergency medical needs for migrants, which
9 included a range of conditions from severe lacerations and broken bones to sick babies
10 and children vomiting and with fevers.

11 9. I spoke directly with Border Patrol agents about their procedures and about
12 individual migrants' needs. I triaged medical conditions to determine which conditions
13 required emergent care at a local emergency department. During these emergencies, I
14 asked Border Patrol agents to assist, either by calling 911 or transferring migrants with
15 emergent conditions to the location where the ambulance was waiting for them.

16 10. I saw children at all of the OADS I visited. I saw infants, young children, and
17 teenagers. The people I have seen held in the open-air detention sites range in age from
18 infants to elderly people.

19 11. I also saw unaccompanied children at the OADS known as Willows. Volunteers I
20 was working with talked to children as I provided medical care and identified that some
21 were unaccompanied children.

22 12. In the first part of the week I spent at Jacumba OADS, Border Patrol came every
23 few hours to process families. But later in the week, I saw young children, including a
24 five-year-old and a twelve-year-old, who had not been processed for days and had spent
25 three nights at the OADS.

26
27 **CBP's Transportation and Control of Migrants to Open-Air Detention Sites**

28 13. I witnessed migrants arriving at all three OADS I visited in Jacumba.

1 14. At Tower 177, I witnessed multiple Border Patrol vans arrive at the OADS and
2 unload dozens of migrants from the vans. Young children were included in the groups of
3 people that CBP was unloading. After they were unloaded, I saw CBP pointing in our
4 direction, toward the volunteer vehicles where we had set up food and water. Then the
5 migrants who had been transported to Tower 177 walked toward the volunteer vehicles
6 together as a group. We provided them with food and water.

7 15. During the week that I was volunteering, Border Patrol intermittently used colored
8 wrist-bands to organize migrants at the OADS. At the beginning of the week that I spent
9 volunteering at the Jacumba OADS, I saw migrants wearing colored wrist-bands. They
10 had a day of the week written on them. The wristbands were the kind of paper-waxy wrist
11 bands given out at concerts. During the week, I stopped seeing people wearing wrist-
12 bands. Then toward the end of the week, CBP appeared to have started using the
13 wristbands again.

14 16. Wrist-band use varied by OADS. Upon information and belief, different offices
15 within CBP oversee different OADS around Jacumba, resulting in minor variations in
16 policies and practices among the sites.

17 17. During my week at the OADS, I witnessed Border Patrol agents instruct migrants
18 to line up at various times. I witnessed agents count migrants and direct migrants toward
19 specific lines of people. It appeared that they lined people up based on their countries of
20 origin and/or language. Families with children were often in different lines or were told
21 to wait for processing at a later time. The timing of telling people to line up seemed
22 arbitrary to me and processing times varied widely.

23 18. When Border Patrol told people to line up, people would run to get in line where
24 they indicated. Border Patrol would process people in the order that they lined up. If they
25 did not process everyone in the line, the rest of the people had to wait for the next
26 transport. It was never clear when CBP was going to come back to continue processing. It
27 ranged from a few hours to the next day. The process of lining up became so onerous that
28

1 sometimes people decided to sleep in the lines so that they would not lose their spots for
2 when CBP eventually continued processing.

3 19. One afternoon, I evaluated a young woman who appeared maybe 19 or 20 years
4 old who had experienced a stroke because of a car accident in Mexico. She was with her
5 uncle who had also experienced a traumatic brain injury during the car accident. I
6 observed this young woman and her uncle struggle to reach the line when CBP told them
7 to line up because of their limited mobility and the symptoms from their traumatic brain
8 injuries. The uncle could only move very slowly with a walker. The young woman had
9 extremely limited mobility, could not even tie her shoes, and had one arm in a sling. I
10 was very concerned about the safety and wellbeing of this young woman and her uncle
11 because every time they tried to line up, their disabilities caused them to always be at the
12 back of the processing lines. I was worried they would be stuck at the backs of the lines
13 indefinitely and CBP would never process them.

14 20. I advocated extensively to try and ensure that they would not have to spend the
15 night at the OADS. It was so cold and they were medically fragile. While they waited, we
16 did all we could to help them and keep them warm, giving them cardboard to sit on and
17 building a fire near them. The Border Patrol agent who finally arrived said that they did
18 not have space to process them, but would prioritize them for the next transport. Upon
19 information and belief, they were finally processed around three a.m., more than 9 hours
20 later.

21 21. I repeatedly witnessed CBP agents conduct pat downs of migrants. I saw them
22 instruct people that they had to leave articles of clothing or bags behind when they were
23 prepared for transport out of OADS.

24 22. I heard Border Patrol tell migrants, including children, that if they were not present
25 in the OADS they would not be processed. The only way I have seen migrants
26 successfully leave the OADS is when CBP processes them or if migrants leave in an
27 ambulance.

1 23. On November 30, 2023, I was taking a short break from my volunteer shift by
2 walking around the town of Jacumba, about a mile from the nearest OADS, Willows. I
3 am Chinese American, and my appearance is ethnically Chinese. I was taking some
4 photos, and a Border Patrol agent pulled up and swung his car in front of me to block my
5 path. I was startled and did not know why he was stopping me. I said, “Hello, how may I
6 help you?” I think because I speak American English, he quickly realized I was
7 American. He was embarrassed, and he said he thought I was lost and needed to go back
8 to the site, gesturing down the road toward Willows. He told me he was going to escort
9 me back to the OADS.
10

11 **Conditions at the Open-Air Detention Sites**

12 24. Whiskey 8 is difficult to get to. It is on a dirt road on a hill. It is not close to any
13 buildings. Migrants at Whiskey 8 are held between the primary and secondary U.S.
14 border walls. They are essentially incarcerated outdoors. There is a gate in the border
15 wall with a sign that says, “Restricted Area” and other signs with other warnings on
16 them. Volunteers, including medical volunteers, have no way to access any person with
17 emergent needs.

18 25. The Jacumba OADS are located off dirt roads with no infrastructure. Some are
19 miles from the nearest paved road. When I arrived, the OADS looked apocalyptic. There
20 was trash everywhere. People had cut down brush and several of the few small trees to
21 burn in fires to keep warm. There was acrid smoke everywhere that stung our mouths,
22 noses, eyes, and lungs. I also saw that this smoke would cause respiratory illness in
23 people, including children, who have reactive airway disease such as COPD and asthma.

24 26. The OADS are located in the California desert, which gets below freezing at night,
25 placing people at risk of hypothermia. During the day, it can get extremely hot. In
26 warmer months, temperatures can rise to over 110 degrees, placing people at risk for heat
27 stroke and other heat related ailments.
28

1 27. There is no shade, and people use makeshift tarp tents that Border Kindness and
2 other aid organizations provide to them for protection from the sun during the day, and to
3 help with the cold at night.

4 28. I have observed that when migrants arrived at all of the OADS I visited, they
5 lacked food, water, and shelter. I never witnessed CBP provide any water, food, shelter or
6 any other basic essential to migrants arriving at the OADS, including children. In my
7 week at the Jacumba OADS, I identified at least six infants who were solely formula fed.
8 Their parents did not have formula to feed them. I tried to work with volunteers to get
9 them formula, but even then, there was no way to warm clean water to mix the formula
10 properly.

11 29. I was particularly concerned about dehydration at the OADS because it was very
12 bright and hot during the day with a lot of sun exposure, but it was freezing at night. I
13 alternated between worrying that children and other vulnerable groups would get heat
14 stroke or hypothermia. We had a limited supply of electrolyte packets, so I always
15 prioritized giving them to children and pregnant and breast-feeding people. We
16 frequently ran out of the packets and had to wait for the next set of donations to replenish
17 our supply.

18 30. The OADS can be particularly dangerous for certain vulnerable groups. I was
19 especially concerned about people with disabilities that were held there. I spoke to one
20 Chinese family who had been at the OADS for a few days. The young teenage son in the
21 family was on the Autism spectrum and had cognitive and mental disabilities.

22 31. There were between one and three porta potties at each Jacumba OADS that I
23 visited. I saw a dumpster at Tower 177. Neither the porta potties nor the dumpster
24 appeared to be regularly maintained or serviced.

25 32. The porta potties were so dirty that people would just relieve themselves outdoors
26 rather than using the porta potties. It was so cold at night that people would use the porta
27 potties to try and stay warm, even though they were disgusting inside.

28

1 **Lack of Medical Care and Access to Emergency Medical Services**

2 33. In the week that I volunteered at the OADS, I evaluated and/or treated around 100
3 children. There were so many children. Babies had severe diaper irritation and rashes
4 because there were only the limited number of diapers, wipes, or creams that volunteers
5 were able to provide, so babies had to wear dirty diapers for long periods of time. We
6 also provided sunblock because babies and children were subjected to significant sun
7 exposure while held at the OADS.

8 34. I observed migrants experience several medical emergencies at OADS including
9 hypothermia and head injuries. CBP made it very difficult to get necessary emergency
10 medical services while I was volunteering at Jacumba. If there was a medical emergency,
11 I would call 911, the migrants would call 911, or Border Patrol would call 911. At that
12 time, multiple Border Patrol agents told me that EMS was preferentially screening and
13 accepting calls from Border Patrol agents. That is problematic because Border Patrol can
14 and did decline to make 911 calls. This meant that we had to advocate with Border Patrol
15 just to get them to call for an ambulance, taking precious time and limiting our ability to
16 help other migrants in need.

17 35. When I sought assistance getting medical attention for migrants, Border Patrol
18 asked for my name and they asked me which hospital I worked at. They also wanted my
19 physician ID number. This information was not relevant to my requests that Border Patrol
20 call for emergency medical care for migrants in need.

21 36. I spent significant time calling CBP supervisors when Border Patrol agents refused
22 to transport migrants with emergent medical needs to ambulances. The CBP supervisor
23 told me it was at the discretion of the Border Patrol agent, and he could not or would not
24 instruct the agent to transport the individual in need of care.

25 37. I also faced obstacles to obtaining emergency medical care for individuals in need
26 because ambulances would stop a mile and a half away from the OADS. Sometimes CBP
27 agents would refuse to transport migrants whom I determined needed emergency medical
28 care to the ambulance. Border Patrol and EMS repeatedly questioned my medical

1 judgment despite my training and expertise in emergency medicine. They insisted that
2 migrants fake medical emergencies in order to leave the camps and questioned my
3 triaging and diagnoses of migrants' health conditions.

4 38. The week that I was volunteering, I received a request for urgent medical
5 assistance around 10 am one morning. I was at the youth center in Jacumba at the time. I
6 spoke on the phone with the volunteer requesting help, and the volunteer told me there
7 was a boy who had been seriously injured. The volunteer described blood coming out of
8 the boy's ears and nose but that he was breathing at the time. I asked the volunteer to take
9 his pulse, and the volunteer reported that he had a very fast pulse. The volunteer had
10 already called 911. The first thing I did was tell the volunteer to hang up and call 911
11 again because I could tell the boy was in extreme medical need.

12 39. I immediately left to meet the volunteer at the Valley of the Moon OADS. When I
13 arrived at the OADS, there were two CBP agents standing nearby but not taking any steps
14 to assist the injured boy. Upon information and belief, the boy was involved in car
15 accident in Mexico before being brought to the U.S. side of the border. Upon information
16 and belief, people in Mexico who had observed the injured boy called Mexican
17 emergency responders while people on the U.S. side of the wall were also trying to help.
18 The first emergency responder to arrive was a Mexican firefighter-paramedic, who I saw
19 bent over the injured boy hooking him up to a portable AED monitor when I arrived at
20 the site. The machine showed that the boy was losing pulse, so the Mexican firefighter-
21 paramedic started doing CPR. I started doing CPR with him, because CPR is taxing and
22 is a full-body effort. As we continued doing CPR, I asked the CBP agents who were
23 standing nearby if they had any medical equipment. One agent had a nasal trumpet,
24 which I inserted into the boy's nose to help open his airway. The firefighter-paramedic
25 and I continued doing CPR. We were getting tired, and I asked the agents "Do you know
26 CPR?" One agent said no and the other agent said he did, but did not move to help. I
27 asked if he could help us do CPR, and he finally agreed. We kept doing CPR for 30
28 minutes.

1 40. Around 11 am, EMS arrived, an hour after the volunteer's first 911 call. The boy
2 was taken to the hospital in a helicopter. Despite our best efforts, he was pronounced
3 dead about an hour later.

4 41. I talked to the people who had gathered and were watching from across the border
5 to try to get more information about what happened. The boy's brother and brother-in-
6 law were there and said they were from Mexico. I learned that the boy was only 13 years
7 old.

8 42. One of the last days I was at Jacumba, I treated a little girl around eight or nine
9 years old who fell and cut her face and needed stitches. I would have preferred her to
10 receive treatment in a sanitary medical environment, but the girl and her family were so
11 afraid of being separated that they refused medical transport. To make sure she got care, I
12 cleaned the wound and sutured the laceration on her face at the OADS.

13 43. I saw other individuals experiencing medical emergencies without CBP assistance
14 while at the OADS. In one case, there was a Chinese man who had been unable to
15 physically leave a tent for days because of pain. I speak Chinese, so when I arrived, I was
16 able to understand that he was experiencing extreme ankle pain in both ankles. He had
17 been stuck lying on the ground for multiple days in the tent and no one had been able to
18 communicate with Border Patrol or get them to provide any help for this man.

19 44. While I was volunteering at Whiskey 8, it was challenging to provide medical care
20 because migrants are held between two border walls. I had to ask one individual with an
21 injury to reach her arm through the slats of the wall so I could examine her injury and
22 treat it.

23 45. I also had to conduct medical examinations of other people, including children by
24 reaching through the slats in the wall. The children I saw at Whiskey 8 were very young.
25 They ranged in age from about four to about eight years old. There were also some
26 infants that I examined through the wall. There were about half a dozen children in total
27 during the couple of hours that I spent at Whiskey 8.

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46. It is very difficult to provide medical care through the slats in the border wall. The location of Whiskey 8 is particularly dangerous because sometimes people are so injured they are not able to get close enough to the wall to receive even the limited medical evaluations or care we can provide through the wall.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 23 day of February 2024, at San Francisco, CA.

Theresa Chung

EXHIBIT 6

1 I, Adriana Jasso, declare as follows:

2
3 1. The content of this declaration is based on my personal knowledge, my own
4 observations, and information communicated directly to me by people detained at open-
5 air detention sites (“OADS”). The following facts are true to the best of my
6 understanding and recollection. If called to testify in this case, I would testify
7 competently about these facts.

8
9 **Professional Background**

10 2. I am a human rights advocate and I have worked with the American Friends
11 Service Committee (AFSC) for 17 years assisting migrants.

12 3. I submitted a declaration in support of the complaint Southern Border
13 Communities Coalition (“SBCC”) filed with the Department of Homeland Security
14 (“DHS”) Office of Civil Rights and Civil Liberties on May 13, 2023. Attached hereto as
15 Exhibit A is a true and correct copy of that declaration. I filed an additional supplemental
16 declaration to the same office in a renewed and expanded complaint about continued
17 violations of rights by U.S. Customs and Border Protection (“CBP”) at OADS on
18 December 11, 2023. Attached hereto as Exhibit B is a true and correct copy of the
19 supplemental declaration.

20 4. Beginning in May 2023, I began providing humanitarian aid alongside a border
21 wall in the San Ysidro area that is one of two parallel walls at the border of the United
22 States and Mexico. The space between the first and second wall is inside the United
23 States and is used by CBP as an OADS. Border agents refer to the area as “Whiskey 8”.

24 5. When I began working at Whiskey 8 OADS in May 2023, there were
25 approximately 400-500 individuals who were detained at the OADS with nothing but the
26 clothes on their backs. Many of the migrants were women and children.

27 6. By September 2023, I was running an open-air volunteer station to provide support
28 to migrants alongside the border wall at Whiskey 8. We provide humanitarian aid to

1 migrants through the slats in the northern-most section of the two border walls. I work at
2 the site five days a week for five to six hours each day.

3 7. Alongside volunteers, I assist migrants by providing food, water, clothing,
4 feminine hygiene products, diapers, blankets, a phone-charging station, and tarps. I also
5 help identify migrants with medical emergencies and other medical needs and work with
6 the other volunteers to do our best to get them medical care.

7
8 **Border Patrol Directs Entry to and Controls Movement Within the OADS**

9 8. I have witnessed Border Patrol agents drive migrants to OADS in CBP's vehicles
10 and leave them at the OADS.

11 9. Additionally, migrants who I have seen arriving at Whiskey 8 frequently tell me
12 that after Border Patrol agents make initial contact with them, after they have crossed the
13 border, the agents instruct them to walk to Whiskey 8 or in many cases migrants are
14 transported by Border Patrol agents.

15 10. As the Whiskey 8 encampment grew in May 2023, I saw Border Patrol direct
16 males to move to a different OADS that is approximately 40-45 minutes away on foot
17 known as "Spoooner's Mesa". I have also seen Border Patrol tell migrants to get in CBP
18 vehicles to be transported to a different OADS, for example from Whiskey 8 to
19 Spoooner's Mesa. It is also common for Border Patrol agents to transport migrants from
20 91X OADS to Whiskey 8. Border Patrol agents are the only people who have access to
21 the four encampments: Whiskey 4, Whiskey 8, Spoooner's Mesa and 91X. They are the
22 enforcing agency on all sites.

23 11. In early summer 2023, Border Patrol developed a system to track the individuals
24 who were in the OADS by providing them with wristbands to mark when they entered
25 into their custody. The wristbands varied in color from red, yellow, blue, green, and gray
26 to reflect the date they entered the OADS.

27 12. From what I have observed since about mid-December, Border Patrol agents
28 stopped the practice of giving migrants different-colored wristbands at Whiskey 8.

1 13. Within Whiskey 8, I have observed, on many occasions, Border Patrol hold a
2 “count” of migrants present multiple times a day. Agents conduct the “count” at any time
3 of day or night. I have repeatedly witnessed them hold counts in the middle of the night
4 when temperatures are cold, and it is raining, and people are sleeping in makeshift tarp
5 shelters. I have seen parents ask Border Patrol agents if their children can remain asleep
6 under their tarps during the count, but Border Patrol has always said no. They demand
7 that every migrant, even children, stand to be counted. I have witnessed Border Patrol
8 agents yell at migrants, including children, who try to go back to their tarps before the
9 agents have given them permission to leave the count. In anticipation of transport, Border
10 Patrol only allows one layer of clothes during the count for men, women, and children
11 regardless of how low the temperature is. I have witnessed people stand for long periods
12 of time in one layer of clothing only to be told by Border Patrol that there is not enough
13 transportation to take everyone, and they will need to wait longer.

14 14. Migrants have told me that their family members who have been sent to other
15 OADS such as Whiskey 4 and Spooner’s Mesa have also reported being subjected to the
16 counts.

17 15. I have also witnessed Border Patrol agents separating families at the Whiskey 8
18 OADS. For example, on or about October 2, 2023, I spoke with a mother who said she
19 was very worried about her 17-year-old son. She said that Border Patrol agents had
20 separated him from her and sent him to the Spooner’s Mesa OADS. When I asked a
21 Border Patrol agent about this case, the agent was dismissive of the concerns about
22 separating the mother from her minor child. I did not see the Border Patrol agent take any
23 action to remedy the separation or provide any information to me or the mother, or to
24 convey any information to the child being held elsewhere.

25 16. I have also witnessed Border Patrol agents separate fathers from their children and
26 send the fathers to different parts of the same OADS or to a different OADS altogether,
27 like Spooner’s Mesa, while the child and their mother wait elsewhere.

28

1 17. I have witnessed migrants getting separated from different-gendered siblings and
2 cousins by Border Patrol agents. I have documented cases of young female migrants who
3 arrived or were transported by Border Patrol to Whiskey 8 with many questions and fears
4 after getting separated from a brother or a male cousin.

5 18. I have also witnessed Border Patrol agents at the Whiskey 8 OADS checking
6 migrants' travel documents. For example, on or about December 4, 2023, I observed an
7 agent checking migrants' passports. One migrant told him that she did not have her
8 passport in her hand because it was in her bag. In response, the agent began to scream
9 and swear at her, repeatedly using the F-word.

10 19. I have also seen Border Patrol agents conduct full-body searches of migrants held
11 in Whiskey 8. Male Border Patrol agents search male migrants, and I have seen that they
12 require the migrants to put their hands up and spread their legs. The agents then pat their
13 legs, back, chest, and waist. I have seen Border Patrol agents search inside migrants'
14 pockets. I have also seen Border Patrol agents require migrants to remove their shoes and
15 shoelaces. When a female Border Patrol agent is present, I have also seen that female
16 migrants are searched in the same way. On Tuesday, February 13, 2024, between 8am-
17 9:30am a total of 22 women, 3 girls, 30 males and 3 boys were standing in formation to
18 be searched. The patting that happens is routine for the male migrants, however on this
19 day during formation time, ALL females were patted by all male agents. I saw and
20 documented how each female was asked to put their hand behind their back and open
21 their legs for the search. The proximity of the agent's hands to the female breasts and
22 pelvis area concerned me. Some of the female migrants were visibly uncomfortable. In
23 the case of several migrants from Brazil when called by the agent to step out of formation
24 for the patting they did not understand the instructions of putting their hands behind their
25 back and spread their legs the agent had to repeat the instructions several times.

26 20. At Whiskey 8, all the migrants are stuck behind the secondary border wall. They
27 can only leave if Border Patrol agents permit them to leave. I have witnessed Border
28 Patrol agents subject migrants to the "one layer" rule during the "counts," before they are

1 transported away from the OADS. Border Patrol agents tell migrants that they can wear
2 only one layer of clothing and that they must remove all other layers that they are
3 wearing. I have seen female migrants trying to comply by removing their t-shirts and
4 expose parts of their upper body to try to keep the warmest layer they have as their one
5 layer. They are forced to do this in public view of male Border Patrol agents. I have seen
6 the women trying to cover each other with their bodies so that the male agents will not
7 see them undressed. I have also seen that Border Patrol agents require female migrants to
8 let down their hair during these body inspections prior to transport.

9 21. On or about November 9, 2023, at Whiskey 8, I saw a male Border Patrol agent
10 force a female migrant to remove her hijab. He then touched her hair and I observed that
11 she and her husband appeared to be deeply uncomfortable throughout the interaction.
12

13 **Border Patrol is Forcing Migrants, Including Children, to Wait in Unsafe and**
14 **Unsanitary Conditions for Long Periods of Time**

15 22. In my experience, Border Patrol agents do not provide even basic necessities to the
16 migrants they are holding in OADS.

17 23. In the Spring of 2023, Border Patrol agents only came once a day to the Whiskey 8
18 OADS. They provided the migrants with a bottle of water per person and some kind of
19 granola bar but there were times they didn't have enough water or granola bars for all the
20 migrants. Agents have regularly approached my volunteer station to ask to "borrow"
21 water for Spooner's Mesa and Whiskey 4.

22 24. In May 2023, I was not able to access Spooner's Mesa, Whiskey 4 or 91X because
23 there is no access for civilians. Border Patrol is the only agency that directs, transports
24 migrants to or from the four locations. At that time, a Colombian family told me that
25 while they were held in the OADS, they only received one bottle of water per person for
26 a whole day. Up to that point we had not been able to transport anything to the migrants
27 ourselves and were not allowed to carry things over there.
28

1 25. During the third week of September 2023, Border Patrol asked me and other
2 volunteers for food and water that they could transport to the Spooner's Mesa OADS,
3 which they have told me only Border Patrol may access. There were other times when
4 migrants told me they had family members at Spooner's Mesa who were desperate for
5 food and water. With that information, I would communicate with the agents on the
6 ground to try to get permission for the men who were held at Spooner's Mesa to hike
7 down to our volunteer station at Whiskey 8 to collect supplies to bring back to the
8 Spooner's Mesa OADS.

9 26. On or about September 23, 2023, I had to negotiate with Border Patrol agents to
10 get food and water for about 120 men who were being held at Spooner's Mesa. Upon
11 information and belief, the men must get permission from Border Patrol to leave the
12 Spooner's Mesa site and are often denied permission.

13 27. Border Patrol controls whether my volunteers and I have access to OADS to
14 provide humanitarian aid. Generally, Border Patrol does not allow us access to three
15 other OADS: Whiskey 4 and Spooner's Mesa and 91X. Since I set up the humanitarian
16 stations at Whiskey 8, I and other volunteers have delivered food and water to two other
17 sites, Spooner's Mesa and Whiskey 4 on five different occasions. I help organize and
18 facilitate communication with Border Patrol on the ground since the few volunteers that
19 were able to visit could only go with a Border Patrol escort.

20 28. On February 17, 2024 at about 10:30pm a family of four arrived to Whiskey 8 – a
21 mother, a father, and two small children. In total, there were about 30 people at Whiskey
22 8 that night. It began to feel very cold by 11pm and I provided a warm jacket to the oldest
23 daughter, who I think was about 4 years old. On February 18, 2024, I arrived at Whiskey
24 8 around 6:30am and found the same group of people from the night before. From a
25 distance I identified the young girl with the light-green jacket standing next to her
26 mother. The total number of people waiting was 115 people, including 23 children.

1 **Migrants Held at OADS, Including Children, Cannot Access Necessary Medical**
2 **Care in a Timely Manner**

3
4 29. Many migrants held at OADS have serious medical needs. For example, in May
5 2023, one woman told me she had a miscarriage while held at the OADS. She expressed
6 to me repeatedly the pain on her lower stomach and how weak she felt. When I asked her
7 how long she was feeling this way she responded that since the night before.

8 30. On a different occasion, a child suffered an epilepsy attack at the OADS. As I was
9 arriving to Whiskey 8 that morning the volunteer on site came running towards me and
10 said the boy's mother had been asking for help since earlier that day. After I spoke to the
11 mother, I called Border Patrol, who called an ambulance.

12 31. Some of the migrants who are arriving report suffering severe pain, diarrhea,
13 headaches, severe cuts and bruises. For example, in May 2023, one man's leg appeared to
14 be severely infected. He was in extreme pain with no way to communicate because he
15 spoke no English. We had to wait for Border Patrol to respond to our request for help via
16 text.

17 32. Another time, in the spring of 2023, a man from Africa was walking and I saw him
18 collapse. Another migrant who was a Colombian nurse tried to help. She told me he was
19 dying. Our volunteers immediately alerted Border Patrol. Fortunately, the Border Patrol
20 came and picked him up but I'm not sure what would have happened to him if me and the
21 volunteers had not been there to alert Border Patrol.

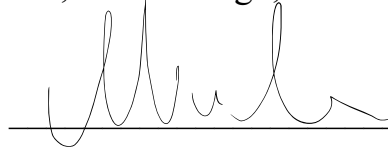
22 33. Even when migrants are not facing urgent medical needs, many migrants are
23 struggling because they are pregnant, some are caring for babies or very small children,
24 in some cases they have no shoes, and during rainy days the place is muddy and wet. All
25 these circumstances making the suffering worse.

26 34. On, February 18, 2024, I arrived at Whiskey 8 at 6:30am. As I walked towards the
27 wall, I could see a group of men trying to help someone who was on the ground. As I got
28 closer, I saw a male on the ground shaking and two other men trying to help him. One of

1 the males was holding and massaging his left hand and the other male was holding his
2 head and cleaning saliva from his mouth, his lips were appearing purple, and he was
3 unresponsive. Fortunately, the other volunteer who was already on site had called 911
4 and informed me that the ambulance was on its way. The ambulance arrived 10 minutes
5 after I got there and took the man. Border Patrol had to open the gate to allow the medic
6 team to access the man. According to the other men who were trying to help him, he had
7 been vomiting all night and became more ill in the early hours of the morning. The sick
8 man came from the country of Egypt and is 45 years old.

9
10 I declare under penalty of perjury that the foregoing is true and correct to the best of my
11 knowledge.

12
13 Executed on this 21 day of February 2024, at San Diego, California.

14
15 

16 Adriana Jasso

EXHIBIT A

DECLARATION OF ADRIANA JASSO

I, Adriana Jasso, declare the following:

1. I have worked with the American Friends Service Committee for 16 years assisting migrants. I am currently working alongside a border wall in the San Ysidro area that is one of two parallel walls at the border of the United States and Mexico. The space between the first and second wall is inside the United States. In the space between the walls, there are approximately 400-500 individuals who are waiting with nothing but the clothes on their backs to be processed for asylum claims.
2. I first arrived at the San Ysidro border just south of South Bay Water Reclamation Plant about 2 weeks ago. Border agents refer to that area as Whiskey 8. When I arrived, I saw approximately 20 people. Then 20 quickly turned to 80 and 80 quickly turned into 120. Later on we started seeing 400-500 individuals. Not only have the numbers changed, but the demographics as well. Now we are seeing mainly women with children. As the encampment grew, Border Patrol moved males to an area approximately 20 minutes away on foot to a different canyon.
3. I have not been able to access the canyon, but have heard there are anywhere between 600-800 single men in the encampment. What we have heard is that the conditions there are a lot worse in terms of access to food and shelter. I took a statement from a Colombian family that said they only received a bottle of water for a whole day. We haven't been able to transport anything to them and we are not able to carry things over there. It would require us hiking to the location.
4. The individuals who come through the primary fence and who are then between the two walls are in the United States. For the last several weeks I have witnessed Border Patrol direct and control their movements, such as the movement of men to a different part of the corridor. Border Patrol agents are the only people who have access to the encampment. They are the only ones on site. These individuals are in their custody and Border Patrol is responsible for their fundamental well being. The individuals are being detained in dire conditions.
5. Border Patrol developed a system to track the individuals who are in the encampment by providing them with wrist bands to track when they entered into their custody. The wristbands vary in color from red, yellow, blue, green and gray to reflect the date they entered the encampment.
6. It appears they have different wristbands for the day of the week that border agents first identify them, and it appears to indicate the priority based on the days and nights that they have been here. But we have seen over and over again that the system isn't being followed and it depends on what officers they get on which wristband they are given. For example, migrants have told us they have been here for 4 days, but their wristband indicates less.
7. Individuals cannot leave the area because of the physical walls that stand in their way. Some of those arriving are suffering severe pain, diarrhea, headaches, severe cuts and bruises. One Asian man's leg was severely infected. He was in extreme pain with no way to communicate. We had to wait for Border Patrol to respond to our texts and.

Many individuals are pregnant, have children with them, have no shoes, are muddy, wet and in terrible condition. All they can do is wait for Border Patrol to take them to be processed for asylum.

8. Border Patrol agents do not come often to the site. Once a day, they provide a bottle of water and some kind of granola bar. To keep people from starving, NGOs, volunteers both on the Mexico and US side of the border, are supplying the basic necessities they can. It is a dire situation.
9. On Tuesday, May 9th, 2023, an incident happened where two Colombian women were traveling alone and were being sexually harassed. Four males became abusive towards them and the women decided to approach us (there were no agents to approach). We let the authorities know. Fortunately there was no sexual attack, but there was physical and verbal abuse. If we were not there, we don't know whether the attack would have been prevented.
10. We have seen several pregnant women come through. One woman, approximately a week ago, had a miscarriage. She has continually expressed the pain she is going through, especially at night.
11. In a particularly distressing incident, a man from Africa was walking and collapsed. A Colombian nurse tried to help and told us he was dying. We alerted the Border Patrol. Fortunately, the Border Patrol came and picked him up.
12. On a different occasion, a child suffered an epilepsy attack and we were able to get assistance from Border Patrol. I continue to be concerned that if we were not there bearing witness that children and adults would suffer harm while in Border Patrol custody.

I affirm that the statements in this affidavit are true to the best of my knowledge and belief.

May 12, 20223

Adriana Jasso

EXHIBIT B

SUPPLEMENTAL DECLARATION OF ADRIANA JASSO

I, Adriana Jasso, declare the following:

1. I have worked with the American Friends Service Committee for 17 years assisting migrants.
2. I previously submitted a declaration in support of the Civil Rights and Civil Liberties complaint that the Southern Border Communities Coalition filed on May 13, 2023.
3. Since early September, I have been running an open-air volunteer station supporting migrants alongside the border wall in the San Ysidro area—a location that is commonly referred to as “Whiskey 8.”
4. The migrants we assist are inside the United States between two border walls. At Whiskey 8 we provide the resources through the slats in the northern-most of the two walls.
5. Beginning on or about September 7, 2023 and continuing to the present, we have had an ongoing daily volunteer presence at Whiskey 8. I work at the site five days a week for five to six hours a day. Prior to September, I was involved in observations of the site in August 2023.
6. I provide this declaration based on my personal observations, the observations and experiences of my colleagues that they have communicated to me, my conversations with migrants we assist, and my conversations with Border Patrol agents in the course of my volunteer work at the site from August 2023 to the present. I keep contemporaneous notes of my observations and information I receive from other volunteers, migrants, and Border Patrol.
7. The volunteers and I assist migrants, including by providing food, water, clothing, female hygiene products, diapers, blankets, a phone-charging station, and tarps. We also identify migrants with medical emergencies and other medical needs and do our best to get them medical care.
8. We provide assistance to migrants at two nearby open-air sites as well: Whiskey 4 and Spooner’s Mesa. Generally, Border Patrol does not allow us to visit these sites, and we identify the needs of migrants there by speaking with their family members who are at Whiskey 8, as discussed more below. I am aware, however, of a handful of occasions when Border Patrol has permitted a volunteer to visit these sites with a Border Patrol escort.

Migrants are in Border Patrol Custody at the Open-Air Sites

9. As I discussed in my prior declaration, the migrants at these open-air sites are in the custody and control of Border Patrol. Unless otherwise specified, the information I provide below reflects ongoing Border Patrol practices between August 2023 and the present day.

Agents direct migrants to the sites

10. Border Patrol agents make contact with migrants in the United States and instruct them to walk to the open-air sites, or the agents actually drive them to the open-air sites in their vehicles. Agents also frequently transport migrants in their vehicles from one open-air site to another.

Agents subject migrants to the count

11. Every day at Whiskey 8, multiple times a day, Border Patrol agents hold a “count” of the migrants present, just as they would in a detention facility. But the practice is more brutal given the outdoor conditions. Agents conduct the “count” at any time of day or night. Not infrequently counts are held in the middle of the night when temperatures are cold, it is raining, and people are sleeping. Migrant families often try to construct makeshift shelters out of tarps, and volunteers have witnessed parents asking Border Patrol agents if their children can remain asleep under their tarps during the count. The agents have said no and demanded that everyone stand to be counted, even small children and even in the rain and freezing weather. The migrants and their children must stand for the count until the agents give them permission to go back to their tarps.
12. We have heard from migrants that their family members are subject to the count at the Whiskey 4 and Spooner’s Mesa sites as well.

Agents subject migrants to body searches

13. Border Patrol agents regularly conduct invasive searches of migrants at the open-air sites. Specifically, agents conduct body searches of all male migrants, during which they require the migrants to put up their hands and spread their legs, and agents pat their legs, back, chest, and waist. The agents also search inside the migrants’ pockets and require migrants to remove their shoes and the shoelaces from their shoes. When a female Border Patrol agent is present, female migrants are also body searched.
14. Even when a female Border Patrol agent is not available, female migrants are required to stand in a line and are subjected to the “one layer” rule—that is, Border Patrol agents inform them that the migrants can wear only one layer of clothing and they must remove all other layers before they are transported away from the open air site. As a result of this rule, I have observed female migrants removing their t-shirts and other inner layers of clothing in public view of male Border Patrol agents. I have seen the female migrants trying to cover each other with their bodies so that the male agents will not see them undressed. Female migrants are also required to let down their hair during these body inspections.
15. On or about November 9, 2023 at Whiskey 8, a male agent forced a female migrant to remove her hijab and then he touched the female migrant’s hair. The female migrant and her husband

appeared to be deeply uncomfortable when the agent engaged in this culturally inappropriate act. I was present and witnessed the incident.

Agents subject migrants to harsh verbal treatment

16. I have also seen Border Patrol agents screaming and swearing at migrants at the open-air sites. For example, on or about December 4, 2023, I observed an agent checking migrants' passports. A female migrant informed him that she did not have her passport in her hand because it was in her bag, and the agent began to scream and swear at her, repeatedly using the F word.

Agents subject migrants to family separation

17. Border Patrol agents routinely separate families at the open-air sites, requiring men to leave their female and minor child relatives who they are traveling with. Border Patrol agents detain the men at the more remote Spooner's Mesa site. Male siblings and male cousins are routinely separated from their female siblings and cousins. And frequently fathers are separated from their spouses and children. Border Patrol agents ask the male migrants if they are legally married to their spouses, and if the answer is no, the agents typically separate the families.
18. On or about October 2, 2023, I spoke with a migrant mother who said she was very worried about her 17-year-old son who had been separated from her and sent to Spooner's Mesa. I asked a Border Patrol agent about this case, and the agent was dismissive of the concerns about separating the mother and her minor child.
19. Volunteers are generally not permitted by Border Patrol agents to enter or approach Spooner's Mesa where the men are detained. Spooner's Mesa is a hike into the canyon away from Whiskey 8, as I described in my earlier declaration. We cannot see what is happening there, but we hear from the family members of the detained men about the needs of the migrants at that site.

