



September 2022

# SOUTHWEST BORDER

## CBP Oversees Short- Term Custody Standards, but Border Patrol Could Better Monitor Care of At-Risk Individuals

# GAO Highlights

Highlights of [GAO-22-105321](#), a report to congressional committees

## Why GAO Did This Study

In recent years, CBP has experienced a significant increase in the number of individuals encountered at or apprehended between U.S. ports of entry along the southwest border. This has resulted in overcrowding and difficult humanitarian conditions in its facilities. According to CBP data, the agency encountered or apprehended about 1.73 million individuals in fiscal year 2021 along the southwest border.

The 2021 House Appropriations Committee Report for the Department of Homeland Security (DHS) includes a provision for GAO to review CBP processes for overseeing its personnel's adherence to TEDS. This report addresses the extent to which CBP monitors adherence to its TEDS standards, among other objectives.

GAO reviewed CBP documentation including the TEDS standards and CBP's 2019 memo on monitoring requirements for certain at-risk populations. GAO also interviewed DHS and CBP officials in headquarters and at 15 field locations selected based on a mix of criteria including geographic location and numbers of encounters or apprehensions.

## What GAO Recommends

GAO recommends that Border Patrol develop and implement a mechanism to monitor the agency's compliance with welfare check requirements for certain at-risk individuals in custody. DHS concurred with this recommendation.

View [GAO-22-105321](#). For more information, contact Rebecca Gambler at (202) 512-8777 or [gablerr@gao.gov](mailto:gablerr@gao.gov).

September 2022

## SOUTHWEST BORDER

### CBP Oversees Short-Term Custody Standards, but Border Patrol Could Better Monitor Care of At-Risk Individuals

#### What GAO Found

In October 2015, U.S. Customs and Border Protection (CBP) issued its National Standards on Transport, Escort, Detention and Search (TEDS). The standards govern how CBP—including the Office of Field Operations (OFO) and U.S. Border Patrol—should transport, escort, detain, or search individuals in short-term custody. They also govern how CBP should handle personal property and provide care for at-risk individuals, among other things.

#### Hold Rooms in U.S. Border Patrol's Rio Grande Valley Sector



Source: U.S. Customs and Border Protection. | GAO-22-105321

CBP uses various mechanisms, at multiple levels of the agency, to monitor the care of individuals in short-term custody and help ensure that CBP personnel are adhering to TEDS. For example, staff at OFO ports of entry and Border Patrol stations—where holding facilities are located—are responsible for performing routine custodial actions. This includes providing meals and conducting periodic welfare checks of those in its custody. These staff also are to use electronic systems to record and manage data of their monitoring activities for individuals in custody. Officials at the OFO field office, Border Patrol sector, and headquarters levels also periodically conduct inspections of facilities and are responsible for monitoring custodial action data.

CBP guidance on TEDS requires staff to conduct welfare checks every 15 minutes for individuals who are sick or injured. It also calls for CBP to develop a method to ensure compliance with those requirements. However, Border Patrol does not have a mechanism to ensure compliance. Border Patrol officials stated that they believe the agency is meeting the intent of the requirements through activities that occur at the field-level. However, there is no agency-wide mechanism to verify that agents have conducted and recorded the required checks across field locations. Without such a mechanism, Border Patrol does not have insights across the agency on its compliance with the required welfare checks for individuals who face health risks.

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### Abbreviations

CBP	U.S. Customs and Border Protection
CRCL	Office for Civil Rights and Civil Liberties
DHS	Department of Homeland Security
OFO	Office of Field Operations
OIG	Office of Inspector General
OPR	Office of Professional Responsibility
TED	National Standards on Transport, Escort, Detention, and Search

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September 28, 2022

The Honorable Chris Murphy  
Chair  
The Honorable Shelley Moore Capito  
Ranking Member  
Subcommittee on Homeland Security  
Committee on Appropriations  
United States Senate

The Honorable Lucille Roybal-Allard  
Chairwoman  
The Honorable Chuck Fleischmann  
Ranking Member  
Subcommittee on Homeland Security  
Committee on Appropriations  
House of Representatives

In recent years, the Department of Homeland Security's (DHS) U.S. Customs and Border Protection (CBP) has experienced a significant increase in the number of individuals encountered at or apprehended between U.S. ports of entry along the southwest border. This has resulted in overcrowding and difficult humanitarian conditions in its facilities.<sup>1</sup> According to CBP data, the agency encountered or apprehended about 977,000 individuals in fiscal year 2019, over 458,000 individuals in fiscal

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<sup>1</sup>Ports of entry are facilities that provide for the controlled entry into or departure from the United States. Specifically, a port of entry is any officially designated location (seaport, airport, or land border location) where CBP officers are assigned to clear passengers and merchandise, collect duties, and enforce customs and other U.S. laws, and where CBP officers inspect persons entering or applying for admission into, or departing the United States pursuant to U.S. immigration and travel controls. According to CBP officials, the Office of Field Operations' (OFO) interactions with noncitizens are generally described as encounters (rather than "apprehensions" conducted by U.S. Border Patrol). This is because such individuals, with or without valid travel documents, present themselves for inspection by an immigration officer, who may retain custody for enforcement and removal processes.

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year 2020, and about 1.73 million individuals in fiscal year 2021 along the southwest border.<sup>2</sup>

CBP is the lead federal agency charged with a dual mission of facilitating the flow of legitimate travel and trade at our nation's borders while also keeping terrorists and their weapons, criminals and their contraband, and inadmissible individuals out of the country.<sup>3</sup> Within CBP, the Office of Field Operations (OFO) is responsible for operating ports of entry through which travelers are inspected for admission to the United States, and U.S. Border Patrol is responsible for patrolling the areas between ports of entry to prevent individuals and goods from entering the U.S. illegally. After inspecting an individual for admissibility into the U.S. or while making an apprehension, OFO and Border Patrol may hold individuals in short-term

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<sup>2</sup>Beginning in March 2020, CBP data includes individuals who CBP processed under both Title 8 and Title 42. In March 2020, the Centers for Disease Control and Prevention (CDC) temporarily suspended the introduction of certain individuals traveling from Canada or Mexico who would otherwise be introduced into a congregate setting at land ports of entry or U.S. Border Patrol stations at or near the U.S. land and adjacent coastal borders, subject to certain exceptions, to prevent the spread of COVID-19. Noncitizens covered by the CDC Order, including any covered individuals encountered at checkpoints, may be immediately expelled to their country of last transit. According to CBP, expulsions under Title 42 are not Title 8 immigration actions (i.e., apprehensions or determinations of inadmissibility) as they are conducted under public health authority, although country of last transit and immigration/citizenship status are relevant to Title 42 implementation. As such, they are tracked separately from immigration enforcement actions that are regularly reported by CBP. See Public Health Reassessment and Order Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists, 86 Fed. Reg. 42,828 (Aug. 2, 2021) (published Aug. 5), stemming from a since superseded March 2020 CDC Order. Notice of Order Under Sections 362 and 365 of the Public Health Service Act Suspending Introduction of Certain Persons From Countries Where a Communicable Disease Exists, 85 Fed. Reg. 17,060 (Mar. 20, 2020) (published Mar. 26). In addition, the number of individuals encountered or apprehended could reflect unique individuals encountered or apprehended more than once.

<sup>3</sup>The term "inadmissible" means that a foreign national may not be admitted into the United States for various health-related, criminal, or other reasons, and such an individual is removable, under 8 U.S.C. § 1182 (statutory grounds of inadmissibility and related provisions). See related "deportability" provisions, 8 U.S.C. § 1227.

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custody in holding facilities located at OFO ports of entry, Border Patrol stations, and other locations.<sup>4</sup>

In October 2015, CBP issued its National Standards on Transport, Escort, Detention and Search (TEDS), which established minimum standards for the short-term custody of individuals held by CBP components in holding facilities nationwide. The standards provide specific requirements on how CBP should transport, escort, detain, and search individuals held in CBP short-term custody. TEDS also includes requirements related to how CBP should handle personal property, provide care for at-risk individuals in custody and address sexual abuse and assault prevention, detection and response.

We have previously reported on DHS's detention of individuals in short-term custody, DHS's processing of family units arriving at the southwest border, and CBP's oversight of the provision of medical care for individuals in its custody.<sup>5</sup> In those reports, we made recommendations to DHS and CBP to strengthen, for example, assessment of time in custody data for individuals in holding facilities, controls over the collection and recording of information on family units processed at the southwest border, and oversight of the provision of medical care for individuals in CBP custody. DHS and CBP have implemented some of these recommendations and have actions planned or underway to address others.

