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ONE HUNDRED SIXTEENTH CONGRESS

# Congress of the United States

## House of Representatives

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May 24, 2019

The Honorable Kevin McAleenan  
Acting Secretary  
Department of Homeland Security  
300 7th Street SW  
Washington, D.C. 20528

Dear Acting Secretary McAleenan:

We write to express our profound concern and sadness over the death of yet another child in Customs and Border Protection (CBP) custody this week. This is the fifth death of a child in CBP's custody in the last six months and raises significant questions about the conditions in CBP's short-term holding facilities, the length of time children are held in such facilities, and the general suitability of such facilities for families and children. To address these and other concerns, we request that you open an investigation immediately and brief the Members of the House Judiciary Committee during the week of June 3.

According to information released by CBP to the Committee and the media, the most recent child to die in CBP custody was 16 year-old Carlos Gregorio Hernandez Vásquez. Carlos was apprehended crossing the border on May 13, 2019, and detained in CBP custody for seven days despite agency rules requiring children to be transferred to Health and Human Services custody within 72 hours. After being in custody for six days, Carlos said he felt ill and was treated with Tamiflu.<sup>1</sup> However, on the seventh day in custody he was found unresponsive during a welfare check.

Due to the seriousness of this tragedy and the many questions that remain, we request you initiate an investigation into this incident, as well as the four other deaths in CBP custody over the last few months. The investigation should assess CBP policies or practices, training curricula, staffing, and potential systemwide errors that may have contributed to the children's deaths. The investigation should also identify policies and practices designed to protect health

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<sup>1</sup> Graham Kates, *Guatemalan Teen Boy is Latest Migrant to Die in U.S. Custody*, CBS News (May 21, 2019), <https://www.cbsnews.com/news/guatemalan-teen-boy-migrant-child-dies-in-border-patrol-custody/>.

and safety and whether they were employed, as well as policies and practices that may be unnecessarily exposing children and families to particularly harsh terrain.

For example, the Department of Homeland Security Inspector General issued a report in September of 2018 describing the impact of CBP's policy of turning away asylum seekers.<sup>2</sup> That report concluded that the practice of turning away asylum seekers at international bridges and "limiting the volume of asylum-seekers entering at ports of entry" may have caused an increase in unauthorized crossing attempts.<sup>3</sup> One asylum seeker interviewed by the Office of Inspector General stated that "she had been turned away three times by an officer on the bridge before deciding to take her chances on illegal entry."<sup>4</sup> These facts are particularly troubling considering clear instructions from former Secretary Nielsen that asylum seekers should present themselves at ports of entry instead of crossing between the ports.<sup>5</sup>

The investigation should also examine the appropriateness of holding children in Border Patrol stations, which were designed to hold adults, and not children, for no more than 72 hours. In December, you appeared before the Senate Judiciary Committee, where you testified that CBP's short-term holding cells are "incompatible" with increased migration of family units and unaccompanied children. You added that "[o]ur Border Patrol stations were built decades ago to handle mostly male single adults in custody, not families and children."<sup>6</sup>

As part of the Fiscal Year 2019 DHS appropriations bill, the agency was given \$415 million for humanitarian relief, specifically for medical care, transportation, and improvements to CBP processing centers along the border.<sup>7</sup> We are concerned that these funds may have not been adequately used to address systemic issues that have contributed to the death of asylum-seeking children. The fact that deaths have continue to occur three months after such funding was issued is troubling.

Thank you for your prompt attention to this matter. We look forward to your timely response as it relates to our briefing request, and notification that an investigation has been opened.

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<sup>2</sup> DHS Office of Inspector General, *Special Review – Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy* (Sep. 27, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>.

<sup>3</sup> *Id.*, at 7.

<sup>4</sup> *Id.*

<sup>5</sup> Neena Satija, *The Trump administration is not keeping its promises to asylum seekers who come to ports of entry*, Texas Tribune (July 5, 2018), <https://www.texastribune.org/2018/07/05/migrants-seeking-asylum-legally-ports-entry-turned-away-separated-fami/>.

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

<sup>7</sup> House Appropriations Committee, *Consolidated Appropriations Act Division by Division Summary*, at 1 (Feb. 2014), <https://appropriations.house.gov/sites/democrats.appropriations.house.gov/files/documents/Summary%20of%20Conference%20Report.pdf>.

Sincerely,



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Jerrold Nadler  
Chairman  
House Committee on the Judiciary



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Zoe Lofgren  
Chair  
Immigration and Citizenship Subcommittee  
House Committee on the Judiciary



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Mary Gay Scanlon  
Vice Chair  
House Committee on the Judiciary



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Pramila Jayapal  
Vice Chair  
Immigration and Citizenship Subcommittee  
House Committee on the Judiciary

cc: The Honorable Doug Collins, Ranking Member, House Committee on the Judiciary  
The Honorable John V. Kelly, Acting Inspector General, Department of Homeland Security  
The Honorable John P. Sanders, Acting Commissioner, U.S. Customs and Border Protection