Agents Fail to Provide Migrants Basic Life Necessities at the Open-Air Sites

20. For example, we have heard from family members, who are communicating by cell phone with male migrants at Spooner's Mesa, that there are times when there is no food or water at that site. Sometimes Border Patrol has asked for food or water from our volunteers and transported it to the site, which only Border Patrol is allowed to access.
21. At other times, the migrants at Spooner's Mesa have been desperate for food and water, and Border Patrol has not provided it. We have then communicated with Border Patrol agents to try to get permission for some men who are detained at Spooner's Mesa to hike to our volunteer station at Whiskey 8 so they can get food and water and then hike back to provide the food and water to the detained men at Spooner's Mesa.
22. On or about September 23, 2023, we had to negotiate with Border Patrol to get food and water for about 120 men at Spooner's Mesa. The lack of food and water for many hours is very

dangerous. These men had to ask for the agents' permission because Border Patrol does not otherwise allow the men to leave Spooner's Mesa. I and other volunteers have heard that many times men at Spooner's Mesa have requested permission to leave to get food and water and their requests have been denied. I am not aware of any time that a man left Spooner's Mesa without permission.

23. Border Patrol agents frequently do not have the basic necessities they need to provide migrants detained in the open-air sites. For example, they do not appear to carry extra water in their vehicles. And agents have repeatedly asked our volunteer station to borrow water for Spooner's Mesa and Whiskey 4. We have provided the water.

24. At times the Border Patrol agents have appeared embarrassed to have to rely on us and have promised to "pay us back" with water. But it is unclear why they are not able to stock sufficient water in the first place. Agents have told me that they need to provide projected migrant numbers in advance for the following week, and they say they have repeatedly had too few supplies to meet the demand. But I do not know why they cannot ask for more water than they anticipate needing to ensure they do not fall short.

I affirm that the statements in this declaration are true, correct, and complete to the best of my knowledge and belief.

December 9, 2023

/s/ Adriana Jasso

Adriana Jasso

EXHIBIT 7

1 I, Sarah Kahn, declare as follows:

2

3 1. This testimony is based on my personal knowledge and the following facts are true
4 to the best of my understanding and recollection.

5 2. I am an attorney licensed in California. I have worked at the Center for Human
6 Rights and Constitutional Law (“CHRCL”) since October 2022 and I have been the
7 interim Executive Director since November 22, 2023. I have conducted hundreds of
8 interviews in detention facilities as part of my work at the ACLU of Southern California
9 monitoring conditions in the Orange County jails; I have conducted approximately fifty
10 interviews in immigration detention centers as part of my work at CHRCL.

11 3. In January and February 2024, I traveled to the Open Air Detention Sites
12 (“OADS”) at the Southern Border with three legal assistants who are fluent in Spanish
13 and together we observed conditions, provided humanitarian aid, and interviewed
14 individuals detained by Customs and Border Protection (“CBP”) in OADS.

15

16 **Open-Air Detention Site: Whiskey 8, San Ysidro, California**

17 *January 24, 2024*

18 4. My colleagues and I arrived at the OADS site known as Whiskey 8 at
19 approximately 9:30 a.m. on January 24, 2024.

20 5. The Whiskey 8 site is a section of dirt between the two border fences. It is
21 approximately 100 feet wide and contiguous with the strip of land that runs between the
22 two fences along the border.

23 6. The border fences are approximately 30 feet in height. They are constructed with
24 sharp-edged, closely adjacent metal bars. If a person were to climb one side of the wall, it
25 would be extremely difficult to safely scale down the other side. If an individual were
26 traveling with children, the risk of severe injury would greatly increase.

27 7. When we arrived at the site, flooding from prior rainstorms had left pools of mud
28 and water at the center of the Whiskey 8 area.

1 8. The land between the border fence is U.S. territory. Both border fences are built by
2 the U.S.

3 9. On the northern side of the border fence in San Ysidro, three semi-permanent
4 volunteer tents were set up containing food, water, warm and waterproof clothes, and
5 medical supplies.

6 10. When we arrived at the site, there were two construction vehicles moving dirt and
7 maintaining the detention area between the fences. I was not able to determine what
8 agency was operating the construction vehicles. There was a Border Patrol truck with an
9 agent in it parked near the gate of the wall on the northern side.

10 11. There was a line of cones set up about 25 feet north of the border wall that
11 delineated the border between federal and city land.

12 12. The OADS at Whiskey 8 was extremely muddy and there was no shade or shelter
13 available. The site had no restrooms and aside from volunteers, no one provided any of
14 the individuals held there with food or water.

15 13. There were no medical personnel in the area and there was no telephone, nor was
16 there any other way to call for help or communicate with anyone aside from volunteers, if
17 and when they were present, unless the individual had their own charged and functioning
18 phone.

19 14. While I was at Whiskey 8, I observed a van drive into the Whiskey 8 OADS area.
20 The van had traveled from a location out of sight to the east within the two border walls.

21 15. The van contained approximately 9 individuals. Border Patrol agents exited the
22 vans and after several minutes, they took the individuals out of the van and lined them up
23 in the mud. Individuals were forced to stand one by one to be searched. It was very cold
24 and slightly rainy and people were clearly cold. Individuals were searched while wearing
25 only a single layer, usually a t-shirt. Individuals were photographed one by one. They
26 were then forced to sit in the wet dirt while waiting for further processing.
27
28

1 16. A large bus drove into the area on the U.S. side of the fence. Border Patrol opened
2 the border wall gate to bring people out of the detention area. Individuals were cuffed
3 together in pairs and directed onto the bus.

4 17. Another van drove up to the site from the U.S./ San Ysidro side. The van waited
5 while Border Patrol opened the gate in the border fence. The van then entered the
6 Whiskey 8 OADS between the border walls, shut the gate, and soon let about ten
7 individuals out of the van and lined them up to be searched in the same manner as the
8 first van. A true and correct copy of an image of the van entering the Whiskey 8 OADS
9 between the border walls is attached as Exhibit A to this declaration. I took this
10 photograph on January 24, 2024.

11 18. It took approximately 30 minutes from the arrival of the van until individuals were
12 able to board the bus. During that time, they were searched, photographed, cuffed
13 together, and made to wait.

14 19. There was one minor, who appeared to be traveling alone, among the individuals
15 being transported. He was forced to wait alone in the OADS area between the fence as
16 others boarded the bus. He was shivering and agents did not provide him with another
17 layer or blanket.

18 20. Of the individuals we witnessed in the detention area between the border fences,
19 none arrived by their own means. Each individual was taken to this area by Border Patrol
20 in a van or bus. Agents appeared to use the OADS as a location for initial pre-
21 transportation processing.

22 21. Border Patrol did not allow us to speak with the individuals being transported.
23

24 **Open-Air Detention Site: Willows (Jacumba, California)**

25 *January 25, 2024*

26 22. My colleagues and I arrived at the OADS known as Willows around 11am on
27 January 25, 2024.
28

1 23. The Willows OADS is accessible by driving a dirt road from the main paved street
2 in the adjacent town towards the border wall, then traveling along the fence. Attached as
3 Exhibit B to this declaration is a true and correct image of the dirt road that runs along the
4 border wall around the entrance to the Willows OADS. This photograph was taken by my
5 colleague Karen Hernandez on January 25, 2024.

6 24. The Willows OADS is in a somewhat flat area in a small valley bordered by hills.
7 The border wall has the same 30-foot metal design but is lined at the top with barbed
8 wire.

9 25. There is a tower that appears to support lights and may be set up to record or
10 monitor individuals in the camp area. It is approximately twelve feet tall.

11 26. The only way to exit the Willows OADS is by traveling down a dirt road that
12 travels east/west along the border and connects the site to the main road of the town of
13 Jacumba. In each of the directions the road leads (west along the border wall, east along
14 the border wall, and along the dirt road leading to town) Border Patrol trucks were parked
15 and partially blocking the road. We drove up to one cluster of trucks and could see that
16 there were agents in the vans watching us approach.

17 27. When I was at the Willows OADS, about half of the site was submerged in several
18 inches of muddy water and there was trash and abandoned personal belongings strewn
19 around the OADS. A true and correct copy of images of the site on this visit is attached
20 as Exhibits C and D to this declaration. I took the photograph labeled Exhibit C and my
21 colleague Brittany Novoa took the photograph labeled Exhibit D on January 25, 2024.

22 28. I saw tents that were partially set up and filled with abandoned belongings and wet
23 sleeping clothes, blankets, or makeshift beds. There were fire pits people had apparently
24 used to keep warm with wood I understand to have been provided by volunteers.

25 29. When I was at the Willows OADS, there were three dirty porta potties and two full
26 dumpsters. Upon information and belief, the porta potties had been serviced by Border
27 Patrol, but had not been serviced recently such that they were no longer sanitary. There
28 was no visible soap or clean water.

1 30. Aside from what was provided by volunteers, I did not observe any food, water, or
2 medical personnel in the area.

3 31. The camp had a distinct, putrid smell, even in the windy post-storm air. Plastic
4 waste and molding clothes were littered throughout the OADS.

5 32. There was no telephone, nor was there any other way to call for help or
6 communicate with anyone aside from volunteers, if and when they were present, or if the
7 individual had their own charged and functioning phone.

8 33. When we arrived at the Willows OADS, I observed individuals being rounded up
9 and directed to walk up a hill by Border Patrol agents in vans. The agents drove the vans
10 up the hill behind individuals who were walking out of the camp, carrying the single
11 backpack of items agents allowed them to bring. Attached as Exhibit E to this declaration
12 is a true and correct image of Border Patrol trucks gathering people and directing them to
13 walk up the hill. My colleague Brittany Novoa took this photograph on January 25, 2024.

14 34. Vans drove behind a group of about 100 people walking up the hill towards the
15 road.

16 35. One couple fell behind because they had lost one of their passports. After they
17 found the passport, a van drove behind them as they ran up the hill.

18 36. Individuals were lined up in three lines. Men were lined up to the left, women in
19 the center, and families and children to the right.

20 37. Mothers and female travelers were kept with their children. No men were placed
21 with children regardless of their connection to the child. Couples and pairs were
22 separated by gender.

23 38. There were five children being prepared for transportation: an 11 year old boy; an
24 11 year old girl; a 10 year old girl; and two 8 year old girls. None appeared to be
25 traveling alone.

26 39. The migrant children I spoke with told me they had been at the OADS for
27 approximately five hours.

28

1 40. The Border Patrol agents did not tell individuals being prepared for transportation
2 anything about what was happening to them or where they were being taken. Children
3 and their families were desperate for information. The families asked us where they'd be
4 taken, how long they would be there, whether they would be deported, whether they
5 would be separated from their children.

6 41. Families tried to ask what was happening, but Border Patrol agents refused to
7 speak to any of the families aside from sharp, short logistical orders. Even when the
8 families asked for clarification about what to do they didn't receive responses. One
9 woman couldn't get an answer about what to do with her shoelaces, which they were told
10 to remove from their shoes, until I approached an agent and asked for her and was able to
11 relay the information to her.

12 42. These individuals were clearly in extreme distress. I observed women holding their
13 children and praying with them or crying. Some of the children were clinging to their
14 mothers and crying. Everyone I spoke to expressed fear, especially about being separated.

15 43. I observed that even when individuals asked for instructions or information, agents
16 did not explain anything or assist or reassure them.

17
18 *February 19, 2024*

19 44. We returned on February 19, 2024, to Willows OADS.

20 45. Just across the border wall on the Mexico side, the Guardia Nacional had set up
21 large tents which appeared very similar to CBP soft-sided facilities and were monitoring
22 the opening in the border wall. It would be nearly impossible to cross the border at that
23 opening without being intercepted by the Guardia Nacional.

24 46. Attached as Exhibit F to this declaration is a true and correct copy of an image of
25 the Guardia Nacional tents. My colleague Brittan Novoa took this photograph on
26 February 19, 2024. Attached as Exhibit G is a true and correct copy of an image of where
27 the border wall ends. My colleague Brittan Novoa took this photograph on February 19,
28 2024. Porta potties and handwashing stations had been set up. This was the first time I

1 saw handwashing stations. Attached as Exhibit H to this declaration is a true and correct
2 copy of an image of the porta potties and handwashing station. My colleague Brittany
3 Novoa took this photograph on February 19, 2024.

4
5 **Open-Air Detention Site: Tower 177 (Jacumba, California)**

6 *January 25, 2024*

7 47. My colleagues and I arrived at the OADS known as Tower 177 around 1pm on
8 January 25, 2024.

9 48. The Tower 177 OADS is at the end of a very long dirt road, approximately 5 miles
10 from the highway.

11 49. The camp was barren aside from three porta potties and a tower possibly
12 containing cameras and/or lights. Attached as Exhibit I is a true and correct copy of an
13 image of the tower at Tower 177 OADS, to which individuals had tied mylar blankets to
14 shield from the wind. My colleague Brittany Novoa took this photograph on February 19,
15 2024.

16 50. The camp abuts mountains. On the other side of the mountains parts of the border
17 wall were visible. The border appeared to be approximately 5 miles from the OADS.

18 51. There were about 100 people lined up waiting to be loaded onto six vans by
19 approximately six Border Patrol agents when we arrived.

20 52. Shortly after we arrived, I witnessed a van driving away from the border towards
21 the OADS. A group of individuals were following the van on foot. The van led them to
22 the Tower 177 OADS to be prepared for transportation. These individuals arrived at the
23 OADS at the direction of the Border Patrol agents they followed. Attached as Exhibit J to
24 this declaration is a true and correct copy of an image of a Border Patrol truck leading a
25 group of people towards the OADS. I took this photograph on January 25, 2024.

26 53. During our visit, approximately 100 additional people arrived on foot, often
27 following a Border Patrol truck.

28

1 54. Everyone who arrived was hungry, tired, and thirsty. I did not observe Border
2 Patrol provide any food or water to anyone at the OADS.

3 55. Attached as Exhibit K to this declaration is a true and correct copy of an image of
4 Border Patrol agents parked and standing near the top of the road leading out of the
5 Tower 177 OADS. Brittany Novoa took this photograph on January 25, 2024.

6 56. I did not observe Border Patrol agents explain anything to individuals as they
7 waited about where they were going or what would happen to them. No one I spoke with
8 knew where they were being taken, what their rights were, or what was happening.

9 57. Along with other volunteers, we handed out oranges, granola bars, and water.
10 Nearly everyone accepted food and water and expressed how hungry and thirsty they
11 were.

12 58. There were no tents and no shelter from the wind or sun.

13 59. There was no telephone, nor was there any other way to call for help or
14 communicate with anyone aside from volunteers, if and when they were present.

15 60. Attached as Exhibit L to this declaration is a true and correct copy of an image of
16 trash at the Tower 177 OADS. Brittany Novoa took this photograph on January 25, 2024.

17
18 *February 3, 2024*

19 61. On February 3, 2024 I again visited Tower 177 at approximately 9am. When we
20 arrived, there were approximately 300 people there.

21 62. There were three Border Patrol vans parked near the top of a long hill. People were
22 already lined up along the hill. I witnessed Border Patrol agents directing individuals to
23 particular parts of the line or to wait where they were. Others were gathered near the
24 bottom of the hill, where three porta potties were set up.

25 63. Just as I observed during my previous visit, there were no tents, shelters, or other
26 protection from the wind.

27 64. There were several families and children being held at the OADS. There were
28 approximately fifteen children under 13 years of age.

1 65. We began handing out paper lunch bags filled with snacks for kids, bananas,
2 goldfish crackers, granola bars, and water. Kids and young teenagers crowded around us
3 reaching out for food. Many had only one or two thin layers. The weather was extremely
4 cold with a severe wind chill.

5 66. Children and families reported having been there since the day before and were
6 hungry and thirsty.

7 67. Down the hill next to a large rock someone had managed to light a fire, but it was
8 almost out. Two parents had climbed down to the fire with a small group and were
9 holding their babies near the fire. One father crouched so close to the fire, attempting to
10 provide warmth to his baby, that smoke engulfed his baby. Attached as Exhibit M to this
11 declaration is a true and correct copy of an image of the group, huddled around a dying
12 fire down the hill from those waiting in line. I took this photograph on February 3, 2024.

13 68. The baby was completely still with closed eyes and bright red cheeks. We asked if
14 they needed medical assistance but they were afraid that if they left, they would not be
15 processed or would no longer be able to request asylum. We brought beanies, blankets
16 and jackets to wrap the babies but we could not warm them sufficiently.

17 69. Border Patrol agents could easily see the parents desperately trying to warm up
18 their babies. While I was there I did not observe any agent walk down the hill to check on
19 the children. I did not observe any agent ask if medical assistance was needed. I did not
20 observe any blankets, jackets, food, water, or other resources offered by Border Patrol.
21 Although Border Patrol agents were present, in the approximately one hour that we
22 stayed at Tower 177, not one child or family was taken away from the camp, asked if
23 they needed help, or provided any resource from anyone other than a volunteer.

24 70. Children were walking up and down the hill. Toddlers were bored, hungry, and
25 freezing, and would escape their parents and run through the dirt.

26 71. One Border Patrol agent drove his van extremely quickly up the narrow road, a
27 foot or two from the line of people, within feet of children waiting and scattered around
28 the area.

1 72. When we ran out of food, people surrounded the trucks hoping for something to eat
2 or drink.

3
4 *February 21, 2024*

5 73. On February 21, 2024, I returned to Tower 177.

6 74. We arrived just after 5am. It was still dark and we could barely make out the
7 silhouettes of bodies at the top of the hill.

8 75. It was raining lightly and was bitterly windy.

9 76. When we reached the top of the hill, a group of about forty people swarmed the
10 car, leaning into my window.

11 77. We began handing out granola bars, oranges, rain ponchos, fleece blankets, clean
12 sweatshirts, and firewood. Everything we had brought was gone within minutes.

13 78. There were approximately 12 children at the camp. Most appeared to be under six
14 years old.

15 79. There were no tents or shelters.

16 80. People said they hadn't eaten since the night before, some hadn't eaten for days.
17 There was no food available at the OADS.

18 81. I saw a girl, approximately one-and-a-half to two years old, whose clothes, gloves,
19 and shoes were soaked through. She was shaking violently. She began crying in a way
20 that did not sound to me like a child who was scared or upset, it sounded like the
21 particular cry of a child who is seriously hurt. I became afraid that she was hypothermic
22 and did everything I could to get her assistance.

23 82. I went to find her a blanket and came across a woman who appeared to be
24 approximately 65. She told me that she couldn't breathe, that she was asthmatic, that she
25 had no medicine or inhaler, and that the cold was giving her an asthma attack. She limped
26 from the cold.

27 83. At approximately 6:30am, a marked Border Patrol van drove slowly around the
28 edge of the camp, past the groups of people huddled around small fires and crouched

1 behind rocks. They did not offer any food or water, they did not check for medical
2 emergencies, and they did not take any of the families with young children.

3 84. Another agent arrived at the OADS in a Border Patrol uniform at approximately
4 8:20am. He parked near the OADS. I approached him to ask when agents might pick up
5 the families and elderly and he said he did not know.

6 85. A third agent arrived and parked nearby. He appeared to be monitoring the crowd
7 but did not speak to anyone.

8 86. No one knew what was happening to them. They said they were afraid that no one
9 would come and they would freeze.

10 87. We began to explain what would happen when Border Patrol picked them up. We
11 prepared the families with older children, non-immediate relatives, and mixed gender
12 groups that they might be separated, but explained that fathers would very likely be
13 reunited with their children at release and that they could ask for visits with their children
14 while in the facility they were being transferred to.

15 88. A mother hugged her husband and broke down. He picked up his two daughters
16 one by one and kissed them and told them to be brave. His 10-year-old daughter told her
17 mother not to cry and he told me that his daughter was so strong and had such a big heart
18 that she never cried, except when she saw an animal hurt.

19 89. An aunt and uncle, who were traveling with their two nieces, fifteen and nine years
20 old, asked how they could keep the children with them. Both of the girls began to cry.

21 90. Some additional volunteers arrived, including two with some medical training.

22 91. People were gathering wood and brush to keep the fires alive. They were placing
23 wet socks, shoes, and gloves on sticks and trying to dry them in the flames.

24 92. Around 9:45 am a Border Patrol agent in full uniform with what appeared to be a
25 bullet proof vest and military style uniform came to the OADS. He began selecting
26 families and individuals to take. He approached one child and her family. He began to
27 direct them to separate. He spoke very harshly in English.

28

1 93. The girls were confused and tried to plead with the agent to keep the family
2 together. He became agitated and told them in English, "I do this every day, I don't need
3 you asking questions." This upset them more because his tone of voice was very
4 aggressive but they could not understand what he was saying.

5 94. The agent did not explain to the children that they would see their aunt and uncle
6 again, or that they would be able to call a parent from the facility. Had we not been there,
7 the children would have had no way to know whether they were being permanently
8 separated from their family. We tried to translate the children's questions and the agent's
9 answers, but had we not been there, the children would have received instructions solely
10 in English and would have been taken from their guardians with no explanation or
11 reassurance.

12 95. Around 10am, Border Patrol took 13 people - mothers and young children - in a
13 small van out of the OADS. They left behind two of the young children. They told
14 everyone to wait there for two hours.

15 96. One of the women ran up to me saying that her friend was freezing. We went with
16 a medical volunteer to see her. He checked out her feet. She was in severe pain and
17 couldn't stand or walk. He determined that she was pre hypothermic and he took steps to
18 treat her.

19 97. We explained that she could go to the hospital, but that they would likely take her
20 alone, without her family. She said she could not leave her children.

21 98. From the OADS, we saw approximately fifty people arrive with a white truck with
22 flashing blue and red lights. The driver appeared to direct them to line up about a half
23 mile from the OADS. This was consistent with other instances where I observed CBP
24 agents escorting people to OADS. Soon after, the people walked up to the OADS and
25 crowded around the fires. Upon information and belief, they had been directed to do so.
26 There were still two Border Patrol agents in the area.

27 99. Another small Border Patrol van came at approximately 11:45am. It drove up to
28 the edge of the OADS, an agent stepped out, and he waved in whoever happened to be

1 standing nearby. He filled the 13 seats with single adults, most of whom had arrived in
2 the last hour, and left the families who had been waiting since 1 am behind. We left at
3 approximately 12pm. Some of the families were still waiting.

4
5 **Open Air Detention Site: Moon Valley (Jacumba)**

6 *February 2, 2024*

7 100. We arrived at the camp at approximately 7pm on February 2, 2024 and it was
8 already dark.

9 101. The camp was barren and extremely windy. The temperature felt freezing. There
10 were about 100 people present. Half were huddled around two very small fires in the east
11 dirt lot. The other half were huddling near two porta potties in the west dirt lot.

12 102. Moon Valley is close to the highway and bordered by mountains on the other side.

13 103. The mountains are steep and rocky and separate the camp from the border wall.

14 104. The terrain appeared dangerous and traveling over the mountains towards the camp
15 would carry a high risk of serious injury.

16 105. One semi-permanent shelter had been erected using pallets and wood poles, but the
17 wind was so strong it was beginning to blow away. Three tents were set up but difficult to
18 enter because of the strong winds. Three people had packed into a porta potty trying to
19 avoid the wind and attempt to keep warm. Attached as Exhibits N and O are true and
20 correct copies of images of the makeshift shelters I observed at Moon Valley OADS.

21 Brittany Novoa took these photographs on February 19, 2024.

22 106. There was a dumpster near the back of the lot.

23 107. There was no food, water, or medical personnel in the area.

24 108. There was no telephone, nor was there any other way to call for help or
25 communicate with anyone aside from volunteers, if and when they were present, unless
26 the individual had a charged and functioning cell phone.

27 109. We began handing out snacks. We had only children's snacks but adults lined up
28 for them, accepting anything. Everyone was extremely cold, thirsty, and hungry. We had

1 bread for sandwiches but we hadn't made sandwiches yet. People took plain pieces of
2 cheap bread and ate them. We left the camp to collect firewood. We returned when it was
3 pitch dark and unloaded the wood. There were no lights, no lit fires, and no food or
4 water.

5 110. When we returned at approximately 8am, there were about 75 people at the camp.
6 One man was holding his baby over a small fire to try to keep him warm.

7 111. Around thirty people were lined up to get crackers from a Border Patrol truck.
8 During my four visits to OADS this was the only time I witnessed agents providing any
9 food. Individuals told us they only received a couple plain crackers.

10 112. We left for Tower 177, then returned to Moon Valley at approximately 10am that
11 morning, February 3, 2024. There were people still there who had arrived the night
12 before at midnight.

13 113. We handed out paper lunch bags filled with snacks for kids, yogurt, water and
14 peanut butter and jelly sandwiches. Children came and asked for extra sandwiches to
15 bring to their siblings and parents. We gave out several hundred sandwiches in a matter
16 of minutes. Everyone was freezing and hungry. We tried to give blankets to people who
17 were holding babies.

18 114. There was very little wood left and one child started collecting plastic trash to
19 burn. We told them not to burn it because we were worried the smoke could make them
20 sick.

21 115. While at the OADS, I witnessed two marked Border Patrol vans drive slowly up
22 the dirt road towards Moon Valley. A group of about twenty people followed the vans. I
23 observed the vans park near the edge of the OADS and CBP agents direct people to wait
24 in the area.

25 116. We interviewed several families but it was very difficult to conduct interviews
26 given the very cold temperature, high winds, and lack of privacy. Some of the individuals
27 traveling alone had been lined up and waiting for at least an hour. Families had been
28 instructed not to join the line and were still waiting for instruction.

1 117. Everyone we spoke to at Moon Valley on February 2, 2024, had arrived at the
2 OADS at the direction or guidance of Border Patrol agents. Families described being led
3 behind trucks or vans, or walked down the mountain following an agent with a flashlight.
4 Every person we spoke with reported that they were told by CBP to wait or stay in the
5 OADS.

6 118. One family shared they were explicitly told that if they left the OADS, they would
7 not have a right to request asylum. The father was named Saulo and his daughter
8 appeared to be approximately 12 years old.

9
10 *February 19, 2024*

11 119. We returned to the Moon Valley OADS on February 19, 2024. Border Patrol had
12 erected handwashing stations near the porta potties and placed a large tank of water. The
13 handwashing stations were full of trash. The spigots to the water were dirty and, upon
14 information and belief, the only cups available had been provided by volunteers. People
15 had begun removing pieces of wood from the edges of the pallets holding up the
16 extremely heavy tank when they ran out of firewood. Attached as Exhibits P and Q to this
17 declaration are true and correct copies of images of the handwashing station and of the
18 heavy water tank sitting atop partially removed pallets. Brittany Novoa took these
19 photographs on February 19, 2024.

20
21 I declare under my duty to tell the truth and penalty of perjury that all the information I
22 have here given is correct and complete and I understand the legal consequences of
23 testifying falsely to the authorities.

24
25 Executed on this 27th day of February 2024, at Anaheim, CA.

26 

27 _____
28 Sarah Kahn

EXHIBIT A



EXHIBIT B



EXHIBIT C



EXHIBIT D



EXHIBIT E



EXHIBIT F



EXHIBIT G



EXHIBIT H



EXHIBIT I



EXHIBIT J



EXHIBIT K



EXHIBIT L



EXHIBIT M



EXHIBIT N



EXHIBIT O



EXHIBIT P



EXHIBIT Q



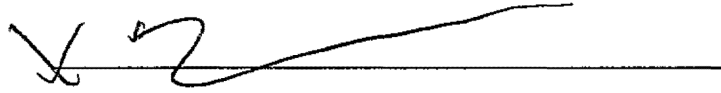
EXHIBIT 8

I, Saulo, declare as follows:

1. This testimony is based on my personal knowledge and the following facts are true to the best of my understanding and recollection.
2. I am 44 years old and I am from Colombia. I speak Spanish.
3. I am giving this declaration from the Moon Valley open air detention site. I am giving the declaration from a shelter made of pallets and a tarp. Finally the people in it left and we have some shelter, but it is dirty and filled with trash.
4. We walked across the border through an opening in the wall.
5. We saw Border Patrol agents in marked trucks near the border wall on the U.S. side, when we were trying to walk through the mountains towards the U.S.
6. Agents got out of the trucks and separated the families from the single people. They separated the men and they separated me from my family.
7. They took each of our photos.
8. Then they led us in a group down the mountain towards the camp, lighting the way with their flashlights.
9. We arrived last night around 3am. There was no shelter, food, or water. There were a couple tents but they were full.
10. When we saw the camp area here there were so many people and families. There were so many babies, it made my wife cry.
11. Border Patrol told us to wait in the camp and that in the morning someone would bring food. The trucks stayed near the camp until the sun came up. There is one dirt road leading out towards the highway in two directions. The trucks were parked on the road.
12. They told us we had to wait here and that later they would take us somewhere.
13. My daughter was so cold that she was shaking. We are used to warm weather in Colombia. I think her body went into shock, she could not stop shaking violently.
14. We tried to cover her with blankets left behind in the mud but we could not get her to warm up.
15. When the agents came to the site we told them she was freezing and she needed help. They told us to call 911.
16. We tried to call 911 but we didn't know what address to tell them. They spoke to us in English and I couldn't understand. I was panicking, I was afraid she would die from the cold.
17. A volunteer helped us call 911 and gave an address. Finally a medic came in the morning. They took my wife and my daughter to the hospital but they would not let me come. I was desperate to find out what happened to them and I could only reach them because a volunteer found out where they were for me and helped me call.
18. Later in the morning a marked Border Patrol truck came to the site and said no one could leave because the facilities were full.

19. The agents told us that if we left the site, we could not be processed. They said that if we left the camp, we would lose the right to ask for asylum.
20. They came a couple hours ago and they were lining everyone up but not the families.
21. While I am giving this declaration they called the families.

I, Saulo, declare under penalty of perjury that the foregoing is true and correct. I understand that I have to tell the truth in this declaration. The interviewer read the declaration to me and everything in it is true and accurate. Executed on this 3rd day of February, 2024, at Jacumba.


[Signature]

CERTIFICATE OF TRANSLATION

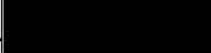
My name is Karen Hernandez and I swear that I am fluent in both the English and Spanish languages and I translated the foregoing declaration from English to Spanish to the best of my abilities.

Dated: Karen Hernandez
[Signature]

EXHIBIT 9

I, [REDACTED] declare as follows:

1. This declaration is based on what I know and is true to the best of my understanding and memory.
2. I am 10 years old and I am from Colombia. I speak Spanish.
3. I am giving this declaration from the Tower 177 open air detention site on February 21, 2024.
4. I traveled here with my mom, dad, and 8 year old sister.
5. We ran into others while we were walking and we all came here together.
6. We saw the bathrooms and we believed we were supposed to wait here.
7. We arrived in the middle of the night, maybe around 1 am.
8. I haven't slept. It is freezing, it's too cold to sleep, and there is no shelter.
9. My hands are so cold I can't feel my fingers.
10. I am hungry, I need water. We have been walking for so long and now we have been here, where it is so windy, for the whole night. Everyone has wet clothes.
11. I have no raincoat and I'm soaked from the rain. I am wearing a plastic poncho that the volunteers brought this morning.
12. We didn't know where to go. The wall is one way and then it is empty the other.
13. While we were walking someone drove by and told us to keep walking this way. I don't know who it was.
14. We didn't even know if we were in the U.S. Someone drove by this morning but no one talked to us.
15. It is horrible here. We're just so cold.
16. I told my mom not to cry if we are separated. I am strong, and I am going to be brave. I am so happy we made it to America.
17. I learned that what I am telling the interviewer is going to help other kids who come after me. If I grow up here, I want to do something that helps people. I think I want to help other immigrants.

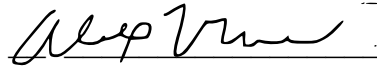
I,  declare under penalty of perjury that the foregoing is true and correct. I understand that I have to tell the truth in this declaration. The interviewer read the declaration to me and everything in it is true and accurate. Executed on this 21 day of February, 2029, at Jalumba-TOWER 177


[Signature] 

CERTIFICATE OF TRANSLATION

My name is Alex Valdivia and I swear that I am fluent in both the English and Spanish languages. I translated the foregoing declaration to [REDACTED] from English to Spanish to the best of my abilities.

Dated: February 21, 2024



[Signature]

EXHIBIT 10

I, [REDACTED], declare as follows:

1. This testimony is based on my personal knowledge and the following facts are true to the best of my understanding and recollection.
2. I am from Colombia. I speak Spanish.
3. I am giving this declaration at the Tower 177 open air detention site.
4. I came with my wife and my two children, my three-year-old son and five-year-old daughter.
5. We came here because we encountered Border Patrol after we crossed the border through a break in the border fence. Border Patrol agents were driving a marked van.
6. The agents told us to follow them and they drove here. We walked behind the van from the wall.
7. We arrived here at 2am.
8. When we got here, we saw that there are porta potties but they are extremely dirty.
9. There is no shelter. It is freezing. My kids were so cold they couldn't sleep. We couldn't keep our kids warm. Now volunteers are giving us gloves for my son but no one gave us clothes or blankets last night.
10. Border Patrol did not give us food or water.
11. There is no soap, no water, and no way to keep warm. People started little fires but it's hard to keep them alive.
12. The agents in the truck left and told us to wait here. The land is barren and rocky with no shelter from the wind.
13. Later, maybe early morning, two marked Border Patrol trucks drove through the site but they didn't stop or talk to us.
14. Border Patrol came back about a short time ago. It is about 9am.
15. The agents told us to line up. There are maybe 200 of us lined up on a hill.
16. They told us nothing about what will happen or where they will take us. Only to wait.

I, _____, declare under penalty of perjury that the foregoing is true and correct. I understand that I have to tell the truth in this declaration. The interviewer read the declaration to me and everything in it is true and accurate. Executed on this 3rd day of February, 2024, at JACUMBA.

[Signature]

CERTIFICATE OF TRANSLATION

My name is Karen Hernandez and I swear that I am fluent in both the English and Spanish languages and I translated the foregoing declaration from English to Spanish to the best of my abilities.

Dated:

Karen Hernandez

[Signature]

EXHIBIT 11

1 I, Lilian Serrano, declare as follows:

2

3 1. The content of this declaration is based on my personal knowledge, my own
4 observations, and information communicated directly to me by people detained at open-
5 air detention sites (“OADS”). The following facts are true to the best of my
6 understanding and recollection. If called to testify in this case, I would testify
7 competently about these facts.

8

9 **Professional Background**

10 2. I am the director of the Southern Border Communities Coalition, a program of
11 Alliance San Diego. In that role, I monitor human rights conditions in the border region. I
12 have over a decade of experience working with immigrants in the San Diego region and
13 documenting human rights violations.

14 3. I submitted a declaration in support of the complaint SBCC filed with the
15 Department of Homeland Security (“DHS”) Office of Civil Rights and Civil Liberties on
16 May 13, 2023. A true and correct copy of that complaint, including my declaration, is
17 attached hereto as Exhibit A. I filed an additional supplemental declaration to the same
18 office in a renewed and expanded complaint about continued violations of rights by U.S.
19 Customs and Border Protection (“CBP”) at OADS on December 11, 2023. Attached
20 hereto as Exhibit B is a true and correct copy of the supplemental complaint, including
21 my declaration.

22 4. I first visited Whiskey 8 OADS near San Ysidro, California, in April 2023. Since
23 that time, I have visited on a daily, weekly, and monthly basis, at different intervals, and
24 witnessed the inhumane conditions in which CBP holds migrants in OADS near San
25 Ysidro and Jacumba, California.

26 5. As of the date of this declaration I have visited the OADS at Spooner’s Mesa and
27 Whiskey 8 near San Diego, and four OADS in Jacumba known as Moon Valley,
28 Willows, Toward 177, and O’Neil. I also learned from conversations with migrants and

1 Border Patrol agents of the existence of two additional OADS near San Ysidro known as
2 “Whiskey 4” and “91X”.

3
4 **CBP Transports Migrants to OADS and Controls Movement to and Within OADS**

5 6. I have seen Border Patrol agents transport migrant family units in their vehicles
6 from other locations along the border wall to the OADS known as Whiskey 8 on multiple
7 occasions. When family units arrive at Whiskey 8, Border Patrol agents tell them that
8 they should wait there and that volunteers will provide food and water through the wall.
9 Then, the agents leave.