The 2021 House Appropriations Committee Report for DHS included a provision for us to review CBP processes for overseeing CBP personnel's

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<sup>4</sup>Border Patrol could also hold individuals at immigration checkpoints, forward operating bases, central processing centers, or temporary facilities called soft-sided facilities. Forward operating bases are permanent facilities established in forward or remote locations to sustain Border Patrol operations. Central processing centers are permanent facilities designed to process and temporarily hold individuals that have crossed into the United States. Soft-sided facilities are temporary facilities that designed to provide additional processing capacity for Border Patrol. Throughout this report, when we refer to holding facilities at Border Patrol stations, we also include central processing centers, soft-sided facilities, and immigration checkpoints.

<sup>5</sup>GAO, *Immigration Detention: Additional Actions Needed to Strengthen DHS Management of Short-Term Holding Facilities*, [GAO-16-514](#) (Washington, D.C.: May 26, 2016); *Southwest Border: Actions Needed to Improve DHS Processing of Families and Coordination Between DHS and HHS*, [GAO-20-245](#) (Washington, D.C.: Feb. 19, 2020); *Southwest Border: CBP Needs to Increase Oversight of Funds, Medical Care, and Reporting of Deaths*, [GAO-20-536](#) (Washington, D.C.: July 14, 2020).

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adherence to TEDS.<sup>6</sup> We provided our preliminary observations to the Appropriations Committees in July 2021. This report addresses the extent to which:

- CBP monitors adherence to its standards for transport, escort, detention, and search of individuals in its custody, and
- DHS and CBP have mechanisms to receive and address complaints related to these standards, and identify the nature of these complaints.

To address both objectives, we interviewed CBP headquarters officials, including OFO and Border Patrol headquarters officials. In addition, we interviewed OFO and Border Patrol officials in 15 selected field locations along the southwest border in Arizona, California, New Mexico, and Texas. These selected locations included OFO land ports of entry in the San Diego, Tucson, El Paso, and Laredo field offices' areas of responsibility and Border Patrol stations in the Del Rio, El Paso, Rio Grande Valley, Tucson, and Yuma sectors.<sup>7</sup> We selected these locations to reflect a range of characteristics related to geographic location, numbers of encounters and apprehensions from fiscal year 2016 through June 2021, and demographics of individuals in custody. Our selections also included locations both with and without a central processing center or temporary, soft-sided holding facility.

We also interviewed officials from the OFO field offices and Border Patrol sectors responsible for overseeing the ports of entry and stations we selected. While the information we obtained from these interviews cannot be generalized more broadly to all CBP locations, it provides important context and insights into how CBP cares for individuals in custody, monitors adherence to TEDS, and addresses TEDS-related complaints in the field. Additionally, we interviewed representatives from the American Civil Liberties Union, the Southern Border Communities Coalition, the Young Center for Immigrant Children's Rights, and the American Bar Association's Pro Bono Asylum Representation Project. We selected

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<sup>6</sup>The report included a provision for GAO to provide the committee an update on its progress and its preliminary findings not later than 180 days after the date of enactment of the 2021 consolidated DHS appropriation. See H.R. Rep. No. 116-458, at 24 (July 20, 2020), incorporated by reference in 2021 Explanatory Statement, 166 Cong. Rec. H8311, H8466 (daily ed. Dec. 21, 2020), accompanying Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020).

<sup>7</sup>Border Patrol divides responsibility for southwest border security operations geographically among nine sectors.

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these organizations to obtain various perspectives on CBP's implementation of TEDS and the processes DHS and CBP use to receive and address TEDS-related complaints.

To determine the extent to which CBP monitors adherence to TEDS, we reviewed the standards and related documentation. In particular, we reviewed CBP's 2019 memo, *Clarification of At-Risk Population and Hold Room Monitoring Provisions*, as well as other policy and procedure documents, such as OFO and Border Patrol hold room policies, local procedures related to short-term custody along the southwest border, and memorandums from headquarters to the field on adhering to TEDS. We evaluated CBP's monitoring efforts for the standards and the related provisions in the 2019 memo. We also reviewed CBP's mechanisms to monitor adherence to TEDS at the port and station, field office and sector, and headquarters levels. The mechanisms we reviewed included CBP's Self-Inspection Program, as well as location-specific mechanisms. We reviewed these mechanisms by examining CBP documents and obtaining information and perspectives from officials at CBP headquarters and the 15 locations we selected.

Additionally, we interviewed cognizant OFO and Border Patrol officials at headquarters and field locations to understand how they conduct custodial actions checks—including the use of built-in alerts in their data systems, how headquarters conducts electronic oversight checks, and any associated trend or analysis reporting that OFO or Border Patrol conduct.<sup>8</sup> We also received virtual demonstrations of OFO and Border Patrol's data systems to understand how personnel in the field use these systems to monitor adherence to TEDS and individuals in custody.

To determine the extent to which CBP has mechanisms to receive and address complaints related to TEDS, we analyzed documentation on the processes used by the DHS Office of Inspector General (OIG), DHS Office for Civil Rights and Civil Liberties (CRCL), and CBP Office of Professional Responsibility (OPR) to receive and investigate complaints. We also interviewed officials from these entities about their respective complaint mechanisms and processes.

To better understand the nature of TEDS-related complaints, we analyzed data from OPR's Joint Integrity Case Management System and CRCL's

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<sup>8</sup>Custodial actions are actions that CBP staff take to care for individuals in custody, such as providing meals, snacks, and phone calls. Officials from some CBP locations provided us additional information and reports on various custodial actions.

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Complaint Management System from fiscal years 2019 through 2021, the three most recent fiscal years for which data were available at the time of our review. Additionally, we analyzed data from DHS OIG's Enforcement Data System from April through September 30, 2021. Because the systems do not categorize or track complaints as short-term custody complaints or by specific TEDS standard, we used a variety of methods to identify the top categories of TEDS-related complaints within each entity's data set. In cases where entities' existing categories did not readily identify whether or not the complaint related to short-term custody, we analyzed case narratives to further categorize whether the complaint was related to TEDS. In categorizing the complaints, two analysts independently categorized each complaint and reconciled or resolved any differences with a third analyst, when needed. Further categorizing the complaints allowed us to gain a better understanding of the types and nature of the complaints overall.

For OPR complaints, we requested and reviewed records related to complaints that occurred in CBP locations along the southwest border during fiscal years 2019 through 2021 that—based on OPR's existing categories and consultations with OPR officials—could be relevant to TEDS. Of the 3,361 records we received from OPR, we were able to categorize about 50 percent of the records using OPR's existing categories. We further analyzed the remaining records by reviewing the narrative summaries for each complaint to determine whether or not they were related to TEDS.

For CRCL complaints, we consulted with CRCL officials to identify existing categories in their data system that could encompass TEDS-related complaints. Out of 4,492 total records identified for complaints in CBP locations along the southwest border for fiscal years 2019 through 2021, we requested a probability sample of 95 records. Among these 95 records, we identified 88 relevant complaints for further analysis. Specifically, we reviewed the narrative summaries and categorized each of these complaints by determining whether or not they were related to TEDS. Because we followed a probability procedure based on random selections, our sample is only one of a large number of samples that we might have drawn and therefore our list of top categories is subject to variability. However, because we are reporting only the top categories of TEDS-related complaints, we are not reporting specific percentage estimates or confidence intervals.

For DHS OIG complaints, we received 552 complaint records from April 1, 2021, to September 30, 2021 for complaints involving CBP locations

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along the southwest border, the most recent data available at the time of our review.<sup>9</sup> DHS OIG selected these records because they were designated by specific categories that we determined, in consultation with DHS OIG, could encompass TEDS-related issues. We reviewed the narrative summaries of the 552 complaints to identify the top categories of TEDS-related complaints and determined that 355 relate to short-term custody or TEDS standards.

We assessed the reliability of the OPR, CRCL, and DHS OIG data by reviewing documentation, interviewing agency officials about the relevant data systems and data collection methods, and conducting electronic testing for obvious errors or outliers. We determined that the data were sufficiently reliable for the purposes of identifying the top categories of TEDS-related complaints received by each of the entities for CBP locations along the southwest border during fiscal years 2019 through 2021.

We conducted this performance audit from June 2021 to September 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

### CBP Short-Term Custody

Individuals typically come into CBP short-term custody after being apprehended by Border Patrol agents or being deemed inadmissible to the U.S. at a port of entry by a CBP officer. Border Patrol and OFO retain custody of individuals at short-term holding facilities in a secure hold room or cell to complete processing and determine the next appropriate course of action. Such actions could include a transfer of custody to another

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<sup>9</sup>These DHS OIG complaints did not originate from, nor were referred to, the Office of Professional Responsibility for further action.

