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20 **UNITED STATES DISTRICT COURT**
 21 **CENTRAL DISTRICT OF CALIFORNIA**
 22 **WESTERN DIVISION**

23 JENNY LISETTE FLORES, *et al.*,

24 Plaintiffs,

25 v.

26 MERRICK B. GARLAND, Attorney
 27 General of the United States, *et al.*,

28 Defendants.

Case No. 2:85-cv-04544-DMG

**NOTICE FILING CBP JUVENILE
 COORDINATOR INTERIM
 REPORT PER COURT ORDER,
 ECF NO. 1406**

Hon. Dolly M. Gee

1 In accordance with the Court's Order, ECF No. 1406, attached hereto for the
2 Court's consideration, please find the Interim Report from Mr. Henry A. Moak, Jr.,
3 the Juvenile Coordinator for U.S. Customs and Border Protection (Attachment A).
4

5 DATED: May 10, 2024

Respectfully submitted,

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1 **CERTIFICATE OF SERVICE**

2 I certify that on May 10, 2024, I served a copy of the foregoing pleading and
3 attachment on all counsel of record by means of the District Court’s CM/ECF
4 electronic filing system.

5
6 */s/ Fizza Batool*
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ATTACHMENT A
MAY 10, 2024 CBP JUVENILE
COORDINATOR INTERIM REPORT

1300 Pennsylvania Avenue, NW
Washington, DC 20229



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

May 10, 2024

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

FROM: Henry A. Moak, Jr. 5/10/2024
Chief Accountability Officer
U.S. Customs and Border Protection

x 

SUBJECT: CBP Juvenile Coordinator May 10, 2024, Interim Report

On April 3, 2024, this Court ordered the U.S. Customs and Border Protection (CBP) Juvenile Coordinator to file an interim report by May 10, 2024, to include: “an update regarding the number of minors held in open-air sites and the status of compliance with this order.” The order required the CBP Juvenile Coordinator to “(a) maintain records and statistical information on minors held in CBP custody for more than 72 hours, *inclusive* of the amount of time any Class Member spends in the open-air sites; and (b) monitor compliance with the Agreement with respect to any minors held in open-air sites.”

The CBP Juvenile Coordinator submits the following report in response to this Court’s April 3, 2024, Order.

On May 1, 2024, based upon the operational situation in the San Diego Sector, I took my *Flores* Team into the field to review the outdoor congregation areas discussed in the April 3, 2024, order of this court. I now have an understanding of the conditions and situation on the ground at these remote areas, as well as those closer to cities. I observed no class members during my visits on May 1, 2024, and I will fully detail our findings in this report. U.S. Customs and Border Protection (CBP) remains in compliance with the Flores Settlement Agreement (FSA).

I find that these locations may be where migrants congregate on one day, maybe not again for several days, and then maybe not again at all. From a personnel and logistics standpoint, the random and unpredictable nature of outdoor congregation areas presents a major challenge, as CBP does not have the resources to hold personnel and or logistical support in reserve given that CBP cannot predict where and when outdoor congregation areas will arise or how long they will remain in a given location. Therefore, CBP is unable to determine which areas may need resources or where personnel should be stationed.

U.S. Border Patrol (USBP) Agents promptly respond upon being made aware of an emerging congregation area. Once it has been determined that unaccompanied minors and/or family units are present, they are prioritized for transport to USBP facilities as required in the FSA.

CBP Juvenile Coordinator May 10, 2024, Interim Report
Page 2

My understanding of the operational situation on the ground in San Diego Sector is informed not only by my May 1, 2024, observations, but also by my experience in the field for the past several years. Notwithstanding my experience as the CBP Juvenile Coordinator, I was struck by the remote conditions of these outdoor congregation areas. I have endeavored to convey these conditions through the detailed descriptions and photographs below. However, it was not until my visit to four of these areas that I fully appreciated the logistical challenges and appreciated how the unpredictable and arbitrary locations of outdoor congregation areas impact factors such as transport and infrastructure – which is lacking in these desert locations.

The following are my observations and findings.

CBP Juvenile Coordinator May 10, 2024, Interim Report
Page 3

San Diego Sector Visit

On May 1, 2024, my team and I visited the Whiskey 4, Whiskey 8, Marron Valley Rd./Gun Club, and Tower 177 outdoor congregation areas (OCAs) in USBP San Diego Sector (SDC) to observe the conditions on the ground. Whiskey 4 and Whiskey 8 are in the Imperial Beach Station's Area of Responsibility (AOR) which is near the San Ysidro Port of Entry. Marron Valley Rd./Gun Club is in Brown Field Station's AOR. Tower 177 is out near Jacumba in Boulevard Station's AOR. These four areas were selected, as they were where Border Patrol Agents most commonly reported OCAs in the 60 days before my visit.