10 7. On November 15, 2023, I saw a Border Patrol vehicle transport a family unit with
11 two small children to Whiskey 8. The agent then left. The family approached the wall in
12 the area in which me and a group of advocates were located. Minutes later, it started
13 raining on the site. An advocate provided rain ponchos and plastic tarp through the wall
14 to the parent to use to cover the family from the rain.

15 8. That same month, I saw Border Patrol agents using their vehicles to guide groups
16 of about 40 migrants to the OADS known as Moon Valley in Jacumba on at least two
17 separate occasions. On one occasion, the migrants followed the Border Patrol vehicle as
18 it led them to the OADS. In the other instance, the Border Patrol agents drove their
19 vehicles behind migrants, pushing them forward to the OADS.

20 9. Migrants in Jacumba have also told me that when Border Patrol agents first
21 encounter migrants, the agents give them directions on how to get to the OADS and tell
22 them to wait there to be taken for processing.

23 10. I have seen Border Patrol agents instruct male adults to walk west of Whiskey 8
24 toward another site called Spooner’s Mesa. Volunteers usually do not have access to
25 Spooner’s Mesa. However, in the fall of 2023, I was driven there once by a Border Patrol
26 agent that identified himself as a supervisor so that I could hand out sandwiches, snacks,
27 and bottled water that the humanitarian aid organizations had prepared for the migrants
28

1 detained there. Border Patrol agents have not permitted me to return or provide services
2 directly to migrants there since that visit.

3 11. On multiple occasions while at Whiskey 8, I have received the number of migrants
4 detained at Spooner's Mesa, Whiskey 4, and 91X from Border Patrol agents. I have heard
5 from other advocates that this is an almost daily practice. The humanitarian aid
6 volunteers and advocates use the numbers to prepare and pack lunches for Border Patrol
7 agents to take to the migrants in those sites.

8 12. Several migrants have told me that Border Patrol agents tell them that they need to
9 follow instructions and wait at the OADS in order to seek asylum. The agents tell
10 migrants that they will not be processed if they do not follow instructions. Consequently,
11 many migrants are afraid their asylum claims won't be processed if they do not follow
12 the officers' instructions and stay at the OADS.

13 13. At the Spooner's Mesa site, I witnessed a Border Patrol agent tell a group of
14 migrants that if they did not follow instructions, he would leave them outside to wait to
15 be transported without access to food and water for as long as the agent wanted.

16 14. On January 24, 2024, I saw multiple Border Patrol agents transport a group of
17 about a dozen men and one woman to Whiskey 8 in their vehicles. I suspect they were
18 coming from Spooner's Mesa because they were traveling from the west. The migrants
19 stayed in Whiskey 8 for several minutes before being escorted to a gate where a bus was
20 awaiting. The group of migrants were handcuffed by a group of transportation agents
21 wearing black uniforms. Upon information and belief, these agents were transportation
22 contractors with CBP. Then the migrants boarded the bus and one of the transportation
23 agents drove it away.

24 15. Before the group of migrants was transferred to the transportation agents, one of
25 the migrants was separated from the group after an interaction with one of the Border
26 Patrol agents. This migrant was placed on a Border Patrol vehicle by himself. The agent
27 then shouted that he was a "juvenile" to other agents nearby. The migrant was then
28

1 transported out of the site by a Border Patrol agent. Upon information and belief, this
2 person was an unaccompanied minor and was going to be processed separately.

3
4 **CBP is Creating an Unsafe Environment by Holding Migrants in OADS**

5 16. The conditions in Jacumba are harrowing. Since May 2023, the number of
6 migrants at those sites have increased significantly. In December 2023, as many as 700
7 migrants were held at the Jacumba OADS in one day. Conditions in Jacumba are
8 particularly dangerous because migrants are exposed to extreme desert weather
9 conditions, including intense heat waves and cold fronts.

10 17. Additionally, the remoteness of Jacumba makes it harder for migrants to access
11 basic necessities and services in a timely manner. For example, if someone needs medical
12 services, it takes about an hour for an ambulance to take them to the nearest hospital.
13 Further, given the remote location, it takes significantly more planning for the assisting
14 organizations and volunteers to get out to the sites and bring any humanitarian aid to
15 Jacumba.

16 18. In the San Ysidro area, I communicate with people assisting migrants on the
17 ground throughout the day. Since May 2023, hundreds of migrants have regularly spent
18 the night each day at Whiskey 8 OADS including children as young as a few days old.
19 On multiple occasions Border Patrol agents have told me that their count was between
20 1700 to 1900 migrants at one time in all the different OADS near San Ysidro. Waiting
21 times for migrants to be taken from the OADS to a Border Patrol facility vary from a few
22 hours to 7 days according to what migrants have shared with me.

23 19. Border Patrol is very inconsistent with how it provides food and water to migrants.
24 Every few days, Border Patrol shows up with cases of water and snacks — a granola bar
25 or crackers. The agents hand out one bottle of water and one snack per migrant. Before
26 volunteers began providing humanitarian assistance, we learned that migrants would
27 routinely go days without eating.

1 20. In September 2023, when we saw the numbers of migrants held in the Whiskey 8
2 OADS increase, our humanitarian efforts became more consistent. At that time, a Border
3 Patrol agent threatened a group of four advocates, including me, with arrest for giving
4 migrants food and water through the wall.

5 21. We had one table and some boxes against the border wall at around 10:00 or 11:00
6 PM with water and sandwiches. A Border Patrol agent told us to step away from the wall
7 and said that we were not allowed to give anything through the wall. I said I was with a
8 group of humanitarian organizations providing humanitarian aid. The agent said he was
9 the authority and advocates were not allowed to be there. We stepped away from the
10 wall, but the agent demanded we leave the area or be arrested. We moved to a piece of
11 land that does not belong to the federal government but to the City of San Diego. The
12 agent contacted other agents and told them that their activities should shift from
13 processing migrants to arresting us, the advocates.

14 22. The next morning, I participated in discussions with CBP sector leadership and
15 they decided to allow us to continue to provide humanitarian aid.

16 23. If volunteers were not there to provide basic sustenance, it is my understanding
17 that migrants may sometimes go days without eating or drinking water. Border Patrol
18 agents tell migrants that volunteers like me will provide basic needs like food.

19
20 **CBP Controls Access to Basic and Emergency Medical Services**

21 24. Border Patrol does not provide appropriate medical services to migrants held in the
22 OADS, and as a result non-medical and medical volunteers are the ones providing first
23 aid and medical care to migrants. Some of these volunteer medical staff provide care
24 through the border wall. Medical trauma experts often take shifts to be at the sites in
25 person. When the medical volunteers are not on site, other volunteers who are on site
26 communicate with the medical volunteers via phone to triage emergencies and assess the
27 gravity of a situation.

1 25. When they are on site, the medical volunteers have reported to me that they see a
2 lot of broken legs, open wounds, and people who lose consciousness. When the medical
3 volunteers indicate that the person needs to go to an emergency room, the on-site
4 volunteers call 911 and/or beg Border Patrol agents to call 911. But often, the agents say
5 they do not believe the migrants when the migrants say they need medical care even if a
6 trained medical expert is on site and telling them the migrant needs medical attention.

7 26. On May 11, 2023, I arrived at Whiskey 8 OADS at 5:45 am. I saw a group of
8 migrants that had spent the night outdoors between the two border walls. When I
9 approached the wall, a man called us over. His mother was in need of medical attention.

10 27. He had traveled with his 79-year-old mother from Colombia. He told us she has
11 several medical conditions and had been without her medication for 2-3 days, held in
12 Whiskey 8 OADS by Border Patrol. Without her medication, she was falling ill. She was
13 also suffering from an injury to her leg after falling from the wall. Her son was also
14 worried that she hadn't used the restroom in 5 days. The day before she was able to walk
15 a little, but that morning she was just laying down and couldn't move.

16 28. I immediately contacted the Border Patrol community liaison for the San Diego
17 sector. I called him to try to provide details about what was happening, but he didn't pick
18 up. I sent him a text at 8:00 am with general information about the woman and that we
19 needed to get her medical care. We didn't hear back from him. The son checked in with
20 me on multiple occasions, but at one point I lost track of him amidst the hundreds of
21 migrants.

22 29. In the evening, I eventually spoke with the Border Patrol liaison regarding the 79-
23 year-old Colombian woman. The liaison said he was receiving our emergency flags and
24 following up, but that when his agents went to take people to the hospital, the migrants
25 were all of a sudden fine and that they didn't have a medical need. I reiterated that the
26 woman we were discussing needed medical attention and told him that the people we
27 were talking to had medical needs. He said that he felt that migrants were taking
28 advantage of this situation and that they were using this to get into the United States.

1 30. Later the same evening, I noticed that Border Patrol agents were carrying the
2 Columbian woman to their truck. Her son told me he finally got the attention from the
3 Border Patrol and that they were taking his mother to the hospital, but they would only let
4 one person go with her. He decided to have his wife accompany his mother.

5 31. On October 27, 2023, while at Moon Valley a migrant approached me to let me
6 know that a family with two girls approximately 6-7 years old needed help. The family
7 spoke Russian, so another migrant helped me translate. The mother shared that she
8 suspected the girls had fevers. The mother and translator said they attempted to
9 communicate this to the Border Patrol agents on site but were ignored. I reached out to a
10 physician volunteer who was nearby. Once the physician volunteer arrived, she
11 confirmed that the girls had fevers and explained other symptoms that needed to be
12 monitor. The physician volunteer provided the family with over the counter medication
13 and let them know that she was going to be back to check on them. When I left the site,
14 the family stayed there with the two sick girls. I am not sure what happened to them.

15
16 I declare under penalty of perjury that the foregoing is true and correct to the best of my
17 knowledge.

18
19 Executed on this 26th day of February 2024, at San Diego, California.

20
21 
22 _____
23 Lilian Serrano
24
25
26
27
28

EXHIBIT A



May 13, 2023

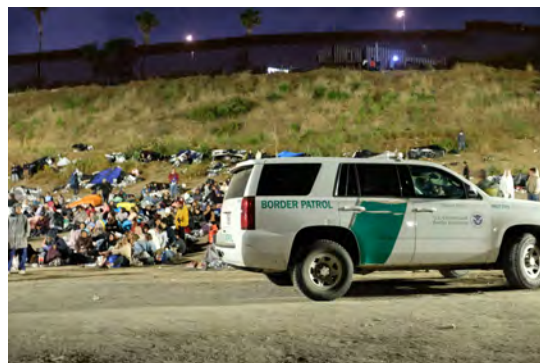
Shoba Sivaprasad Wadhia, Officer
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Compliance Branch, Mail Stop # 0190
2707 Martin Luther King, Jr. Ave., SE
Washington, DC 20528-0190

Via Electronic Mail: CRCLCompliance@hq.dhs.gov

RE: CBP Violations of Custody Standards and International Human Rights By Failing to Provide Water, Food, Shelter, Sanitation and Medical Assistance to Migrants Detained in Open-Air Corridor Between Border Wall Layers Near San Ysidro Port of Entry

Dear Officer Wadhia:

We write to file a formal complaint about grave violations of rights in the United States committed by U.S. Customs and Border Protection (CBP) agents, namely Border Patrol agents, who for months have used an open-air corridor between the primary and secondary walls west of the San Ysidro Port of Entry in California as a holding area for migrants in their custody without complying with custody standards. As detailed in this complaint and the attached witness declarations, Border Patrol agents are not providing adequate water, food, shelter, sanitation or medical assistance, exacerbating the trauma of already vulnerable migrants and undermining their basic human rights. Instead, they stand by with guns watching migrants in need.



Now, with the lifting of Title 42 exclusions, and the increase of migrants seeking asylum, it is imperative that CBP correct course to comply with custody standards and protect human rights. Your office, in conjunction with Congress, has an important oversight role to play. The violations of custody standards by CBP in this California corridor are systemic. They are not the actions of a few agents, but rather of an agency that has acted intentionally with full knowledge of the conditions they are subjecting migrants to while endangering their well being.

1. The migrants in the California corridor between walls are indisputably in CBP custody.



The area of concern in which CBP is violating rights is a space between the primary border wall that abuts Tijuana, Mexico, and the parallel secondary wall approximately 75 yards to the north. The area between the walls where CBP is holding migrants is U.S. soil. There is in fact a sign posted on the secondary wall in front of that space declaring it U.S. property. In that space, CBP exercises full control, patrolling it regularly with vehicles and ATVs. The area is also monitored by CBP cameras.

Civil society organizations who form part of the Southern Border Communities Coalition (SBCC) have borne witness to the treatment of migrants over the last several months in the California corridor. The migrants originate from countries all over the world, seeking refuge from the dangers they face at home. While visiting the site, our team observed and continues to observe Border Patrol agents clearly exercising control in the following ways:

- a. **CBP controls movement** — Agents drive in and out of the detention area, walk among detained migrants and occasionally direct them to different areas within the corridor. Pedro Rios observed “Border Patrol agents ushering migrants from the area near Las Americas to the Whiskey 8 area. Agents also directed single men to the area closer to the beach.”¹ Additionally, “Border Patrol told the migrants they had to sit in rows and stay seated. Occasionally, the agents would drive through with an ATV or cars, to check that they were seated.”²
- b. **CBP controls access to water and food** — Due to the migrants being detained in an area controlled by Border Patrol, agents control access to basic necessities. In Whiskey 8, our declarants have observed Border Patrol provided very limited water and only a granola bar that left them hungry and thirsty with no way to access more without the help of community members on the other side of the wall³ When Pedro Rios raised concerns about lack of access to water he was told “that the government was considering bringing in a buffalo water tank, but then the Border Patrol liaison told [him] they would not out of concern that it would attract more migrants. They never brought the tank in.”⁴

¹ Decl. of Pedro Rios at ¶ 21

² Decl. of Pedro Rios at ¶ 20

³ Decl. of Adriana Jasso at ¶ 8

⁴ Decl. of Pedro Rios at ¶ 12

c. **CBP controls migrant tracking system** — Border Patrol monitors migrants by issuing color coded or labeled wristbands. From Pedro Rios’ observations, “Border Patrol instituted the use of wristbands to identify people’s arrival based on the agent’s first interaction with them, which might be a day or two after they actually arrive in the corridor. The wristbands are like the ones used for concerts. They are different colors and some have the day of the week printed on them.”⁵



d. **CBP controls access to the area** — Border Patrol also controls access to the area, not allowing anyone to leave without the assistance of agents. Migrants “cannot leave the area because of the physical walls that stand in their way. Some of those arriving are suffering severe pain, diarrhea, headaches, etc. Many individuals are pregnant, have children with them, have no shoes, are muddy, wet and in terrible condition.”⁶ Individuals in need of medical attention are dependent on Border Patrol to transport them to a hospital, but they are slow to respond. For example, A 79-year old Colombian woman who fell off the border wall and suffered injuries to her leg and other distress because of a lack of medicine, was not provided medical attention by Border Patrol until after an entire day of advocacy by advocates.⁷

The control CBP has over every aspect of the migrant’s environment and well-being from where and how they are able to move, to the basic necessities they have access to, indisputably amounts to custody. CBP has the responsibility to follow the laws and protocols in place and uphold the human rights and dignity of all migrants in their custody.

2. **CBP is violating its own standards for conditions and length in custody.**

The U.S. Customs and Border Protection National Standards on Transport, Escort, Detention, and Search (“TEDS Standards”) dictate the custody standards that CBP must follow when they detain people in a holding facility.⁸ A holding facility is any “secure enclosure” that is “[u]nder the control of CBP; and [p]rimarily used for the short-term confinement of individuals who have recently been detained”.⁹ Individuals are detained when they are restrained from having freedom of movement.¹⁰ Border Patrol agents that hold migrants in the corridor between the walls are subject to the TEDS Standards.

⁵ Decl. of Pedro Rios at ¶ 22

⁶ Decl. of Adriana Jasso at ¶ 7

⁷ Decl. of Lilian Serrano at ¶ 2-4, 9-10

⁸ CBP National Standards on Transport, Escort, Detention, and Search (2015), <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf>. (“TEDS Standards”)

⁹ TEDS Standards at Pg. 29.

¹⁰ TEDS Standards at Pg. 28.

The TEDS Standards provide, among other things, that all detainees must be provided medical attention, meals at regularly scheduled times, adequate water, have restroom accommodations, and must be provided with personal hygiene items.¹¹ All efforts must be made to ensure care for migrants under the Standards.¹²

As described above and in the specific examples below, CBP is violating all of these standards at the open air detention site in the California corridor.

a. CBP does not provide medical assistance in violation of TEDS § 4.10

Observers have documented numerous examples of Border Patrol failing to provide medical attention to detained migrants, including at-risk populations.¹³ TEDS Standards provide that “[e]mergency medical services will be called immediately in the event of a medical emergency.”¹⁴ Adriana Jasso states in her declaration that she encountered an African man who collapsed and was described as dying by a Colombian nurse. Only after advocate intervention did Border Patrol come to assist.¹⁵ Additionally, she describes migrants “suffering severe pain, diarrhea, headaches, severe cuts and bruises. One Asian man’s leg was severely infected. He was in extreme pain with no way to communicate.”¹⁶



Lilian Serrano has various accounts of migrants needing medical assistance. In reaching out to the Border Patrol liaison she was told the liaison “was receiving our emergency flags and following up, but that when his agents went to take people to the hospital, the migrants were all of a sudden fine and that they didn’t have a medical need.”¹⁷ In another instance the liaison asked why she was calling him and not 9-1-1.¹⁸ Lilian also encountered a 79-year old Colombian woman who fell off the border wall and suffered injuries to her leg and other distress because of a lack of medication; she was not provided medical attention by Border Patrol until after an entire day of advocacy by multiple advocates.¹⁹ Additionally, she encountered an asylum seeking woman from Afghanistan who the Border Patrol took to the hospital after she suffered injury and infection to her arm. The woman was dumped at a hospital without any paperwork from

¹¹ TEDS Standards at Pgs. 17-18

¹² TEDS Standards at Pg. 3

¹³ TEDS Standards § 5.1 defines “at-risk populations” as including children, “pregnant individuals; those known to be on life-sustaining or life-saving medical treatment; those at higher risk of sexual abuse (including but not limited to gender nonconforming, intersex, and transgender); reported victims of sexual abuse; those who have identified mental, physical or developmental disabilities; those of advanced age; or family units.” The Standards provide such individuals “may require additional care or oversight”.

¹⁴ TEDS Standards § 4.10 (“Medical Emergencies”)

¹⁵ Decl. of Adriana Jasso at ¶ 11

¹⁶ Decl. of Adriana Jasso at ¶ 7

¹⁷ Decl. of Lilian Serrano ¶ 9.

¹⁸ Decl. of Lilian Serrano at ¶ 13

¹⁹ Decl. of Lilian Serrano at ¶ 2-4, 9-10

Border Patrol and was later denied access to agents so she could be processed.²⁰ In addition, Lilian encountered a 29-year old pregnant Somali woman suffering repeated vomiting without medical attention.²¹

Pedro Rios confirmed that a Jamaican woman who suffered a miscarriage after being kidnapped and raped in Mexico and remained in excruciating pain, was not provided medical attention by Border Patrol for days despite advocates raising the issue multiple times.²² Pedro also documented an infant no longer taking breastmilk who suffered vomiting and was listless and was only taken to a hospital after advocates' intervention.²³

b. CBP does not provide meals to detained migrants in violation of TEDS § 4.13

Border Patrol did not provide regular meals as required under the TEDS Standards, leaving migrants at risk of starvation while relying on the limited resources of NGOs providing emergency food aid. The TEDS Standards require that “[a]dult detainees, whether in a hold room or not, will be provided with food at regularly scheduled meal times.”²⁴ For children and pregnant individuals, the Standards require “a snack upon arrival and a meal at least every six hours thereafter, at regularly scheduled meal times. At least two of those meals will be hot. Juveniles and pregnant or nursing detainees must have regular access to snacks, milk, and juice.”²⁵



Instead, Border Patrol only provided migrants with a single small water bottle per person, and a granola bar.²⁶ Adriana Jasso observed that Border Patrol entered the corridor between the walls “[o]nce a day [to] provide a bottle of water and some kind of granola bar. To keep people from starving, NGOs, volunteers both on the Mexico and US side of the border, are supplying the basic necessities they can.”²⁷ One group of Indian men detained for five days were left to starve and resorted to eating leaves.²⁸

²⁰ Decl. of Lilian Serrano at ¶ 5-7

²¹ Decl. of Lilian Serrano at ¶ 13

²² Decl. of Pedro Rios at ¶ 30.

²³ Decl. of Pedro Rios at ¶ 16.

²⁴ TEDS Standards § 4.13.

²⁵ TEDS Standards § 5.6 (“Meals and Snacks – Juveniles, Pregnant, and Nursing Detainees”).

²⁶ Decl. Adriana Jasso at ¶ 3, Dec. Flower Alvarez Lopez at ¶ 5.

²⁷ Decl. of Adriana Jasso at ¶ 8

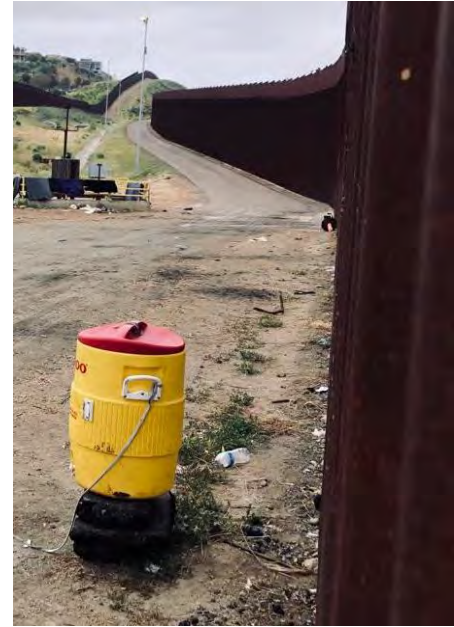
²⁸ Decl. of Pedro Rios at ¶ 15.

c. CBP does not provide adequate water to detained migrants in violation of TEDS § 4.14

CBP is required to make available clean drinking water along with clean drinking cups to detainees.²⁹ Pedro Rios stated that in April of 2023, “migrants reported waiting up to 7 days with no shelter, minimal water, and only a granola bar to eat. I communicated with the Border Patrol liaison about the conditions, and shortly thereafter, agents placed a 5 gallon container of water every morning, but this would finish quickly. By mid day there was no available water.”³⁰

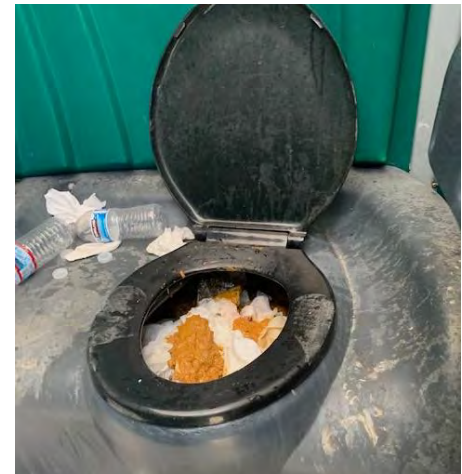
The amount of water was wholly inadequate, requiring advocates to push Border Patrol to provide more water.³¹ The Border Patrol liaison said they considered bringing a buffalo water tank, but chose not to because they did not want to attract more migrants.³²

By May, Pedro stated, “Border agents had removed the 5 gallon water jug. They handed out one small water bottle per migrant every day, leaving migrants thirsty by the afternoon.”³³ As of May 12, declarants continue to report that Border Patrol is only providing one bottle of water per day.³⁴



d. CBP does not provide restroom facilities for detained migrants in violation of TEDS § 4.15 nor maintain cleanliness standards in violation of TEDS § 4.7

CBP is required to provide restroom accommodations to all detainees with a reasonable amount of privacy ensured.³⁵ Border Patrol agents have only provided one port-a-potty for hundreds of migrants.³⁶ The port-a-potty was brought into the area on April 28, 2023 when there were approximately 70 individuals in custody.³⁷ Within two days the port-a-potty was full and unusable.³⁸ Since that time, the number of migrants has grown to approximately 400 and no additional facilities have been added.³⁹ To date, we have not seen the one port-a-potty be cleaned and migrants have regularly complained since that is unusable.⁴⁰



²⁹ TEDS Standards § 4.14 (“Drinking Water”)

³⁰ Decl. of Pedro Rios at ¶ 9

³¹ Decl. of Pedro Rios at ¶ 12

³² Decl. of Pedro Rios at ¶ 12

³³ Decl. of Pedro Rios at ¶ 15.

³⁴ Decl. of Flower Alvarez Lopez at ¶ 5

³⁵ TEDS Standards § 4.15 (“Restroom Facilities”)

³⁶ Decl. of Flower Alvarez Lopez at ¶ 5

³⁷ Decl. of Pedro Rios at ¶ 13

³⁸ Decl. of Pedro Rios at ¶ 13

³⁹ Decl. of Pedro Rios at ¶ 14

⁴⁰ Decl. of Pedro Rios at ¶ 14; Decl. of Flower Alvarez at ¶ 5



Border Patrol fails to provide minimum standards of cleanliness; CBP TEDS standards require facilities “be regularly and professionally cleaned and sanitized.”⁴¹ Despite this, Flower Alvarez Lopez saw “a pile of trash that has not been picked up in days” and “one portable restroom for” hundreds of people that has “not been cleaned at all.”⁴²

e. CBP does not provide basic hygiene items and made no efforts to provide showers in violation of TEDS § 4.11

Additionally, CBP did not provide access to basic hygiene items as required under the Standards. TEDS provides that “Detainees must be provided with basic personal hygiene items, consistent with short term detention and safety and security needs” where “[f]amilies with small children will also have access to diapers and baby wipes” and restrooms must include “access to toiletry items, such as toilet paper and sanitary napkins.”⁴³ In contrast, Flower Alvarez Lopez found that “[t]here are no showers, hand washing stations, nor basic personal hygiene items like feminine hygiene products, baby wipes, toothbrushes, etc. I see families, babies, children, women with children, and people of all ages in here and they don’t have the basic necessities.”⁴⁴

CBP has made no effort to provide showers to migrants who were detained for up to a week, even though the Standards provide that “reasonable efforts will be made to provide showers, soap, and a clean towel to detainees who are approaching 72 hours in detention.”⁴⁵ Instead, Flower Alvarez Lopez confirmed no showers were available at the open air detention site.⁴⁶



f. CBP Detains Migrants Far Beyond 72 Hours in violation of TEDS § 4.1

The TEDS standards provide that migrants should not be detained for longer than 72 hours in holding facilities.⁴⁷ CBP is regularly detaining migrants in the corridor between the border walls for over 72 hours

⁴¹ TEDS Standards § 4.7 (“Cleanliness”)

⁴² Decl. Flower Alvarez Lopez ¶ 5

⁴³ TEDS Standards § 4.11.

⁴⁴ Decl. of Flower Alvarez Lopez at ¶ 5

⁴⁵ TEDS Standards § 4.11.

⁴⁶ Decl. of Flower Alvarez Lopez at ¶ 5

⁴⁷ CBP National Standards on Transport, Escort, Detention, and Search (2015) at Pg. 14

<https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf> (“TEDS Standards”)

and up to a week.⁴⁸ Every effort must be made to hold detainees for the least amount of time required.⁴⁹ Pedro Rios found that “migrants reported waiting up to 7 days.”⁵⁰ After a Border Patrol liaison claimed migrants were exaggerating their length of detention, Pedro Rios confirmed that migrants “continued to tell [him] they had been there 2, 3, 4 and up to 7 days.”⁵¹ The wristbands issued by agents to migrants are evidence of the length of detention.

For months, Border Patrol has continued to egregiously violate its basic obligations to people it detains under its own TEDS Standards in the California corridor between border walls.



3. CBP is violating international treaties on cruel, inhuman and degrading treatment.

The United States has signed and ratified the International Covenant on Civil and Political Rights (ICCPR), an international treaty that recognizes fundamental human rights. Under the U.S. Constitution's Article VI, treaties are the “supreme law of the land” governing the responsibilities of every part of government at the local, state, and federal level.⁵² Thus, CBP is bound by the ICCPR.

This year, the U.S. Government is under review by sister nations who are signatories to the ICCPR for compliance with the treaty's obligations. In fact, the U.S. Government led by the Department of State is preparing to appear before the ICCPR Human Rights Committee to answer questions from other nations about non compliance. Civil society groups, including SBCC, will be submitting reports to the Human Rights Committee to alert them to the violations we have witnessed, including those occurring now in the California corridor between the walls.

The ICCPR provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment.”⁵³ The violations of the TEDS Standards described above and detailed in the attached declarations also constitute violations of migrants' rights under the ICCPR. Pedro Rios, who has observed CBP human rights violations in the California corridor for months, summarized:

⁴⁸ Decl. Pedro Rios ¶ 9, 10, 18

⁴⁹ TEDS Standards § 4.1

⁵⁰ Decl. Pedro Rios ¶ 9

⁵¹ Decl. Pedro Rios ¶ 18

⁵² U.S. Constitution, Art. VI., International Covenant on Civil and Political Rights (ICCPR) Art 2

⁵³ International Covenant on Civil and Political Rights (ICCPR) Art. 7

My overarching concern is the inhumane treatment that I have witnessed since February, the ongoing lack of water, food, and shelter, the degrading treatment, and overall lack of respect or compassion for the migrants who are seeking safety from the dangers they face in their home countries⁵⁴.... [T]hey should be treated with dignity and decency pursuant to human rights standards. That is not what's happening.⁵⁵

In his declaration, Pedro details how border agents treat migrants in cruel, inhuman, and degrading ways, leaving them starving and freezing while in their custody.⁵⁶ He also describes how some agents treat migrants with complete disregard, for example, one agent told migrants, "I don't give a fuck how long you've been here," and another said, "get the fuck away from me" when a migrant approached to ask a question.⁵⁷

Flower Alvarez Lopez in her declaration echoed the statements by other declarants, speaking to the indignity of the situation facing migrants. "This is devastating. We should not have to bear witness to what is happening today.... To see babies and children here in this type of setting, it's heartbreaking. We need to do better. Our government needs to do better."⁵⁸

The ICCPR states that if violations of human rights occur, as they have for some time and continue to occur, the government shall provide an effective remedy.⁵⁹ That could be an administrative, legislative, or judicial remedy. Despite the pleas of migrants and advocates, CBP has not provided an effective remedy. Through this petition, we hope to prompt a remedy — the cessation of the violations and the protection of human rights.

4. CRCL must act to investigate and address these violations with Congress.

The Office of Civil Rights and Civil Liberties (CRCL) was established to, among other things, "oversee compliance with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights and civil liberties of individuals affected by the programs and activities" of the Department of Homeland Security, including CBP,⁶⁰ in conjunction with Congress. You have the mandate to address both the violation of the TEDS custody standards and the ICCPR rights incorporated into U.S. law through the Constitution. We look to your office to end the harm caused by CBP in its treatment of migrants in the California corridor between walls west of the San Ysidro Port of Entry.

Those seeking safety at our border should be treated at all times with humanity, dignity, and respect. For months now, CBP has fallen short of this responsibility. We recognize that the challenges facing CBP are many, but that should never be an excuse for violating the rights of migrants. The violations that declarants describe have been going on for months. Since at least February 2023, migrants in the corridor have been left waiting for days without adequate water, food, shelter and other basic necessities. Long before that, CBP has taken custody of migrants in the corridor and used it as a pre-processing holding area, exercising control of migrants.

⁵⁴ Decl. of Pedro Rios at ¶ 26

⁵⁵ Decl. of Pedro Rios at ¶ 31

⁵⁶ Decl. of Pedro Rios at ¶ 27

⁵⁷ Decl. of Pedro Rios at ¶ 25

⁵⁸ Decl. of Flower Alvarez Lopez ¶ 7

⁵⁹ ICCPR Art. 2

⁶⁰ 6 U.S.C. § 345

CBP anticipated an increased number of migrants, especially asylum seekers. Congress increased CBP resources significantly, but those resources are not being used to comply with the agency's duties of care in the California corridor. If CBP is going to continue using the corridor as a holding area or a pre-processing area (as opposed to processing someone from the area that day), then the agency must stand up the infrastructure and engage in practices that honor the rights and dignity of migrants. That is what we committed to do as a nation when we signed the ICCPR and what the agency committed to do when it adopted the TEDS standards.

We call on CRCL to ensure that not only will the current violations cease and human rights be protected, but also that this situation will not be allowed to reoccur in California or anywhere else along the border. We stand ready to speak with your Office to discuss these claims further if needed. Please contact us to acknowledge receipt and discuss immediate next steps.

Sincerely,



Ricky Garza, Border Policy Counsel
Southern Border Communities Coalition⁶¹

Enclosures:

1. *Declaration of Pedro Rios*
2. *Declaration of Lilian Serrano*
3. *Declaration of Flower Alvarez Lopez*
4. *Declaration of Adriana Jasso*

CC:

Chairman Dick Durbin
Ranking Member Lindsey Graham
Senate Judiciary Committee

Chairman Jim Jordan
Ranking Member Jerrold Nadler
House Committee on the Judiciary

Chairman Gary Peters
Ranking Member Rand Paul
Senate Committee on Homeland Security & Governmental Affairs

Chairman Mark Green
Ranking Member Bennie Thompson

⁶¹ SBCC is a program of Alliance San Diego, which is based in San Diego, but staffs SBCC throughout the border region and in D.C. SBCC is governed by a steering committee of members from CA, AZ, NM, and AZ.

House Committee on Homeland Security

Chairman James Comer
Ranking Member Jamie Raskin
House Committee on Oversight and Reform

Majority Leader Mitch McConnell
Minority Leader Charles Schumer
United States Senate

Speaker Kevin McCarthy
Minority Leader Hakeem Jeffries
United States House of Representatives

Attorney General Merrick Garland
U.S. Department of Justice

Assistant Attorney General Kristen Clarke
Civil Rights Division
U.S. Department of Justice

Erin Barclay
Acting Assistant Secretary of State for Democracy, Human Rights, and Labor
U.S. Department of State

Acting Commissioner Troy A. Miller
Customs and Border Protection
Department of Homeland Security

Nathaniel Kaine
Chief of Staff
Customs and Border Protection
Department of Homeland Security

Chief Raul Ortiz
United States Border Patrol
Customs and Border Protection
Department of Homeland Security

DECLARATION OF PEDRO RIOS

I, Pedro Rios, declare the following:

1. I am the director of the American Friends Service Committee (AFSC) US-Mexico Border Program. I have been monitoring and advocating for human rights at AFSC for twenty years.
2. For the last several months, I have observed migrants trapped between the primary and secondary barriers on the western most segment of the US-Mexico border near San Ysidro. Migrants have identified themselves as from many different countries including Afghanistan, Jamaica, India and Colombia, and they state they are seeking asylum because of dangers they face in their home countries.
3. The area in which they are trapped is north of the primary barrier abutting Mexico. That area north of the barrier is in the United States. The migrants state they have crossed the barrier to turn themselves in to border agents and are doing so out of desperation, because they seek safety. Once over the barrier, they await to be processed by border agents.
4. The migrants are trapped in an area bounded by a secondary barrier to the north of the primary barrier. This corridor between the barriers is fully controlled by the U.S. Border Patrol. Agents pass along this corridor with vehicles and ATVs. The area is also monitored by cameras. Anyone in this corridor is under their control and in their custody.
5. In February 2023, I first spoke to migrants trapped in the corridor, while I was at an event we held near the border walls. About a dozen migrants approached the northern barrier to talk to me and told me that they had been in the corridor for several days hoping to be processed by border agents, but had not yet been, even though agents were regularly passing by. The agents had given them mylar blankets but little else. During this time, it rained regularly in San Diego.
6. I have continued to see migrants in the corridor since, and have monitored their conditions. I have seen them in several locations in the corridor identified as follows from east to west: near the Las Americas mall, at the section known as Whiskey 8, and closer to the beach.
7. The number of people that I have been able to see has varied from dozens to hundreds. In March, I began coming 2-3 times a week to talk to migrants and monitor the conditions. In most cases, they had been there for at least 2 days. Some had mylar blankets given to them by border agents, others had nothing to cover themselves at night. During this time it rained regularly and was cold day and night. They told me they were thirsty and hungry with little to nothing to eat or drink.
8. In April, the number of migrants in the corridor seemed to grow until it was regularly around 70 people who were visible to me at the Whiskey 8 area, and I knew there were more at other locations in the corridor. More women and children appeared in the corridor. Because Whiskey 8 is most accessible from the U.S. side, this is where I came to speak to migrants.
9. Migrants reported waiting up to 7 days with no shelter, minimal water, and only a granola bar to eat. I communicated with the Border Patrol liaison about the conditions, and shortly thereafter,

agents placed a 5 gallon container of water every morning, but this would finish quickly. By mid day there was no available water.

