

Senior Official Performing the Duties of the Commissioner Troy A. Miller
Customs and Border Protection
(via electronic mail)

July 24, 2023

Dear Mr. Miller:

We write as migrant rights and good government organizations horrified by the “preventable”¹ death of 8-year-old Anadith Danay Reyes Álvarez in Harlingen, Texas, while in Border Patrol custody. We are concerned about two aspects of Customs and Border Protection’s (CBP) subsequent inadequate transparency on issues raised by Anadith’s extinguished young life: (1) release of continuous data and inspection reports on CBP’s custody population; and (2) a prompt, thorough, and independent review by non-governmental experts of all circumstances contributing to Anadith’s death.

First, we request that on a monthly basis you release detailed records and unredacted facility-inspection reports about those in CBP’s custody, including information about average length of detention; the frequency of individuals and families being held for over 24, 48, 72, and 168 hours; numbers, demographics, legal access rates and success rates for people going through the credible-fear-interview process in CBP custody; and information about when CBP facilities are over-capacity or understaffed by medical personnel. Second, we request that you supplement CBP’s investigation by commissioning an independent review, led by non-governmental experts, that covers CBP policy and operational decisions alongside the medical actions already identified. These after-analyses must also answer *why* Anadith and her family were in CBP detention when she died after nine days in custody.

In the two months following the end of Title 42 expulsions and Anadith’s death, CBP has not publicly released detailed data on day-to-day Border Patrol detention numbers; custody-population composition measured by characteristics such as nationality/race or

¹ As described by Dr. Sandy Chung, president of the American Academy of Pediatrics in her article “An 8-year-old died in Customs and Border Protection custody. CBP must stop failing kids.” USA TODAY (June 25, 2023), <https://www.usatoday.com/story/opinion/2023/06/25/make-customs-border-protection-immigration-facilities-safe-kids/70322187007/>; see also Camilo Montoya-Galvez, “Death of migrant girl was a ‘preventable tragedy’ that raises ‘profound concerns’ about U.S. border process, monitor says.” CBS News (July 18, 2023), <https://www.cbsnews.com/news/8-year-old-migrant-girl-died-us-custody-anadith-tanay-reyes-alvarez-report/>

ethnicity/family status/gender identity/age/medical condition; and length of incarceration, despite repeated requests to do so from many of the undersigned organizations even before her passing. These statistics appear readily available to CBP, as your statement on June 1, 2023 relies on exactly such data to announce important progress made to “reduce[] the average time in custody for family units by more than 50% from two weeks ago.”² And the *New York Times* published “internal data” showing an average stay in CBP custody of four-and-a-half days when Anadith died—well in excess of CBP’s 72-hour-maximum goal.³ You have been reported to acknowledge internally that, on that day of May 17, “CBP had a ‘large number of individuals, including families, in custody for more than 72 hours,’ ”⁴ and that excess persists as of this month (“[M]ore than 1,000 ... had been in border facilities for over 10 days ... one Homeland Security official told CNN. In some cases, migrants have been in custody for more than 25 days, another Homeland Security official said.”).⁵

Similarly, last summer the Department of Homeland Security’s (DHS) Office of the Immigration Detention Ombudsman (OIDO) issued a report warning of “critical medical staffing shortages at CBP facilities” that “could jeopardize the health and safety of noncitizens in CBP custody”—but all data on staffing levels was blacked out, without any justification given.⁶ The present situation in which CBP and DHS selectively release or publish such data raises questions about what is held back. We believe proactive, complete disclosure is in CBP’s best interests, as well as being vital to public confidence

² “Statement from CBP Acting Commissioner Troy Miller on the Investigation of the in-custody death of a child.” (June 1, 2023), <https://www.cbp.gov/newsroom/speeches-and-statements/statement-cbp-acting-commissioner-troy-miller-investigation>

³ Eileen Sullivan and Emiliano Rodríguez Mega, “8-Year-Old Migrant Died After a Week in U.S. Detention.” *New York Times* (May 19, 2023), <https://www.nytimes.com/2023/05/19/us/politics/8-year-old-migrant-died-border.html>

⁴ Nick Miroff, “Inquiry after girl’s death reports unsafe medical care in U.S. border facilities.” *Washington Post* (June 22, 2023), <https://www.washingtonpost.com/immigration/2023/06/22/medical-care-unsafe-border-facilities-migrants/>

⁵ Priscilla Alvarez, “Adult migrants are held in border facilities too long amid Biden administration policy changes, sources say.” *CNN* (July 18, 2023), <https://www.cnn.com/2023/07/18/politics/migrants-border-facilities-biden-policies/index.html>; see also Montoya-Galvez, *supra* (linking to *Flores* monitor report, at 12, tbl. 2 (861 children in families held for more than 72 hours in May 2023)).