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agency, removal from the country, permission to voluntarily return, or conditional release pending the outcome of removal proceedings.<sup>10</sup>

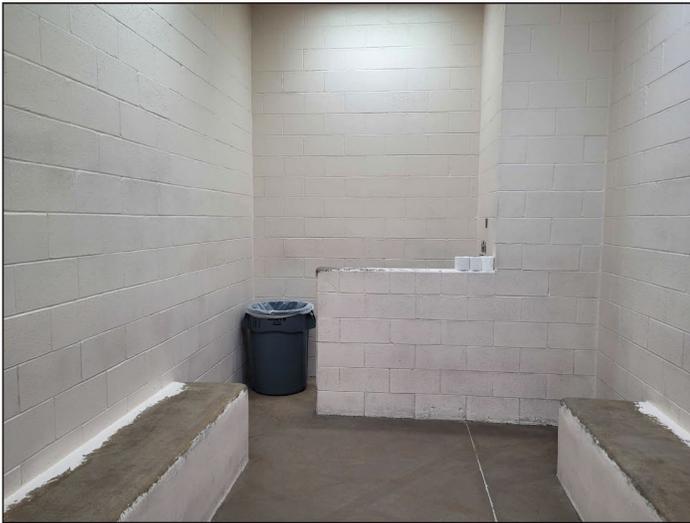
Typically, the facilities are designed to accommodate short-term stays generally for no longer than a 72-hour period. The capacity of CBP personnel at Border Patrol and OFO holding facilities to process individuals in a timely manner depends on factors such as the physical design of the facility and the number of demographic groups such as unaccompanied children, family units and other vulnerable individuals that require additional care and treatment by CBP personnel. From May to August 2019, CBP increased its holding capacity by 6,500 people along the southwest border by establishing several steel-framed structures, called soft-sided facilities, to address the ongoing need for space to accommodate the influx of families and single adults entering the U.S. along the southwest border.<sup>11</sup> See figure 1 for examples of hold rooms at a Border Patrol station and a soft-sided facility.

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<sup>10</sup>During processing, CBP personnel gather and record information from encountered individuals. Specifically, CBP personnel collect and record information on individuals in agency databases; take fingerprints, if applicable; and conduct record checks. CBP personnel or contractors may also escort encountered individuals to other locations and search individuals coming into custody. CBP refers individuals to U.S. Immigration and Customs Enforcement for short and long-term detention or to the Office of Refugee Resettlement within the Department of Health and Human Services, which provides interim care for unaccompanied children at its shelters. CBP may also temporarily hold individuals due to other violations such as seizures or potential arrest warrants.

<sup>11</sup>As of July 25, 2022, Border Patrol has 7 operational soft-sided facilities in 5 locations: Del Rio, Texas; Donna, Texas; Laredo, Texas; Tucson, Arizona; and Yuma, Arizona.

**Figure 1: Hold Rooms in U.S. Border Patrol's Rio Grande Valley Sector**



Source: U.S. Customs and Border Protection. | GAO-22-105321

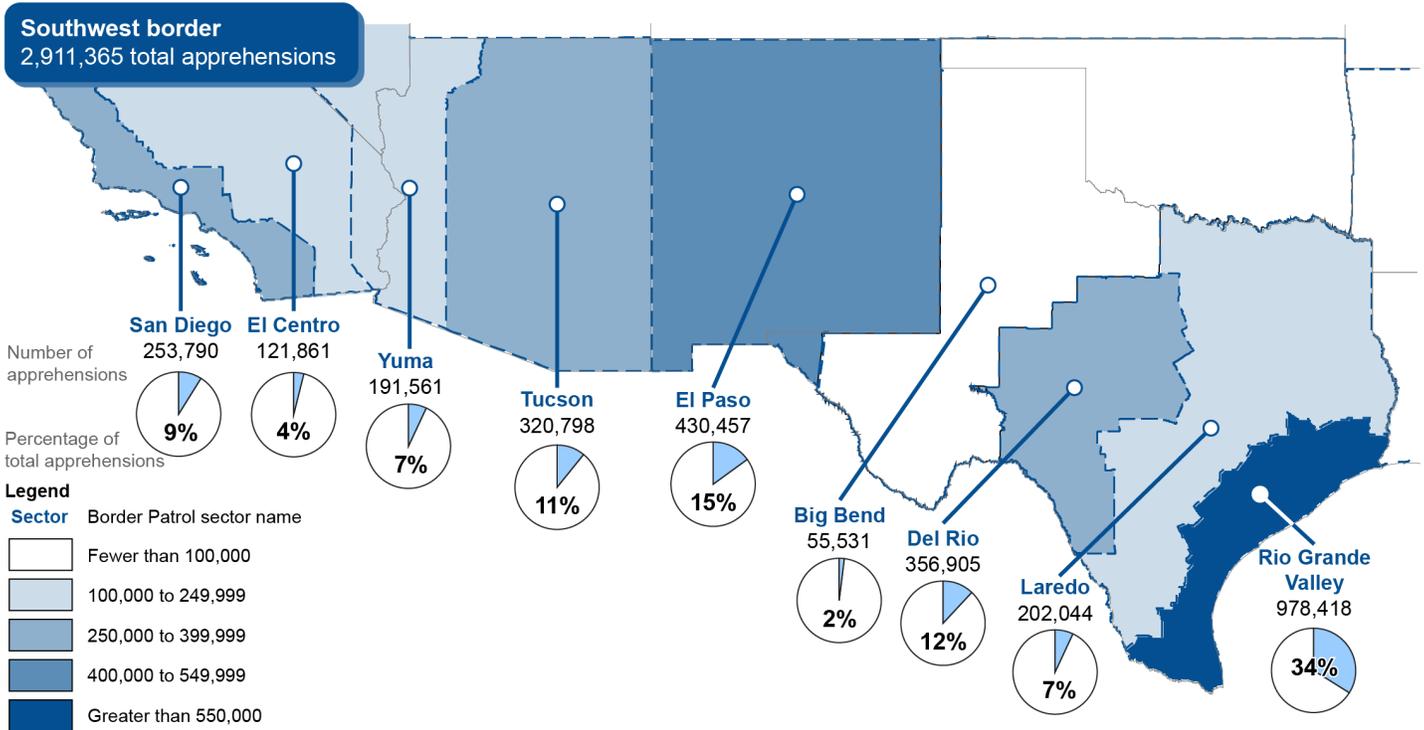
## Roles and Responsibilities

Border Patrol is responsible for apprehending individuals between ports of entry, dividing responsibility for southwest border security operations geographically among nine sectors, each with its own sector headquarters. Each sector is further divided into varying numbers of stations, and may also have immigration checkpoints, central processing centers, forward operating bases, and temporary facilities at which individuals may be held in short-term custody.<sup>12</sup>

From fiscal years 2019 through 2021, Border Patrol apprehended over 2.92 million individuals and held them in short-term holding facilities. Approximately 99 percent of these individuals were apprehended along the southwest border. About 34 percent were apprehended in the Rio Grande Valley sector in Texas. Figure 2 shows the locations of apprehensions along the southwest border from fiscal years 2019 through 2021.

<sup>12</sup>Border Patrol apprehends individuals between ports of entry for suspected violations of immigration law, such as illegal entry or criminal activity.

**Figure 2: U.S. Border Patrol's Apprehensions along the Southwest Border from Fiscal Years 2019 through 2021 by Sector**



Source: GAO analysis of U.S. Customs and Border Protection data. | GAO-22-105321

Note: Percentages do not add to 100 due to rounding.