I found that the situation on the ground is fluid and constantly changing. SDC has seven stations: Imperial Beach, Chula Vista, Brown Field, Campo, Boulevard, San Clemente, and Newton-Azrak. SDC also operates a soft-sided facility called the San Diego Area Detention Facility (SDC-SAD). In January 2024, CBP started holding FMUs at SDC-SAD. This opened holding space at the various stations to stage UCs until they can be transported to Imperial Beach Station, which is the UC hub for SDC. UCs are only held at other stations for the time needed to prepare them for transfer to Imperial Beach Station.

USBP does not establish the OCAs, and the specific locations change based on migration flow and travel patterns. There is no set number of OCAs, because they pop up wherever migrants congregate. They have varied between Imperial Beach Station's, Brown Field Station's, Boulevard Station's, and Campo Station's AOR. As of the time of the JCD visit, there were no large numbers of migrants congregating in outdoor areas daily. SDC stated that they are seeing fewer migrants waiting at OCAs in recent weeks. Some OCAs do not have migrants daily; instead, it can be weeks before migrants congregate at those specific areas again. At the time of my visit, SDC informed me that they do not have a policy or practice of directing individuals to these locations, nor requiring them to stay at these areas. SDC stated that they inform migrants at an OCA that a transport vehicle will arrive, and that migrants will be transported to a CBP facility to be processed if they wait at an OCA for pick up. However, SDC mentioned that non-governmental organizations have put signs up on private land directing migrants with "asylum" and an arrow pointing in the direction of Tower 177.

Once SDC is aware of people congregating at OCAs, through either cameras, USBP agents driving by, or call-ins by individuals or local government services, SDC will prioritize and arrange the transport of vulnerable populations, including UCs and FMUs. All FMUs are transported to safe and sanitary USBP facilities together; no parents or legal guardians are left at the OCAs while the child is transported to a facility.

At two of the areas JCD visited, there were no migrants present (Whiskey 4 and Whiskey 8). There were about 10 adults at the Marron Valley Rd./Gun Club area, and USBP estimated about 200 adults were at the Tower 177 area. There were no children at any of the four OCAs at the time we visited. USBP stated there were some children at Tower 177 earlier in the day, but USBP had already transported them from the area.

Table 1. Humanitarian Aid Provided by CBP at Visited OCAs

	Drinking Water	Port a Potties	Hand Washing Stations	Dumpster
Whiskey 4	No	Yes	No	No
Whiskey 8	Yes	Yes	Yes	Yes
Marron Valley Rd./Gun Club	No	No	No	Yes
Tower 177	Yes	Yes	Yes	Yes

Currently, assuming that funding is available, it can take SDC about one week to augment an OCA comprised of large groups with humanitarian aid, if warranted. USBP in SDC determines what humanitarian aid may be warranted for a particular location based on the totality of circumstances, including but not limited to, an area’s location, number of migrants congregating, and service accessibility. Humanitarian aid provided by CBP, as listed in Table 1, are regularly serviced as part of their contract with vendors.

Near San Diego POE OCAs

Whiskey 4 and Whiskey 8 are located along the International Boundary Barrier with access to Mexico. Whiskey 4 is located on the South levee next to a shopping center. It is separated from the shopping center by a solid metal barrier. On the other side of the river, there are two sets of fences before the border with Mexico. Whiskey 8 is located on the South levee between the two sets of fences. The Tijuana side of the fence is an urban area. USBP stated they constantly observe migrants at these OCAs physically cross to the Mexican side of the border to purchase items or receive orders from food delivery apps through the slats of the fence. In addition, non-governmental organizations have set up a tent for food distribution with charging ports at Whiskey 8. The non-governmental organization was not staffing their tent while I was at Whiskey 8, but the tent was set up for cooking for large groups and had a power strip for charging small electronics attached to the northern fence.

Whiskey 4

Going in order from Photograph 1 to 4, it forms a panorama view from the East to West while standing at the tent to shade where a USBP car was parked during my visit. Dependent on manpower and field needs, SDC will station an agent here to act as a deterrence to crossings. In addition, the agent will be able to quickly respond to observed crossings.

CBP Juvenile Coordinator May 10, 2024, Interim Report
Page 5



Picture 1. Photographer is standing on the North levee looking South. After the bridge, under construction in the distance, and behind the fencing along the right side of the photograph, is Mexico.