10. This year, San Diego has been unusually cold and rainy. I recall a particularly rainy night in mid April. The following morning, I came to the border and spoke to a group of migrants who were all from Africa. They had not been given mylar blankets, but had regular blankets that were soaked. They had no other clothes or cover to protect them from the weather. They told me they had been there for 5 days.
11. In the last week of April, I spoke to the Border Patrol community liaison as well as the Department of Homeland Security Civil Rights and Civil Liberties liaison expressing concerns about the conditions, including the lack of water and sanitation.
12. Initially they told me that the government was considering bringing in a buffalo water tank, but then the Border Patrol liaison told me they would not out of concern that it would attract more migrants. They never brought the tank in.
13. On April 28, several months after I began witnessing the presence of migrants in the corridor, agents brought in a single port-a-potty to the Whiskey 8 area, but it was not enough for what was then about 70 people on average in that area. I don't know if they brought additional port-a-potties to other parts of the corridor.
14. Two days after the port-a-potty arrived, it was full and unusable. It may have been serviced, but I never saw that happen, and migrants have regularly complained since that it is unusable. As of today, there is only one port-a-potty, even though the number of migrants has grown to an estimated 400.
15. Beginning in May, I began coming to the border nearly every day, spending several hours at a time. On May 1st, I spoke with a group of men from India who told me they were starving. They showed me the leaves they were eating. They had been there for 5 days. During that time, I observed that border agents had removed the 5 gallon water jug. They handed out one small water bottle per migrant every day, leaving migrants thirsty by the afternoon.
16. On May 3rd, migrants told me that border agents had taken their shoelaces, and they did not know why, but believed it was in preparation for agents to take them in. I am familiar with this practice, a tactic that border agents have previously said they use to prevent migrants from running away. I took photos of their shoes without laces.
17. Out of grave concern for the condition of migrants, my organization began to provide basic necessities to migrants, including water, food, and mylar blankets. Initially, an agent scolded me, telling me that we needed to alert Border Patrol every time we came. They told the media that was starting to cover the encampment the same thing. This is not a requirement, but something they suggested we must do nonetheless. I believe this was meant to dissuade us from coming, especially as the media began to arrive.
18. After the first article in the San Diego Union-Tribune was published, stating that migrants were there up to 7 days, the Border Patrol liaison told me that this was not true, that migrants were exaggerating and were conflating their days in Tijuana with their days in the corridor. But I had been witness to migrants trapped in the area, waiting to be processed for many days. I asked

migrants to clarify and confirm the number of days they had been in the corridor, and they continued to tell me they had been there 2, 3, 4 and up to 7 days.

19. At the end of the first week of May, the number of migrants grew significantly to around 400. I worked with my organization to alert the media. Migrants shared with them what they had told me — that agents were waiting days to process them, but not providing them with basic necessities including sufficient water, food, and shelter.
20. With the arrival of the media, Border Patrol told the migrants they had to sit in rows and stay seated. Occasionally, the agents would drive through with an ATV or cars, to check that they were seated. This would happen at various times of the day. Migrants have told me they believe this is in anticipation of them being processed, but the agents will make them all sit for hours on end and not process any of them. Then they will come with vans and take a few people or sometimes 20, but there are hundreds of people.
21. I have observed Border Patrol agents ushering migrants from the area near Las Americas to the Whiskey 8 area. Agents also directed single men to the area closer to the beach. Between the direction for them to sit in rows to ushering them from one part of the corridor to another, agents are controlling the movement of migrants.
22. This week, Border Patrol instituted the use of wristbands to identify people's arrival based on the agent's first interaction with them, which might be a day or two after they actually arrive in the corridor. The wristbands are like the ones used for concerts. They are different colors and some have the day of the week printed on them.
23. Migrants have now organized themselves in rows based on their wristband, hoping that the more organized they are, the more quickly they will be processed, but they are still waiting for days. Migrants state, and I have observed, that agents come through every so often to see if people are sitting and if they are not, they sometimes yell at the migrants. This includes children, who don't understand what is happening. They sit under full sun and then rain and cold, they sit and they wait.
24. One of the migrants who took the initiative to organize the other migrants shared his frustrations that agents come to scold the migrants, but not to process them. He told me he had not slept for 3 days and was concerned that the other migrants thought he was colluding with the agents and felt he was in danger, and that the agents are not there to protect him or anyone, but to leave them waiting.
25. Throughout my time monitoring the conditions in the corridor, I have also witnessed some Border Patrol agents speaking aggressively towards migrants. For example, I heard one agent say, "I don't give a fuck how long you've been here," and another say, "get the fuck away from me" when a migrant approached to ask a question.
26. My overarching concern is the inhumane treatment that I have witnessed since February, the ongoing lack of water, food, and shelter, the degrading treatment, and overall lack of respect or compassion for the migrants who are seeking safety from the dangers they face in their home countries.

Pedro Rios



May 12, 20223

I affirm that the statements in this affidavit are true to the best of my knowledge and belief.

- That is not what's happening.
- As such, they should be treated with dignity and decency pursuant to human rights standards.
31. In conclusion, there is no doubt that the migrants in the corridor are in Border Patrol custody.
30. I am deeply concerned about other vulnerable migrants. Today, I alerted the Border Patrol liaison that a Jamaican woman had approached me to tell me she had suffered a miscarriage after being kidnapped and raped in Mexico and is now in what she described as excruciating pain. Other human rights observers shared that they alerted Border Patrol to this woman's condition several days ago, but nothing was done.
30. One migrant told me that in the night, the children cry. He said that the adults have a way to cope, but the children are scared.
29. In another instance, parents of an 8 year old child approached me to tell my colleague that their child had had a seizure as a result of his medication being taken away by Mexican authorities. They were concerned for the child's health. I left a message for the Border Patrol liaison and agents came for him soon after. As with other incidents, I am concerned that if we had not been there, the child would have fallen into greater danger.
28. I'm also concerned about the children. Two days ago, I witnessed a child who was less than a year old whose mother said was no longer taking her breast milk and was throwing up and illstess. I called the Border Patrol liaison for medical assistance, and they came to take the child and mother to the hospital. But had I or another human rights observer not been there, that child might not have received any assistance. Especially since agents are not making themselves approachable and some are actively aggressive towards migrants.
27. I am especially concerned about the treatment of migrants who are out of sight from us, especially the area where the men have been directed to, closer to the beach. Last night, I spoke with two men who came to the Whiskey 8 area hoping volunteers would charge their phones. They told me they were hungry and freezing. One was from a Spanish speaking country (not sure which) and one appeared to be from Eastern Europe.

DECLARATION OF LILIAN SERRANO

I, Lillian Serrano, declare the following:

1. I am the director of the Southern Border Communities Coalition, a program of Alliance San Diego. As part of that role, I monitor human rights conditions in the border region.
2. On May 11, after hearing from colleagues about migrants trapped in the corridor between the two border walls, both of which are in the United States, near San Ysidro, California, I arrived at the border wall at 5:45 am. The first thing I saw was a group of migrants that had spent the night outdoors between the two border walls. When I approached the wall, a man called us over. His mother was in need of medical attention.
3. He had traveled with his 79 year old mother from Colombia. He told us she has several medical conditions and at that moment had been without her medication for 2-3 days, trapped in Border Patrol custody. Without her medication, she was falling ill. She was also suffering from an injury to her leg after falling from the wall she had climbed to turn herself in to border agents. Her son was also worried that she hadn't used the restroom in 5 days. The day before she was able to walk a little, but that morning she was just laying down and couldn't move.
4. I immediately contacted the Border Patrol community liaison for the San Diego sector. I called him to try to provide details about what was happening, but he didn't pick up. I sent him a text at 8:00 am with general information about the woman and that we needed to get her medical care. We didn't hear back from him. The son checked in with me on multiple occasions, but at one point I lost track of him amidst the hundreds of migrants.
5. Around the same time, I encountered another woman, who we later learned was an asylum seeker from Afghanistan, who was sleeping by herself on the US side of the border wall wrapped in blankets. She was wearing a hijab. I approached her with colleagues and asked her why she was there. She showed us documents from Scripps hospital. She was taken in an ambulance from the encampment the day before. She told us she wasn't feeling well, she showed us her arm and it was swollen, and had an infection.
6. She told us she had flagged this for Border Patrol, and they took her to Scripps hospital. When the hospital released her, they put her in a taxi. She didn't know where she was, she had no way of contacting anyone, she didn't have an address, so the taxi brought her back to the border wall. She didn't know what to do, she wanted to make sure Border Patrol knew she wasn't trying to sneak into the country. She was waiting for them, but they never arrived at the hospital.
7. She told us she arrived at this site at 2:00 am and knocked multiple times on the gate trying to get inside the encampment. The agents did not open it. She told us that she had family in New York, but didn't have a way to contact them. We had her take a nap in my car. It was the first time she slept indoors after 4 days.
8. She slept and our partner organization PANA (Partnership for the Advancement of New Americans) was able to pick her up around noon. They were able to get her placed in a Catholic Charities shelter. We believe they were able to get in contact with her family in New York, but she doesn't have any paperwork from Border Patrol that would allow her to travel on a plane.

9. In the evening, I eventually spoke with the Border Patrol liaison regarding the 79 year old Colombian woman described above. The liaison said he was receiving our emergency flags and following up, but that when his agents went to take people to the hospital, the migrants were all of a sudden fine and that they didn't have a medical need. I reiterated that the woman we were discussing needed medical attention and told him that the people we were talking to had medical needs. He said that he felt that migrants were taking advantage of this situation and that they were using this to get into the United States.
10. The Border Patrol liaison mentioned he was going to be on site last night because at 9:00 pm "migrants were going to rush the border." Because of this I came back to the site around 8-8:30 pm. At 9:45, I noticed that Border Patrol agents were carrying a woman to their truck who was accompanied by another woman. Her son told me he finally got the attention from the Border Patrol and that they were taking his mother to the hospital, but they would only let one person go with her. He decided to have his wife accompany his mother.
11. To follow up, my colleagues and I went to the hospital and we found his wife. She was confused. As soon as she arrived at the hospital, staff told her she couldn't go in and they left her outside. The Border Patrol left and gave her no instructions, so she was outside of the hospital, and she said she was waiting for them to come and give her instructions. We explained they were not coming back. She didn't get any documents from Border Patrol and was told she couldn't go inside. It was cold and late and she had no way to communicate with her mother-in-law inside. We stayed in the hospital past midnight and assisted her to communicate with the hospital staff to get information about her mother-in-law.
12. The mother-in-law was released this morning, and a family member in the United States was able to come and accompany her. The family member shared that the 79 year old woman was concerned about her Colombian passport, which Border Patrol agents had asked her for before transporting her to the hospital. She gave it to them and she saw an agent put it in his pocket. The passport was never returned to her. She now has no identity documents, nor does she have any paperwork from Border Patrol from her entry to apply for asylum. Her son is still in custody in the area between the walls, separated from his mother and wife, all of whom have a related asylum claim. It is uncertain whether he will be released or whether his asylum claim will be heard. For the moment, they face the prospect of indefinite separation far from a country they fear returning to.
13. In another incident, I was notified today at 4:15 pm that a 29 year old pregnant Somali woman had thrown up 5 times today. I contacted the Border Patrol liaison, and he told me that I should have just called 9-1-1. Then he said he would call them. Several hours have now passed and no one has arrived to assist the pregnant woman. We are keeping a close eye on her and hopefully she will receive help soon.

I affirm that the statements in this affidavit are true to the best of my knowledge and belief.

May 12, 20223

Lilian Serrano

DECLARATION OF FLOWER ALVAREZ LOPEZ

I, Flower Alvarez Lopez, declare the following.

1. My name is Flower Alvarez Lopez and I am a Co-Director at Universidad Popular.
2. Around 12 pm on May 11, I went to the border wall near San Ysidro to find hundreds of people in an encampment between two fences, unable to leave. Border Patrol provided the migrants with wristbands of different colors to indicate when they arrived and have created some sort of a system for when they will process them.
3. I stayed overnight at the encampment and observed and talked to Border Patrol agents around 2:00 am during a big round up. I saw Border Patrol agents ask those who had children to raise their hands. I saw them yelling at folks that were sitting down telling them to not get up. If they tried to move, they would be immediately yelled at. I tried to gather information from the agents about how many people they were taking and where they were taking them. They said 60 people and didn't say anything else. Border Patrol has not communicated their plans for the individuals who are trapped in the corridor between the border walls.
4. They are being treated inhumanely. The government has not provided any blankets or shelter for these individuals. At night, it is cold and everyone is exposed to the elements including our most vulnerable populations: children, pregnant women and the elderly.
5. There is a pile of trash that has not been picked up in days. There is only one portable restroom for all 300-450 people to use and it has not been cleaned at all. There are no showers, hand washing stations, nor basic personal hygiene items like feminine hygiene products, baby wipes, toothbrushes, etc. I see families, babies, children, women with children, and people of all ages in here and they don't have the basic necessities. They are sleeping on the ground with few clothes to keep them warm. Border Patrol has only provided one water bottle and one granola bar per person per day. A lot of them have been sleeping directly on the dirt and gravel ground except for those who we were able to provide cardboard boxes to use as mattresses.
6. Border Patrol is not providing medical support on site. We are providing the limited first aid we can, but we don't have any medics on site. We know a few people have been taken by ambulance to other hospitals.
7. This is devastating. We should not have to bear witness to what is happening today. Folks are showing up and they are very emotional to what they are seeing because it is a devastating sight. To see babies and children here in this type of setting, it's heartbreaking. We need to do better. Our government needs to do better.

I affirm that the statements in this affidavit are true to the best of my knowledge and belief.

May 12, 20223

Flower Alvarez Lopez

DECLARATION OF ADRIANA JASSO

I, Adriana Jasso, declare the following:

1. I have worked with the American Friends Service Committee for 16 years assisting migrants. I am currently working alongside a border wall in the San Ysidro area that is one of two parallel walls at the border of the United States and Mexico. The space between the first and second wall is inside the United States. In the space between the walls, there are approximately 400-500 individuals who are waiting with nothing but the clothes on their backs to be processed for asylum claims.
2. I first arrived at the San Ysidro border just south of South Bay Water Reclamation Plant about 2 weeks ago. Border agents refer to that area as Whiskey 8. When I arrived, I saw approximately 20 people. Then 20 quickly turned to 80 and 80 quickly turned into 120. Later on we started seeing 400-500 individuals. Not only have the numbers changed, but the demographics as well. Now we are seeing mainly women with children. As the encampment grew, Border Patrol moved males to an area approximately 20 minutes away on foot to a different canyon.
3. I have not been able to access the canyon, but have heard there are anywhere between 600-800 single men in the encampment. What we have heard is that the conditions there are a lot worse in terms of access to food and shelter. I took a statement from a Colombian family that said they only received a bottle of water for a whole day. We haven't been able to transport anything to them and we are not able to carry things over there. It would require us hiking to the location.
4. The individuals who come through the primary fence and who are then between the two walls are in the United States. For the last several weeks I have witnessed Border Patrol direct and control their movements, such as the movement of men to a different part of the corridor. Border Patrol agents are the only people who have access to the encampment. They are the only ones on site. These individuals are in their custody and Border Patrol is responsible for their fundamental well being. The individuals are being detained in dire conditions.
5. Border Patrol developed a system to track the individuals who are in the encampment by providing them with wrist bands to track when they entered into their custody. The wristbands vary in color from red, yellow, blue, green and gray to reflect the date they entered the encampment.
6. It appears they have different wristbands for the day of the week that border agents first identify them, and it appears to indicate the priority based on the days and nights that they have been here. But we have seen over and over again that the system isn't being followed and it depends on what officers they get on which wristband they are given. For example, migrants have told us they have been here for 4 days, but their wristband indicates less.
7. Individuals cannot leave the area because of the physical walls that stand in their way. Some of those arriving are suffering severe pain, diarrhea, headaches, severe cuts and bruises. One Asian man's leg was severely infected. He was in extreme pain with no way to communicate. We had to wait for Border Patrol to respond to our texts and.

Many individuals are pregnant, have children with them, have no shoes, are muddy, wet and in terrible condition. All they can do is wait for Border Patrol to take them to be processed for asylum.

8. Border Patrol agents do not come often to the site. Once a day, they provide a bottle of water and some kind of granola bar. To keep people from starving, NGOs, volunteers both on the Mexico and US side of the border, are supplying the basic necessities they can. It is a dire situation.
9. On Tuesday, May 9th, 2023, an incident happened where two Colombian women were traveling alone and were being sexually harassed. Four males became abusive towards them and the women decided to approach us (there were no agents to approach). We let the authorities know. Fortunately there was no sexual attack, but there was physical and verbal abuse. If we were not there, we don't know whether the attack would have been prevented.
10. We have seen several pregnant women come through. One woman, approximately a week ago, had a miscarriage. She has continually expressed the pain she is going through, especially at night.
11. In a particularly distressing incident, a man from Africa was walking and collapsed. A Colombian nurse tried to help and told us he was dying. We alerted the Border Patrol. Fortunately, the Border Patrol came and picked him up.
12. On a different occasion, a child suffered an epilepsy attack and we were able to get assistance from Border Patrol. I continue to be concerned that if we were not there bearing witness that children and adults would suffer harm while in Border Patrol custody.

I affirm that the statements in this affidavit are true to the best of my knowledge and belief.

May 12, 20223

Adriana Jasso

EXHIBIT B



December 11, 2023

Officer Shoba Sivaprasad Wadhia
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Compliance Branch, Mail Stop # 0190
2707 Martin Luther King, Jr. Ave., SE
Washington, DC 20528-0190

Via Electronic Mail: CRCLCompliance@hq.dhs.gov

RE: CBP Violations of Custody Standards and Human Rights of Individuals Detained in Open-Air Detention Sites in the San Diego Sector Require Immediate Attention to Save Lives

Dear Officer Wadhia:

We are writing to file a renewed and expanded formal complaint with the Office for Civil Rights and Civil Liberties (CRCL) about the continued gross violations of rights by U.S. Customs and Border Protection (CBP), specifically, Border Patrol, which has now for nearly a year forced asylum seekers to remain in CBP custody in open-air detention sites along the U.S.-Mexico border in California. The sites are located in the open-air corridor between the primary and secondary border walls west of the San Ysidro port of entry and in open-air encampments near the town of Jacumba, California.

As detailed in the original complaint filed by the Southern Border Communities Coalition (SBCC)—and since corroborated by numerous media reports and accounts from organizations providing asylum seekers with minimal supplies to survive—Border Patrol agents are still detaining asylum seekers in dangerous, exposed conditions, and are failing to provide the adequate food, water, sanitation, shelter, and medical care required under the law. Since your office completed its review of the previous complaint, at least one individual has died at an open-air detention site despite CRCL having “raised concerns about conditions” and suggesting

that “CBP have humanitarian assistance plans in place to ensure these conditions do not recur.”¹ The situation is increasingly dire, as the cold and rainy winter season is beginning. CRCL must exercise its oversight function to ensure CBP takes immediate corrective action if it continues to detain asylum seekers at these open-air detention sites, including providing the basic shelter, food, water, and medical care required under the law.

The undersigned organizations are located at the border where they provide essential services and have documented conditions at the open-air detention sites in California. Based on our first-hand observations, it is indisputable that individuals held at the open-air detention sites are under CBP’s custody and control, and that the conditions continue to violate CBP’s National Standards on Transport, Escort, Detention, and Search (“TEDS Standards”) and violate the human rights of asylum seekers and other migrants, which the United States is bound to uphold. Thus, the undersigned organizations renew the demands in the previous complaint and implore CRCL to take immediate and meaningful action to address these ongoing and increasingly grave violations by CBP.

The open-air detention sites near San Ysidro were the subject of the previous complaint filed with your office on May 13, 2023. Section I, below, describes current conditions at those sites. In Section II, the sites near Jacumba are described for the first time in this complaint, given the government’s expanded reliance on these more remote locations. The undersigned organizations are aware of open-air detention sites at other points along the border including outside of California, which are beyond the scope of this complaint. We urge CRCL to ensure oversight and compliance with basic human rights standards at *all* such sites.

¹ U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties, *Letter responding to Complaint No. 006336-23-CBP* (Sept. 28, 2023) [hereinafter CRCL Response to SBCC Complaint] (on file with the undersigned organizations).

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I. San Ysidro Sites: The Ongoing Operations of Open-Air Detention Sites West of the San Ysidro Port of Entry Continue to Violate CBP's Own Standards, as Described in a May 2023 Complaint

In May 2023, the Southern Border Communities Coalition (SBCC) filed a complaint documenting CBP's use of open-air detention sites between the primary and secondary walls located west of the San Ysidro port of entry in California.² In the complaint and its supporting declarations, SBCC documented Border Patrol agents' failure to provide adequate water, food, shelter, sanitation, and medical assistance to asylum seekers and other migrants at the open-air detention sites.³ It also provided examples of Border Patrol agents verbally mistreating individuals.⁴

Based on the conditions documented by advocates, SBCC established that CBP was violating its TEDS Standards⁵ and violating migrants' rights under the International Covenant on Civil and Political Rights (ICCPR),⁶ including Article 7 which provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment."⁷ Accordingly, SBCC sought an investigation into the violations of the TEDS Standards and the ICCPR.⁸ More specifically, SBCC asked CRCL to ensure that violations cease, that human rights be protected, and that the conditions not recur in California or anywhere else along the border.⁹ CRCL completed its investigation with a September 28, 2023 letter indicating that it understood individuals in the open-air detention sites outside the San Ysidro port of entry "had since been processed" but that it would work with CBP to ensure that such conditions did not occur again.¹⁰

In November 2023, the U.N. Human Rights Committee ("the Committee") concluded its review of the United States' compliance with its obligations under the ICCPR. The United States is a signatory to the ICCPR, which it ratified in 1992, giving the ICCPR the status of the supreme law of the land per the U.S. Constitution's Supremacy Clause. The Committee expressed concern about the U.S. government's treatment of migrants, specifically "poor conditions of detention, including overcrowding and inadequate access to food, water and medical care," and stated that the United States "should take all measures necessary to enhance protection of migrants,

² Southern Border Communities Coalition, [Civil Rights Civil Liberties Complaint](#), 1 (May 13, 2023) [hereinafter SBCC CRCL Complaint].

³ SBCC CRCL Complaint at 2-8.

⁴ *Id.* at 9 (citing Decl. of Pedro Rios ¶ 25).

⁵ CBP, [National Standards on Transport, Escort, Detention, and Search](#) (2015), [hereinafter TEDS Standards].

⁶ SBCC CRCL Complaint at 8.

⁷ International Covenant on Civil and Political Rights Art. 7.

⁸ SBCC CRCL Complaint at 9.

⁹ *Id.* at 10.

¹⁰ CRCL Response to SBCC Complaint.

refugees and asylum seekers” and ensure that immigration policy is aligned “with international human rights and humanitarian standards.”¹¹ It further directed the United States to take measures to remedy the violations, as required under Article 2 of the ICCPR.¹² Despite raising these concerns at both the domestic and international levels, violations of the ICCPR and the TEDS Standards—and severe ongoing harm to asylum seekers and migrants—persist at the open-air detention sites. The inhumane conditions migrants face at the open-air detention sites will become even more dire, if not more deadly, as the rainy, freezing winter weather continues.

A. Asylum Seekers and Migrants at Open-Air Detention Sites Near San Ysidro Remain in CBP Custody

CBP has established four open-air detention sites along the open-air corridor west of the San Ysidro port of entry. Listed from east to west they are known as: Whiskey 4; Whiskey 8 (where volunteers maintain a site providing migrants with food, water, and basic necessities); Spooner’s Mesa (where it is believed predominantly single adult men are detained);¹³ and 91X (closest to the beach).¹⁴ CBP officers have stated that they are only present at the open-air detention sites to monitor for medical emergencies until their stations have capacity to process individuals.¹⁵ But their interactions with individuals between the walls suggest otherwise. SBCC’s May 2023 complaint explained that asylum seekers and migrants in the open-air detention sites are in CBP custody because of the extent of CBP’s control over their environment, movement, and treatment.¹⁶ CBP continues to exercise the same control now.

First and foremost, the area between the primary Tijuana wall and the secondary wall (about 75 yards north) is located on U.S. soil, as is evidenced by a sign posted on the secondary wall.¹⁷ CBP regularly patrols and monitors this area¹⁸ and exercises control over migrants by, for example: directing them from one area of the corridor to another,¹⁹ and in some cases, transporting them from one area of the corridor to another in Border Patrol vehicles;²⁰ taking

¹¹ U.N. Human Rights Comm., [Concluding Observations on the Fifth Periodic Report of the United States of America](#) ¶¶ 54-55 (Nov. 3, 2023), U.N. Doc. CCPR/C/USA/CO/5.

¹² *Id.*

¹³ Supp. Decl. of Flower Alvarez Lopez ¶ 8.

¹⁴ Supp. Decl. of Pedro Rios ¶ 5.

¹⁵ WRC Report at 3.

¹⁶ SBCC CRCL Complaint at 3.

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ *Id.* See also Supp. Decl. of Pedro Rios ¶ 12; Supp. Decl. of Flower Alvarez Lopez ¶ 9.

²⁰ Supp. Decl. of Adriana Jasso ¶ 10; Supp. Decl. of Lilian Serrano ¶ 10; Supp. Decl. of Pedro Rios ¶ 12.

counts of people in the corridor;²¹ issuing color coded or labeled wristbands;²² directing people to remain seated;²³ subjecting them to invasive body searches;²⁴ providing inadequate amounts of water and food, portable toilet facilities, and garbage collection;²⁵ and not allowing anyone, including those in need of medical attention, to leave the corridor without authorization from CBP agents.²⁶ Individuals only leave the corridor in Border Patrol vehicles or privately owned buses contracted by CBP, unless they are in a medical crisis so grave that they have to be picked up in an ambulance.

Recent reporting confirms that CBP officers tell migrants that they need to stay in the open-air detention sites; otherwise, they will be deported.²⁷ CBP officials place paper wristbands on individuals labeled with the day they entered custody, indicating the rough order in which they will be picked up.²⁸

When CBP officers arrive to take asylum seekers on the sites for processing, they exert control over people in numerous ways. CBP officers order people to remove any additional clothing beyond a shirt or other article of clothing on top and pants or another article of clothing on the bottom.²⁹ People are forced to remove or discard blankets, jackets, and coats. CBP only allows people to have one small bag, and orders them to remove all shoelaces, hair ties, and other accessories. Often, CBP outsources transport to a private transportation company, which picks up and transports asylum seekers for processing. CBP officers are present and monitor the private company during transport. The private transport company often handcuffs asylum seekers before they board the bus.³⁰

²¹ Supp. Decl. of Flower Alvarez Lopez ¶ 11; Supp. Decl. of Adriana Jasso ¶¶ 11-12; Supp. Decl. of Lilian Serrano ¶¶ 14-15; Supp. Decl. of Pedro Rios ¶ 13.

²² SBCC CRCL Complaint at 3.

²³ *Id.* at 2; Decl. of Pedro Rios ¶ 20.

²⁴ Supp. Decl. of Adriana Jasso ¶¶ 13-15.

²⁵ SBCC CRCL Complaint at 2; Decl. of Adriana Jasso ¶ 8; Supp. Decl. of Adriana Jasso ¶¶ 20-23; Supp. Decl. of Lilian Serrano ¶ 9.

²⁶ SBCC CRCL Complaint at 3.

²⁷ Jasmine Garsd, [Border Patrol sending migrants to unofficial camps in California desert, locals say](#), NPR (Nov. 21, 2023), [hereinafter NPR Story].

²⁸ Women's Refugee Commission, [People Seeking Asylum Confined Outside in Appalling Conditions: Findings and Recommendations from a Monitoring Visit to San Diego](#) 3 (Nov. 2023) [hereinafter WRC Report]. See also Gustavo Solis, [Border Patrol once again puts migrants in outdoor San Ysidro camp with no bathrooms](#), KPBS (Sept. 12, 2023), [hereinafter KPBS San Ysidro open-air detention sites]. As discussed below, some volunteers have reported that CBP has stopped issuing wristbands in the Jacumba sites as of early December. Decl. of Jacqueline Arellano ¶¶ 20-22.

²⁹ Supp. Decl. of Flower Alvarez Lopez ¶ 12.

³⁰ *Id.*

CBP continues to detain people in the open-air corridors for anywhere between a few hours to multiple days, although average time in detention at the corridor sites has dropped following the death of an asylum seeker. On October 11, 2023, a 29-year-old Guinean woman died after suffering a medical emergency at the Whiskey 4 site.³¹ Before her death, advocates witnessed CBP regularly detaining migrants in the open-air detention sites for over 72 hours, in violation of the TEDS Standards.³² Since her death, the average time a person is at Whiskey 8 has decreased.³³ However, without proper treatment, individuals still experience violations of their rights that are sometimes fatal. This decrease in detention time does not absolve CBP from complying with its duties.

B. CBP is Still Not Adequately Responding to Medical Emergencies in San Ysidro

Notwithstanding that migrants at the open-air detention sites are within CBP's custody and control, CBP fails to satisfy its own minimum standards for providing for migrants' basic care. The TEDS Standards require CBP to provide individuals with medical attention, meals at regularly scheduled times, adequate water, restroom accommodations, and personal hygiene items.³⁴ TEDS Standards § 4.10 provides that "[e]mergency medical services will be called immediately in the event of a medical emergency."³⁵ Yet, advocates have witnessed CBP's delayed response in providing medical attention to detained asylum seekers and migrants,³⁶ including to a person on the verge of dying.³⁷

Advocates have observed many people who sustained injuries from falling from the border walls.³⁸ Volunteers have tended to the medical needs of migrants because CBP has failed to do so. A volunteer reported providing first aid to a woman who suffered a deep laceration to her leg after being cut by concertina wire while climbing over the border wall in September 2023.³⁹ The woman had reported her injury to CBP, but the officer told her to go to the volunteers

³¹ Alexandra Mendoza, [Migrant woman dies after waiting to be processed at the border near San Ysidro](#), THE SAN DIEGO UNION-TRIBUNE (Oct. 13, 2023); Salvador Rivera, [Female migrant dies after crossing the border in California](#), BORDER REPORT (Oct. 13, 2023).

³² SBCC CRCL Complaint at 7-8 (describing detention of migrants for up to a week). See TEDS Standards § 4.1 ("Detainees should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities. Every effort must be made to hold detainees for the least amount of time required for their processing, transfer, release, or repatriation as appropriate and as operationally feasible.").

³³ WRC Report at 3.

³⁴ SBCC CRCL Complaint at 4. See also TEDS Standards at 17-18.

³⁵ TEDS Standards § 4.10 ("Medical Emergencies").

³⁶ SBCC CRCL Complaint at 4-5.

³⁷ Decl. of Adriana Jasso ¶ 11.

³⁸ Supp. Decl. of Flower Alvarez Lopez ¶ 19.

³⁹ *Id.* ¶ 20.

instead.⁴⁰ Volunteers also supported an Ecuadorian woman who feared calling an ambulance for her 11-year-old son with a fever because she was told that she would not be able to move forward with her case.⁴¹ Volunteers helped the mother call for medical assistance when her son's fever reached 103.5 degrees.⁴² These examples show that CBP is not following the TEDS Standards, which require CBP to call for emergency medical services "immediately."⁴³ Rather, CBP is creating an environment that delays or discourages individuals from receiving medical services altogether.⁴⁴

CBP does not adequately respond to medical emergencies, and when it does respond, it fails to account for the processing of individuals after they are discharged from local hospitals.⁴⁵ Without coordinated plans from CBP, individuals who are discharged from local hospitals have had to figure out how to return to the open-air detention sites on their own because they are unsure of what else to do.⁴⁶ According to a volunteer doctor providing medical services to asylum seekers, including through the slats of the border wall, there will be more injuries and deaths unless adequate medical care and additional support is provided.⁴⁷

C. CBP is Still Not Providing Sufficient Food and Water in San Ysidro

The May 2023 complaint describes CBP agents providing migrants with "a single small water bottle per person, and a granola bar"⁴⁸ after arrival even though the TEDS Standards require "regularly scheduled meal times" for adults⁴⁹ and "a snack upon arrival and a meal at least every six hours thereafter, at regularly scheduled meal times" for children and pregnant individuals.⁵⁰ In direct contravention of the TEDS Standards, CBP was also not providing adequate amounts of water.⁵¹

⁴⁰ *Id.*

⁴¹ *Id.* ¶ 17.

⁴² *Id.*; Supp. Decl. of Pedro Rios ¶ 20.

⁴³ TEDS Standards § 4.10 ("Medical Emergencies").

⁴⁴ Supp. Decl. of Flower Alvarez ¶ 15.

⁴⁵ WRC Report at 6.

⁴⁶ *Id.*; see also Paul Sisson, [Federal government mum on why less-severe medical needs are not better coordinated](#), THE SAN DIEGO UNION-TRIBUNE (Sept. 23, 2023).

⁴⁷ Alexander Mendoza, [Migrant woman dies after waiting to be processed at the border near San Ysidro](#), THE SAN DIEGO UNION TRIBUNE (Oct. 13, 2023).

⁴⁸ SBCC CRCL Complaint at 5; Supp. Decl. of Lilian Serrano ¶ 9; Decl. of Jacqueline Arellano ¶ 13.

⁴⁹ TEDS Standards § 4.13.

⁵⁰ TEDS Standards § 5.6.

⁵¹ SBCC CRCL Complaint at 6 (describing the use of a 5-gallon container of water that would be finished by mid-day). See TED Standards § 4.14 ("Functioning drinking fountains or clean drinking water along with clean drinking cups must always be available to detainees.").

CBP continues to commit blatant violations of these standards. CBP is still only providing—at best—a single bottle of water and one small snack per day.⁵² In response to CBP’s inadequate food provision, organizations and volunteers on both sides of the border have been supplying migrants with basic necessities.⁵³ In fact, CBP has stopped regularly providing even this minimal food and water to migrants at Whiskey 8, where volunteers have a constant presence and have direct access to provide supplies through the slits in the border wall.

D. CBP is Still Not Providing Adequate Restroom Facilities at the Open-Air Detention Sites in San Ysidro

The May 2023 complaint discussed CBP’s failure to provide adequate restroom facilities⁵⁴ and basic hygiene items.⁵⁵ Six months later, there continues to be a dearth of restroom facilities at the open-air detention sites. To address the urgent need for restroom facilities, the American Friends Service Committee (AFSC) brought the issue to the attention of state Senator Steve Padilla’s office, which advocated bringing portable restrooms to three open-air detention sites located west of the San Ysidro port of entry.⁵⁶ And, in fact, all of the open-air detention sites accessible to public view now appear to have at least one portable toilet provided by CBP. But this is not adequate sanitation for the number of individuals passing through these sites, which can include up to a hundred or more people daily.⁵⁷

The TEDS Standards further require restrooms that afford a reasonable amount of privacy.⁵⁸ Yet, women at the open-air detention sites are forced to go to the restroom in groups for protection and use pieces of cardboard to provide a degree of privacy.⁵⁹ In addition, CBP does not provide any menstrual products, such as sanitary pads and tampons, or diapers for babies,⁶⁰ which violates TEDS Standard § 4.11.

⁵² Supp. Decl. of Lilian Serrano ¶ 9; KPBS San Ysidro open-air detention sites.

⁵³ Decl. of Adriana Jasso ¶ 8; Supp. Decl. of Lilian Serrano ¶ 9.

⁵⁴ SBCC CRCL Complaint at 6 (describing use of a single port-a-potty for hundreds of migrants and lack of maintenance of the port-a-potty). See TEDS Standards § 4.15 (requiring restroom accommodations made available to “all detainees and a reasonable amount of privacy . . .”).

⁵⁵ SBCC CRCL Complaint at 7 (describing a lack of showers, hand washing stations, and basic personal hygiene items despite some individuals being detained for up to a week). See TEDS Standards § 4.11 (requiring that detainees be provided with “basic personal hygiene items, consistent with short term detention and safety and security needs” and for families with small children to have “access to diapers and baby wipes,” and requiring reasonable efforts to “provide showers, soap, and a clean towel to detainees who are approaching 72 hours in detention.”).

⁵⁶ Pedro Rios, [Update: AFSC U.S.-Mexico Border Program staff responds to Border Patrol’s open-air detention sites](#), AFSC NEWSROOM (Oct. 2, 2023) hereafter “AFSC Update”]. See also Supp. Decl. of Pedro Rios ¶ 19.

⁵⁷ KPBS San Ysidro open-air detention sites.

⁵⁸ See TEDS Standards § 4.15 (requiring restroom accommodations made available to “all detainees and a reasonable amount of privacy . . .”).

⁵⁹ KPBS San Ysidro open-air detention sites.

⁶⁰ SBCC CRCL Complaint at 7 (citing Decl. of Flower Alvarez Lopez ¶ 5).