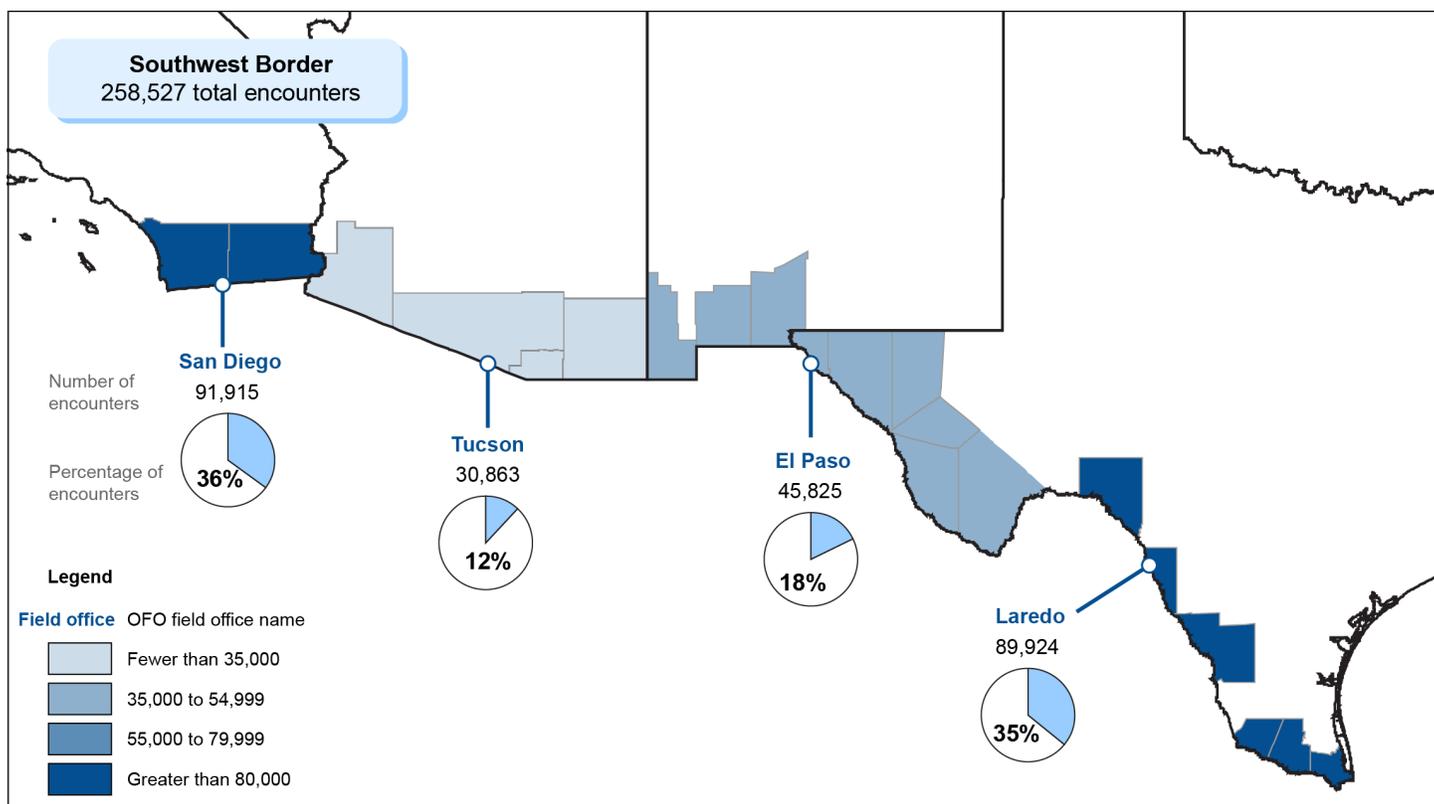
OFO is responsible for inspecting all arriving persons to the U.S. to determine their citizenship or nationality, immigration status, and admissibility. This inspection can lead to individuals being taken into temporary custody at port of entry holding facilities while awaiting repatriation to a foreign country, transfer or referral to another agency, or completion of inspection and associated processing. During inspections, OFO may encounter inadmissible individuals who arrive at ports of entry.<sup>13</sup> OFO has four southwest border field offices that are responsible for 27 land ports of entry.

From fiscal years 2019 through 2021, OFO encountered more than 346,000 individuals at land ports of entry and held them in short-term holding facilities. Approximately 75 percent of encounters at land ports of

<sup>13</sup>OFO may also detain individuals, including U.S. citizens, suspected of violating the law, to include crimes such as terrorism, drug smuggling, and human trafficking.

entry during those fiscal years occurred along the southwest border. Of the more than 258,000 individuals whom OFO encountered along the southwest border, about 36 percent of the encounters took place in the San Diego field office in California. Figure 3 shows the locations of individuals OFO encountered along the southwest border from fiscal years 2019 through 2021.

**Figure 3: U.S. Customs and Border Protection Office of Field Operations' (OFO) Encounters along the Southwest Border from Fiscal Years 2019 through 2021**



Source: GAO analysis of U.S. Customs and Border Protection data. | GAO-22-105321

Note: The counties included for each field office are counties where a land port of entry is located, as OFO officers encounter individuals at these locations, or other counties as indicated by OFO officials. Percentages do not add to 100 due to rounding.

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In addition to Border Patrol and OFO, other offices and components within CBP and DHS have responsibilities related to oversight of short-term custody and implementation of TEDS. Within CBP, the Management Inspections Division is responsible for administering the Self Inspection Program, an annual, internal self-assessment that requires management at field locations to assess compliance with CBP and component-level policies by completing worksheets and identifying corrective actions to address any deficiencies. These policies include, among other things, TEDS; OFO and Border Patrol hold room policies; and standards for the prevention, detection, and response to sexual abuse and assault. CBP's OPR may receive and investigate complaints or allegations related to corruption, misconduct, or mismanagement by CBP personnel, including those at CBP holding facilities. Within DHS, OIG inspects holding facilities and may also receive and investigate complaints or allegations of serious or criminal misconduct or corruption against CBP personnel. CRCL reviews and assesses civil liberties and human rights complaints and may initiate investigations accordingly.

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### CBP Standards and Processes for Care of Individuals in Short-Term Custody

In 2015, CBP issued its nationwide TEDS standards to govern CBP personnel's interaction with and care of individuals who are in short-term custody. TEDS contain provisions related to the transport, escort, detention, and search of these individuals. While OFO and Border Patrol are required to follow the minimum standards set forth in TEDS, each component may develop additional policies and procedures to govern the treatment and care of individuals in its custody.<sup>14</sup> Additionally, TEDS outlines requirements related to the treatment of at-risk populations who may require additional care such as juveniles and sick or injured individuals, among others.<sup>15</sup> See table 1 for an overview of TEDS and examples of standards.

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<sup>14</sup>Examples of such policies include OFO's Secure Detention, Transport and Escort Procedures at Ports of Entry directive (2008) and the *Personal Search Handbook* (2021). Border Patrol uses its Short-Term Custody and Hold Room Policy (2008).

<sup>15</sup>TEDS defines the at-risk populations as those individuals in CBP custody who may require additional care or oversight. This might include juveniles; unaccompanied 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 individuals who are 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.

**Table 1: Overview U.S. Customs and Border Protection’s (CBP) National Standards on Transport, Escort, Detention, and Search (TEDS)**

Category of standards	Examples of Standards
General Standards	<ul style="list-style-type: none"> <li>• Making reasonable accommodations for an individual’s known or reported mental, physical or other special needs consistent with safety, and security requirements; and</li> <li>• Requiring that CBP employees speak and act with the utmost integrity and professionalism.</li> </ul>
Transport and Escort Standards	<ul style="list-style-type: none"> <li>• Requiring officers and agents to conduct a transport assessment prior to transport or escort to evaluate each individual in custody’s safety; known or reported medical or mental health issues and level of risk to themselves, other individuals in custody, and staff based on the information available at the time of the assessment.</li> </ul>
Searches of Individuals	<ul style="list-style-type: none"> <li>• Requiring that if CBP personnel use restraints on individuals during the search process, they must use restraints in a manner that is safe, secure, humane, and professional, and not in a punitive manner; and</li> <li>• Requiring that officers and agents conducting a search or that are present at a medical examination, to be of the same gender, gender identity, or declared gender as the individual in custody being searched, whenever operationally feasible.</li> </ul>
Secure Detention Procedures	<ul style="list-style-type: none"> <li>• Holding individuals for generally no longer than 72 hours in CBP hold rooms or holding facilities.<sup>a</sup></li> <li>• Monitoring hold rooms in a regular and frequent manner. In hold rooms with visual limitations, a physical check is required.</li> <li>• Providing adults meals at regularly scheduled meal times and snacks in between meals.</li> <li>• Making restroom accommodations available to all individuals and a reasonable amount of privacy will be ensured.</li> </ul>
At-Risk Populations	<ul style="list-style-type: none"> <li>• Generally, keeping family units with juveniles together</li> <li>• Holding at-risk individuals in the least restrictive setting as appropriate, and</li> <li>• Providing juveniles and pregnant individuals a snack upon arrival and a meal at least every 6 hours at regularly scheduled meal times.</li> </ul>
Sexual Abuse Victimization	<ul style="list-style-type: none"> <li>• Providing individuals that have been identified to be at high risk of sexual abuse victimization with heightened protection such as continuous direct sight and sound supervision or single-occupancy hold room, among other things, when operationally feasible.</li> </ul>
Personal Property	<ul style="list-style-type: none"> <li>• Storing an individual’s personal property in a secure storage room or area.</li> </ul>

Source: GAO summary of CBP’s TEDS standards. | GAO-22-105321

<sup>a</sup> While the Department of Homeland Security has broad authority to detain adult foreign nationals, the detention of children is governed by particular standards established in the Homeland Security Act of 2002, the Trafficking Victims Protection Reauthorization Act of 2008 (applicable to unaccompanied children), and the 1997 Flores v. Reno Settlement Agreement (Flores Agreement) (applicable to unaccompanied and accompanied children). See Pub. L. No. 107-296, title. IV, subtitle. D, § 441, 116 Stat. 2135, 2192; Pub. L. No. 110-457, 112 Stat. 5044; Stipulated Settlement Agreement, Flores v. Reno, No. 85-4544 (C.D. Cal. Jan. 17, 1997).

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## CBP Monitors Short Term Custody Standards, but Could Strengthen Welfare Checks for At-Risk Individuals

### CBP Has Various Mechanisms at Multiple Levels of the Agency to Monitor Standards

CBP uses various mechanisms at multiple levels of the agency to monitor the care of individuals in short-term custody and help ensure that CBP personnel are adhering to TEDS. At the port and station level, officers, agents, and supervisors are responsible for performing custodial actions and using electronic systems to monitor care for individuals in custody, among other things. At the field office and sector levels, OFO and Border Patrol officials are responsible for conducting inspections of facilities and monitoring custodial action data. At the headquarters level, DHS, for example, conducts inspections of CBP facilities, and CBP headquarters entities are responsible for overseeing self-inspections and monitor and disperse relevant data, such as time in custody, to the field.