⁶ OIDO Ombudsman Alert, “Critical Medical Understaffing on the Border.” (July 12, 2022), https://www.dhs.gov/sites/default/files/2022-08/OIDO%20Ombudsman%20Alert%20CBP%20Medical%20Contract%20Final_508.pdf

and oversight from stakeholders including Congress and the media. Indeed, timely disclosure of such data is necessary both to assess past conditions correctively and to prevent future tragedies.

As you well know, multiple other children's deaths occurred all too recently in Border Patrol custody, including in the Rio Grande Valley. One of your predecessors acknowledged: "It's hard to talk about. It's very hard to talk about, but I think we owe it to Carlos, Jakelin and Felipe, so it doesn't happen again."⁷ We are distressed that the wide understanding after those 2018-19 deaths of how vital transparency about CBP detention is to accountability seems absent today. We therefore call on you to remedy these statistical and reporting deficiencies through much greater affirmative disclosure as well as ending CBP practices like sending reports on deaths in custody to Congress but not disclosing them publicly in full.

Second, as much as we value the detailed statements you and CBP's Office of Professional Responsibility (OPR) have released about Anadith's treatment, we are concerned about the narrow review of medical-contractor actions that those statements portend, as opposed to an equal focus on policy choices and decision-making by CBP personnel of all ranks. OPR's June 1, 2023 statement, for example, focuses on "the events and interactions that occurred between the time the family unit arrived for medical isolation at the Harlingen U.S. Border Patrol Station, on May 14 and when the child was transported to the hospital and subsequently passed away on May 17."⁸ A prior statement dated May 21, 2023 used passive voice in accepting without attribution or elaboration that "[b]ased on agency protocols, a decision was made to transfer the entire family to the U.S. Border Patrol Station in Harlingen."⁹

⁷ Franco Ordoñez, "Deaths Of Migrant Children Haunt Former Official As Border Surge Increases." NPR (Mar. 17, 2021), <https://www.npr.org/2021/03/17/977978891/deaths-of-migrant-children-haunt-former-official-as-border-surge-increases>

⁸ CBP Office of Professional Responsibility, "June 1, 2023 Update: Death in Custody of 8-Year-Old in Harlingen, Texas." <https://www.cbp.gov/newsroom/speeches-and-statements/update-death-custody-8-year-old-harlingen-texas-0>

⁹ CBP Office of Professional Responsibility, "Update: Death in Custody of 8-Year-Old in Harlingen, Texas." (May 21, 2023), <https://www.cbp.gov/newsroom/speeches-and-statements/update-death-custody-8-year-old-harlingen-texas>

It is critical to understand medical staff's actions and omissions, but we urge you not to neglect other central questions about CBP personnel—and command responsibility—including: the reason(s) for transferring Anadith's family from Brownsville and Donna instead of release or hospitalization for Anadith; the basis for decisions Border Patrol agents made to continue detention, disregard the family's pleas and documentation, and refuse hospitalization at different points after apprehending Anadith and her family on May 9; and what form(s) of Title 8 processing and/or planning for deportation occurred for them in custody, including whether these changed over the family's custody period.

We strongly believe that only an investigation independent of CBP and DHS can achieve the twin goals of being comprehensive and trustworthy. Repeated children's deaths require review outside CBP, and some of the undersigned groups lack confidence in the DHS Office of Inspector General.¹⁰ We therefore urge you to commission a full-scope inquiry led by nongovernmental experts. If contributing policy choices are immune from investigation or beyond its remit, complete accountability for Anadith's death will be impossible; decisions of higher-level leaders and policies contributing to dangerous custodial conditions would be unjustly insulated from review.

We appreciate your attention to these concerns and can elaborate on them as helpful. We ask to schedule a meeting with you to discuss how best to move forward on this letter's requests for increased transparency.

Yours sincerely,

Al Otro Lado
Americans for Immigrant Justice
Amnesty International USA
Border Kindness
DeBellis Aviv Pardini LLP
Diocesan Migrant and Refugee Services, Inc.
First Friends of New Jersey & New York
Florence Immigrant & Refugee Rights Project
Fordham Law School Feerick Center for Social Justice
Kern Welcoming and Extending Solidarity to Immigrants

¹⁰ Letter to President Biden from Project On Government Oversight (Mar. 8, 2023), <https://www.pogo.org/letter/2023/03/pogo-calls-on-biden-to-remove-inspectors-general-cuffari-ennis>,

Haitian Bridge Alliance
Hope Border Institute
Human Rights First
Immigrant Defenders Law Center
Immigration Hub
Immigration Services and Legal Advocacy (ISLA)
Inter-Faith Committee on Latin America
Kino Border Initiative
Minnesota Freedom Fund
National Immigration Law Center
National Immigration Project
Project On Government Oversight
La Resistencia
Robert F. Kennedy Human Rights
Rocky Mountain Immigrant Advocacy Network
Southern Border Communities Coalition
Southern Poverty Law Center
Texas Civil Rights Project
Transformations CDC
Vera Institute of Justice
Washington Office on Latin America
Witness at the Border
Women's Refugee Commission