E. Volunteers are Addressing the Needs of Migrants at Open-Air Detention Sites in San Ysidro Because CBP is Not Providing Adequate Food, Water, Medical Care, or Other Necessities

Because CBP is not addressing the basic needs of asylum seekers at the open-air detention sites, where they are exposed to the elements in the desert, organizations and volunteers have set up a volunteer station to provide water, food, and medical assistance.⁶¹ AFSC, Al Otro Lado, and Border Kindness, among others, have committed to providing asylum seekers at the open-air detention sites with meals, water, and sources of warmth where CBP has failed to do so.⁶² CBP does not provide blankets, jackets, umbrellas, ponchos, or shelter—even though TEDS Standards require CBP to provide clean bedding to children and clean blankets, when available, to adults upon request.⁶³ Instead, nongovernmental organizations have taken it upon themselves to provide food, water, blankets, tarps, informal translation services, clothing, medicine and first aid, diapers, and personal hygiene products to asylum seekers at the open-air detention sites.⁶⁴

Volunteers responding to the needs of migrants use Whiskey 8 as a headquarters, where they prepare food and other items to distribute to people at the four sites near San Ysidro. Nonprofit organizations and volunteers advocated with CBP to be able to provide aid directly at one publicly accessible site through the wall; however, there are three other open-air detention sites where CBP generally does not allow nonprofit organizations and volunteers to go.⁶⁵ Volunteers give food to CBP agents, who presumably distribute it to individuals at the other sites.⁶⁶ The food provided by volunteers and organizations is the only substantial food that individuals at the open-air detention sites receive, given that CBP only provides them water and occasional snack foods, such as granola bars.⁶⁷ Men from Spooner's Mesa have repeatedly requested permission from Border Patrol to leave and hike to Whiskey 8 to bring back food for the men there.⁶⁸ CBP has generally denied them permission.⁶⁹ On at least one occasion, Border

⁶¹ AFSC Update; Supp. Decl. of Pedro Rios ¶ 22; Supp. Decl. of Lilian Serrano ¶ 9.

⁶² AFSC Update; Decl. of Jacqueline Arellano ¶ 17. *See also* Jacob Aere, [Migrants detained near Jacumba Hot Springs now face cold, wet weather](#), KPBS (Nov. 15, 2023) [hereinafter KPBS Jacumba Report].

⁶³ *See* TEDS Standards § 4.12. *See also id.* § 8.0 (defining bedding as “[a] (or any combination of) blanket, mat, or cot”).

⁶⁴ AFSC Update. *See also* KPBS San Ysidro open-air detention sites.

⁶⁵ WRC Report at 3; *see, e.g.*, Supp. Decl. of Adriana Jasso ¶¶ 8, 20-22.

⁶⁶ *See* Supp. Decl. of Lilian Serrano ¶ 13 noting that “Border Patrol agents tell volunteers at Whiskey 8 how many migrants are in Spooner's Mesa so that the volunteers can pack food lunches and Border Patrol takes those packages to the migrants in that site.”

⁶⁷ SBCC CRCL Complaint at 5. *See also* AFSC Update; Supp. Decl. of Pedro Rios ¶ 18; Supp. Decl. of Lilian Serrano ¶ 9.

⁶⁸ Supp. Decl. of Adriana Jasso ¶¶ 21-22.

⁶⁹ *Id.* ¶ 22.

Patrol allowed migrants detained at Spooner's Mesa to access food and water provided by volunteers only after the volunteers interceded on the migrants' behalf and negotiated for permission for the migrants to bring food to the site.⁷⁰ Response efforts from organizations including Border Kindness, Al Otro Lado, Universidad Popular, and mutual aid groups are driven by volunteers and funded by donations, and thus are not guaranteed to continue.⁷¹

Given the dire conditions facing asylum seekers at these sites, CRCL should reopen its investigation into the open-air corridor between the primary and secondary border walls west of the San Ysidro Port of Entry. Although CRCL "raised concerns about [these] conditions"⁷² with CBP, it does not appear that the agency has taken any meaningful action in response.

II. Jacumba Sites: CBP Fails to Address the Basic Needs of Asylum Seekers Detained near Jacumba, California, in Violation of the TEDS Standards

Open-air encampments emerged in Jacumba, California around May 2023.⁷³ According to recent reporting, currently on any given day there are an average of 500 asylum seekers and other migrants at the sites.⁷⁴ According to data collected by Al Otro Lado, between the end of October 2023 and the beginning of December 2023, the number of asylum seekers at the Jacumba open-air detention sites on a single day ranged between less than 100 to over 750.⁷⁵ During this period, the number of children at the Jacumba open-air detention sites ranged between less than 20 and up to nearly 60, and the number of pregnant persons has reached over 60.⁷⁶ Conditions in Jacumba are just as, if not more, deplorable⁷⁷ than the conditions in between the primary and secondary border walls west of the San Ysidro port of entry. Thus, the undersigned organizations request that CRCL expand its investigation of CBP's violations of TEDS Standards to include all open-air detention sites currently in use in California and beyond and to ensure that such violations cease.

⁷⁰ *Id.*; Supp. Decl. of Pedro Rios ¶ 16.

⁷¹ AFSC Update.

⁷² CRCL Response to SBCC Complaint.

⁷³ Soumya Karlamangla, [Scenes From a Migrant Camp at California's Southern Border](#), N.Y. TIMES (May 19, 2023). See also Melissa Gomez, [Migrants struggle against the elements in San Diego's open-air desert camps](#), L.A. TIMES (Nov. 28, 2023) [hereinafter L.A. TIMES Article]. See also Supp. Decl. of Pedro Rios ¶ 7; Supp. Decl. of Lilian Serrano ¶¶ 4-6.

⁷⁴ L.A. TIMES Article.

⁷⁵ Decl. of Erika Pinheiro ¶ 23; see also Supp. Decl. of Lilian Serrano ¶ 6.

⁷⁶ Decl. of Erika Pinheiro ¶ 23.

⁷⁷ Supp. Decl. of Lilian Serrano ¶ 6 ("While conditions in the other sites are deplorable, the conditions in Jacumba are particularly dangerous because migrants are exposed to extreme desert weather conditions, including intense heat waves and cold fronts.").

A. Individuals at the Sites Near Jacumba are in CBP Custody

There are four open-air detention sites in and near Jacumba, California, which are in remote locations in the middle of the desert. Three of the sites are presently in use: Valley of the Moon (also referred to as “Moon Valley” or “Moon”); Tower 177; and Willows.⁷⁸ While the sites vary in their precise location and geographic features, at each site, asylum seekers undoubtedly are—and understand themselves to be—under CBP’s custody and control.⁷⁹ In fact, a senior CBP official recently acknowledged to a reporter that the camp serves as a “sort of informal holding spot.”⁸⁰ Based on observations from advocates on the ground, asylum seekers and migrants at the Jacumba open-air detention sites are indeed in CBP custody, as detailed below.



Figure 1. CBP vehicles and officers at the Moon Valley Site. (Photo from November 14, 2023).

1. The Physical Location of the Jacumba Sites Coupled with CBP Control Prevents People from Leaving

The geography and operations of each site, as seen in the photos included in this complaint, prevent asylum seekers from leaving the sites. As an initial matter, all three sites are surrounded by desert, and any asylum seeker who leaves the sites will be at severe risk of dehydration, starvation, or death by exposure. The Moon Valley site is located by the shoulder of a highway and is bordered by mountains to the south and desert all around. When on site, CBP maintains its vehicles between the encampment and the highway.⁸¹ Tower 177 and Willows are both located on private property and are only accessible through a gated road. The Tower 177 site is bordered by mountains on the side opposite to the road and CBP maintains

⁷⁸ The fourth site is referred to as O’Neill.

⁷⁹ Tom K. Wong, [Lives in Danger: Seeking Asylum Against the Backdrop of Increased Border Enforcement](#), UC San Diego US Immigration Policy Center (May 16, 2023) [hereinafter “Immigration Policy Center Report”].

⁸⁰ L.A. Times Article.

⁸¹ See Figure 1.

vehicles at the top of the hill leading out from the encampment.⁸² And the Willows site is enclosed by the border wall on one side and by railroad tracks on the other side. CBP vehicles patrol the only road leading in and out of this site.⁸³ At each location, CBP monitors who may enter and interact with asylum seekers. At Willows, CBP has even installed a sign indicating the site is under CBP control and that only authorized personnel are allowed on the site.⁸⁴



Figure 2. A sign installed by CBP at the Willows site. (Photo from November 14, 2023).

In addition to physical barriers and in-person monitoring, there are Anduril Autonomous Surveillance Towers (AST) at each of the three Jacumba open-air detention sites.⁸⁵ The ASTs use an artificial intelligence system that detects and tracks movement in a 360-degree radius up to more than a mile away from the site.⁸⁶ These ASTs alert Border Patrol when an “object of interest” is detected, meaning that it sends images of persons or vehicles of interest that have made movement at the sites.⁸⁷ Border Patrol therefore has capacity to monitor and surveil asylum seekers at the detention sites even when agents are not physically onsite.⁸⁸ When asylum seekers and migrants have attempted to leave the camp, Border Patrol agents have apprehended and returned them to the detention sites.⁸⁹



Figure 3. A CBP vehicle guards the road leading out of Tower 177. (Photo from November 14, 2023).

⁸² Supp. Decl. of Pedro Rios ¶ 6.

⁸³ *Id.*; Decl. of Jacqueline Arellano ¶ 11; Decl. of Erika Pinheiro ¶ 16.

⁸⁴ See Figure 6.

⁸⁵ Decl. of Erika Pinheiro ¶ 17.

⁸⁶ *Id.*

⁸⁷ Decl. of Erika Pinheiro ¶¶ 17-18.

⁸⁸ *Id.* ¶ 17.

⁸⁹ *Id.* ¶ 18.

Finally, CBP officers themselves consider the asylum seekers at Jacumba to be in custody. According to a report, a Border Patrol agent, when asked whether the asylum seekers were free to leave, said that they were not: "[W]hen asked what would happen if the migrants tried to leave Jacumba, the agent said they would be apprehended."⁹⁰



Figure 4. The Willows site abuts the border wall. (Photo from November 14, 2023).



Figure 5. CBP vehicles patrol the only road leading to the Willows site. (Photo from November 14, 2023).

2. CBP Directs Individuals to Remain at the Jacumba Sites

CBP directs asylum seekers from wherever they are apprehended along the border to the sites and orders them to wait there to be taken for processing.⁹¹ In some instances, CBP directly transports asylum seekers to the open-air detention sites in its vehicles.⁹² As at the San Ysidro sites, CBP requires individuals to wear paper wristbands indicating the day they arrived.⁹³ CBP officers tell asylum seekers that they can expect to be at the site for at least 1-3 days and warn them that leaving the site will be harmful to their asylum case, meaning



Figure 6. Asylum seekers with wristbands. (Photo from November 14, 2023).

⁹⁰ Immigration Policy Center Report at 4.

⁹¹ Supp. Decl. of Lilian Serrano ¶ 12.

⁹² Decl. of Jacqueline Arellano ¶¶ 9-10; Decl. of Erika Pinheiro ¶¶ 14-15. See also Steve Inskeep and Jasmine Garsd, [Many migrants entering the U.S. illegally land in makeshift camps in California](#), NPR MORNING EDITION (Nov. 21, 2023).

⁹³ See Paulina Velasco, [Detained in the desert: migrants stuck in camps in the extreme climate of the US-Mexico border](#), THE GUARDIAN (Nov. 27, 2023) [hereinafter "GUARDIAN Story"]. See also L.A. TIMES Article; Decl. of Erika Pinheiro ¶¶ 14, 30.

that they could be denied asylum and deported. Children and family groups are often picked up first, though they may still be required to wait overnight.⁹⁴

Asylum seekers at the Jacumba sites are not free to leave. As mentioned, when people venture out of open-air detention sites in search of food or other goods, CBP follows them and forces them to return, underscoring CBP’s control over the sites.⁹⁵

3. CBP Acknowledges its Duties at the Jacumba Sites by Providing Inadequate Levels of Care

CBP maintains a presence at the open-air detention sites: the agency has installed inadequate numbers of portable toilets at all the sites, and dumpsters at a few of the sites. Such infrastructure, however inadequate, further indicates that CBP’s open-air detention sites are custodial and that the agency is adhering to some—deeply inadequate—standard of confinement. CBP is not consistently present on site to provide humanitarian services, but instead guards the side closest to the road at all sites: monitoring for any individuals attempting to leave or enter the site. At Tower 177, for example, advocates have witnessed an additional CBP vehicle stationed on the road outside the site,⁹⁶ which would prevent anyone from leaving without being surveilled by CBP.



Figure 7. Portable toilets installed by CBP at the Tower 177 site (Photo from November 14, 2023).

B. CBP is Not Providing Sufficient Food and Water at the Jacumba Sites

Notwithstanding that migrants detained at the Jacumba open-air detention sites are in CBP’s custody and control, CBP also fails to provide for their basic needs, just as it fails to provide for migrants detained at the sites near San Ysidro. The TEDS Standards require “regularly scheduled meal times” for adults⁹⁷ and “a snack upon arrival and a meal at least every six hours

⁹⁴ L.A. TIMES Article; Decl. of Erika Pinheiro ¶¶ 42-43; Supp. Decl. of Pedro Rios ¶ 15.

⁹⁵ Decl. of Jacqueline Arellano ¶ 11.

⁹⁶ See Figure 2.

⁹⁷ TEDS Standards § 4.13.

thereafter, at regularly scheduled meal times” for children and pregnant individuals.⁹⁸ However, individuals staying at the Jacumba open-air detention sites rely exclusively on volunteers to provide them with food and water to survive.⁹⁹ In fact, CBP has even asked humanitarian organizations to bring certain items that CBP does not provide.¹⁰⁰ Like in San Ysidro, CBP provides just one bottle of water, and at most, a small snack-size pack of crackers.¹⁰¹ Some asylum seekers do not receive even these basic items on arrival.¹⁰²



Figure 8. Tents at the Willows site. (Photo from November 14, 2023).

People brought to these sites have often walked for hours through the desert and are tired, hungry, and dehydrated on arrival. Despite forcing people to remain at the sites for days at a time, CBP does not provide any meals. Only volunteers provide meals, traveling to all three sites twice a day to provide a meal in the morning and a meal in the afternoon.

C. CBP is Denying Medical Care at the Jacumba Sites

There are no medical facilities, supplies, or posted information about what to do in the event of a medical emergency at any of the described open-air detention sites. CBP does not assess medical needs or provide any emergency medical care.¹⁰³ Instead, medical volunteers regularly volunteer at the sites to address immediate needs.¹⁰⁴ Medical volunteers at the open-air detention sites include doctors, nurse practitioners, and medical students who are licensed to provide medical assistance.¹⁰⁵ Other volunteers, while not medical providers, have EMT or first aid training and provide care to address immediate needs.¹⁰⁶ People have required first aid care to address parasites, burns, broken bones, and other medical needs.¹⁰⁷ Volunteers have also seen people with significant medical conditions, including pregnant women or women in

⁹⁸ *Id.* § 5.6.

⁹⁹ NPR Story.

¹⁰⁰ GUARDIAN Story.

¹⁰¹ Decl. of Erika Pinheiro ¶ 8.

¹⁰² Decl. of Jacqueline Arellano ¶ 13.

¹⁰³ Decl. of Erika Pinheiro ¶ 39; Decl. of Jacqueline Arellano ¶ 18.

¹⁰⁴ Decl. of Erika Pinheiro ¶ 39; Decl. of Jacqueline Arellano ¶ 19.

¹⁰⁵ Decl. of Erika Pinheiro ¶ 39.

¹⁰⁶ Supp. Decl. of Flower Alvarez Lopez ¶ 16.

¹⁰⁷ NPR Story.

labor.¹⁰⁸ Given the recent change in weather, medical professionals are concerned that there may be an increase in cases of hypothermia and the flu, particularly among children and individuals with underlying medical conditions.¹⁰⁹ Since September, volunteers have already seen people at the open-air detention sites with hyperthermia and hypothermia.¹¹⁰

Yet, even as CBP deprives migrants of the basic necessities they need to survive, it threatens to bar or deter volunteers from assisting migrants detained at the open-air sites near Jacumba. In particular, medical volunteers have received pushback for the aid that they provide.¹¹¹ On December 4, 2023, two San Diego County sheriffs approached volunteers at Willows to inquire whether they were giving out pharmaceuticals.¹¹² Volunteers confirmed that they only provide over-the-counter medicine and wound care.¹¹³

Given the location of the detention sites, it is extremely difficult for migrants to receive appropriate medical attention in an emergency. Border Patrol agents often refuse to call local Emergency Medical Services (EMS),¹¹⁴ but when migrants or volunteers call, EMS sometimes delays responding to emergency calls or discourages migrants from seeking medical attention.¹¹⁵ Recently, Border Patrol has informed advocates that EMS will now only respond if CBP makes the 911 call.¹¹⁶ Yet even when CBP does call, EMS has generally refused to go into the Jacumba open-air detention sites.¹¹⁷ As a result, people experiencing medical emergencies need to be taken to the paved road next to the open-air detention sites to be treated by EMS, which at Tower 177 is a significant distance away.¹¹⁸ Moreover, the remoteness of the sites delays how fast an ambulance can take a person to the nearest hospital.¹¹⁹ Earlier this month, it took over an hour for EMS to respond after receiving an emergency call about a 13-year-old boy who was badly injured.¹²⁰ The boy died at the site.¹²¹

¹⁰⁸ Dani Miskell, [Freezing conditions at Jacumba border puts migrants at risk for hypothermia](#), ABC 10 NEWS SAN DIEGO (Dec. 1, 2023).

¹⁰⁹ KPBS Jacumba Report.

¹¹⁰ Decl. of Jacqueline Arellano ¶ 14.

¹¹¹ Decl. of Erika Pinheiro ¶ 40.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* ¶¶ 31, 35.

¹¹⁵ Decl. of Jacqueline Arellano ¶¶ 18-19; Decl. of Erika Pinheiro ¶¶ 36-37.

¹¹⁶ Decl. of Erika Pinheiro ¶ 37; Decl. of Jacqueline Arellano ¶ 19.

¹¹⁷ Decl. of Erika Pinheiro ¶ 34.

¹¹⁸ *Id.* ¶¶ 34, 37.

¹¹⁹ Supp. Decl. of Lilian Serrano ¶ 7.

¹²⁰ Decl. of Erika Pinheiro ¶ 37.

¹²¹ *Id.*

CBP actively discourages and blocks access to medical care.¹²² Some Border Patrol agents have falsely accused people of faking illnesses to get out of the open-air detention sites, and have told asylum seekers that they will be deported if they fake an illness, or that their asylum process will stop if they get into an ambulance.¹²³ Persons who are transported in an ambulance are often not allowed to bring anyone with them or are only allowed to bring one person.¹²⁴ Migrants in need of medical care express fear of having their asylum cases forestalled and of being separated from their families, and they hesitate to receive the medical aid that they need.¹²⁵ The fear of family separation is well founded, and volunteers have encountered instances where this fear has been realized.¹²⁶ Al Otro Lado has helped reunify families that have been separated under these circumstances.¹²⁷

CBP also fails to provide hygiene products of any kind, such as toothbrushes, soap, or sanitary pads and tampons—a violation of the TEDS Standards, which require the provision of basic personal hygiene items.¹²⁸ Volunteers sometimes provide basic supplies such as ibuprofen, bandages, and sanitary pads.

D. CBP is Failing to Provide Adequate Shelter at the Jacumba Sites

All of the sites are outdoors and completely exposed to the elements. There are no permanent shelters, and CBP has not set up any temporary structures or provided any protection from the weather.¹²⁹ Located in the desert, the sites are extremely dry, dusty, cold and windy—even in the middle of a sunny day.¹³⁰ Many asylum seekers are forced to sleep at the open-air detention sites overnight when temperatures drop considerably—recently as low as 20 degrees Fahrenheit.¹³¹ Asylum seekers build fires out of uprooted trees, brush, and sticks, and even trash on site to try to keep warm.¹³² And volunteers have reported that during the summer, temperatures often reach well over 100 degrees Fahrenheit, and that there is no shelter or protection from the sun.

¹²² *Id.* ¶ 31.

¹²³ Decl. of Erika Pinheiro ¶¶ 31, 33; Supp. Decl. of Flower Alvarez Lopez ¶ 15.

¹²⁴ Decl. of Erika Pinheiro ¶ 38.

¹²⁵ Supp. Decl. of Flower Alvarez Lopez ¶ 17.

¹²⁶ Supp. Decl. of Flower Alvarez Lopez ¶ 22.

¹²⁷ Decl. of Erika Pinheiro ¶ 38.

¹²⁸ See TEDS Standards § 4.11.

¹²⁹ Decl. of Erika Pinheiro ¶¶ 10, 11.

¹³⁰ *Id.* ¶ 9.

¹³¹ See Decl. of Jacqueline Arellano ¶ 15; see also TEDS Standards § 4.7 ("Temperature Controls: When it is within CBP control, officers/agents should maintain hold room temperature within a reasonable and comfortable range for both detainees and officers/agents. Under no circumstances will officers/agents use temperature controls in a punitive manner.").

¹³² L.A. Times Article.; Decl. of Jacqueline Arellano ¶ 15; Decl. of Erika Pinheiro ¶ 12.

At all three sites, people have built some rudimentary shelter for rest and privacy, either by setting up volunteer-provided tents or by building tent-like structures out of tarps and blankets.¹³³ Most of these structures are flimsy and built out of found materials—often dirty, dusty blankets—and do not provide adequate warmth or protection from the elements. At Tower 177, asylum seekers have also sought protection from the wind by huddling near large boulders.¹³⁴

Volunteers are making extraordinary efforts to distribute jackets, blankets, and hats to asylum seekers to try to ensure their basic survival.¹³⁵ However, the donations and distribution are necessarily haphazard, leaving some asylum seekers without the items they need to stay warm. Volunteers are not able to maintain a permanent presence at the sites to offer this support at all times nor do they have adequate supplies to provide these basic essentials on a large scale when there are hundreds of people arriving at the same time.



Figure 9. Asylum seekers seek protection from the elements at the Tower 177 site by sheltering near boulders. (Photo from November 14, 2023).

Volunteers, including physicians,¹³⁶ are very concerned about the upcoming wet weather and colder temperatures in the winter. As it is, people are huddling under dirty blankets and building fires out of brush and trash to try to stay warm. Smoke from these fires has exacerbated allergies and health problems for some asylum seekers.¹³⁷ In the event of rain, the sites are likely to become very muddy, and the rudimentary tents that asylum seekers and volunteers have built will be insufficient to provide protection and warmth.

¹³³ Decl. of Jacqueline Arellano ¶ 15; Decl. of Erika Pinheiro ¶ 10.

¹³⁴ See Figure 9.

¹³⁵ Decl. of Jacqueline Arellano ¶¶ 15, 17.

¹³⁶ See KPBS Jacumba Report (describing a Kaiser Permanente physician’s concern for asylum seekers and migrants, especially children, who do not have the “proper clothing” for 40-degree weather).

¹³⁷ Decl. of Erika Pinheiro ¶ 12.

III. CRCL Must Take Immediate Action to Address the Grave Violations Documented in this Complaint

Given CBP's persistent and increasingly concerning violations of domestic and international standards through its operation of the open-air detention sites in California, and elsewhere along the border, we implore CRCL to reopen its investigation of the open-air detention sites operated by CBP and ensure adequate oversight. The recent death at an open-air detention site provides a painful reminder that lives hang in the balance. More lives are at risk as we move into the winter months.

CBP has not put in place any humanitarian assistance plans in response to concerns raised by CRCL. In fact, were it not for the courageous and tireless work of volunteers and humanitarian aid organizations, the fatal nature of these operations would no doubt be more severe. If CBP is not able to process people promptly, it must at a minimum comply with the TEDS Standards and provide: 1) shelter, warm clothing, and blankets that provide protection from the elements; 2) adequate water, food, and sanitation; and 3) medical care, particularly to address life threatening emergencies and those issues that if left untreated would cause irreparable harm. Ultimately, the agency could eliminate unnecessary suffering by permitting individuals to request asylum at ports of entry instead of unlawfully turning away those who do not have CBP One appointments.¹³⁸

We welcome the opportunity to meet with your office to share more regarding the completely avoidable humanitarian crisis occurring at these sites. Further inquiries regarding this complaint may be directed to Lilian Serrano at lilian@alliancesd.org and Blaine Bookey at bookeybl@uclawsf.edu.

(Signatures on the following page)

¹³⁸ See *Al Otro Lado and Haitian Bridge Alliance v. Mayorkas*, 3:23-cv-01367-AGS-BLM (S.D. Cal., filed July 27, 2023).

Sincerely,

Erika Pinheiro
Al Otro Lado (AOL)

Pedro Rios
American Friends Service Committee (AFSC)

Kelly Scott Overton
Jacqueline Arellano
Border Kindness

Lilian Serrano
Southern Border Communities Coalition (SBCC)

Edith Sangüeza
Dulce Rodas
Blaine Bookey
Peter Habib*
Center for Gender & Refugee Studies (CGRS)

Mevlûde Akay Alp
Melissa Fich
Linda Evarts
International Refugee Assistance Project (IRAP)

Sarah Kim Pak
Hilda Bonilla*
Michelle Lapointe
National Immigration Law Center (NILC)

*Law graduate

Complainants

Counsel for Complainants

Enclosures¹³⁹

1. Supplemental Declaration of Adriana Jasso
2. Supplemental Declaration of Flower Alvarez Lopez
3. Supplemental Declaration of Lilian Serrano
4. Supplemental Declaration of Pedro Rios
5. Declaration of Erika Pinheiro
6. Declaration of Jacqueline Arellano
7. SBCC May 2013 Complaint to CRCL and Attachments

¹³⁹ Original declarations on file and available upon request.

CC

Chairman Dick Durbin
Ranking Member Lindsey Graham
Senate Judiciary Committee

Speaker Mike Johnson
Minority Leader Hakeem Jeffries
United States House of Representatives

Chairman Jim Jordan
Ranking Member Jerrold Nadler
House Committee on the Judiciary

Attorney General Merrick Garland
U.S. Department of Justice

Chairman Alex Padilla
Senate Judiciary Committee
Subcommittee on Immigration, Citizenship,
and Border Safety

Assistant Attorney General Kristen Clarke
Civil Rights Division
U.S. Department of Justice

Secretary Alejandro Mayorkas
U.S. Department of Homeland Security

Chairman Gary Peters
Ranking Member Rand Paul
Senate Committee on Homeland Security &
Governmental Affairs

Acting Commissioner Troy A. Miller
Customs and Border Protection
U.S. Department of Homeland Security

Chairman Mark Green
Ranking Member Bennie Thompson
House Committee on Homeland Security

Nathaniel Kaine
Chief of Staff
Customs and Border Protection
U.S. Department of Homeland Security

Chairman James Comer
Ranking Member Jamie Raskin
House Committee on Oversight and
Accountability

Chief Jason Owens
United States Border Patrol
Customs and Border Protection
U.S. Department of Homeland Security

Chairman Tom McClintock
Ranking Member Pramila Jayapal
House Judiciary Committee
Subcommittee on Immigration Integrity,
Security, and Enforcement

Erin Barclay
Acting Assistant Secretary of State for
Democracy, Human Rights, and Labor
U.S. Department of State

Majority Leader Charles Schumer
Minority Leader Mitch McConnell
United States Senate

Attachment 1

SUPPLEMENTAL DECLARATION OF ADRIANA JASSO

I, Adriana Jasso, declare the following:

1. I have worked with the American Friends Service Committee for 17 years assisting migrants.
2. I previously submitted a declaration in support of the Civil Rights and Civil Liberties complaint that the Southern Border Communities Coalition filed on May 13, 2023.
3. Since early September, I have been running an open-air volunteer station supporting migrants alongside the border wall in the San Ysidro area—a location that is commonly referred to as “Whiskey 8.”
4. The migrants we assist are inside the United States between two border walls. At Whiskey 8 we provide the resources through the slats in the northern-most of the two walls.
5. Beginning on or about September 7, 2023 and continuing to the present, we have had an ongoing daily volunteer presence at Whiskey 8. I work at the site five days a week for five to six hours a day. Prior to September, I was involved in observations of the site in August 2023.
6. I provide this declaration based on my personal observations, the observations and experiences of my colleagues that they have communicated to me, my conversations with migrants we assist, and my conversations with Border Patrol agents in the course of my volunteer work at the site from August 2023 to the present. I keep contemporaneous notes of my observations and information I receive from other volunteers, migrants, and Border Patrol.
7. The volunteers and I assist migrants, including by providing food, water, clothing, female hygiene products, diapers, blankets, a phone-charging station, and tarps. We also identify migrants with medical emergencies and other medical needs and do our best to get them medical care.
8. We provide assistance to migrants at two nearby open-air sites as well: Whiskey 4 and Spooner’s Mesa. Generally, Border Patrol does not allow us to visit these sites, and we identify the needs of migrants there by speaking with their family members who are at Whiskey 8, as discussed more below. I am aware, however, of a handful of occasions when Border Patrol has permitted a volunteer to visit these sites with a Border Patrol escort.

Migrants are in Border Patrol Custody at the Open-Air Sites

9. As I discussed in my prior declaration, the migrants at these open-air sites are in the custody and control of Border Patrol. Unless otherwise specified, the information I provide below reflects ongoing Border Patrol practices between August 2023 and the present day.

Agents direct migrants to the sites

10. Border Patrol agents make contact with migrants in the United States and instruct them to walk to the open-air sites, or the agents actually drive them to the open-air sites in their vehicles. Agents also frequently transport migrants in their vehicles from one open-air site to another.

Agents subject migrants to the count

11. Every day at Whiskey 8, multiple times a day, Border Patrol agents hold a “count” of the migrants present, just as they would in a detention facility. But the practice is more brutal given the outdoor conditions. Agents conduct the “count” at any time of day or night. Not infrequently counts are held in the middle of the night when temperatures are cold, it is raining, and people are sleeping. Migrant families often try to construct makeshift shelters out of tarps, and volunteers have witnessed parents asking Border Patrol agents if their children can remain asleep under their tarps during the count. The agents have said no and demanded that everyone stand to be counted, even small children and even in the rain and freezing weather. The migrants and their children must stand for the count until the agents give them permission to go back to their tarps.
12. We have heard from migrants that their family members are subject to the count at the Whiskey 4 and Spooner’s Mesa sites as well.

Agents subject migrants to body searches

13. Border Patrol agents regularly conduct invasive searches of migrants at the open-air sites. Specifically, agents conduct body searches of all male migrants, during which they require the migrants to put up their hands and spread their legs, and agents pat their legs, back, chest, and waist. The agents also search inside the migrants’ pockets and require migrants to remove their shoes and the shoelaces from their shoes. When a female Border Patrol agent is present, female migrants are also body searched.
14. Even when a female Border Patrol agent is not available, female migrants are required to stand in a line and are subjected to the “one layer” rule—that is, Border Patrol agents inform them that the migrants can wear only one layer of clothing and they must remove all other layers before they are transported away from the open air site. As a result of this rule, I have observed female migrants removing their t-shirts and other inner layers of clothing in public view of male Border Patrol agents. I have seen the female migrants trying to cover each other with their bodies so that the male agents will not see them undressed. Female migrants are also required to let down their hair during these body inspections.
15. On or about November 9, 2023 at Whiskey 8, a male agent forced a female migrant to remove her hijab and then he touched the female migrant’s hair. The female migrant and her husband

appeared to be deeply uncomfortable when the agent engaged in this culturally inappropriate act. I was present and witnessed the incident.

Agents subject migrants to harsh verbal treatment

16. I have also seen Border Patrol agents screaming and swearing at migrants at the open-air sites. For example, on or about December 4, 2023, I observed an agent checking migrants' passports. A female migrant informed him that she did not have her passport in her hand because it was in her bag, and the agent began to scream and swear at her, repeatedly using the F word.

Agents subject migrants to family separation

17. Border Patrol agents routinely separate families at the open-air sites, requiring men to leave their female and minor child relatives who they are traveling with. Border Patrol agents detain the men at the more remote Spooner's Mesa site. Male siblings and male cousins are routinely separated from their female siblings and cousins. And frequently fathers are separated from their spouses and children. Border Patrol agents ask the male migrants if they are legally married to their spouses, and if the answer is no, the agents typically separate the families.
18. On or about October 2, 2023, I spoke with a migrant mother who said she was very worried about her 17-year-old son who had been separated from her and sent to Spooner's Mesa. I asked a Border Patrol agent about this case, and the agent was dismissive of the concerns about separating the mother and her minor child.
19. Volunteers are generally not permitted by Border Patrol agents to enter or approach Spooner's Mesa where the men are detained. Spooner's Mesa is a hike into the canyon away from Whiskey 8, as I described in my earlier declaration. We cannot see what is happening there, but we hear from the family members of the detained men about the needs of the migrants at that site.

Agents Fail to Provide Migrants Basic Life Necessities at the Open-Air Sites

20. For example, we have heard from family members, who are communicating by cell phone with male migrants at Spooner's Mesa, that there are times when there is no food or water at that site. Sometimes Border Patrol has asked for food or water from our volunteers and transported it to the site, which only Border Patrol is allowed to access.
21. At other times, the migrants at Spooner's Mesa have been desperate for food and water, and Border Patrol has not provided it. We have then communicated with Border Patrol agents to try to get permission for some men who are detained at Spooner's Mesa to hike to our volunteer station at Whiskey 8 so they can get food and water and then hike back to provide the food and water to the detained men at Spooner's Mesa.
22. On or about September 23, 2023, we had to negotiate with Border Patrol to get food and water for about 120 men at Spooner's Mesa. The lack of food and water for many hours is very

dangerous. These men had to ask for the agents' permission because Border Patrol does not otherwise allow the men to leave Spooner's Mesa. I and other volunteers have heard that many times men at Spooner's Mesa have requested permission to leave to get food and water and their requests have been denied. I am not aware of any time that a man left Spooner's Mesa without permission.

23. Border Patrol agents frequently do not have the basic necessities they need to provide migrants detained in the open-air sites. For example, they do not appear to carry extra water in their vehicles. And agents have repeatedly asked our volunteer station to borrow water for Spooner's Mesa and Whiskey 4. We have provided the water.
24. At times the Border Patrol agents have appeared embarrassed to have to rely on us and have promised to "pay us back" with water. But it is unclear why they are not able to stock sufficient water in the first place. Agents have told me that they need to provide projected migrant numbers in advance for the following week, and they say they have repeatedly had too few supplies to meet the demand. But I do not know why they cannot ask for more water than they anticipate needing to ensure they do not fall short.

I affirm that the statements in this declaration are true, correct, and complete to the best of my knowledge and belief.

December 9, 2023

/s/ Adriana Jasso

Adriana Jasso

Attachment 2

SUPPLEMENTAL DECLARATION OF FLOWER ALVAREZ LOPEZ

I, Flower Alvarez Lopez, declare the following:

1. My name is Flower Alvarez-Lopez. I am a Co-Director at Universidad Popular, a grassroots community organization that supports immigrants in the San Diego, CA region.
2. This declaration supplements the declaration that I provided on May 12, 2023 in support of the Civil Rights and Civil Liberties complaint filed by the Southern Border Communities Coalition on May 13, 2023.
3. I first went to the open air detention site near San Ysidro, known by Border Patrol agents as "Whiskey 8", in May 2023. I camped out for several days providing humanitarian assistance to migrants facing terrible conditions trapped by Border Patrol between the border walls on U.S. soil.
4. Since September 2023, I have been assisting at open air detention sites controlled by Border Patrol agents almost every single day, six or seven days a week. Our organization is part of a collective of organizations providing humanitarian aid to people at the open air detention sites. I would usually begin my day at Whiskey 8 and then move to Jacumba later in the day. Recently, I have spent more time at Whiskey 8.
5. As a result of my work over the past few months, I have gained significant personal knowledge about the devastating conditions at the sites and have triaged dozens of medical emergencies. I also interact multiple times a day with the Border Patrol agents controlling the sites.
6. The content of this declaration is based on my own observations, the observations and experiences of my colleagues and other volunteers that have been communicated directly to me by them, information communicated directly to me by people detained at open air detention sites and their family members, and my communications with Border Patrol agents at the sites.