### OFO Ports of Entry and Border Patrol Stations

CBP has mechanisms to monitor individuals in custody and help ensure CBP personnel are adhering to TEDS. These mechanisms include daily activities conducted at the port and station level by officers, agents, and supervisors.

**Care and monitoring of individuals in custody.** Designated officers and agents at OFO ports of entry and Border Patrol stations are to care for and monitor individuals while in custody. For example, these agents and officers are responsible for completing medical forms, conducting welfare checks, monitoring restroom breaks, checking the physical condition of hold rooms, providing meals and snacks at specified intervals, providing and tracking medications, and ensuring access to drinking water at all times, among other custodial actions. How officers and agents monitor hold rooms may vary depending on the layout of the facilities. For example, at one port of entry, officials stated that officers operate out of an area with cameras to monitor holding rooms continuously. At some ports of entry or stations, officers and agents are able to observe hold room areas directly, while others may rely more on periodic checks of hold rooms. See figure 4 for an example of a poster with a list of amenities that agents could provide individuals in custody.

Figure 4: Poster of Available Amenities at a U.S. Border Patrol Facility Intake Area



Source: U.S. Border Patrol. | GAO-22-105321

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Border Patrol uses color-coded wristbands with a barcode to help the agency comply with TEDS. Agents are to use these wristbands to identify individuals in custody and to electronically log amenities—such as meals, welfare checks, and medication—and conduct property inventory. The wristbands contain an individual’s biographical information, and are a specific color based on whether the individual is a single adult, part of a family unit, an unaccompanied child, or a U.S. citizen. Officials stated that these wristbands are available in all sectors along the southwest border, and that certain stations with contract medical care providers specifically use the wristbands to help monitor individuals in custody.

**Electronic systems for monitoring care.** OFO officers and Border Patrol agents are to use their respective electronic systems—Unified Secondary and e3—to document and monitor the care of individuals in custody. For example, officers and agents are responsible for recording custodial actions into their systems when they provide a meal, conduct a welfare check, fill out a medical assessment, and provide medication. Both systems require officers and agents to record the time and date of each action and include an option to document if someone declines offered items, such as meals.

Further, both electronic systems generate reminders for officers and agents to complete certain actions that help ensure adherence to TEDS. For example, Border Patrol’s e3 has a status check screen that shows when certain custodial actions would be overdue, such as providing meals and access to showers. Similarly, Unified Secondary has timers for 15-minute welfare checks and meals and indicates when actions are overdue.

Officers and agents also can use these systems to document other custodial actions that could take place in or outside a holding facility. For example, Border Patrol agents must document certain searches of individuals in e3, including fields such as type of search (e.g., a strip or an x-ray search), whether the search yielded any results, who conducted the search, and who approved the search. Additionally, OFO officers are to document personal search information in a separate electronic system including the search type, a reason for the search, and the individual’s name, date of birth, and citizenship, among other things. Officers can link information from this system into Unified Secondary, which displays the personal search results.

Regarding transport, OFO officers and Border Patrol agents can develop trip manifests in the systems that allow personnel to see the individual’s

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original and final destination. For example, Border Patrol agents can add information such as the actual or expected date of transfer, where Border Patrol is transferring the individual to (for instance another Border Patrol facility), and the transporting agency. Agents can also record any property that the individual is taking with them. Additionally, when transferring an individual to and from ports, OFO officers can view a log of custodial actions such as meals provided and welfare checks conducted from each location.

**Supervisory monitoring activities.** OFO and Border Patrol supervisors are responsible for conducting regular and frequent daily monitoring of individuals in CBP custody, as well as the activities performed by designated officers and agents responsible for their care. For example, OFO and Border Patrol supervisors we met with stated that they walk around facilities to check conditions and speak to individuals in custody throughout their shifts. Additionally, officials at one port of entry told us that supervisors operate out of an area that allows them to view the entire detention space so they can help ensure that TEDS provisions are followed appropriately and provide assistance as needed.<sup>16</sup>

Supervisors can also access electronic data systems in real time or at the end of a shift to generate reports on custodial actions and other relevant data. For example, Border Patrol officials stated that supervisors at one station receive a “time in custody” report three or four times over a 24-hour period that helps them ensure individuals are processed as quickly as possible. CBP officials we met with at other holding facilities stated that supervisors review and verify information in end of shift reports such as the number of individuals in custody, custodial actions, and time in custody. At the beginning of their shifts, Border Patrol supervisors must also fill out reports in the electronic systems to record the conditions of each holding room and verify if the room is within a certain temperature range and has functioning toilets, among other things. Supervisors also

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<sup>16</sup>TEDS requires officers and agents of the opposite gender to announce their presence when entering an area where individuals are likely to be showering, performing bodily functions, or changing clothing, except in exigent circumstances or when such viewing is incidental to routine cell checks. Further, officers and agents are to ensure that individuals are able to shower (where showers are available), perform bodily functions, and change clothing without being viewed by staff of the opposite gender, except in exigent circumstances or when such viewing is incidental to routine cell checks or is otherwise appropriate in connection with a medical examination or monitored bowel movement under medical supervision.

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conduct daily or weekly spot checks, where they engage with officers and agents and review facility conditions, according to officials.

Supervisors are also required to approve activities in these systems that could take place in or outside of holding facilities. For example, according to TEDS, supervisors must approve and document specific types of searches of individuals in electronic data systems, such as x-ray searches.

**Other actions to help ensure adherence to TEDS.** Ports of entry and stations can have local procedures and issue policy reminders to help ensure that CBP personnel adhere to TEDS. For example, two ports of entry we interviewed have standard operating procedures that include information like what time locations provide meals, how an officer should intake individuals, how officers should process a case, and caring for unaccompanied children in custody for extended periods.

Officials we spoke with also noted that some supervisors and managers send out reminders to officers and agents to help ensure that they are adhering to policy. For example, an official from one Border Patrol station noted that management reinforced TEDS via an email reminder to all staff and supervisors on reporting requirements and procedures for responding to any allegation of sexual abuse or assault that occurs in custody. The same official stated that management would send out musters if there were any corrective actions identified during the Self-Inspection Program. An official we interviewed from one port of entry stated that the port sent an email about a change in policy regarding the search of transgender individuals. Specifically when searching an individual, an officer should be the same gender as the gender the individual identifies as.<sup>17</sup>

## OFO Field Offices and Border Patrol Sectors

OFO field offices and Border Patrol sectors are responsible for monitoring the care of individuals in short-term custody and undertaking activities to help ensure that officers and agents are adhering to TEDS. Such efforts include inspecting facilities and monitoring electronic custodial data, among other activities.

**Inspections of holding facilities.** Officials at some field offices and sectors we interviewed review and evaluate facilities in their areas of responsibility and monitor adherence to TEDS through walk-throughs,

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<sup>17</sup>According to OFO officials, the office updated its policy regarding the search of transgender individuals as part of its update to its *Personal Search Handbook*, which OFO issued in April 2021. This update conforms to search provisions set out in TEDS.

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spot checks, and recurring inspections. For example, officials from one OFO field office told us they regularly visit ports of entry within their areas of responsibility. According to these officials, these visits help identify areas and locations that may warrant additional support or guidance in adhering to TEDS. Further, field office officials can review detention logs to check for deficiencies or make recommendations on how to improve operations. For example, officials from one field office stated that they might become aware of deficiencies such as missing 15-minute welfare checks in Unified Secondary as a result of the Self-Inspection Program.<sup>18</sup> According to officials, the field office could share this information with the port director to help ensure that their officers were performing and recording the required checks. Another field office official stated that supervisors monitor custody activities at ports on a daily basis through Unified Secondary, such as the amount of time in custody and they would reach out to ports for additional information, if needed.

Some Border Patrol sectors we interviewed also conduct recurring inspections of facilities within their areas of responsibility, including soft-sided facilities. For example, officials from one sector stated that staff walk through each holding facility with the location's supervisors and look at the processes in place. This includes checking the temperature of cells and reviewing custodial action data. Officials from another sector said they evaluate each location once per quarter. Though this evaluation is typically in person, the officials described how they conducted some of these evaluations virtually during the COVID-19 pandemic. We reviewed this location's checklist and a sample of evaluations and saw that the agents from the sector who conducted these evaluations checked detention logs to ensure that individuals received meals, water, bedding, blankets, and medical care as required by TEDS. Once the staff from the sector complete the inspections, they provide any findings, deficiencies, and corrective actions immediately to the station.