Photograph 2. Photographer is standing on the North levee looking South towards Mexico. Like photograph 1 but angled more towards the West.

Photograph 2

CBP Juvenile Coordinator May 10, 2024, Interim Report
Page 6



Photograph 3. Photographer is standing directly behind the tent, looking due South towards Mexico.

Photograph 3



Photograph 4. Photographer is looking West. In the distance, along the far right of the photograph is a white building. Whiskey 8 is located directly in front of the building.

Photograph 4

CBP Juvenile Coordinator May 10, 2024, Interim Report
Page 7

Whiskey 8

Photographs 5 to 12 form a 360-degree view from the center of the OCA moving East-North-West-South.



Photograph 5. Photographer is looking towards Whiskey 4 in the East. Mexico is to the right of the photograph, on the other side of the distant fence.

Photograph 5



Photograph 6. Photographer is facing North. Shows humanitarian aid available at Whiskey 8. The “tent” connected to the port a potty and fence was placed by a migrant.

Photograph 6

CBP Juvenile Coordinator May 10, 2024, Interim Report
Page 8



Photograph 7. Photographer is facing North-Northwest. Tents behind the fence belong to NGOs. Tents are in the U.S.

Photograph 7



Photograph 8. Photographer is looking West.

Photograph 8

CBP Juvenile Coordinator May 10, 2024, Interim Report
Page 9



Photograph 9

Photograph 9. Photographer is looking South into Mexico, which is on the distant side of the fence where the billboard is.



Photograph 10

Photograph 10. Photographer is looking South into Mexico.

CBP Juvenile Coordinator May 10, 2024, Interim Report
Page 10



Photograph 11. Photographer is looking South into Mexico.

Photograph 11



Photograph 12. Photographer is looking South-Southeast along the fence with Mexico.

Photograph 12

Outside Jacumba Area OCAs

Marron Valley Rd./Gun Club and Tower 177 are in mountainous areas. Marron Valley Rd./Gun Club is located about a 5 mile walk from the border. Tower 177 is located less than 1 mile from the Mexican border and is incredibly remote. Additionally, there are no large trees to provide shade for migrants, creating a hazardous desert environment for migrants congregating.

CBP Juvenile Coordinator May 10, 2024, Interim Report
Page 11

Temperatures in these areas can reach up to 115° Fahrenheit during the summer and freezing temperatures in the winter.

Marron Valley Rd./Gun Club

Photographs 13 to 16 show the Marron Valley Rd./Gun Club OCA.



Photograph 13. Photographer is standing at the Northern edge of the OCA looking South at the OCA. Behind the USBP truck on the left is the dumpster shown in Photograph 16. The SUVs in the photo are there for my visit, they are not typically located at this OCA.

Photograph 13



Photograph 14. Photographer is on the right side of the cars in Photograph 13, looking South.

Photograph 14

CBP Juvenile Coordinator May 10, 2024, Interim Report
Page 12



Photograph 15. Photographer is standing on the South side of the OCA looking towards the East.

Photograph 15



Photograph 16. Photographer is standing in the South side of the OCA looking North. Adult migrants are leaning against dumpster on the right side of the picture.

Photograph 16

CBP Juvenile Coordinator May 10, 2024, Interim Report
Page 13

Tower 177

Photographs 17 to 20 show the area around the Tower 177 OCA.



Photograph 17. Photographer is looking East.

Photograph 17



Photograph 18. Photographer is facing West.

Photograph 18

CBP Juvenile Coordinator May 10, 2024, Interim Report
Page 14



Photograph 19. Photographer is facing South-Southeast. Tents in the distance of the photograph show the start of where migrants were congregating when I visited.

Photograph 19



Photograph 20. Photographer is facing South on the gravel road leading to the OCA.

Photograph 20

CBP Juvenile Coordinator May 10, 2024, Interim Report
Page 15

It is hard to overstate the sheer remoteness of these OCAs. At Tower 177, it took us six minutes to drive from the OCA to the paved road where a USBP bus could pick migrants up to transport them to USBP facilities. All migrants must be shuttled from the OCA to the bus pick up area. That adds additional time to the migrant's time in custody (TIC), as all migrants must be patted down before transport.¹ To get from Tower 177 to Boulevard Station, it is a 20-minute drive on a day with good weather. To go directly to the SDC-SAD from Tower 177, it would be a minimum of 1.5 hours without the added time to pat down and prepare migrants for transport.