Border patrol control at the open air detention sites

7. In addition to Whiskey 8, there are three other open-air detention sites located near San Ysidro: "Whiskey 4", "91X" and "Spoooner's Mesa". Border Patrol does not permit volunteers to enter these sites to provide humanitarian aid. Since September, Border Patrol has made limited exceptions on about four occasions to allow us to bring humanitarian aid into Spoooner's Mesa. I was present three of these times. Each of these times, a superior officer from the Imperial Beach Border Patrol Sector escorted us onto the site. On one occasion, a fellow volunteer reported that Border Patrol escorted them onto the Whiskey 4 site to provide humanitarian assistance. I have no knowledge of anyone else being allowed to enter Whiskey 4 on any other occasion. To my knowledge, no one from our collective has ever accessed 91X.
8. One of the sites near San Ysidro, "Spoooner's Mesa", is also referred to by Border Patrol agents as "the men's site". This site is more remote and you have to cross hilly terrain to access the site. Individuals at this site do not have direct access to humanitarian aid from volunteers so they go longer without food or water. The reason it is called "the men's site" is because Border Patrol

sends men over 18-years-old who are traveling without minor children or a legal spouse to this site.

9. I have seen and heard Border Patrol agents at Whiskey 8 direct single men to walk to Spooner's Mesa. Sometimes agents will point and tell them to just keep walking. I have also seen ATV or Border Patrol vehicles lead groups of men to Spooner's Mesa. I would estimate that it takes approximately an hour and a half to walk from Whiskey 8 to Spooner's Mesa.
10. I have witnessed Border Patrol agents wake men up in the middle of the night and ask if they are traveling with their children or legal spouse. I have witnessed agents asking men to show copies of birth certificates or marriage certificates to prove parent-child or marital relationship in order to be able to stay with their families. Some of the most difficult separations I have witnessed are when barely 18-year-old sons get separated from their families and sent to Spooner's Mesa. I have witnessed mothers clinging to their sons who are barely adults and begging Border Patrol not to separate them.
11. Border Patrol agents regularly take a count of the number of people at Whiskey 8 and at the sites out in Jacumba. Border Patrol agents have also given us head count numbers for the other sites near San Ysidro so that we know how many hot meals to have ready for Border Patrol to bring there. At Whiskey 8, I have seen the counts occur at almost every shift change, which normally occurs about three times a day. Generally, what I observe is that the Border Patrol agents will make everyone stand up and get in a line. The agents will then make everyone stay in line while they patrol the site to make sure that everyone is standing and that no one is lying down. They then go along the line and take a headcount. We often ask Border Patrol to give us their headcount once they are done and then we document the head counts.
12. When Border Patrol agents are preparing to transport people off the sites for processing, the agents line them up and order them to remove shoelaces, jewelry, coins, extra layers of clothing etc. The agents only allow people to keep one article of clothing on top and one on the bottom, even in the cold weather. They are also only allowed one bag. On their person they are only allowed dollar bills, their passport and sponsor information. I have also witnessed Border Patrol photographing individuals before they are transported off the site. They are then mainly transported out in transport vehicles such as large vans or buses. I have seen the private transportation company put handcuffs or zip ties on individuals including young men before getting on the bus to be taken for processing. See photograph attached at Exhibit 1.

Lack of food and water provided by Border Patrol

13. When I first began visiting the sites, Border Patrol agents would provide limited insufficient offerings of food and water, but in recent months Border Patrol agents have stopped providing any food rations at Whiskey 8 or the site known as "Boulevard Tower 177" in Jacumba at all. Since September, our team has not witnessed Border Patrol handing out any food rations at these sites.
14. Prior to that, Border Patrol agents would hand out meager offerings only. On about four occasions, a Border Patrol field officer approached me with boxes of small cheez-it snack bags or small cookie bags and water bottles and asked me if I would hand them out along with the hot meals that our group was providing. The officer seemed embarrassed by the small snacks that

they were offering. Officers have also told me that they don't have money in their budget to buy meals.

Lack of medical care and insufficient response to medical emergencies

15. Border Patrol continues to fail to provide any type of medical support at the sites and volunteers are left to triage people and provide the limited first aid we can. At Whiskey 8 we deal with a high rate of medical emergencies that people tell us they have sustained from falling from the border wall. On multiple occasions, I have told Border Patrol agents that a person is in medical distress and agents have told me to let the person know that if they leave the site in an ambulance they won't get the documents they need and they won't get processed for their immigration case.
16. I have received basic emergency medical training and I triage and provide first aid to people with terrible injuries at the sites. I ask multiple triage questions and then I bring an extensive list of symptoms to Border Patrol agents to advocate as to why the person requires immediate medical attention. I am very persistent and often I have to approach Border Patrol agents multiple times to advocate on behalf of people in medical distress in order to convince Border Patrol to call an ambulance.
17. One morning in early October 2023 I triaged an 11-year old boy from Ecuador who had arrived the night before with his mother. He had a rising fever and had been vomiting throughout the night. I asked a Border Patrol agent how high his temperature would have to be in order to get medical help and he told me it had to be 102 degrees. I ran to CVS and bought a thermometer to measure his temperature. I approached Border Patrol agents multiple times on the boy's behalf as his condition worsened. When his temperature reached 103.5 degrees, the boy's mother told us that she was afraid to ask Border Patrol to call an ambulance because they had made it this far and she didn't want to get deported for not being processed properly. She also told me she was scared they would just take her son in the ambulance and she would get separated from him. When I asked Border Patrol to confirm that she could travel with her son in the ambulance he said that was the ambulance driver's decision. We had to persuade her to seek the medical care her son needed and eventually she agreed to allow Border Patrol to call an ambulance.
18. On November 17, 2023 I encountered a man from Colombia with a laceration on his forehead, which he told me he sustained from falling after being chased by Border Patrol. When he arrived at Whiskey 8 he told me he was too afraid to seek medical help because he feared that his case would not be processed. He asked me if I would suture the wound for him, despite knowing I wasn't a medic. I eventually convinced him to have Border Patrol call an ambulance. I took his phone number because I wanted to check in with him and make sure he got the medical assistance that he needed. He later texted me to let me know that he received stitches at the hospital and he sent me a photograph of the stitched wound on his forehead. See attached photograph at Exhibit 2.
19. On November 25, 2023 I assisted four people in a single night who had injuries they told us they sustained from falling from the wall. One woman was reported during wall triage to have suspected fractures in both feet from falling from the wall. She was transported off the site in an ambulance and the next morning she texted me a photograph from the hospital showing both her feet in bandages. See attached photograph at Exhibit 3.

20. At 11:33 pm on Sunday, September 24, 2023 I received a call from a fellow volunteer, Roberto. He told me he was at Whiskey 8 and that a woman had arrived with a deep laceration on her leg that she sustained after she was cut by concertina wire climbing over the border wall. He told me that she reported to him that Border Patrol had sent her to volunteers to get help. He asked me to walk him through what to do over the phone. I walked him through how to flush and pressure wash the wound to prevent infection. I then told him to apply direct pressure to stop the bleeding and told him how to bandage the wound. Since we don't have direct access to the other side of the fence where the migrants are physically located and he couldn't help her through the fence, I heard him guiding someone else inside the open air detention site on what to do. Roberto told me he provided the materials including the gloves, flush, gauze etc. He also sent me a photo of her wound which is attached as Exhibit 4.
21. I have observed that most of the time when Border Patrol agents call ambulances, they tell the ambulance to wait down the road and then they transport the person in medical distress from the open air detention site in a vehicle and transfer them from their custody into the ambulance further down the road. Agents have told me that they do this because they don't want people at the site to see ambulances coming into the site as this might make them fake injuries in order to leave the site. When a person has suspected spinal injuries from falling from the wall or is unable to walk, Border Patrol agents will allow the ambulance to enter the site through the gate.

Family separation

22. One day that stood out for me was Sunday, November 26, 2023, when multiple Border Patrol transport vans dropped off groups of people at Whiskey 8. A man ran out of one of the vehicles and told us that an elderly woman had fallen 16 feet from the border wall. He brought her over and I triaged her. She was nauseous and sleepy and had been unconscious for 5 to 10 minutes, which was a red flag. She was traveling with her two grandchildren, ages 11 and 8 years old. We were able to call the children's father who lives in the U.S. and speak with him and I have remained in contact with him via phone since. I was very concerned that the family would get separated so I asked an agent whether both children could travel with their grandmother in the ambulance. The agent called his supervisor to the site and eventually they said that they would process her very quickly and transport the family together. The family was transported off the site in a transport vehicle, but I later learned from their father that the grandmother was admitted to hospital and subsequently processed and released. He informed me that his children were separated from their grandmother and placed in ORR custody. Our organization hosted the grandmother after she was discharged. To my most recent knowledge, the children have not been released to either their father or grandmother's custody.

I affirm that the statements in this affidavit are true to the best of my knowledge and belief.

December 10, 2023

/s/Flower Alvarez Lopez
Flower Alvarez Lopez

Exhibit 1

Photograph of private transportation company handcuffing asylum seekers at Whiskey 8, dated November 25, 2023



Exhibit 2

Photograph of stitched head wound, dated November 17, 2023



Exhibit 3

Photograph of bandaged feet injured after falling from wall, dated November 26, 2023



Exhibit 4

Photograph of leg laceration, dated September 24, 2023



Attachment 3

SUPPLEMENTAL DECLARATION OF LILIAN SERRANO

I, Lilian Serrano, declare the following:

1. I am the Director of the Southern Border Communities Coalition (SBCC), a program of Alliance San Diego. As part of that role, I monitor human rights conditions in the border region.
2. I previously submitted a declaration in support of a complaint filed by SBCC with the Office of Civil Rights and Civil Liberties (CRCL) on May 13, 2023.
3. I provide this declaration based on my personal observations, the observations and experiences of my colleagues that they have communicated to me, my conversations with migrants we assist, and my conversations with Border Patrol officers in the course of my work at the border since May 2023.
4. Since May 2023, I have witnessed the inhumane conditions in which migrants have been held in the open-air detention sites (OADS) near San Ysidro and Jacumba, California.
5. I have visited OADS in San Diego known as Spooner's Mesa and Whiskey 8; and four sites in Jacumba. We did not include the Jacumba sites in SBCC's May 2023 complaint because we had only learned about the Jacumba sites a few days before filing the complaint.
6. The situation in Jacumba is harrowing. Since May, the number of migrants at those sites has significantly increased. There are now reports that as many as 700 migrants are held at the Jacumba sites in one day. While conditions in the other sites are deplorable, the conditions in Jacumba are particularly dangerous because migrants are exposed to extreme desert weather conditions, including intense heat waves and cold fronts.
7. Additionally, the remoteness of Jacumba makes it harder for migrants to access basic necessities and services in a timely manner. For example, if someone needs medical services, it takes about an hour for an ambulance to take them to the nearest hospital. Further, given the remote location, it takes significantly more planning for the assisting organizations and volunteers to get out to the sites and bring any humanitarian aid to Jacumba.
8. In the San Ysidro area, I communicate with people assisting migrants on the ground throughout the day. I know from them that the number of migrants spending the night at one of these sites can be up to seventy (70) at a time. Waiting times for migrants to be taken from the OADS to a Border Patrol facility for processing can be up to and even beyond twenty-four hours.

Access to Food and Water

9. Border Patrol is very inconsistent with how it provides food and water to migrants. Every few days, Border Patrol shows up with cases of water and snacks — a granola bar or crackers. The agents hand out one bottle of water and one snack per migrant. If volunteers were not there to provide basic sustenance, migrants would go days without eating or drinking water. In fact, what

prompted our humanitarian efforts in May was finding out that migrants did not have access to basic necessities, and some were not eating for three days. Border Patrol agents tell migrants that volunteers will provide basic needs like food.

Border Patrol Transportation of Migrants to OADS

10. I have seen Border Patrol agents transport migrant family units in their vehicles from other locations along the border wall to the OADS known as Whiskey 8. When the family units arrive at Whiskey 8, Border Patrol agents tell them that they should wait there and that volunteers will provide food and water through the wall. Then, the agents leave.
11. Additionally, in November, I saw—on at least two separate occasions—Border Patrol agents guiding with their vehicle groups of about 40 migrants to the OADS known as Moon Valley in Jacumba. On one occasion, the migrants followed the Border Patrol vehicle and, on the other, the Border Patrol agent followed migrants in their vehicles to make sure migrants arrived at the OADS.
12. Migrants in Jacumba have also shared with me that when Border Patrol agents encounter migrants, the agents give them directions on how to get to the OADS and tell them to wait there to be taken for processing.
13. I have seen Border Patrol agents instruct male adults to walk west and, there, they encounter another site called Spooner's Mesa. Volunteers usually do not have access to this site. However, earlier this fall, I was driven there once by a Border Patrol supervisor. I have not been permitted to return or provide services directly to migrants there. Sometimes, Border Patrol agents tell volunteers at Whiskey 8 how many migrants are in Spooner's Mesa so that the volunteers can pack food lunches for Border Patrol to take to the migrants in that site.

Border Patrol Counts of Migrants

14. I know from volunteers that Border Patrol agents take counts of migrants in the OADS. In San Ysidro, the volunteers talk to Border Patrol agents in the Whiskey 8 area every morning, afternoon, and night (when the last volunteer leaves, usually at midnight) about the number of migrants in the OADS. Most of the time, Border Patrol shares numbers that are broken down by OADS, family units, and men.
15. In Whiskey 8, the counts happen late at night and Border Patrol wakes up migrants, including family units.
16. I also know that migrants were getting wristbands with the day they arrived at the OADS written on them. However, last week, Border Patrol stopped giving migrants wristbands at the Jacumba sites.

Threats from Border Patrol to Migrants in the OADS

17. When I visit the sites, I talk to migrants in Spanish and English. I also communicate in other languages by using Google Translate. Several migrants told me that they are here to seek asylum and that they want to do it the right way. Border Patrol agents often tell migrants that they need to follow instructions and wait at the OADS. The agents tell migrants that they will not be processed if they do not follow instructions. Consequently, many migrants are afraid their asylum claims won't be processed if they do not follow the officers' instructions.
18. At the Spooner's Mesa site, a Border Patrol agent told migrants that if they did not follow instructions, he would leave them outside to wait to be transported without access to food and water for as long as the agent wanted.

Threats from Border Patrol to Advocates

19. In September, once we saw the numbers go up in Whiskey 8 and our humanitarian efforts escalated, a Border Patrol agent threatened a group of four advocates, including me, with arrest for giving migrants food and water through the wall.
20. We had one table and some boxes against the border wall at around 10:00 or 11:00 PM with water and sandwiches. A Border Patrol agent told us to step away from the wall and that we were not allowed to give anything through the wall. I said I was with a group of humanitarian organizations providing humanitarian aid. The agent said he was the authority and advocates were not allowed to be there. We stepped away from the wall, but the agent demanded we leave the area or be arrested. We moved to a piece of land that does not belong to the federal government but to the City of San Diego. The agent contacted other agents and told them that their activities should shift from processing migrants to arresting us, the advocates.
21. The next morning, we had talks with sector leadership and we were allowed to continue to provide humanitarian aid.

Medical Emergencies

22. Border Patrol does not provide appropriate medical services to migrants held in the OADS, and non-medical and medical volunteers are the ones providing first aid and medical care to migrants. I received multiple reports from volunteers at Whiskey 8 about injuries, wounds, and concussions migrants have suffered. Some of these volunteer medical staff provide care through the border wall. Medical trauma experts take shifts to be at the sites in person. When the medical volunteers are not on site, other volunteers who are on site communicate with the medical volunteers via phone to triage emergencies and assess the gravity of a situation. When on site, the medical volunteers have reported to me seeing a lot of broken legs, open wounds, and people who lose consciousness. When the medical volunteers indicate that the person needs to go to an emergency room, the on-site volunteers call 911 and/or beg Border Patrol agents to call 911. But often, the agents say they do not believe the migrants when the migrants say they need medical care even if a trained medical expert is on site and telling them the migrant needs medical attention.

I affirm that the statements in this declaration are true to the best of my knowledge and belief.

December 10, 2023

/s/ Lilian Serrano

Lilian Serrano

Attachment 4

SUPPLEMENTAL DECLARATION OF PEDRO RIOS

I, Pedro Rios, declare the following:

1. I am the director of the American Friends Service Committee (AFSC) US-Mexico Border Program. I have been monitoring and advocating for human rights at AFSC for twenty years.
2. This declaration supplements the declaration I previously submitted in support of the Civil Rights and Civil Liberties complaint filed by the Southern Border Communities Coalition on May 13, 2023.
3. I provide this declaration based on my personal observations, the observations and experiences of my colleagues that they have communicated to me, my conversations with migrants we assist, and my conversations with Border Patrol officers in the course of my work volunteering at the border since May 2023.
4. Since May 2023, I have visited the border many times, providing volunteer aid and observing the conditions of the open air detention sites (OADS) near San Ysidro and Jacumba, California. Since September 2023, I have gone to the OADS at the border nearly every day, about 5 days a week, and I spend 5-6 hours there each visit.
5. In San Ysidro, CBP traps migrants in various OADS between primary and secondary barriers on the western most segment of the U.S.-Mexico border. There are at least four OADS near San Ysidro, including Whiskey 8, Whiskey 4, Spooner's Mesa, and 91X. I have personally visited Whiskey 8 and Spooner's Mesa, and have observed Whiskey 4 from an adjacent parking lot. The 91X site is by the beach and seems to be used less frequently than the others, though I have occasionally heard a Border Patrol agent indicate that a migrant is being held at 91X. All four of these sites are fully controlled by U.S. Border Patrol; anyone held at these sites is under CBP's control and custody.
6. In Jacumba, CBP traps migrants in various OADS, including a site called Valley of the Moon (also sometimes called Moon Valley) that is along the highway; Tower 177 which is located on private land isolated at the bottom of a hill; and Willows, a gated-off site located on private land abutting a wall along the U.S.-Mexico border. These sites are fully controlled by U.S. Border Patrol, and anyone held at these sites is under CBP's control and custody.
7. The OADS near Jacumba emerged in or near May 2023, around the same time the Southern Border Communities Coalition filed the Civil Rights and Civil Liberties Complaint dated May 13, 2023. At the time, it was too early for coalition members, including my organization AFSC, to know the gravity or extent of the situation in Jacumba, as the OADS were then emerging. In recent weeks, Border Patrol agents have spoken with my colleague indicating they recognize that more people are passing through the Jacumba OADS.
8. We do not know with precision the total number of people that have been forced to wait at the OADS in southern California since May 2023. The first documented groups of people that were held between the primary and secondary barriers along the U.S.-Mexico border occurred in October 2022, near Friendship Park. Though the numbers of people detained at the OADS from October 2022 and January 2023 varied, the number steadily increased in February and again more significantly so in April and May 2023.

9. The numbers of people who CBP has released into the community after processing serve as the best estimate of the total number of people who have been detained at the OADS. Typically, CBP forces people to wait at the OADS, transfers them into a CBP detention facility, and then releases them to the community after processing. Since September 13, 2023, approximately 50,000 people have been released to the community after processing. This figure, though enormous, does not account for the numbers of people that passed through the OADS between May and September 2023, when large numbers of people were held at the OADS.

Border Patrol Controls the Flow of Movement at and Within the OADS

10. Border Patrol directs migrants where they must go, where they must stay, and where they must wait, underscoring Border Patrol's strict control and custody over the migrants held at the OADS. In San Ysidro, Border Patrol agents tell some migrants that they must remain at Whiskey 8 and wait to be picked up there, whereas they tell other migrants to head to another location. I have spoken to migrants at Whiskey 8 who told me that the men in their group were separated and told to remain at Spooner's Mesa.
11. There have been few unaccompanied children that I have observed at Whiskey 8. On one occasion, Border Patrol separated a child out of a group and into a van. The remaining individuals were kept in a line and later transported in a bus out of Whiskey 8.
12. Border Patrol often transports people from one area of the corridor between the primary and secondary barriers along the U.S.-Mexico border to another. Nearly every day I am at the Whiskey 8 site, I have observed Border Patrol vans dropping off people to different areas of the open-air corridor. For example, on December 7th, I witnessed Border Patrol transporting two vanloads of people to the Whiskey 8 site; the Border Patrol agent told these transported individuals to eat food that volunteers were providing.
13. Border Patrol regularly takes count of people detained in the open-air corridor. The agents direct people to stand in a row and count everyone present. Sometimes they tell the families to stand separately and the single men and the single women to stand together to get a count of those present, including families.
14. In Jacumba, migrants are directed by Border Patrol to walk to the OADS location. On December 3, 2023, I spoke with three people at the Valley of the Moon site who had walked nearly three hours to get to the site, following Border Patrol agents' directions to go there. During the walk, one person said that they were walking in one direction, and a Border Patrol agent redirected them in another direction and to keep walking eastward. Migrants are not free to wander, and are periodically being monitored and directed by Border Patrol agents.
15. Migrants at the OADS are forced to wait at the sites for hours and even days at a time, without being allowed to freely leave. In May 2023, I spoke to several people at Whiskey 8 who were held for up to 7 days at the site. As of December 2023, at Whiskey 8, people are held there anywhere between 2 hours and 18 hours, while men held at Spooner's Mesa are forced to wait usually for at least 24 hours. On December 5th, I spoke with two families who had spent the night at the Valley of the Moon site near Jacumba.
16. Border Patrol also maintains strict control over who enters the OADS to assist migrants and asylum seekers. Usually, we are not allowed into the Spooner's Mesa site, but only once, in early

September 2023, after advocating with the supervising Border Patrol agent, my colleague and I were permitted to feed people meals there. We fed approximately 380 people during that visit.

17. Even when allowed in, volunteers like me are subject to Border Patrol's strict orders. In September 2023, Border Patrol agents told me on at least two occasions that they would arrest me and my group if we approached the secondary border wall at Whiskey 8. On September 12, 2023, I reported one such incident to the Sector Chief by email, but got no response. The threats to arrest volunteers are surprising, given that on more than three occasions, I have spoken with Border Patrol agents who have stated that they appreciate our presence and work in the area.

Lack of Basic Human Necessities, Water, Sanitation, and Medical Care

18. Border Patrol does not provide basic human necessities to the migrants detained at the OADS. At Whiskey 8, Border Patrol agents continue to fail to provide food or even water. I spoke with several men who came to Whiskey 8 from Spooner's Mesa, and they told me that they had not had water or food in the near 24 hours since they were directed to wait at Whiskey 8.
19. Border Patrol neglects to provide sufficient sanitation and adequate toilets. The sanitation and servicing of the portable toilets have gotten a bit better following AFSC's advocacy on the issue with state Senator Steve Padilla's office. It is our understanding that Senator Padilla's office is working with CBP to improve sanitation and trash conditions. However, at Whiskey 8, although portable toilets are supposed to be consistently serviced on Mondays, Wednesdays, and Fridays, sometimes the portable toilets still go for a week without servicing.
20. Border Patrol also fails to provide sufficient medical care to injured or ill migrants at the OADS, relying on volunteers like me to provide first aid and other first responder care. One day in early October 2023, a Border Patrol agent notified my colleague and me that a boy from Ecuador had a high temperature of about 101 degrees. The agent asked us to keep monitoring the boy. We monitored the boy's temperature every 30 minutes for about two hours, and when his temperature shot up to 103 degrees, I notified Border Patrol, who then called for an ambulance.
21. Border Patrol even leverages injuries and illness to maintain control and custody over migrants. Several months ago, I spoke with a mother of a one-year-old baby who had fallen from the border wall with her baby daughter strapped to her back. The mother agreed to have her injuries inspected by paramedics, and the paramedics suggested she and her child get further medical care at a hospital. But a Border Patrol agent threatened the mother that if she agreed to be transported to the hospital, she would not be processed and would suffer immigration consequences. The mother then refused medical treatment.
22. Due to Border Patrol's failure to provide a basic level of care, I and other volunteers visit the OADS regularly, almost every day to respond to the basic needs of the migrants. At Whiskey 8, we have set up four different stations, including a water station, food station, phone charging station, and a medical station. We have also added a food pantry at Whiskey 8. When Border Patrol permits us to do so, we also travel to other OADS locations to deliver water and food.

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I affirm that the statements are true to the best of my knowledge and belief.

December 10, 2023

/s/ Pedro Rios
Pedro Rios

Attachment 5

DECLARATION OF ERIKA PINHEIRO

I, Erika Pinheiro, declare the following:

1. I am the Executive Director of Al Otro Lado (AOL), a nonprofit advocacy and legal services organization incorporated in California and based in Los Angeles, with offices in San Diego, California, and Tijuana, Mexico. As the Executive Director, I supervise attorneys and other staff who work directly with migrants on both sides of the U.S.-Mexico border. I am currently based in San Diego, CA/Tijuana, Mexico and I oversee programs and operations in all AOL locations.
2. I have worked in the immigration legal field since 2003. I hold a J.D. degree from the Georgetown University Law Center, a Master's of Public Policy from the Georgetown Public Policy Institute, and a Certificate in Refugee and Humanitarian Emergencies from the Georgetown University Institute for the Study of International Migration.
3. Throughout my legal career, I have specialized in high-volume legal representation and education for noncitizens detained in immigration or criminal custody, as well as those seeking asylum at the U.S.-Mexico border. In each position I have held, I have created, maintained, and analyzed extensive databases to identify the effects of policies governing the admission, detention, transfer, and release of noncitizen adults and children. Since 2010, I have personally observed and tracked migration and detention trends, with a particular focus on individuals and families seeking asylum at the U.S.-Mexico border.
4. AOL provides legal and humanitarian support to indigent refugees, deportees, and other migrants, including providing free direct legal services on both sides of the U.S.-Mexico border and beyond. Our Border Rights Project, established in 2017, provides legal education, representation, accompaniment, and human rights monitoring for more than 15,000 asylum seekers in Tijuana each year. The project also documents human rights violations committed by U.S. and Mexican government officials against refugees at the U.S.-Mexico border. We use this data to demonstrate unlawful patterns or practices in our advocacy with U.S. policy makers, international human rights monitoring bodies, and nongovernmental human rights organizations. Since 2020, we have provided substantial humanitarian assistance to asylum seekers stuck on the Mexican side of the border, including emergency housing, medical care, food, hygiene supplies, and educational services for refugee children.
5. I provide this affidavit based on my personal observations, the observations and experiences of my colleagues that they have communicated to me, my conversations with migrants we assist, and my conversations with Border Patrol officers in the course of my work from September 2023 to the present.

Providing Aid at the Jacumba Open-air Detention Sites

6. AOL began providing aid to migrants and asylum seekers in Jacumba, California in September 2023. AOL provides support at three sites in Jacumba: Moon Valley, Tower 177, and Willows. Moon Valley

and Willows are both located in the Boulevard Border Patrol sector. Tower 177 is located in the Campo Border Patrol sector. Since September, I have traveled to Jacumba once or twice a week. An AOL staff member is generally on site three to four times a week. There are multiple organizations and local volunteers that provide aid at the Jacumba open-air detention sites (OADS). We all work together to provide aid; due to the volume of asylum seekers entering the Jacumba OADS, no single organization has the capacity or resources to provide aid alone. The organizations and mutual aid groups currently providing aid in Jacumba include AOL, Border Kindness, Universidad Popular, American Friends Service Committee (AFSC), Free Shit Collective, Borderlands Relief Collective, and Detention Resistance. A significant number of individuals residing in or near Jacumba also coordinate with the nonprofits and mutual aid groups to provide aid at OADS. AOL's Volunteer Coordinator helps coordinate the delivery of purchased items and donations and manages the volunteer schedule to ensure there is adequate coverage at the OADS.

7. Providing aid at the Jacumba sites presents logistical hurdles given their remote locations. The camps themselves are on unpaved roads that have damaged the cars of some volunteers. Tower 177 in particular is difficult to access without a high-clearance vehicle. We had to raise money to rent a van to continue providing aid because none of the local volunteers had a vehicle able to carry enough food and water to the migrants detained at that site. We have also had to purchase specialized catering equipment in order to safely transport enough hot food to serve hundreds of people at a time at each camp. Getting enough water out to the camps is a logistical nightmare. The volume of water needed makes it impossible for us to rely on volunteers. The number of volunteers or nonprofit staff traveling to Jacumba each day doesn't enable them to bring enough water in their vehicles, unless they are driving a large truck. There is nowhere to buy bulk water within an hour's drive of the Jacumba camps. We usually need at least one pallet of bottled water each day to provide the minimum migrants need to survive, so we have had to arrange for delivery, which has been extremely inconsistent due to the remote location of the Jacumba OADS. We have had a few times when we have come close to running out of water, but thankfully the volunteers are an extremely dedicated and resourceful group who has gone to great lengths to ensure we can at least provide enough food and water. Every organization and mutual aid group works hard to raise funds, and some individual volunteers have put in thousands of dollars of their own money to fill the gaps. Still, we are always behind in having enough money to provide the bare minimum of food and water necessary for survival.
8. Personally, I have never seen Border Patrol provide any water to the migrants at the Jacumba OADS. However, other volunteers and the migrants say that sometimes, Border Patrol will provide one bottle of water and a small bar or crackers when they initially turn themselves in, receive a wristband, and are told to wait in the camps. However, this is clearly insufficient to support survival for several days, especially in a harsh desert environment.
9. The Jacumba OADS are located in the high desert. This means that temperatures are extreme; it can be very hot and dry during the day, and drop below freezing at night. It is often extremely windy and dusty at the Jacumba OADS, with high winds exacerbating dry or cold conditions. Migrants exposed to those conditions often experience dehydration, sunburn, cracked lips, and in the case of freezing

temperatures, are at risk of hypothermia. Migrants with pre-existing medical conditions are often at risk of complications when forced to endure this extreme environment for days at a time.

10. When I started going to the Jacumba OADS in September, temperatures were extremely hot during the day. There was no shade or shelter at the Moon Valley camp, and the only vegetation was scrub brush under which asylum seekers could not protect themselves from the sun or wind. At Willows and Tower 177, asylum seekers had cut down trees and gathered brush and garbage to construct makeshift shelters to protect themselves against the sun and wind. Migrants often told me that they slept in the dirt, where they were exposed to scorpions, snakes, and insects. Our collective brought tarps and tents to help the migrants survive these harsh conditions. Once the weather turned cold, our collective constructed shelters and provided tents to prevent asylum seekers from having to sleep in the dirt and protect against the wind and cold. Due to cost and labor constraints coupled with the volume of asylum seekers, we have not been able to provide enough shelter for everyone and there are still migrants who have to sleep in the dirt, exposed to insects, snakes, and the elements, for days at a time while they are forced to wait in the OADS.
11. Near the Willows camp, there are Border Patrol trucks always parked under a shade canopy. However, Border Patrol has never provided any shade or any other shelter to the migrants they force to wait in the Jacumba OADS.
12. Now that the weather has turned cold, migrants burn brush and garbage in an attempt to stay warm. Much of the brush they cut down is still “green” and produces a lot of smoke when burned. The asylum seekers also burn large amounts of creosote (“chaparral”), which is toxic to humans while burned. When I am in the camps, there are usually several fires of creosote burning, which causes my eyes to water and a burning sensation in my throat. Volunteers report expelling black mucous from their noses and throats after spending a significant time in the camps. Asylum seekers and volunteers with asthma or other respiratory ailments report having their conditions worsen significantly when exposed to creosote fires. The private property owners on which these camps are located also complain that their land has been stripped bare, with the desert plants and shrubs being burned taking decades or longer to regenerate. Unfortunately, despite the toxic nature of the smoke and the environmental impact, the asylum seekers have no other choice but to burn toxic fires in order to stave off hypothermia.
13. At each camp, there are only a few port-o-potties for several hundred migrants. The port-o-potties are not serviced often enough to prevent them from filling to overflowing with excrement on a regular basis. Migrants have expressed concern that they will contract disease or a bacterial infection if they use the port-o-potties. For this reason, many migrants relieve themselves in the area around the camps. This practice presents a potential public health risk given that hundreds or thousands of migrants move through the camps each week. When the weather is very dry and the wind is high, excrement particles are blown around along with the toxic smoke from fires. When the weather is very hot, the smell makes it evident that the area is surrounded by human waste.

Transportation of Migrants and Asylum Seekers into the Jacumba Open Air Detention Sites

14. Migrants and asylum seekers cross the U.S.-Mexico border at multiple points in the Campo and Boulevard Border Patrol Sectors. Migrants have reported being told by smugglers that the proper way to seek asylum is to turn themselves in to Border Patrol so that they can be processed. They attempt to make contact with a Border Patrol officer as soon as possible after crossing to turn themselves in. I have spoken to dozens of migrants about what happens when they turn themselves in. Migrants report that they are given a wristband indicating the date and time of their arrival. Then, they are directed into one of the three Jacumba open air detention sites. Sometimes, they are told to walk in the direction of the nearest camp with their group. Sometimes, a Border Patrol truck will accompany them; they walk in a group behind a truck that drives into the camp. Some migrants report having to walk several miles into the camps. I have also personally observed Border Patrol officers bringing small groups of migrants into the camps in their vehicles. Some migrants report being transported into the camps in a Border Patrol van or bus. Several volunteers have witnessed and documented van or buses dropping migrants off in the camps.
15. As a co-facilitator of the California Welcoming Task Force, I have been in numerous meetings with Department of Homeland Security (DHS) leadership where they unequivocally stated that they could not transport migrants unless they were in their custody. This conversation happened numerous times in the context of nonprofits requesting that CBP transport released migrants to where they could receive nonprofit services. DHS' own practices and policies dictate that any migrant in a Border Patrol or CBP-contracted vehicle would be "in custody," and we have documented numerous instances in which Border Patrol brings migrants into OADS in vehicles. DHS' assertion that migrants in OADS are not in custody is clearly contradicted by their policies regarding transport.

CBP Custody and Control of Asylum Seekers and Other Migrants at the Jacumba Sites

16. Each time I go into the Jacumba OADS, I ask at least a dozen migrants about their interactions with Border Patrol, how they arrived at the camps, and what they understand about their obligation to stay there. The migrants and asylum seekers have told me that when they turn themselves in to Border Patrol, they are directed into the Jacumba camps, and that Border Patrol agents tell them that they have to stay in the camps or they will be deported. In some camps, Border Patrol indicates a limit line that migrants cannot cross; for example, in the Willows camp, there is a train track running between the camp and the road; Border Patrol agents tell migrants that they cannot cross the railroad track, or they will be deported. Most of the time, Border Patrol officers are onsite, with their trucks parked on the road that leads out of the camps. When Border Patrol is onsite, migrants could not walk out of the camps without passing an officer. If they try or ask Border Patrol if they can leave, they are told they must stay to be processed.
17. Each of the three Jacumba OADs has an Anduril Autonomous Surveillance Tower (AST). Each AST uses an AI system that can detect and track humans and other movement in a 360 degree radius up to more than a mile away. When an "object of interest" is detected, the tower sends an alert to Border Patrol, with an image of the person or vehicle of interest. Each AST stands either in the

middle of the camp or at another point where it can detect who comes in and out of the camps. Even if Border Patrol agents are not physically onsite, they can utilize the AST to alert them if a migrant leaves.

18. When migrants have left the camps, they are apprehended and brought back. In October, two migrants walked out of the Moon Valley camp to a nearby gas station to buy supplies. They were apprehended by Border Patrol and brought back to the Moon Valley camp. Border Patrol also stops individuals in the town of Jacumba who “look like migrants.” In the last week of November 2023, a Chinese-American volunteer doctor was walking near the Jacumba Hot Springs Hotel on Old Highway 80, taking photos of a vintage gas station painted in bright patterns. A Border Patrol truck pulled in front of her to block her path. The agents engaged with her, and during their conversation, told her they “thought she was a migrant” who had come from one of the camps. In general, whenever I drive in and out of Jacumba to access the camps, I see at least 2 to 5 Border Patrol trucks patrolling the vicinity. It would not be possible for a migrant to walk out of the camps without encountering an agent, and if they did, the Autonomous Surveillance Towers would send an alert to Border Patrol agents with a live image of the individual leaving the camps, to which Border Patrol could quickly respond.
19. Even in the unlikely event that a migrant managed to make it past Border Patrol and the surveillance towers located in the camps, they would be unlikely to safely reach any area from which they could travel further into the United States. Jacumba is surrounded by mountain ranges and deserts, with incredibly challenging terrain. It would be near impossible to traverse the mountains without specialized climbing equipment. A person could not survive crossing the Anza Borrego desert without more water than any migrant would be able to carry. Any migrant traveling on roads would be seen by Border Patrol or another law enforcement agency. Additionally, there are hundreds of Border Patrol’s Autonomous Surveillance Towers dotting the landscape, aside from those located in the OADS, and a Border Patrol checkpoint for vehicles traveling to San Diego on Highway 8.
20. It would be very dangerous for migrants to try and cross back into Mexico from the OADS. The area south of the border near Jacumba is extremely remote, with unforgiving terrain and few population centers. The area directly south of the border wall is frequently patrolled by the Mexican National Guard, which apprehends migrants they encounter to prevent them from crossing into the United States. Additionally, there are several criminal groups fighting to control migrant access to the border, and migrants often face danger if they pay the “wrong” group. There have been around a dozen migrants murdered in Mexico near Jacumba since September, a significant increase from what we have seen previously. Migrants also often recount stories of being extorted by officials in Mexico or falling victim to crimes like robbery, extortion, or rape. Migrants I have talked to about their experiences in Mexico report feeling traumatized and afraid to ever return.
21. To my knowledge, very few migrants or asylum seekers have attempted to leave the OADS in Jacumba. The hundreds with whom I have spoken include migrants from all over the world who have told me about the persecution and abuse they suffered in their countries of origin and on their way to the United States. They want to follow the law, and believe based on misinformation from

smugglers that the best way to seek protection is to cross the border and turn oneself in to Border Patrol. Border Patrol agents then tell them that they must wait in the OADS to seek asylum. They are largely committed to obtaining asylum in the United States and would not jeopardize their chances by leaving the OADS, despite the harsh conditions.