Another sector in our review also reported inspecting and evaluating stations within the sector quarterly; however, officials stated that they only conducted one at a station in fiscal year 2021 because of COVID-19. We reviewed this sector's completed fiscal year 2021 evaluation and saw that it included an evaluation of specific TEDS standards related to privacy, amenity reports, electronic system of record, duration of detention, detention standards, meals and snacks, and juvenile detention standards.

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<sup>18</sup>According to OFO officials this might occur when, for example, officers are recording 15-minute checks during a system outage. In this case, the officer would manually record the checks and must upload the manual checks into the electronic system of record.

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The evaluation also lists areas for improvement if agents find deficiencies. For example, the evaluation looks at whether individuals are afforded privacy from the opposite gender when showering and changing clothes; whether agents provided individuals with sleeping mats; and whether there were procedures in place to provide hot meals, snacks, and juice at appropriate times.<sup>19</sup>

**Electronic systems for monitoring custody data.** OFO and Border Patrol supervisors and managers in field offices and sectors can monitor data in real time through spot checks, data quality reports, and daily time in custody reports. For example, supervisors and managers in field offices and sectors can monitor their respective electronic systems to help ensure that personnel at facilities are completing required custodial actions. An official we spoke with from one field office said that supervisors monitor custodial actions data within Unified Secondary on a daily basis and check that individuals have received meals and medicine, among other things, during their time in custody. Additionally, Border Patrol officials we spoke with stated that supervisors monitor time in custody in real time to look for anomalies or determine if locations need more staff to process individuals. According to these officials, supervisors monitor dashboards within electronic systems of record or perform spot checks of the custody logs during each shift and throughout the day. Officials from another sector told us they send out daily emails reporting the amount of time that individuals are held in short-term custody and produce reports summarizing each station's capacity to hold individuals within the sector.<sup>20</sup>

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<sup>19</sup>In terms of privacy, TEDS requires that officers and agents ensure individuals are able to shower (where showers are available), perform bodily functions, and change clothing without being viewed by staff of the opposite gender, except in exigent circumstances or when such viewing is incidental to routine cell checks or is otherwise appropriate in connection with a medical examination. In terms of bedding, TEDS requires that clean bedding must be provided to juveniles and when available, clean blankets must be provided to adults upon request. In terms of meals and snacks TEDS requires that adults, whether in a hold room or not, will be provided with food at regularly scheduled meal times and snacks in between regularly scheduled meal times. TEDS requires that juveniles and pregnant individuals be offered a snack upon arrival and a meal at least every six hours at regularly scheduled meal times. At least two of those meals must be hot. Juveniles and pregnant or nursing individuals must have regular access to snacks, milk, and juice.

<sup>20</sup>TEDS states that every effort must be made to ensure that hold rooms house no more individuals than prescribed by the operational office's policies and procedures. Capacity may only be exceeded with supervisory approval. However, under no circumstances, should the maximum occupancy rate, as set by the fire marshal, be exceeded.

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Further, field offices and sectors can produce and review various reports on time in custody and different custodial actions. For example, officials from one sector reported they have their data system send auto-generated time in custody reports that provide information for the sector as a whole and for its stations, including breakdowns by demographic and time in custody ranges. Supervisors we spoke with from one field office stated that they receive daily time in custody reports which can help them identify individuals who may have been held in custody beyond 72 hours, understand the circumstances underlying the time in custody, and ensure that time in custody information is accurately recorded and not missing any information. Lastly, staff from another sector said they produce status checks, which show whether, for example, any adults or juveniles have missed meals and showers, or any individuals did not receive dental hygiene products. The sector also produces reports every 3 hours to show which individuals did not receive a welfare check in that time period.

**Other actions to help ensure adherence to TEDS.** Officials from some field offices and sectors we interviewed help ensure that CBP personnel adhere to TEDS through issuing policy reminders and conducting analysis of Self-Inspection Program results. For example, one sector official told us that the sector sends out general information as well as specific excerpts from TEDS to remind agents of their responsibilities. The official stated that the sector sends these out once per month, at a minimum. For example, the official stated that the sector sends out reminders to agents to log custodial actions into the proper systems. Additionally the official said that the sector distributed a 20-minute training and policy reminder of the TEDS standards to agents in August 2021. An official from a different field office also stated that the field office reiterated aspects of TEDS to officers in the field through emails. For example, the field office sent a reminder to officers of OFO's updated personal search policy, which reflected the TEDS standards such as proper methods for searches of transgender individuals.

Field offices can also conduct their own analysis of deficiencies identified through CBP's Self-Inspection Program. One of the program's worksheets—OFO's *Secure Detention, Escort, and Transport at Ports of Entry*—addresses TEDS requirements related to provision of meals, reasonable accommodations, and caring for at-risk populations. For example, according to officials, one field office conducted analysis of Self-Inspection Program results of these worksheets for fiscal years 2017 through 2019 and identified five areas as priorities for corrective actions. These included reminders that officers complete all detention logs, annotate all custodial actions, notify and transport individuals in a timely

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manner, ensure the safety of juveniles, provide meals to juveniles every 6 hours, and conduct a risk-assessment of all individuals in custody. Additionally, an official from another field office stated that the field office develops a post-analysis report on repetitive corrective actions in its area of operations at the end of every Self-Inspection Program cycle for the *Secure Detention, Escort, and Transport at Ports of Entry* worksheet. Officials from OFO stated that they initiated this process of conducting post-analysis reports in all field offices in response to a prior recommendation we made.<sup>21</sup>

## DHS and CBP Headquarters

DHS and CBP headquarters use various mechanisms to monitor adherence to TEDS, including inspections of OFO and Border Patrol facilities. For example, the DHS OIG conducts inspections, while CBP headquarters entities are responsible for overseeing self-inspections, reviewing results, and monitoring and dispersing relevant data to the field.

**Inspections of holding facilities.** DHS and CBP conduct inspections of facilities along the southwest border to understand conditions of custody and operations. For example, in late 2018, the DHS OIG began routinely conducting unannounced inspections to review facilities' adherence to TEDS, according to DHS officials. As a part of this work, the DHS OIG has conducted site visits to a number of OFO and Border Patrol locations along the southwest border to inspect CBP facilities, including conditions of custody, the amount of time individuals spend in CBP custody, and custodial actions. The DHS OIG's inspections have resulted in reports

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<sup>21</sup>GAO, *Land Ports of Entry: CBP Should Update Policies and Enhance Analysis of Inspections*, [GAO-19-658](#) (Washington, D.C.: Aug. 6, 2019). We recommended that the Commissioner of CBP analyze the results of the Self-Inspection Program over time and at a level necessary to identify and address potentially reoccurring inspection deficiencies at individual ports of entry. In addressing this recommendation, in the 2020 OFO Self-Inspection Program cycle, CBP updated the program's reporting requirements to include the identification and analysis of reoccurring inspection deficiencies at individual ports of entry over the three most recent Self-Inspection Program cycles. In September 2020, CBP issued the OFO 2020 Self-Inspection Program Cycle Annual Report that provided the results of the reoccurring deficiency analysis and corrective action plans to ensure compliance in future reporting cycles.

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that include a number of recommendations, including ones related to medical care, welfare checks, and personal property.<sup>22</sup>

As required by statute, DHS also established the Office of the Immigration Detention Ombudsman in late 2019 to provide oversight of conditions of custody at CBP locations, among other things.<sup>23</sup> As of April 2022, the office had conducted visits to one OFO location and 12 Border Patrol locations, and provided observations of CBP's operations, such as on the conditions of facilities and the effects of migrant surges.<sup>24</sup>

CBP's Self-Inspection Program is an annual internal self-assessment of various CBP components and offices and includes assessment of various activities at stations and ports of entry. CBP's Management Inspections Division is responsible for administering the Self-Inspection Program. Along with OFO's *Secure Detention, Escort, and Transport at Ports of Entry* worksheet, described earlier, the program also uses a Border Patrol worksheet—*e3 Detention: Juvenile Processing, Hold Rooms/Short Term Custody of All Detainees*—to measure adherence to TEDS requirements. This includes TEDS requirements related to meals and hygiene—for example, providing personal hygiene items such as diapers, feminine hygiene products, bodily cleansing products, and dental hygiene products. We also identified CBP's Prison Rape Elimination Act worksheet as a means used by the program to assess compliance with certain TEDS standards associated with prevention, detection, and

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<sup>22</sup>The DHS OIG has issued reports based on the results of its inspections. See DHS, *Management Alert: DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in RGV*, OIG-19-51 (Washington D.C.: July 2, 2019); and DHS, *Capping Report: CBP Struggled to Provide Adequate Detention Conditions During 2019 Migrant Surge*, OIG-20-38 (Washington, D.C.: June 12, 2020). The DHS OIG began conducting unannounced inspections of CBP facilities prior to fiscal year 2018, in which year Congress directed that the DHS OIG continue these inspections. See 2018 Explanatory Statement, 164 Cong. Rec. H2045, H2547 (daily ed. Mar. 22, 2018), 2019 Conference Report, H. Rep. No. 116-9, at 474 (Feb. 13, 2019), 2021 Explanatory Statement, 166 Cong. Rec. H7879, H8468 (daily ed. Dec. 21, 2020), and 2022 Explanatory Statement, 168 Cong. Rec. H1709, H2398 (daily ed. Mar. 9, 2022).