Issues with Transportation

USBP continues to comply with the FSA by expeditiously transporting UCs and FMUs to safe and sanitary USBP facilities to be processed. USBP prioritizes UCs and FMUs to transport to the nearest facility. At the OCAs I visited, UCs and FMUs are generally transported to USBP facilities within 6 hours of when USBP conducts a field interview with them. Transportation times are based on current trends and may require more than 6 hours to transport UCs and FMUs to USBP facilities if numbers increase in the future. Transportation issues arise due to the number of migrants encountered, available space at USBP facilities, the remote location of areas where migrants are, and the availability of vehicles or car seats.

In Fiscal Year (FY) 2024 to date, SDC encountered 3,775 UCs and 40,293 FMUs.² The number of individuals encountered exceeds SDC's ability to immediately conduct a field interview, apprehend, and transport migrants to the nearest USBP facility, resulting in some wait time at OCAs. Of the migrants at an OCA, USBP will identify UCs and FMUs to quickly transport them to a CBP facility to be processed.

Due to the number of migrants encountered, remote areas, and vehicle and staffing constraints, it is not possible to immediately transport all migrants encountered in the OCAs to USBP facilities. However, all migrants are transported as expeditiously as possible. Whiskey 4 and Whiskey 8 are accessible by paved roads where large passenger buses are able to transport large groups of people. Marron Valley Rd./Gun Club and Tower 177 are on private land and are remote and hard to reach locations. Larger passenger buses are not able to reach all the OCAs, as buses get stuck on train tracks or cannot reach their destination due to the large size of the vehicle. Therefore, USBP must use smaller vans to access these remote areas and safely transport migrants to the nearest USBP facility or to an area that a larger bus can reach.

In the best interests of a child, USBP will use car seats to safely transport the child. If a car seat is necessary, additional time is needed to locate an available car seat, retrieve and properly secure the car seat, and reach the OCA. USBP has, and will continue to, prioritize transportation of UCs and FMUs to USBP facilities.

¹ TIC is determined as of the start of the USBP field interview.

² See, *Southwest Land Border Encounters by Component: Fiscal Year to Date (FYTD)*, U.S. Department of Homeland Security, Customs and Border Protection, [Southwest Land Border Encounters \(By Component\) | U.S. Customs and Border Protection \(cbp.gov\)](https://www.cbp.gov/publications/southwest-land-border-encounters-by-component), (last visited May 3, 2024). Note that in this statistic, FMU includes both adult parents and children in a family unit.

CBP Juvenile Coordinator May 10, 2024, Interim Report
Page 16

As the number of migrants fluctuates, USBP cannot predict or assess the number of migrants who will congregate in any one area or where migrants will congregate, as the locations fluctuate as well.

Number of Children in SDC held over 72 Hours

From April 3, 2024, to April 26, 2024, there were a total of 484 UCs and children in FMUs in SDC that were held over 72 hours. These numbers represent children’s total time in custody, which may include some time an OCA prior to being brought to a USBP facility. A further breakdown by hour is shown in Table 2. As provided below, 32% of children held over 72 hours were held under 80 hours.

Table 2. TIC of Children in SDC Over 72 Hours

TIC in Hours	Number of Children	Percentage of Children
72-80	158	32.6%
81-90	73	15.1%
91-100	75	15.5%
101-110	50	10.3%
111-120	36	7.4%
121-130	33	6.8%
131-140	24	5.0%
141-150	11	2.3%
151-160	10	2.1%
161-170	12	2.5%
171-180	1	0.2%
181-190	1	0.2%
Total	484	100.0%

During that same period, the average TIC for children in SDC held over 72 hours was 98 hours. The average TICs for all children held in SDC are listed in Table 3.

Table 3. Average TIC in SDC

Demographic	Average TIC in Hours
FMU	50.77
UC	36.44

On April 25, 2024, SDC had 2,077 apprehensions in one day. The total number of UC apprehensions was 43 and FMU³ apprehensions was 237. All 43 UCs apprehended that day were

³ For the April 25, 2024, SDC data, FMU numbers include parents/legal guardians and children.

CBP Juvenile Coordinator May 10, 2024, Interim Report
Page 17

processed within 24 hours of when USBP was made aware of migrants congregating and referred to the Office of Refugee Resettlement (ORR). Further, all migrants, including single adults, were generally transported from the OCA within 24 hours of when USBP was made aware of migrants congregating.

Conclusions

Based on my observations of the OCAs in SDC, CBP continues to prioritize UC and FMU transports to USBP facilities, in accordance with the FSA. Upon observation of migrants congregating at these areas, USBP will identify UCs and FMUs and expeditiously transport them to USBP facilities within 6 hours, which is the time USBP reasonably requires to prepare the child and arrange for transport to a suitable facility at this time.