Monitoring and Documenting Deteriorating Conditions at the OADS

22. AOL provides volunteers with a reporting form in which they document in real time conditions at the camps. For example, the questionnaire includes: how many people are processed out of the OADS during their rotation, and who transported them; whether there are children, pregnant persons, elderly persons, or persons with medical emergencies on site; whether people have wristbands issued by CBP; whether CBP is handing out food and water; whether Border Patrol agents were on site; and whether people are shackled when transported out of the sites. The form also has space to include any other incident of note, such as whether there was a medical issue that required emergency medical response, whether Border Patrol or the volunteer called 911, and how the agents or medical staff responded to the incident.
23. According to the data collected by AOL staff and volunteers, the number of asylum seekers at the Jacumba OADS has fluctuated between the end of October 2023 to the beginning of December 2023. During this period, the number of asylum seekers at the Jacumba OADS on a single day has ranged between less than 100 to over 750. And the number of children at the Jacumba OADS has ranged between less than 20 and up to nearly 60. The number of pregnant persons also varies but has reached over 60.
24. On October 1, 2023, I emailed DHS headquarters to inform them about Border Patrol's failure to provide for the basic survival of asylum seekers and the potentially life-threatening conditions at the Jacumba OADS. My email described Border Patrol's practice of using wristbands to indicate when people arrive; ways in which Border Patrol prevents people from leaving the sites; the average number of people at the sites; the separation of family units; and the lack of food, water, hygiene products, adequate bathroom facilities, and medical assistance. My email asked DHS to provide food, water, shelter, bathrooms, and medical assistance in accordance with its own detention standards.
25. The following week, around October 10-13, DHS headquarters staff visited the San Diego sector and visited the open air detention site in San Ysidro/San Diego and Jacumba. Immediately in advance of their arrival, Border Patrol processed most migrants out of the Jacumba OADS. At the same time, we saw an increased number of Mexican National Guard on the south side of the border immediately adjacent to the Jacumba OADS, where they prevented migrants from crossing through gaps in the wall. Border Patrol agents also cleaned the camps of some of the garbage, dismantled some of the makeshift shelters built by migrants, and threw out tents and other shelters our collective had built. When DHS headquarters officials arrived in Jacumba around October 10-11, the OADS looked very different from before they cleaned them up and cleared out most of the migrants.

26. On or around October 11, 2023, a 29 year old migrant from Guinea died at Whiskey 4, one of the OADS in San Diego. At the time, we did not have many details because volunteers are not allowed access to the Whiskey 4 OADS. Later, we learned that the woman needed emergency medical care shortly after crossing the border into Whiskey 4, but that she later died either in the camp or at the hospital.
27. On October 12, 2023, I met with Dr. Alexander Eastman, CBP's Chief Medical Officer, and Marc Olcott, a medical contractor with CBP, in San Diego. In our conversation, Dr. Eastman denied that migrants kept at OADS were "detained" such that DHS would be required to follow TEDS standards. They told me that moving forward, they would have agents with medical training onsite at OADS. They said that any responsibility for emergency medical services fell to the County of San Diego. They also said that "no one would be denied water," but did not commit to providing food, shelter, or triage medical services to prevent the need for emergency services.
28. However, after these meetings, the only notable difference was that people were being transported out of the OADS at a faster rate, including with buses provided by ISS, a private transportation contractor. For about a week, we saw a reduction in the number of people at the sites and in the length of time people were staying there. Volunteers also witnessed an increase in transportation services provided by CBP to remove people from the OADS. But in recent weeks, the number of individuals waiting at the sites for longer periods of time has spiked.
29. Before the meetings, I had never seen Border Patrol giving out water. After these meetings, Border Patrol began handing out water bottles and a small granola bar or crackers while providing the paper wristbands. Border Patrol does not provide additional food or water after this point.
30. CBP has been providing wristbands to individuals at OADS in Jacumba consistently, either before or after they enter the camps upon their initial encounter with Border Patrol. CBP would generally process individuals out of the camps in order of arrival, while prioritizing families with children, pregnant women, and the acutely medically vulnerable. Between approximately November 28 and December 5 of 2023, Border Patrol agents in the Boulevard sector stopped providing wristbands to migrants at the Moon Valley and Willows camp. What resulted was chaotic; migrants complained that they had been there for days while others who had arrived recently were picked up. We started to see a higher number of families, some with infant children, staying overnight at those OADS during that time. Even agents complained onsite about the difficulty in processing migrants unless they were able to distribute wristbands. By December 5th, I saw migrants with wristbands in all three Jacumba OADS.

Lack of Medical Assistance at the Jacumba Sites

31. Not only does Border Patrol fail to provide any medical services in the OADS, but the agents also actively discourage access to emergency care. Multiple migrants and volunteers have heard Border Patrol agents accuse individuals of "faking" illness, telling migrants that everyone in their group will be deported if any of them fake an illness in an attempt to get out of the camps. Volunteers reporting a medical emergency to Border Patrol officers in Jacumba on October 29, 2023, report the

agent refusing to call for assistance, saying “It’s not my problem.” On November 7, 2023, volunteers reported that Border Patrol told a Turkish man with likely appendicitis that he would be deported if he went to the hospital. I have witnessed Border Patrol agents refuse to prioritize a hypertensive woman because “the migrants fake illness to get processed out faster.” Volunteers have reported that sick migrants will hide in caves or behind rocks because they are afraid of being accused of faking illness.

32. A lack of language capacity amongst the Border Patrol agents also contributes to delays in accessing care. Many of the migrants come from China, Turkey, Afghanistan, Uzbekistan, Brazil, and a host of other countries that do not speak Spanish or English. Even Spanish-speaking migrants often report that they have trouble communicating their ailments to Border Patrol agents with only a limited command of Spanish. Our volunteers have documented several instances where non-English/Spanish speaking migrants attempted to communicate the need for emergency assistance to agents, but were unable to do so. I have never seen Border Patrol agents call for an interpreter to better communicate with migrants with whom they do not share a common language.
33. Border Patrol agents in OADS frequently tell migrants that their asylum process will be “stopped” if they go to the hospital, which is legally incorrect. Migrants are not processed by Border Patrol if sent to the hospital from OADS, but can apply for asylum affirmatively. Jewish Family Service has also established a mechanism through which migrants released from hospitals can be processed by Immigration and Customs Enforcement (ICE) if they do not have a valid passport and require their NTA for air travel. However, during multiple incidents, migrants experiencing a medical emergency will refuse to be transported to a hospital based on Border Patrol’s erroneous statements that they will no longer have access to asylum.
34. In Jacumba, ambulances will often refuse to come into the camps, so the migrant must be transported out to the paved road in order to access care. While some Border Patrol officers are helpful and transport the migrants to the ambulance themselves, some refuse, citing the aforementioned DHS policy dictating that because the migrants are not in their custody, they are not allowed to transport them. Some agents have asked volunteers to transport medically vulnerable migrants to the pavement.
35. In our collective, volunteers will immediately inform Border Patrol if they encounter an individual who needs an ambulance. While some Border Patrol officers will readily call for emergency medical services if our volunteers encounter an individual requiring care, others have refused, minimizing the illness or injury and accusing the individual of faking illness. Volunteers will often call 911 to help an individual, sometimes because Border Patrol asks them to, and sometimes because Border Patrol refuses to call themselves. Medical providers working across all seven OADS in San Diego County have documented dozens of these incidents.
36. Often, migrants themselves will call 911 because they are having a medical emergency, or because they feel they cannot endure the conditions in the camps, either due to an underlying medical issue, or because they fear they cannot survive the cold, heat, dehydration, hunger, and other issues they

confront while held at OADS. Jacumba's normal population is around 600, however local Emergency Medical Services (EMS) report receiving hundreds of emergency calls. This has caused tension between EMS and the migrants, as well as the volunteers advocating for their care. Individuals who form part of the EMS workers and leadership have made anti-immigrant comments, and acted with hostility toward volunteers and the migrants themselves. They, too, will accuse migrants of faking illness and send them back to the camps without adequate care. EMS workers and supervisors have complained that calls from the camps get in the way of "real emergencies."

37. Frequently, response times from EMS have been very long, either because EMS takes a long time to arrive, or because officers delay or refuse to call 911. The remote location of Tower 177 is also a factor, from which it takes at least 10 or 15 minutes to transport a migrant to the pavement to meet EMS. There are multiple documented instances of long response times that include the following. On November 21, 2023, an ambulance had just taken a woman who was in labor from the Moon Valley camp when volunteers identified another migrant who appeared to be having a heart attack. EMS was called and the licensed volunteer physician on site gave the man an aspirin. EMS did not arrive until more than 30 minutes later, and EMS staff berated the volunteers for having given the man aspirin, even though the volunteer doctor immediately reported the dosage to EMS and had correctly determined its administration to be medically sound given the situation. On November 26, 2023, a migrant in the Jacumba OADS with a pre-existing vascular disorder had a dangerously elevated heart rate and blood pressure. A volunteer onsite notified a CA National Guard officer to ask for EMS, but the National Guard officer put his hand on his weapon and shouted at the volunteer. The volunteer was able to make contact with a Border Patrol officer, who called EMS and transported the woman to the pavement. It took at least 30 minutes from when the volunteer first informed officials onsite for the ambulance to arrive. On Saturday, December 2, 2023, volunteers at the perimeter of the Moon Valley camp called 911 after a 13-year old boy was brought over the border and dropped near them. He had apparently been involved in an auto accident south of the border and badly injured; his traveling companions thought he could get more rapid care in the U.S., so they brought him to the Moon Valley camp. The volunteers also called Border Patrol, who were not onsite at the Moon Valley camp at the time and took around 30 minutes to respond. About ten minutes later, one of the volunteer doctors arrived on the scene. She reported that Border Patrol had not been administering CPR when she arrived, and despite her best efforts to help the boy with CPR, he died. EMS did not respond for over an hour after volunteers had initially called. Within 24 hours of the boy's death, Border Patrol agents told volunteers that EMS will only respond to calls from CBP and will not respond to emergency calls made directly by asylum seekers or volunteers at the OADS. Our collective has since been advocating with EMS locally to avoid implementation of this disastrous policy.
38. Most of the time, people transported in an ambulance are not allowed to bring anyone else with them, or sometimes they can only bring one person. As such, some people hesitate to get on an ambulance because they will be separated from family members who remain at the camps. This fear is very real, as migrants are discharged by hospitals to the streets as "homeless," often without phones or with phones that do not work in the U.S. Volunteers report that some individuals brought

to hospitals near El Campo, CA are put into a taxi by the hospital and dropped off near the OADS. Volunteers once encountered an elderly Turkish woman who had been dropped off on Old Highway 80 alone at night without a working phone, while her family remained in the camps. On September 13, 2023, I met a Chinese man and his son in San Diego, where he had been released from Border Patrol custody. His wife had been transported out of the Willows camp a few days earlier, and their daughter had gone to the hospital with them. We called multiple area hospitals to try to find them, but no one had a record. After about a week of not having heard from them, we helped the family file a missing person's report with the San Diego Police Department, fearing that they may have been abducted after being released to the streets. After another week, we finally learned that the wife and daughter had gone back to the border to turn themselves in, and instead of being released, were transferred to an ICE detention facility in Louisiana, where they remained until October 5, 2023. In another hospital release case, a woman turned herself back in at the border, only to be detained at the Otay Mesa Detention facility for several weeks. We are currently attempting to create systems to address the needs of individuals transported out of OADS so they do not end up homeless, detained, or separated from their families for extended periods of time, but progress has been slow and resources scarce.

39. CBP does not provide medical attention to individuals at the Jacumba sites. To fill the void, medical volunteers have visited the sites regularly to provide basic emergency services. Volunteers include licensed physicians, nurses, medical students, individuals with EMT certifications, and others with first-aid training. Medical volunteers provide asylum seekers with over-the-counter medication, including Tylenol, and materials for basic wound care, like bandages and Neosporin. Our collective receives these medications through donations or purchase basic wound care items and electrolytes for individuals experiencing acute dehydration. Medical volunteers have also provided blood pressure cuffs, COVID tests, glucose meters for diabetics, and other basic diagnostic equipment to measure heart rate and blood pressure. Generally, volunteers who are licensed physicians have their own kits with emergency inhalers, EpiPens, and other medical devices to monitor the conditions of diabetic persons and persons with respiratory conditions. Many of the medical volunteers have provided medical care at shelters in Tijuana or have worked in mobile medicine, and thus they have the adequate tools to respond to common medical needs. A mobile medical clinic from Operation Samaritan, a San Diego nonprofit medical provider, has provided care at the Jacumba OADS on at least two occasions.
40. Volunteers have experienced a lot of push back for providing basic medical care. Volunteer doctors, nurse practitioners, and medical students have been asked to leave the OADS by Border Patrol, even though Border Patrol is not providing any medical triage or treatment onsite. On December 4, 2023, I was at the Willows camp when our group was approached by two San Diego County sheriffs. They told us that it had "trickled down" that we were giving out "pharmaceuticals." I explained to the Sheriffs that volunteers only provide Tylenol and basic wound care, with licensed physicians sometimes providing an emergency inhaler or EpiPen in an emergency. At that time, there was a volunteer doctor onsite providing basic care, so the sheriffs approached her and confirmed that she was not dispensing prescription medication (even though she would legally be able to pursuant to

the rules of her medical license). On December 6, 2023, I was again at Willows camp and had a conversation with a Border Patrol officer. He asked me if I was giving out pharmaceuticals, and I said "I am not a doctor, I am a lawyer." I told him that there would be a licensed physician volunteer on site all week, plus a mobile medical unit. He said I should call the Boulevard Border Patrol station and let them know, and provide a schedule with physician medical license numbers. At around 4:30 PM that day, I called the Boulevard Border Patrol Station as instructed, and explained that I wanted to provide medical licenses for volunteers. The agent who answered told me "that's not how that works." He took my number and said a supervisor would call me back, but I never received a call back. On December 9, 2023, a volunteer who called 911 after being requested to do so by a Border Patrol officer on behalf of a migrant with a necrotic wound was berated by EMS workers, who asked things like "what are you doing here? Which organization is providing medical care? What drugs are you giving out?"

41. Volunteer medical professionals providing basic care and triage at Jacumba OADS have encountered multiple serious and emergency medical issues, including but not limited to the examples provided above, as well as COVID, chickenpox, scabies, hypertension, asthma, COPD, HIV, high-risk pregnancies with complications, including lack of fetal movement and bleeding, individuals with serious disabilities, individuals recovering from recent heart surgeries, strokes, and organ transplants, infants with severe vomiting and diarrhea, and a host of other ailments. Often, migrants' pre-existing conditions are exacerbated by the fact that they do not have their prescribed HIV, blood pressure, inhaler, or other medication that would keep the condition from becoming critical. Having medical volunteers at OADS saves lives, but Border Patrol and local officials seem committed to reducing or eliminating this volunteer service. Given that DHS claims that the migrants at Jacumba OADS are not in their custody, it is unclear under which authority they purport to prohibit volunteers from offering basic wound care, and under what authority they seek to regulate the practice of licensed physicians attempting to provide much-needed care and emergency triage to migrants trapped in OADS.

Families and Children at the Jacumba Sites

42. It is common to see families staying overnight at the Jacumba sites, although Border Patrol will prioritize their processing over that of single adults. Sometimes, Border Patrol takes out women and children first, but this sometimes means separating them from other family members such as spouses or adult children. Sometimes, families need to make the difficult choice of staying overnight to keep their family together. Since Thanksgiving, the average time that migrants spend in the Jacumba OADS has increased, and it has become more common for families with young children to stay overnight, sometimes for multiple nights.
43. Volunteers have seen many unaccompanied children at the Jacumba sites. Generally, unaccompanied children travel with extended family members like uncles, cousins, or friends, but I have met several children ranging from ages 15-17 who were traveling alone. Volunteers have documented instances of unaccompanied children staying overnight at the camps. Our practice is to inform Border Patrol agents about unaccompanied children when we come across them. On

December 6, 2023, I spoke with 8 unaccompanied children, three of whom were traveling alone. I alerted the Border Patrol officers onsite between noon and 1:00 PM. A van came to transport families out around that time, but the agents told me they couldn't take the unaccompanied children because families with young children had stayed the night before. I observed families with toddlers and infants lining up for transport. The agents onsite told me that they would likely be transported out after they changed shifts around 4:00 PM. The agent asked me how old the children were, and when I told him the ones traveling alone were all 15 and older, the agent told me that they prioritize young children, meaning children under the age of five or babies, not adolescents or older children. I observed about 40 children total in the camp that day, many under the age of 5, so I was not sure whether the unaccompanied children would be processed that evening. I left around 4:30 PM, and asked volunteers who stayed on site to alert Border Patrol as to the location of the unaccompanied children when they brought the next transport van. The volunteers reported that the children still had not been processed when they left a few hours later. I am not sure whether they were processed out that night or the following day.

44. The chaos of processing migrants out of OADS has led to frequent separations of family groups. Between September 20, 2023 and December 7, 2023, Al Otro Lado has documented over 1,000 separations of family groups. We document family separations at street release sites, where migrants often describe being separated from their families at the OADS or while being processed. Around 35% of separations involve legally married spouses, and around 18% involve at least one parent being separated from a minor or adult child. Migrants are often processed and released at different times, or separated if a family member seeks emergency medical care. At least 37 individuals have been sent to ICE detention facilities in Texas and Louisiana while their families are released to San Diego. It often takes us weeks to locate a missing family member because Border Patrol has not responded to numerous requests for information, and will not even confirm whether the missing individual is in DHS custody. I have worked with several families whose 18 and 20 year old children were separated and detained by ICE for weeks while we worked to secure their release. Although technically adults, these young migrants would otherwise be included on their parents' asylum application, and often do not know every detail of why the family fled, putting them at risk of failing a CFI and being separated from their families permanently.
45. Having watched Border Patrol process individuals out of the camps, it is no surprise that families get separated, especially when they do not provide wristbands to lend some order to processing. Even with the wristbands, processing can be haphazard; I once witnessed one Border Patrol officer ask another "what are the numbers on the bracelets for?", and the other replied that he did not know. I often encounter migrants who missed the time they should have been processed due to communication or other issues, who did not feel comfortable engaging with Border Patrol officers to let them know. On November 29, 2023, I accompanied researchers from Amnesty International to the Jacumba OADS. When they were observing Border Patrol agents processing migrants out of the Tower 177 camp, one agent told another that there was a family group that wanted to travel together, but who were not together in the line. The other agent replied, "I don't care. Border Patrol

separates families.” This statement is consistent with a general lack of care in ensuring that family groups encountered in OADS stay together.

I affirm that the statements in this affidavit are true to the best of my knowledge and belief.

December 10, 2023

/s/ Erika Pinheiro

Erika Pinheiro

Attachment 6

DECLARATION OF JACQUELINE ARELLANO

I, Jacqueline Arellano, declare as follows:

1. I am the Director of United States Programming for Border Kindness, a largely volunteer organization. Since 2016, Border Kindness has worked to provide food, water, and first aid to migrants along the California-Mexico border. Border Kindness also operates in Mexico to assist migrants and asylum seekers, including running a children's center in Mexicali and assisting migrants in Mexico with their immediate needs. As the Director of U.S. programming, I coordinate our work to provide direct aid to immigrant communities in the United States. In addition to my work at Border Kindness, I also work a full-time job as an acupuncturist.
2. I am providing this declaration based on my personal observations, the observations and experiences of my colleagues and volunteers that they have communicated to me, my conversations with migrants we assist, and my conversations with Border Patrol officers in the course of my work from May 2023 to the present.
3. I live in San Diego, and I first became aware of the open-air detention sites near Jacumba around May 2023. In May, I received a search and rescue call from a woman who contacted Border Kindness, saying that her father was at a site near Jacumba, California, and that he urgently needed water. She told me that he was with a group of about 100 other people who also needed water. I told the woman that she or the people in the group should contact Border Patrol, who would arrive to process them and would provide water. The woman I spoke with told me that her father and the other people had already been held at the site for two days without food and water.
4. That night, some volunteers from Border Kindness who do desert aid went out and dropped off food and water for the people at the site. The people were held at a site called O'Neill, near where the Moon Valley site is now. In May 2023, other members of Border Kindness and I provided food, water, first aid, and other basic supplies to people at the sites.
5. Over the next roughly week and a half, Border Kindness volunteers and I saw that there were approximately 1,800 people who were held at three sites—O'Neill, Tower 177, and Willows—before being processed by Border Patrol.
6. From late May 2023 until mid-September 2023, there were few people held in the desert near Jacumba. Occasionally while doing our border assistance work, we heard from or saw a few small groups who were being held at the three sites then in use, but there were rarely very many people.
7. On September 16, 2023, I heard about a group of about 100 people who were being held at one of the sites near Jacumba. Since approximately September 16, 2023, there have consistently

been hundreds of people every week detained at the three open-air detention sites near Jacumba: Moon Valley, Tower 177, and Willows. While the numbers of people fluctuate from day to day and week to week, I would estimate that there are usually 500 people per day waiting across all three sites.

Border Patrol maintains control of the Jacumba open-air detention sites and directs people to remain there.

8. I am familiar with all three sites and have been to all of them several times. Since mid-September, I regularly work 40 hours per week with Border Kindness, in addition to working a full-time job and caring for my toddler. I purchase and organize supplies at the Youth Center in Jacumba, coordinate our volunteers, communicate with other volunteer groups, deliver supplies, and work with migrants at the site. I am generally present at the open-air detention sites near Jacumba approximately three times a week: I spend one full weekend day working at the detention sites, and during the week I make shorter, intermittent trips to deliver supplies and provide assistance.
9. Border Patrol officers direct and in some instances directly transport migrants to the detention sites. I have personally observed Border Patrol officers round up groups of migrants between vehicles at other points along the border and then direct them in a caravan to the sites. One vehicle will drive in front and one vehicle will drive in back, with a group of migrants made to walk in between the vehicles to the detention sites. I have seen this happen going towards all of the sites.
10. I have also personally observed Border Patrol officers transport migrants in vehicles and then bring them to the sites, at both Moon and Willows. For example, on or about November 11, 2023, two Turkish men flagged me down while I was driving near Jacumba and asked me to call Border Patrol for them. As I was speaking to them, Border Patrol officers arrived. They handcuffed the two men, put them in the Border Patrol vehicle, and drove away. Less than an hour later, I was at the Moon Valley site, when I saw the same men arrive at the site with a larger group of migrants. I talked to the men later, who told me that the Border Patrol officers had taken them back near the border wall, rounded them up with another group of migrants, and walked them in a caravan between two vehicles to the Moon Valley site, where they were told to stay.
11. If a migrant tries to leave one of the detention sites, Border Patrol brings them back. I have heard from other volunteers that when a migrant leaves a site temporarily, for example to try to buy food, Border Patrol will transport them back to the sites. I have heard about this practice happening at all three sites. Border Patrol will also position their vehicles to restrict access to the sites. For example, I have seen Border Patrol officers angle their vehicle and set up traffic cones to partially block the entrance to Willows.

12. Border Patrol also discourages people from leaving if they need medical attention. At Moon Valley, I have personally heard Border Patrol agents threaten people if they request emergency medical care. More than once, I have heard agents tell migrants that if they leave the site in an ambulance, their case will automatically be over and they will be denied asylum. I have spoken with migrants who tell me that, after being threatened, they believe Border Patrol and will not seek medical attention.

Conditions at the open-air detention sites in Jacumba are extremely dangerous, and Border Patrol does not provide food, water, shelter, medical care, or basic hygiene items.

13. Border Patrol agents provide next to nothing in terms of food and water. Distribution of food and water is sporadic and even then, only upon entry. Border Patrol will provide a 16-ounce bottle of water and a small snack-pack of crackers or another snack, but does not do so consistently. Currently, the vast majority of asylum seekers at the detention sites are not even given one meager snack a day.
14. The conditions at all the sites are very harsh. All are on desert terrain, and the temperatures are extreme. In the months since September that I've been working at the detention sites, we've seen people with hyperthermia and now hypothermia.
15. Now that it's December, the temperature regularly falls below freezing. Last weekend, the temperatures in the evening and at night were in the 20s. There was frost on the ground, and water bottles froze overnight. The wind is often really strong, which makes the temperature feel much colder. Because it is so cold, people build fires out of any materials they can find to try to stay warm, including cutting down brush and trees on private property or even burning trash. The ground is dry and dusty, and it quickly turns into mud when it rains. There is no shelter at any of the sites, aside from some tents and tarps that volunteers have provided. We give out blankets, coats, hats, and warm clothing to try to keep people alive, but the cold, wind, and rain are very dangerous.
16. Border Patrol installed and maintains Port-a-Potties at all three detention sites. However, because Border Patrol agents don't have a consistent schedule at the sites, I am not sure how regularly they empty the toilets or replenish toilet paper, if there is even toilet paper in the first place. Border Patrol does not provide hand sanitizer, soap, water for washing hands, or other basic hygiene items like toothpaste and toothbrushes, diapers, and menstrual products. The only personal hygiene items provided at the sites are donations from volunteers. People sometimes go to the bathroom outside when the Port-a-Potties are not maintained and become too unpleasant to use. The lack of sanitation is dangerous, especially in the winter.
17. Border Kindness and other volunteer groups have taken responsibility for providing food, water, and other basic needs for survival to the asylum seekers at the open-air detention sites. Volunteers go to all sites regularly to provide water, blankets, and at least two meals each day.

18. Border Patrol generally does not assist people with medical emergencies. Since September, I have personally seen many people arrive with medical needs, including some people in crisis. One evening in September or early October, my husband and I were at the Tower 177 site providing food and other supplies. A woman at the site began having multiple, severe seizures. One of the volunteers working with us had to try to hold her and put her hand in the woman's mouth so she would not bite her tongue off mid-seizure. My husband approached Border Patrol officers who were on site and asked them to contact the county Emergency Medical Services (EMS) to dispatch an ambulance. The officers refused and told him to call an ambulance himself. Tower 177 is in a remote area with poor signal, so my husband had to run down the road to try to get a signal so he could call an ambulance. He was finally able to call emergency services, who sent an ambulance.
19. I have seen many other people who are medically fragile or who experience medical emergencies, including seizures, symptoms of smoke inhalation, severe kidney pain to the point of vomiting, diabetic emergencies, and people going into labor. Border Patrol will rarely, if ever, call for an ambulance. Recently, I've heard from some volunteers that local emergency services will now only respond to 911 calls at the sites if Border Patrol calls themselves. This is very concerning since Border Patrol generally refuses to call 911. The local emergency services' practices seem to be constantly changing, and my understanding is that their current practice is that they will not respond to 911 calls from migrants. Instead, volunteer medical students and local doctors and healthcare workers provide medical care when they are present. However, medical volunteers can only provide first aid and things like ibuprofen—they cannot dispense medication that would require a prescription.
20. Until very recently, in approximately early December, Border Patrol officers gave wristbands to migrants who arrived at the sites. The wristbands were color-coded and had the days of the week on them. Border Patrol used the wristbands as a rough way to know how long people had been held at the detention sites and when to pick them up for processing. With the wristband system, adults were usually kept at the sites between two and five days. Children and families with children were usually processed more quickly.
21. About a week ago, Border Patrol discontinued the use of wristbands. Since then, the conditions at the detention sites have become even more chaotic and dangerous. Without wristbands, it's not clear how long someone has been held at the sites, and there is no order to how long people have to stay there or when they will be picked up for processing. The lack of organization has led to more tension at the sites between the asylum seekers themselves, because no one wants to be left behind or to have to wait longer than another person. People are on edge waiting for Border Patrol to come pick them up, but Border Patrol does not have a regular schedule or any consistency in when they come to the sites. Instead of going into a tent to try to seek shelter and warmth, people wait outside in the freezing cold for agents to come.

22. Due to this new policy by Border Patrol, I have seen children forced to wait much longer at the detention sites. Previously, Border Patrol would usually pick up children and one parent in a family unit within a day of the family's arrival at the detention sites. Over the last week, I have seen children, including sick and vulnerable children, kept at the sites for much longer. Last weekend, a child was forced to stay at the Willows site for several days. She had asthma and was wheezing, but her family did not have an inhaler for her.

23. I am extremely concerned about the winter months with rain and freezing temperatures. The work that volunteers have been doing is not sustainable over the long term, and I am worried that conditions at the open-air sites will continue to deteriorate.

I affirm that the statements in this declaration are true to the best of my knowledge and belief.

December 10, 2023

/s/ Jacqueline Arellano
Jacqueline Arellano

Attachment 7



May 13, 2023

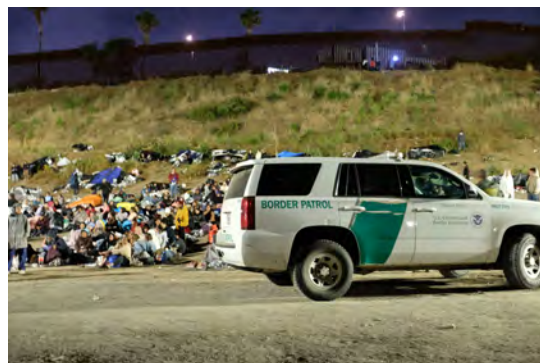
Shoba Sivaprasad Wadhia, Officer
Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Compliance Branch, Mail Stop # 0190
2707 Martin Luther King, Jr. Ave., SE
Washington, DC 20528-0190

Via Electronic Mail: CRCLCompliance@hq.dhs.gov

RE: CBP Violations of Custody Standards and International Human Rights By Failing to Provide Water, Food, Shelter, Sanitation and Medical Assistance to Migrants Detained in Open-Air Corridor Between Border Wall Layers Near San Ysidro Port of Entry

Dear Officer Wadhia:

We write to file a formal complaint about grave violations of rights in the United States committed by U.S. Customs and Border Protection (CBP) agents, namely Border Patrol agents, who for months have used an open-air corridor between the primary and secondary walls west of the San Ysidro Port of Entry in California as a holding area for migrants in their custody without complying with custody standards. As detailed in this complaint and the attached witness declarations, Border Patrol agents are not providing adequate water, food, shelter, sanitation or medical assistance, exacerbating the trauma of already vulnerable migrants and undermining their basic human rights. Instead, they stand by with guns watching migrants in need.



Now, with the lifting of Title 42 exclusions, and the increase of migrants seeking asylum, it is imperative that CBP correct course to comply with custody standards and protect human rights. Your office, in conjunction with Congress, has an important oversight role to play. The violations of custody standards by CBP in this California corridor are systemic. They are not the actions of a few agents, but rather of an agency that has acted intentionally with full knowledge of the conditions they are subjecting migrants to while endangering their well being.

1. The migrants in the California corridor between walls are indisputably in CBP custody.



The area of concern in which CBP is violating rights is a space between the primary border wall that abuts Tijuana, Mexico, and the parallel secondary wall approximately 75 yards to the north. The area between the walls where CBP is holding migrants is U.S. soil. There is in fact a sign posted on the secondary wall in front of that space declaring it U.S. property. In that space, CBP exercises full control, patrolling it regularly with vehicles and ATVs. The area is also monitored by CBP cameras.

Civil society organizations who form part of the Southern Border Communities Coalition (SBCC) have borne witness to the treatment of migrants over the last several months in the California corridor. The migrants originate from countries all over the world, seeking refuge from the dangers they face at home. While visiting the site, our team observed and continues to observe Border Patrol agents clearly exercising control in the following ways:

- a. **CBP controls movement** — Agents drive in and out of the detention area, walk among detained migrants and occasionally direct them to different areas within the corridor. Pedro Rios observed “Border Patrol agents ushering migrants from the area near Las Americas to the Whiskey 8 area. Agents also directed single men to the area closer to the beach.”¹ Additionally, “Border Patrol told the migrants they had to sit in rows and stay seated. Occasionally, the agents would drive through with an ATV or cars, to check that they were seated.”²
- b. **CBP controls access to water and food** — Due to the migrants being detained in an area controlled by Border Patrol, agents control access to basic necessities. In Whiskey 8, our declarants have observed Border Patrol provided very limited water and only a granola bar that left them hungry and thirsty with no way to access more without the help of community members on the other side of the wall³ When Pedro Rios raised concerns about lack of access to water he was told “that the government was considering bringing in a buffalo water tank, but then the Border Patrol liaison told [him] they would not out of concern that it would attract more migrants. They never brought the tank in.”⁴

¹ Decl. of Pedro Rios at ¶ 21

² Decl. of Pedro Rios at ¶ 20

³ Decl. of Adriana Jasso at ¶ 8

⁴ Decl. of Pedro Rios at ¶ 12

c. **CBP controls migrant tracking system** — Border Patrol monitors migrants by issuing color coded or labeled wristbands. From Pedro Rios’ observations, “Border Patrol instituted the use of wristbands to identify people’s arrival based on the agent’s first interaction with them, which might be a day or two after they actually arrive in the corridor. The wristbands are like the ones used for concerts. They are different colors and some have the day of the week printed on them.”⁵



d. **CBP controls access to the area** — Border Patrol also controls access to the area, not allowing anyone to leave without the assistance of agents. Migrants “cannot leave the area because of the physical walls that stand in their way. Some of those arriving are suffering severe pain, diarrhea, headaches, etc. Many individuals are pregnant, have children with them, have no shoes, are muddy, wet and in terrible condition.”⁶ Individuals in need of medical attention are dependent on Border Patrol to transport them to a hospital, but they are slow to respond. For example, A 79-year old Colombian woman who fell off the border wall and suffered injuries to her leg and other distress because of a lack of medicine, was not provided medical attention by Border Patrol until after an entire day of advocacy by advocates.⁷

The control CBP has over every aspect of the migrant’s environment and well-being from where and how they are able to move, to the basic necessities they have access to, indisputably amounts to custody. CBP has the responsibility to follow the laws and protocols in place and uphold the human rights and dignity of all migrants in their custody.

2. **CBP is violating its own standards for conditions and length in custody.**

The U.S. Customs and Border Protection National Standards on Transport, Escort, Detention, and Search (“TEDS Standards”) dictate the custody standards that CBP must follow when they detain people in a holding facility.⁸ A holding facility is any “secure enclosure” that is “[u]nder the control of CBP; and [p]rimarily used for the short-term confinement of individuals who have recently been detained”.⁹ Individuals are detained when they are restrained from having freedom of movement.¹⁰ Border Patrol agents that hold migrants in the corridor between the walls are subject to the TEDS Standards.

⁵ Decl. of Pedro Rios at ¶ 22

⁶ Decl. of Adriana Jasso at ¶ 7

⁷ Decl. of Lilian Serrano at ¶ 2-4, 9-10

⁸ CBP National Standards on Transport, Escort, Detention, and Search (2015), <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf>. (“TEDS Standards”)

⁹ TEDS Standards at Pg. 29.

¹⁰ TEDS Standards at Pg. 28.

The TEDS Standards provide, among other things, that all detainees must be provided medical attention, meals at regularly scheduled times, adequate water, have restroom accommodations, and must be provided with personal hygiene items.¹¹ All efforts must be made to ensure care for migrants under the Standards.¹²

As described above and in the specific examples below, CBP is violating all of these standards at the open air detention site in the California corridor.

a. CBP does not provide medical assistance in violation of TEDS § 4.10

Observers have documented numerous examples of Border Patrol failing to provide medical attention to detained migrants, including at-risk populations.¹³ TEDS Standards provide that “[e]mergency medical services will be called immediately in the event of a medical emergency.”¹⁴ Adriana Jasso states in her declaration that she encountered an African man who collapsed and was described as dying by a Colombian nurse. Only after advocate intervention did Border Patrol come to assist.¹⁵ Additionally, she describes migrants “suffering severe pain, diarrhea, headaches, severe cuts and bruises. One Asian man’s leg was severely infected. He was in extreme pain with no way to communicate.”¹⁶



Lilian Serrano has various accounts of migrants needing medical assistance. In reaching out to the Border Patrol liaison she was told the liaison “was receiving our emergency flags and following up, but that when his agents went to take people to the hospital, the migrants were all of a sudden fine and that they didn’t have a medical need.”¹⁷ In another instance the liaison asked why she was calling him and not 9-1-1.¹⁸ Lilian also encountered a 79-year old Colombian woman who fell off the border wall and suffered injuries to her leg and other distress because of a lack of medication; she was not provided medical attention by Border Patrol until after an entire day of advocacy by multiple advocates.¹⁹ Additionally, she encountered an asylum seeking woman from Afghanistan who the Border Patrol took to the hospital after she suffered injury and infection to her arm. The woman was dumped at a hospital without any paperwork from

¹¹ TEDS Standards at Pgs. 17-18

¹² TEDS Standards at Pg. 3

¹³ TEDS Standards § 5.1 defines “at-risk populations” as including children, “pregnant individuals; those known to be on life-sustaining or life-saving medical treatment; those at higher risk of sexual abuse (including but not limited to gender nonconforming, intersex, and transgender); reported victims of sexual abuse; those who have identified mental, physical or developmental disabilities; those of advanced age; or family units.” The Standards provide such individuals “may require additional care or oversight”.