<sup>23</sup>6 U.S.C. § 205. The Office of the Immigration Detention Ombudsman also investigates complaints. *Id.* at § 205(b).

<sup>24</sup>The DHS Office of the Immigration Detention Ombudsman also has a role in inspecting U.S. Immigration and Customs Enforcement facilities. The office conducted visits to the following locations in 2021: the Rio Grande Valley sector, the Del Rio sector, the Yuma sector, the Tucson sector, the El Paso sector, and the El Paso field office.

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response to sexual abuse and assault in CBP holding facilities.<sup>25</sup> At the end of every Self-Inspection Program cycle, the Management Inspections Division produces a report that summarizes the results reported by CBP managers.

**Electronic systems for monitoring custody data.** Border Patrol and OFO headquarters are responsible for both monitoring custody data and producing reports on related data. CBP administers a dashboard that Border Patrol and OFO can use to monitor operations along the southwest border. Officials can review the dashboard for data for certain sectors or field offices on various aspects of immigration processing along the southwest border, such as the number of individuals in custody, the amount of time they spend in custody, and the capacity level of a station or port of entry.

Officials also stated that Border Patrol headquarters generates data reports for Border Patrol leadership and sectors, including a daily report that shows the total number of individuals in custody and their time spent in custody. Border Patrol used CBP's dashboard system to create its own time in custody dashboard that shows all individuals currently in custody which Border Patrol personnel can break out by location, demographics, time in custody, and age groups. Further, Border Patrol has a system that allows users to create custom reports based on data fields for custodial actions and time in custody.

Similarly, OFO produces time in custody reports—an effort, which an OFO headquarters official stated, began in late 2020. For example, OFO officials stated that its headquarters data unit produces reports 3 times a week that identify individuals who have been held longer than 48 hours, and distributes these reports to the field offices on the southwest border. OFO's headquarters data unit uses an in custody dashboard to create and send these reports to field offices with a list of individuals currently in custody, what port they are held in, and their time in custody color-coded by length of time. For example, individuals held over 72 hours are highlighted red, and individuals held over 48 hours are highlighted yellow.

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<sup>25</sup>According to CBP officials, all OFO and Border Patrol holding facilities are required to complete CBP's *Prison Rape Elimination Act* Self-Inspection Program worksheet. This worksheet assesses each facility's implementation of agency policies and procedures associated with prevention, detection, and response to sexual abuse or assault in CBP holding facilities. This worksheet includes evaluating some aspects of TEDS, such as ensuring certain at-risk individuals have access to CBP's information on efforts to prevent, detect, and respond to sexual abuse and holding juveniles in the least restrictive setting appropriate to the juveniles' age and special needs.

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When disseminating this information, headquarters asks the field office to indicate if an individual is no longer in custody in their data system and to record the correct date and time the individual was released from OFO custody.

**Other actions to help ensure adherence to TEDS.** CBP headquarters entities have several efforts to help ensure that CBP personnel adhere to TEDS, including creating a tool to help officers and agents identify at-risk individuals and issuing policy reminders.

CBP's Privacy and Diversity Office officials stated that they worked with Border Patrol and OFO to develop a tool to better identify individuals in custody who may be at a high risk for sexual victimization and/or abusiveness.<sup>26</sup> This tool is designed to help agents and officers determine if an individual is at-risk of being sexually abused by others in custody or being sexually abusive to other in custody prior to placing them in a holding facility. Officers and agents could use the tool to make this determination using factors such as age, criminal history, or if an individual indicates a fear for their physical safety in custody.<sup>27</sup>

Border Patrol and OFO headquarters have also issued reminders on new or updated CBP directives or policies. For example, in September 2020 Border Patrol headquarters sent out a policy reminder to all sectors on personal searches that provided additional guidance on TEDS standards on search, specifically related to the search of transgender, intersex, or gender non-conforming individuals.<sup>28</sup> OFO headquarters also sent a reminder to all of its field office directors on the updated *Personal Search Handbook* in April 2021, which included changes to reflect terminology

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<sup>26</sup>TEDS state that before placing any individuals together in a hold room or holding facility, officers and agents determine if the individual may be considered an at-risk individual, or at risk of posing a threat to others. If an officer or agent determines that the individual is at-risk or at risk of posing a threat to others, TEDS has specific provisions for the care and custody of these individuals.

<sup>27</sup>A CBP official stated that any individuals identified by this assessment as at a high risk of victimization are provided heightened protection, to include continuous direct sight and sound supervision, single-cell housing, or placement in a cell actively monitored on video by a staff member sufficiently proximate to intervene, unless no such option is determined to be feasible. Additionally, the official stated that OFO has been using a similar tool since the publication of TEDS in November 2015, while Border Patrol implemented the tool on June 2, 2022.

<sup>28</sup>TEDS also requires that whenever operationally feasible, officers and agents conducting a search or that are present at a medical examination, must be of the same gender, gender identity, or declared gender as the individual being searched.

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consistent with TEDS. OFO's policy reminder provided additional guidance on the search of transgender individuals.

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## Border Patrol Does Not Have a Mechanism for Monitoring Compliance with Welfare Checks for At-Risk Individuals in Custody

In response to the significant increase in the number of individuals in custody with contagious disease, illness or injury, CBP issued a memo in 2019 to clarify and update TEDS provisions related to the care and custody of certain at-risk populations. Specifically, the memo stated that for those individuals with a known or reported contagious disease, illness, or injury or who have been isolated or quarantined within a CBP facility, CBP must (1) check on them at least once every 15 minutes and (2) monitor that these checks are recorded in the electronic system. The memo also directed CBP's Office of Accountability to work with components to develop a method to ensure compliance with these requirements prior to the end of fiscal year 2019. Further, TEDS provisions require regular and frequent monitoring of hold rooms according to each component's policies and procedures. OFO's policy requires officers to conduct and record 15-minute welfare checks for all individuals in its custody, regardless of at-risk designation. Border Patrol's short-term custody policy states that agents should physically check high-risk individuals every 15 minutes.<sup>29</sup> Border Patrol's policy does not specify how frequently agents should conduct welfare checks for individuals in its custody not designated as at-risk.

OFO officials told us they monitor compliance with the memo's requirements, as well as the component's own policy, through the Self-Inspection Program. As part of the Self-Inspection Program, OFO staff are required to complete a short-term custody worksheet that includes a question that covers 15-minute welfare checks for the entire population in custody, including at-risk populations. The worksheet question cites TEDS provisions for electronically recording secure detention activities, which include recording the completion of welfare checks on individuals in custody, and OFO's short-term custody policy related to welfare checks as the policies being assessed. OFO staff complete these worksheets by, among other things, reviewing a sample of data on custodial actions at OFO facilities. These data include information on whether the facilities' completed 15-minute welfare checks. Through completion and review of these worksheets, OFO is able to monitor that these checks have occurred consistent with the 2019 memo and OFO's own policy.

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<sup>29</sup>This policy defines high-risk individuals as someone who shows signs of distress, hostility, depression, or other unusual behavior.

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Border Patrol monitors compliance with welfare checks for the general population in custody; however, it does not have a mechanism specifically to monitor compliance with conducting 15-minute welfare checks for certain at-risk populations, as required by the 2019 memo. Border Patrol has a similar Self-Inspection Program worksheet as OFO for assessing welfare checks. While the worksheet directs staff to verify that agents have conducted and recorded general welfare checks, it does not collect information that would enable the agency to verify that agents have done so every 15 minutes for certain at-risk populations as required. More specifically, in completing the Self-Inspection Program worksheet, Border Patrol staff review a sample of data on custodial actions, including welfare checks, at Border Patrol facilities. However, Border Patrol cannot tell from these data whether any of the welfare checks were for individuals designated as at-risk who should have received checks every 15 minutes. This is because the data do not identify whether or not at-risk individuals are included in the sample. And, unlike OFO, Border Patrol's policy does not specify how often agents are to conduct welfare checks for those in its custody not designated as at-risk.

Border Patrol officials told us that they believe the agency is meeting the intent of the memo's requirements through activities that occur at the field-level. For example, Border Patrol officials stated that the agency's electronic data system allows agents to mark when someone is at-risk, and alerts agents when they need to carry out a 15-minute welfare check for an at-risk individual. This alert, called a status check, turns yellow when it is near due—which is between 11 and 15 minutes—and red when it is overdue—which is over 15 minutes. Officials stated that agents and supervisors constantly monitor the data system and the status checks screen to ensure that agents conduct actions such as welfare checks in a timely manner.