¹⁴ TEDS Standards § 4.10 (“Medical Emergencies”)

¹⁵ Decl. of Adriana Jasso at ¶ 11

¹⁶ Decl. of Adriana Jasso at ¶ 7

¹⁷ Decl. of Lilian Serrano ¶ 9.

¹⁸ Decl. of Lilian Serrano at ¶ 13

¹⁹ Decl. of Lilian Serrano at ¶ 2-4, 9-10

Border Patrol and was later denied access to agents so she could be processed.²⁰ In addition, Lilian encountered a 29-year old pregnant Somali woman suffering repeated vomiting without medical attention.²¹

Pedro Rios confirmed that a Jamaican woman who suffered a miscarriage after being kidnapped and raped in Mexico and remained in excruciating pain, was not provided medical attention by Border Patrol for days despite advocates raising the issue multiple times.²² Pedro also documented an infant no longer taking breastmilk who suffered vomiting and was listless and was only taken to a hospital after advocates' intervention.²³

b. CBP does not provide meals to detained migrants in violation of TEDS § 4.13

Border Patrol did not provide regular meals as required under the TEDS Standards, leaving migrants at risk of starvation while relying on the limited resources of NGOs providing emergency food aid. The TEDS Standards require that “[a]dult detainees, whether in a hold room or not, will be provided with food at regularly scheduled meal times.”²⁴ For children and pregnant individuals, the Standards require “a snack upon arrival and a meal at least every six hours thereafter, at regularly scheduled meal times. At least two of those meals will be hot. Juveniles and pregnant or nursing detainees must have regular access to snacks, milk, and juice.”²⁵



Instead, Border Patrol only provided migrants with a single small water bottle per person, and a granola bar.²⁶ Adriana Jasso observed that Border Patrol entered the corridor between the walls “[o]nce a day [to] provide a bottle of water and some kind of granola bar. To keep people from starving, NGOs, volunteers both on the Mexico and US side of the border, are supplying the basic necessities they can.”²⁷ One group of Indian men detained for five days were left to starve and resorted to eating leaves.²⁸

²⁰ Decl. of Lilian Serrano at ¶ 5-7

²¹ Decl. of Lilian Serrano at ¶ 13

²² Decl. of Pedro Rios at ¶ 30.

²³ Decl. of Pedro Rios at ¶ 16.

²⁴ TEDS Standards § 4.13.

²⁵ TEDS Standards § 5.6 (“Meals and Snacks – Juveniles, Pregnant, and Nursing Detainees”).

²⁶ Decl. Adriana Jasso at ¶ 3, Dec. Flower Alvarez Lopez at ¶ 5.

²⁷ Decl. of Adriana Jasso at ¶ 8

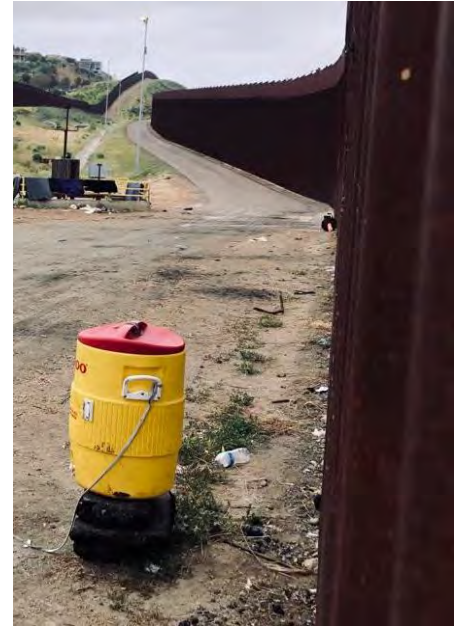
²⁸ Decl. of Pedro Rios at ¶ 15.

c. CBP does not provide adequate water to detained migrants in violation of TEDS § 4.14

CBP is required to make available clean drinking water along with clean drinking cups to detainees.²⁹ Pedro Rios stated that in April of 2023, “migrants reported waiting up to 7 days with no shelter, minimal water, and only a granola bar to eat. I communicated with the Border Patrol liaison about the conditions, and shortly thereafter, agents placed a 5 gallon container of water every morning, but this would finish quickly. By mid day there was no available water.”³⁰

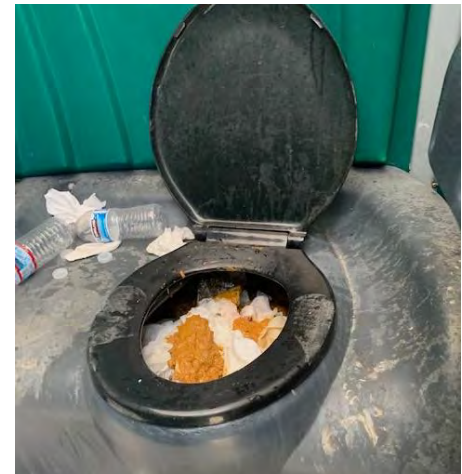
The amount of water was wholly inadequate, requiring advocates to push Border Patrol to provide more water.³¹ The Border Patrol liaison said they considered bringing a buffalo water tank, but chose not to because they did not want to attract more migrants.³²

By May, Pedro stated, “Border agents had removed the 5 gallon water jug. They handed out one small water bottle per migrant every day, leaving migrants thirsty by the afternoon.”³³ As of May 12, declarants continue to report that Border Patrol is only providing one bottle of water per day.³⁴



d. CBP does not provide restroom facilities for detained migrants in violation of TEDS § 4.15 nor maintain cleanliness standards in violation of TEDS § 4.7

CBP is required to provide restroom accommodations to all detainees with a reasonable amount of privacy ensured.³⁵ Border Patrol agents have only provided one port-a-potty for hundreds of migrants.³⁶ The port-a-potty was brought into the area on April 28, 2023 when there were approximately 70 individuals in custody.³⁷ Within two days the port-a-potty was full and unusable.³⁸ Since that time, the number of migrants has grown to approximately 400 and no additional facilities have been added.³⁹ To date, we have not seen the one port-a-potty be cleaned and migrants have regularly complained since that is unusable.⁴⁰



²⁹ TEDS Standards § 4.14 (“Drinking Water”)

³⁰ Decl. of Pedro Rios at ¶ 9

³¹ Decl. of Pedro Rios at ¶ 12

³² Decl. of Pedro Rios at ¶ 12

³³ Decl. of Pedro Rios at ¶ 15.

³⁴ Decl. of Flower Alvarez Lopez at ¶ 5

³⁵ TEDS Standards § 4.15 (“Restroom Facilities”)

³⁶ Decl. of Flower Alvarez Lopez at ¶ 5

³⁷ Decl. of Pedro Rios at ¶ 13

³⁸ Decl. of Pedro Rios at ¶ 13

³⁹ Decl. of Pedro Rios at ¶ 14

⁴⁰ Decl. of Pedro Rios at ¶ 14; Decl. of Flower Alvarez at ¶ 5



Border Patrol fails to provide minimum standards of cleanliness; CBP TEDS standards require facilities “be regularly and professionally cleaned and sanitized.”⁴¹ Despite this, Flower Alvarez Lopez saw “a pile of trash that has not been picked up in days” and “one portable restroom for” hundreds of people that has “not been cleaned at all.”⁴²

e. CBP does not provide basic hygiene items and made no efforts to provide showers in violation of TEDS § 4.11

Additionally, CBP did not provide access to basic hygiene items as required under the Standards. TEDS provides that “Detainees must be provided with basic personal hygiene items, consistent with short term detention and safety and security needs” where “[f]amilies with small children will also have access to diapers and baby wipes” and restrooms must include “access to toiletry items, such as toilet paper and sanitary napkins.”⁴³ In contrast, Flower Alvarez Lopez found that “[t]here are no showers, hand washing stations, nor basic personal hygiene items like feminine hygiene products, baby wipes, toothbrushes, etc. I see families, babies, children, women with children, and people of all ages in here and they don’t have the basic necessities.”⁴⁴

CBP has made no effort to provide showers to migrants who were detained for up to a week, even though the Standards provide that “reasonable efforts will be made to provide showers, soap, and a clean towel to detainees who are approaching 72 hours in detention.”⁴⁵ Instead, Flower Alvarez Lopez confirmed no showers were available at the open air detention site.⁴⁶



f. CBP Detains Migrants Far Beyond 72 Hours in violation of TEDS § 4.1

The TEDS standards provide that migrants should not be detained for longer than 72 hours in holding facilities.⁴⁷ CBP is regularly detaining migrants in the corridor between the border walls for over 72 hours

⁴¹ TEDS Standards § 4.7 (“Cleanliness”)

⁴² Decl. Flower Alvarez Lopez ¶ 5

⁴³ TEDS Standards § 4.11.

⁴⁴ Decl. of Flower Alvarez Lopez at ¶ 5

⁴⁵ TEDS Standards § 4.11.

⁴⁶ Decl. of Flower Alvarez Lopez at ¶ 5

⁴⁷ CBP National Standards on Transport, Escort, Detention, and Search (2015) at Pg. 14

<https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf> (“TEDS Standards”)

and up to a week.⁴⁸ Every effort must be made to hold detainees for the least amount of time required.⁴⁹ Pedro Rios found that “migrants reported waiting up to 7 days.”⁵⁰ After a Border Patrol liaison claimed migrants were exaggerating their length of detention, Pedro Rios confirmed that migrants “continued to tell [him] they had been there 2, 3, 4 and up to 7 days.”⁵¹ The wristbands issued by agents to migrants are evidence of the length of detention.

For months, Border Patrol has continued to egregiously violate its basic obligations to people it detains under its own TEDS Standards in the California corridor between border walls.



3. CBP is violating international treaties on cruel, inhuman and degrading treatment.

The United States has signed and ratified the International Covenant on Civil and Political Rights (ICCPR), an international treaty that recognizes fundamental human rights. Under the U.S. Constitution's Article VI, treaties are the “supreme law of the land” governing the responsibilities of every part of government at the local, state, and federal level.⁵² Thus, CBP is bound by the ICCPR.

This year, the U.S. Government is under review by sister nations who are signatories to the ICCPR for compliance with the treaty's obligations. In fact, the U.S. Government led by the Department of State is preparing to appear before the ICCPR Human Rights Committee to answer questions from other nations about non compliance. Civil society groups, including SBCC, will be submitting reports to the Human Rights Committee to alert them to the violations we have witnessed, including those occurring now in the California corridor between the walls.

The ICCPR provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment.”⁵³ The violations of the TEDS Standards described above and detailed in the attached declarations also constitute violations of migrants' rights under the ICCPR. Pedro Rios, who has observed CBP human rights violations in the California corridor for months, summarized:

⁴⁸ Decl. Pedro Rios ¶ 9, 10, 18

⁴⁹ TEDS Standards § 4.1

⁵⁰ Decl. Pedro Rios ¶ 9

⁵¹ Decl. Pedro Rios ¶ 18

⁵² U.S. Constitution, Art. VI., International Covenant on Civil and Political Rights (ICCPR) Art 2

⁵³ International Covenant on Civil and Political Rights (ICCPR) Art. 7

My overarching concern is the inhumane treatment that I have witnessed since February, the ongoing lack of water, food, and shelter, the degrading treatment, and overall lack of respect or compassion for the migrants who are seeking safety from the dangers they face in their home countries⁵⁴.... [T]hey should be treated with dignity and decency pursuant to human rights standards. That is not what's happening.⁵⁵

In his declaration, Pedro details how border agents treat migrants in cruel, inhuman, and degrading ways, leaving them starving and freezing while in their custody.⁵⁶ He also describes how some agents treat migrants with complete disregard, for example, one agent told migrants, “I don’t give a fuck how long you’ve been here,” and another said, “get the fuck away from me” when a migrant approached to ask a question.⁵⁷

Flower Alvarez Lopez in her declaration echoed the statements by other declarants, speaking to the indignity of the situation facing migrants. “This is devastating. We should not have to bear witness to what is happening today.... To see babies and children here in this type of setting, it's heartbreaking. We need to do better. Our government needs to do better.”⁵⁸

The ICCPR states that if violations of human rights occur, as they have for some time and continue to occur, the government shall provide an effective remedy.⁵⁹ That could be an administrative, legislative, or judicial remedy. Despite the pleas of migrants and advocates, CBP has not provided an effective remedy. Through this petition, we hope to prompt a remedy — the cessation of the violations and the protection of human rights.

4. CRCL must act to investigate and address these violations with Congress.

The Office of Civil Rights and Civil Liberties (CRCL) was established to, among other things, “oversee compliance with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights and civil liberties of individuals affected by the programs and activities” of the Department of Homeland Security, including CBP,⁶⁰ in conjunction with Congress. You have the mandate to address both the violation of the TEDS custody standards and the ICCPR rights incorporated into U.S. law through the Constitution. We look to your office to end the harm caused by CBP in its treatment of migrants in the California corridor between walls west of the San Ysidro Port of Entry.

Those seeking safety at our border should be treated at all times with humanity, dignity, and respect. For months now, CBP has fallen short of this responsibility. We recognize that the challenges facing CBP are many, but that should never be an excuse for violating the rights of migrants. The violations that declarants describe have been going on for months. Since at least February 2023, migrants in the corridor have been left waiting for days without adequate water, food, shelter and other basic necessities. Long before that, CBP has taken custody of migrants in the corridor and used it as a pre-processing holding area, exercising control of migrants.

⁵⁴ Decl. of Pedro Rios at ¶ 26

⁵⁵ Decl. of Pedro Rios at ¶ 31

⁵⁶ Decl. of Pedro Rios at ¶ 27

⁵⁷ Decl. of Pedro Rios at ¶ 25

⁵⁸ Decl. of Flower Alvarez Lopez ¶ 7

⁵⁹ ICCPR Art. 2

⁶⁰ 6 U.S.C. § 345

CBP anticipated an increased number of migrants, especially asylum seekers. Congress increased CBP resources significantly, but those resources are not being used to comply with the agency's duties of care in the California corridor. If CBP is going to continue using the corridor as a holding area or a pre-processing area (as opposed to processing someone from the area that day), then the agency must stand up the infrastructure and engage in practices that honor the rights and dignity of migrants. That is what we committed to do as a nation when we signed the ICCPR and what the agency committed to do when it adopted the TEDS standards.

We call on CRCL to ensure that not only will the current violations cease and human rights be protected, but also that this situation will not be allowed to reoccur in California or anywhere else along the border. We stand ready to speak with your Office to discuss these claims further if needed. Please contact us to acknowledge receipt and discuss immediate next steps.

Sincerely,



Ricky Garza, Border Policy Counsel
Southern Border Communities Coalition⁶¹

Enclosures:

1. *Declaration of Pedro Rios*
2. *Declaration of Lilian Serrano*
3. *Declaration of Flower Alvarez Lopez*
4. *Declaration of Adriana Jasso*

CC:

Chairman Dick Durbin
Ranking Member Lindsey Graham
Senate Judiciary Committee

Chairman Jim Jordan
Ranking Member Jerrold Nadler
House Committee on the Judiciary

Chairman Gary Peters
Ranking Member Rand Paul
Senate Committee on Homeland Security & Governmental Affairs

Chairman Mark Green
Ranking Member Bennie Thompson

⁶¹ SBCC is a program of Alliance San Diego, which is based in San Diego, but staffs SBCC throughout the border region and in D.C. SBCC is governed by a steering committee of members from CA, AZ, NM, and AZ.

House Committee on Homeland Security

Chairman James Comer
Ranking Member Jamie Raskin
House Committee on Oversight and Reform

Majority Leader Mitch McConnell
Minority Leader Charles Schumer
United States Senate

Speaker Kevin McCarthy
Minority Leader Hakeem Jeffries
United States House of Representatives

Attorney General Merrick Garland
U.S. Department of Justice

Assistant Attorney General Kristen Clarke
Civil Rights Division
U.S. Department of Justice

Erin Barclay
Acting Assistant Secretary of State for Democracy, Human Rights, and Labor
U.S. Department of State

Acting Commissioner Troy A. Miller
Customs and Border Protection
Department of Homeland Security

Nathaniel Kaine
Chief of Staff
Customs and Border Protection
Department of Homeland Security

Chief Raul Ortiz
United States Border Patrol
Customs and Border Protection
Department of Homeland Security

DECLARATION OF PEDRO RIOS

I, Pedro Rios, declare the following:

1. I am the director of the American Friends Service Committee (AFSC) US-Mexico Border Program. I have been monitoring and advocating for human rights at AFSC for twenty years.
2. For the last several months, I have observed migrants trapped between the primary and secondary barriers on the western most segment of the US-Mexico border near San Ysidro. Migrants have identified themselves as from many different countries including Afghanistan, Jamaica, India and Colombia, and they state they are seeking asylum because of dangers they face in their home countries.
3. The area in which they are trapped is north of the primary barrier abutting Mexico. That area north of the barrier is in the United States. The migrants state they have crossed the barrier to turn themselves in to border agents and are doing so out of desperation, because they seek safety. Once over the barrier, they await to be processed by border agents.
4. The migrants are trapped in an area bounded by a secondary barrier to the north of the primary barrier. This corridor between the barriers is fully controlled by the U.S. Border Patrol. Agents pass along this corridor with vehicles and ATVs. The area is also monitored by cameras. Anyone in this corridor is under their control and in their custody.
5. In February 2023, I first spoke to migrants trapped in the corridor, while I was at an event we held near the border walls. About a dozen migrants approached the northern barrier to talk to me and told me that they had been in the corridor for several days hoping to be processed by border agents, but had not yet been, even though agents were regularly passing by. The agents had given them mylar blankets but little else. During this time, it rained regularly in San Diego.
6. I have continued to see migrants in the corridor since, and have monitored their conditions. I have seen them in several locations in the corridor identified as follows from east to west: near the Las Americas mall, at the section known as Whiskey 8, and closer to the beach.
7. The number of people that I have been able to see has varied from dozens to hundreds. In March, I began coming 2-3 times a week to talk to migrants and monitor the conditions. In most cases, they had been there for at least 2 days. Some had mylar blankets given to them by border agents, others had nothing to cover themselves at night. During this time it rained regularly and was cold day and night. They told me they were thirsty and hungry with little to nothing to eat or drink.
8. In April, the number of migrants in the corridor seemed to grow until it was regularly around 70 people who were visible to me at the Whiskey 8 area, and I knew there were more at other locations in the corridor. More women and children appeared in the corridor. Because Whiskey 8 is most accessible from the U.S. side, this is where I came to speak to migrants.
9. Migrants reported waiting up to 7 days with no shelter, minimal water, and only a granola bar to eat. I communicated with the Border Patrol liaison about the conditions, and shortly thereafter,

agents placed a 5 gallon container of water every morning, but this would finish quickly. By mid day there was no available water.

10. This year, San Diego has been unusually cold and rainy. I recall a particularly rainy night in mid April. The following morning, I came to the border and spoke to a group of migrants who were all from Africa. They had not been given mylar blankets, but had regular blankets that were soaked. They had no other clothes or cover to protect them from the weather. They told me they had been there for 5 days.
11. In the last week of April, I spoke to the Border Patrol community liaison as well as the Department of Homeland Security Civil Rights and Civil Liberties liaison expressing concerns about the conditions, including the lack of water and sanitation.
12. Initially they told me that the government was considering bringing in a buffalo water tank, but then the Border Patrol liaison told me they would not out of concern that it would attract more migrants. They never brought the tank in.
13. On April 28, several months after I began witnessing the presence of migrants in the corridor, agents brought in a single port-a-potty to the Whiskey 8 area, but it was not enough for what was then about 70 people on average in that area. I don't know if they brought additional port-a-potties to other parts of the corridor.
14. Two days after the port-a-potty arrived, it was full and unusable. It may have been serviced, but I never saw that happen, and migrants have regularly complained since that it is unusable. As of today, there is only one port-a-potty, even though the number of migrants has grown to an estimated 400.
15. Beginning in May, I began coming to the border nearly every day, spending several hours at a time. On May 1st, I spoke with a group of men from India who told me they were starving. They showed me the leaves they were eating. They had been there for 5 days. During that time, I observed that border agents had removed the 5 gallon water jug. They handed out one small water bottle per migrant every day, leaving migrants thirsty by the afternoon.
16. On May 3rd, migrants told me that border agents had taken their shoelaces, and they did not know why, but believed it was in preparation for agents to take them in. I am familiar with this practice, a tactic that border agents have previously said they use to prevent migrants from running away. I took photos of their shoes without laces.
17. Out of grave concern for the condition of migrants, my organization began to provide basic necessities to migrants, including water, food, and mylar blankets. Initially, an agent scolded me, telling me that we needed to alert Border Patrol every time we came. They told the media that was starting to cover the encampment the same thing. This is not a requirement, but something they suggested we must do nonetheless. I believe this was meant to dissuade us from coming, especially as the media began to arrive.
18. After the first article in the San Diego Union-Tribune was published, stating that migrants were there up to 7 days, the Border Patrol liaison told me that this was not true, that migrants were exaggerating and were conflating their days in Tijuana with their days in the corridor. But I had been witness to migrants trapped in the area, waiting to be processed for many days. I asked

migrants to clarify and confirm the number of days they had been in the corridor, and they continued to tell me they had been there 2, 3, 4 and up to 7 days.

19. At the end of the first week of May, the number of migrants grew significantly to around 400. I worked with my organization to alert the media. Migrants shared with them what they had told me — that agents were waiting days to process them, but not providing them with basic necessities including sufficient water, food, and shelter.
20. With the arrival of the media, Border Patrol told the migrants they had to sit in rows and stay seated. Occasionally, the agents would drive through with an ATV or cars, to check that they were seated. This would happen at various times of the day. Migrants have told me they believe this is in anticipation of them being processed, but the agents will make them all sit for hours on end and not process any of them. Then they will come with vans and take a few people or sometimes 20, but there are hundreds of people.
21. I have observed Border Patrol agents ushering migrants from the area near Las Americas to the Whiskey 8 area. Agents also directed single men to the area closer to the beach. Between the direction for them to sit in rows to ushering them from one part of the corridor to another, agents are controlling the movement of migrants.
22. This week, Border Patrol instituted the use of wristbands to identify people's arrival based on the agent's first interaction with them, which might be a day or two after they actually arrive in the corridor. The wristbands are like the ones used for concerts. They are different colors and some have the day of the week printed on them.
23. Migrants have now organized themselves in rows based on their wristband, hoping that the more organized they are, the more quickly they will be processed, but they are still waiting for days. Migrants state, and I have observed, that agents come through every so often to see if people are sitting and if they are not, they sometimes yell at the migrants. This includes children, who don't understand what is happening. They sit under full sun and then rain and cold, they sit and they wait.
24. One of the migrants who took the initiative to organize the other migrants shared his frustrations that agents come to scold the migrants, but not to process them. He told me he had not slept for 3 days and was concerned that the other migrants thought he was colluding with the agents and felt he was in danger, and that the agents are not there to protect him or anyone, but to leave them waiting.
25. Throughout my time monitoring the conditions in the corridor, I have also witnessed some Border Patrol agents speaking aggressively towards migrants. For example, I heard one agent say, "I don't give a fuck how long you've been here," and another say, "get the fuck away from me" when a migrant approached to ask a question.
26. My overarching concern is the inhumane treatment that I have witnessed since February, the ongoing lack of water, food, and shelter, the degrading treatment, and overall lack of respect or compassion for the migrants who are seeking safety from the dangers they face in their home countries.

Pedro Rios



May 12, 20223

I affirm that the statements in this affidavit are true to the best of my knowledge and belief.

31. In conclusion, there is no doubt that the migrants in the corridor are in Border Patrol custody. As such, they should be treated with dignity and decency pursuant to human rights standards. That is not what's happening.

30. I am deeply concerned about other vulnerable migrants. Today, I alerted the Border Patrol liaison that a Jamaican woman had approached me to tell me she had suffered a miscarriage after being kidnapped and raped in Mexico and is now in what she described as excruciating pain. Other human rights observers shared that they alerted Border Patrol to this woman's condition several days ago, but nothing was done.

30. One migrant told me that in the night, the children cry. He said that the adults have a way to cope, but the children are scared.

29. In another instance, parents of an 8 year old child approached me to tell my colleague that their child had had a seizure as a result of his medication being taken away by Mexican authorities. They were concerned for the child's health. I left a message for the Border Patrol liaison and agents came for him soon after. As with other incidents, I am concerned that if we had not been there, the child would have fallen into greater danger.

28. I'm also concerned about the children. Two days ago, I witnessed a child who was less than a year old whose mother said was no longer taking her breast milk and was throwing up and listless. I called the Border Patrol liaison for medical assistance, and they came to take the child and mother to the hospital. But had I or another human rights observer not been there, that child might not have received any assistance. Especially since agents are not making themselves approachable and some are actively aggressive towards migrants.

27. I am especially concerned about the treatment of migrants who are out of sight from us, especially the area where the men have been directed to, closer to the beach. Last night, I spoke with two men who came to the Whiskey 8 area hoping volunteers would charge their phones. They told me they were hungry and freezing. One was from a Spanish speaking country (not sure which) and one appeared to be from Eastern Europe.

DECLARATION OF LILIAN SERRANO

I, Lillian Serrano, declare the following:

1. I am the director of the Southern Border Communities Coalition, a program of Alliance San Diego. As part of that role, I monitor human rights conditions in the border region.
2. On May 11, after hearing from colleagues about migrants trapped in the corridor between the two border walls, both of which are in the United States, near San Ysidro, California, I arrived at the border wall at 5:45 am. The first thing I saw was a group of migrants that had spent the night outdoors between the two border walls. When I approached the wall, a man called us over. His mother was in need of medical attention.
3. He had traveled with his 79 year old mother from Colombia. He told us she has several medical conditions and at that moment had been without her medication for 2-3 days, trapped in Border Patrol custody. Without her medication, she was falling ill. She was also suffering from an injury to her leg after falling from the wall she had climbed to turn herself in to border agents. Her son was also worried that she hadn't used the restroom in 5 days. The day before she was able to walk a little, but that morning she was just laying down and couldn't move.
4. I immediately contacted the Border Patrol community liaison for the San Diego sector. I called him to try to provide details about what was happening, but he didn't pick up. I sent him a text at 8:00 am with general information about the woman and that we needed to get her medical care. We didn't hear back from him. The son checked in with me on multiple occasions, but at one point I lost track of him amidst the hundreds of migrants.
5. Around the same time, I encountered another woman, who we later learned was an asylum seeker from Afghanistan, who was sleeping by herself on the US side of the border wall wrapped in blankets. She was wearing a hijab. I approached her with colleagues and asked her why she was there. She showed us documents from Scripps hospital. She was taken in an ambulance from the encampment the day before. She told us she wasn't feeling well, she showed us her arm and it was swollen, and had an infection.
6. She told us she had flagged this for Border Patrol, and they took her to Scripps hospital. When the hospital released her, they put her in a taxi. She didn't know where she was, she had no way of contacting anyone, she didn't have an address, so the taxi brought her back to the border wall. She didn't know what to do, she wanted to make sure Border Patrol knew she wasn't trying to sneak into the country. She was waiting for them, but they never arrived at the hospital.
7. She told us she arrived at this site at 2:00 am and knocked multiple times on the gate trying to get inside the encampment. The agents did not open it. She told us that she had family in New York, but didn't have a way to contact them. We had her take a nap in my car. It was the first time she slept indoors after 4 days.
8. She slept and our partner organization PANA (Partnership for the Advancement of New Americans) was able to pick her up around noon. They were able to get her placed in a Catholic Charities shelter. We believe they were able to get in contact with her family in New York, but she doesn't have any paperwork from Border Patrol that would allow her to travel on a plane.

9. In the evening, I eventually spoke with the Border Patrol liaison regarding the 79 year old Colombian woman described above. The liaison said he was receiving our emergency flags and following up, but that when his agents went to take people to the hospital, the migrants were all of a sudden fine and that they didn't have a medical need. I reiterated that the woman we were discussing needed medical attention and told him that the people we were talking to had medical needs. He said that he felt that migrants were taking advantage of this situation and that they were using this to get into the United States.
10. The Border Patrol liaison mentioned he was going to be on site last night because at 9:00 pm "migrants were going to rush the border." Because of this I came back to the site around 8-8:30 pm. At 9:45, I noticed that Border Patrol agents were carrying a woman to their truck who was accompanied by another woman. Her son told me he finally got the attention from the Border Patrol and that they were taking his mother to the hospital, but they would only let one person go with her. He decided to have his wife accompany his mother.
11. To follow up, my colleagues and I went to the hospital and we found his wife. She was confused. As soon as she arrived at the hospital, staff told her she couldn't go in and they left her outside. The Border Patrol left and gave her no instructions, so she was outside of the hospital, and she said she was waiting for them to come and give her instructions. We explained they were not coming back. She didn't get any documents from Border Patrol and was told she couldn't go inside. It was cold and late and she had no way to communicate with her mother-in-law inside. We stayed in the hospital past midnight and assisted her to communicate with the hospital staff to get information about her mother-in-law.
12. The mother-in-law was released this morning, and a family member in the United States was able to come and accompany her. The family member shared that the 79 year old woman was concerned about her Colombian passport, which Border Patrol agents had asked her for before transporting her to the hospital. She gave it to them and she saw an agent put it in his pocket. The passport was never returned to her. She now has no identity documents, nor does she have any paperwork from Border Patrol from her entry to apply for asylum. Her son is still in custody in the area between the walls, separated from his mother and wife, all of whom have a related asylum claim. It is uncertain whether he will be released or whether his asylum claim will be heard. For the moment, they face the prospect of indefinite separation far from a country they fear returning to.
13. In another incident, I was notified today at 4:15 pm that a 29 year old pregnant Somali woman had thrown up 5 times today. I contacted the Border Patrol liaison, and he told me that I should have just called 9-1-1. Then he said he would call them. Several hours have now passed and no one has arrived to assist the pregnant woman. We are keeping a close eye on her and hopefully she will receive help soon.

I affirm that the statements in this affidavit are true to the best of my knowledge and belief.

May 12, 20223

Lilian Serrano

DECLARATION OF FLOWER ALVAREZ LOPEZ

I, Flower Alvarez Lopez, declare the following.

1. My name is Flower Alvarez Lopez and I am a Co-Director at Universidad Popular.
2. Around 12 pm on May 11, I went to the border wall near San Ysidro to find hundreds of people in an encampment between two fences, unable to leave. Border Patrol provided the migrants with wristbands of different colors to indicate when they arrived and have created some sort of a system for when they will process them.
3. I stayed overnight at the encampment and observed and talked to Border Patrol agents around 2:00 am during a big round up. I saw Border Patrol agents ask those who had children to raise their hands. I saw them yelling at folks that were sitting down telling them to not get up. If they tried to move, they would be immediately yelled at. I tried to gather information from the agents about how many people they were taking and where they were taking them. They said 60 people and didn't say anything else. Border Patrol has not communicated their plans for the individuals who are trapped in the corridor between the border walls.
4. They are being treated inhumanely. The government has not provided any blankets or shelter for these individuals. At night, it is cold and everyone is exposed to the elements including our most vulnerable populations: children, pregnant women and the elderly.
5. There is a pile of trash that has not been picked up in days. There is only one portable restroom for all 300-450 people to use and it has not been cleaned at all. There are no showers, hand washing stations, nor basic personal hygiene items like feminine hygiene products, baby wipes, toothbrushes, etc. I see families, babies, children, women with children, and people of all ages in here and they don't have the basic necessities. They are sleeping on the ground with few clothes to keep them warm. Border Patrol has only provided one water bottle and one granola bar per person per day. A lot of them have been sleeping directly on the dirt and gravel ground except for those who we were able to provide cardboard boxes to use as mattresses.
6. Border Patrol is not providing medical support on site. We are providing the limited first aid we can, but we don't have any medics on site. We know a few people have been taken by ambulance to other hospitals.
7. This is devastating. We should not have to bear witness to what is happening today. Folks are showing up and they are very emotional to what they are seeing because it is a devastating sight. To see babies and children here in this type of setting, it's heartbreaking. We need to do better. Our government needs to do better.

I affirm that the statements in this affidavit are true to the best of my knowledge and belief.

May 12, 20223

Flower Alvarez Lopez

DECLARATION OF ADRIANA JASSO

I, Adriana Jasso, declare the following:

1. I have worked with the American Friends Service Committee for 16 years assisting migrants. I am currently working alongside a border wall in the San Ysidro area that is one of two parallel walls at the border of the United States and Mexico. The space between the first and second wall is inside the United States. In the space between the walls, there are approximately 400-500 individuals who are waiting with nothing but the clothes on their backs to be processed for asylum claims.
2. I first arrived at the San Ysidro border just south of South Bay Water Reclamation Plant about 2 weeks ago. Border agents refer to that area as Whiskey 8. When I arrived, I saw approximately 20 people. Then 20 quickly turned to 80 and 80 quickly turned into 120. Later on we started seeing 400-500 individuals. Not only have the numbers changed, but the demographics as well. Now we are seeing mainly women with children. As the encampment grew, Border Patrol moved males to an area approximately 20 minutes away on foot to a different canyon.
3. I have not been able to access the canyon, but have heard there are anywhere between 600-800 single men in the encampment. What we have heard is that the conditions there are a lot worse in terms of access to food and shelter. I took a statement from a Colombian family that said they only received a bottle of water for a whole day. We haven't been able to transport anything to them and we are not able to carry things over there. It would require us hiking to the location.
4. The individuals who come through the primary fence and who are then between the two walls are in the United States. For the last several weeks I have witnessed Border Patrol direct and control their movements, such as the movement of men to a different part of the corridor. Border Patrol agents are the only people who have access to the encampment. They are the only ones on site. These individuals are in their custody and Border Patrol is responsible for their fundamental well being. The individuals are being detained in dire conditions.
5. Border Patrol developed a system to track the individuals who are in the encampment by providing them with wrist bands to track when they entered into their custody. The wristbands vary in color from red, yellow, blue, green and gray to reflect the date they entered the encampment.
6. It appears they have different wristbands for the day of the week that border agents first identify them, and it appears to indicate the priority based on the days and nights that they have been here. But we have seen over and over again that the system isn't being followed and it depends on what officers they get on which wristband they are given. For example, migrants have told us they have been here for 4 days, but their wristband indicates less.
7. Individuals cannot leave the area because of the physical walls that stand in their way. Some of those arriving are suffering severe pain, diarrhea, headaches, severe cuts and bruises. One Asian man's leg was severely infected. He was in extreme pain with no way to communicate. We had to wait for Border Patrol to respond to our texts and.

Many individuals are pregnant, have children with them, have no shoes, are muddy, wet and in terrible condition. All they can do is wait for Border Patrol to take them to be processed for asylum.

8. Border Patrol agents do not come often to the site. Once a day, they provide a bottle of water and some kind of granola bar. To keep people from starving, NGOs, volunteers both on the Mexico and US side of the border, are supplying the basic necessities they can. It is a dire situation.
9. On Tuesday, May 9th, 2023, an incident happened where two Colombian women were traveling alone and were being sexually harassed. Four males became abusive towards them and the women decided to approach us (there were no agents to approach). We let the authorities know. Fortunately there was no sexual attack, but there was physical and verbal abuse. If we were not there, we don't know whether the attack would have been prevented.
10. We have seen several pregnant women come through. One woman, approximately a week ago, had a miscarriage. She has continually expressed the pain she is going through, especially at night.
11. In a particularly distressing incident, a man from Africa was walking and collapsed. A Colombian nurse tried to help and told us he was dying. We alerted the Border Patrol. Fortunately, the Border Patrol came and picked him up.
12. On a different occasion, a child suffered an epilepsy attack and we were able to get assistance from Border Patrol. I continue to be concerned that if we were not there bearing witness that children and adults would suffer harm while in Border Patrol custody.

I affirm that the statements in this affidavit are true to the best of my knowledge and belief.

May 12, 20223

Adriana Jasso