While the electronic alerts are helpful for reminding agents to conduct a welfare check, Border Patrol officials acknowledged that there is no agencywide mechanism to verify that agents have conducted and recorded the required 15-minute welfare checks. These officials also acknowledged that there could be gaps in the times they conduct welfare checks on individuals—which they indicated are typically a few minutes—due to circumstances like overcrowding. Without such a mechanism to verify that agents have conducted and recorded the required 15-minute welfare checks, Border Patrol does not have complete insights across the agency on its compliance with the required welfare checks for individuals with known or reported health risks. Border Patrol also does not have

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complete information to help ensure that individuals held within its custody are receiving the appropriate care.

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## Short Term Custody Standard Complaints Are Received and Addressed through Multiple Mechanisms

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### DHS and CBP Complaint Mechanisms for Individuals in Short-term Custody

DHS and CBP have multiple mechanisms to receive and address complaints regarding CBP facilities or personnel, including complaints related to short-term custody or implementation of TEDS. Border Patrol and OFO officials we spoke with in the field told us that it is generally their practice to receive and address short-term custody complaints immediately and at the lowest level possible through oral communication with Border Patrol and OFO facility staff.

According to Border Patrol and OFO officials, generally, an individual would make the complaint to a supervisor at a holding facility, who would try to resolve the complaint as quickly as possible, especially if a complaint related to the conditions of custody. For example, Border Patrol and OFO officials responsible for holding facilities stated that individuals might make complaints, such as being cold or hungry. Officers and agents are to attempt to resolve such complaints as quickly as possible by supplying a blanket or providing a meal or a snack. Additionally, CBP uses other methods, for example posters displayed at holding facilities, to inform individuals how to report incidents or requests to agents or officers on duty. Figure 5 shows an example of such a poster.

Figure 5: U.S. Customs and Border Protection (CBP) Poster on Reporting Complaints



**TRANSLATION**

**ATTENTION**

If you are thirsty

If you are hungry

If you need medical attention

If you have been a victim of physical or sexual abuse

If you have witnessed a crime

Report it to a Border Patrol agent at this facility

Source: U.S. Border Patrol. | GAO-22-105321

In addition to making complaints directly to staff at holding facilities, individuals may submit complaints during or after they leave short-term custody through the following DHS and CBP entities: (1) DHS OIG; (2) DHS CRCL and (3) CBP OPR's Joint Intake Center.<sup>30</sup> These entities can also receive complaints of criminal and non-criminal misconduct by CBP employees and contractors through various methods. These methods include paper or online forms, phone hotlines, mail, fax and other methods. Table 2 summarizes each DHS and CBP entity's complaint mechanism.<sup>31</sup>

**Table 2: Department of Homeland Security (DHS) and U.S. Customs and Border Patrol (CBP) Mechanisms to Address Short-term Custody Complaints**

Entity responsible for complaint mechanism	Description of complaint mechanism
DHS Office of Inspector General (OIG)	Receives and investigates complaints of criminal and noncriminal misconduct of DHS employees and contractors, including detention-related complaints. The DHS OIG also investigates allegations related to potential fraud, waste, abuse, and mismanagement.
DHS Office for Civil Rights and Civil Liberties (CRCL)	Receives and investigates complaints alleging civil rights and liberties violations related to actions taken by DHS officials, employees, or contractors, or as a result of DHS programs or activities, which may include allegations related to detention facility conditions. CRCL also refers complaints and works with DHS components, including the DHS OIG, to review and resolve complaints.
CBP Office of Professional Responsibility (OPR) Joint Intake Center	Receives, processes, investigates, and refers misconduct complaints involving CBP employees and contractors. In addition, CBP OPR coordinates misconduct complaints with the DHS OIG and refers them to the appropriate office for investigation, fact-finding, or immediate management action.

Source: GAO analysis of DHS and CBP information. | GAO-22-105321

<sup>30</sup>The DHS Office of Immigration Detention Ombudsman (OIDO) is another entity that is in the process of developing a case management system to receive and track detention related complaints for CBP, according to officials from the office. The office was statutorily established in 2019 to assist individuals with complaints about the potential violations of immigration detention standards or misconduct by DHS (or contract) personnel. See 6 U.S.C. § 205. Additionally, the office plans to partner with CBP OPR to review complaints involving conditions of immigration detention that come through the Joint Intake Center.

<sup>31</sup>The CBP Information Center receives, manages, tracks, and refers general complaints submitted by the public related to short-term custody issues, among other items. However, we did not include information from this entity in table 2 since CBP Information Center officials stated that less than 1 percent of the estimated 25,000 complaints that they receive per year are related to short-term custody and serious complaints are typically referred to the other DHS and CBP entities for further investigation.

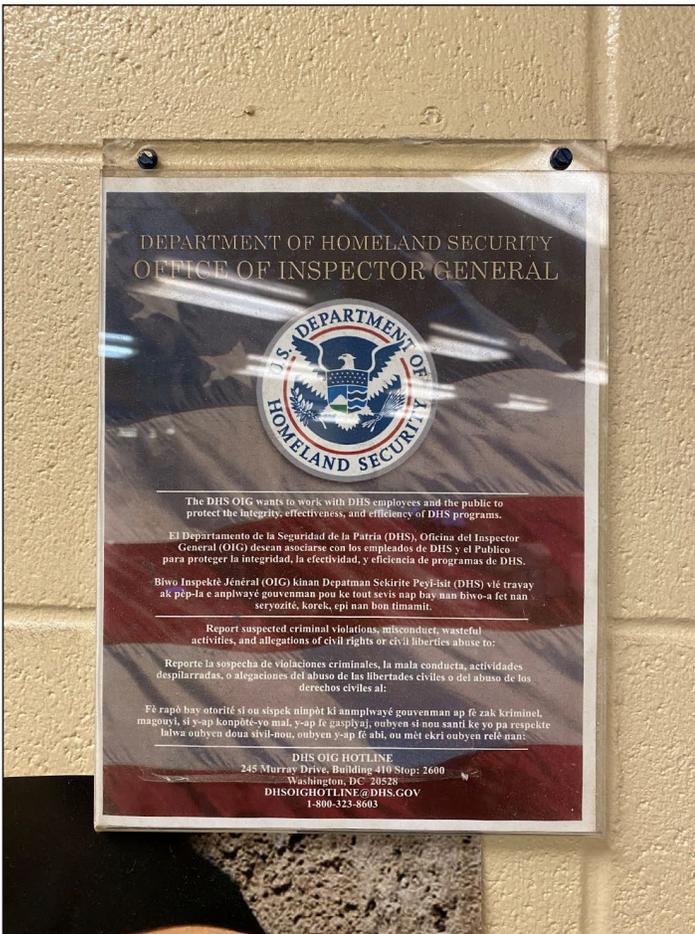
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While all of the above entities may receive complaints directly from complainants, generally they are to forward the complaints to the Joint Intake Center for further review and action. CBP officials stated that the Joint Intake Center's management system electronically routes all complaints involving CBP employees and contractors to the DHS OIG for the right of first refusal upon receiving complaints. If the DHS OIG declines to accept the case, OPR will either retain the case or refer it back to the CBP management to determine further action.

OPR routinely refers lesser administrative allegations to OFO and Border Patrol for immediate management action, management inquiry, or to coordinate evidence collection, according to CBP officials. For example, the Joint Intake Center will send the complaints to OFO and Border Patrol field office and sector-level management. These entities may then conduct further inquiries or work with other entities such as CBP OPR, DHS CRCL, or DHS OIG to obtain evidence such as witness statements, custodial action data, or other items to support investigations.

As described above, according to DHS documents, while DHS OIG generally routes the complaints it receives to the Joint Intake Center for initial review, as do the other entities, it also can decide to retain complaints for its own investigation or forward them to another entity for further action. DHS CRCL also receives allegations related to civil rights and civil liberties violations at holding facilities directly from complainants but consults with OPR regarding allegations that involve employee misconduct and refers such allegations to the Joint Intake Center and DHS OIG for review. If CRCL pursues the complaint, it may conduct activities such as requesting policies and procedures from specific locations and conducting more in-depth, onsite investigations at field locations. Figure 6 shows DHS and CBP posters advertising the DHS OIG hotline and instructions for making complaints or reporting incidents regarding sexual abuse or assault to a CBP employee or the DHS OIG.

Figure 6: Posters Advertising Complaint Mechanisms, Displayed in a U.S. Customs and Border Protection Facility



Source: U.S. Border Patrol. | GAO-22-105321

Note: The posters depict the Department of Homeland Security Office of Inspector General's Complaint Hotline and U.S. Customs and Border Protection's Zero Tolerance Policy.

## Types of Complaints Related to Short-term Custody, and DHS and CBP Analysis of Complaints

The DHS OIG, DHS CRCL, and CBP OPR all maintain data on complaints they receive, including short-term custody-related complaints, in their individual databases. In reviewing these data, we found similar top categories for OPR, CRCL and DHS OIG complaint data sets. Table 3 provides an overview of the primary categories of TEDS-related complaints that we identified for each entity, including examples to illustrate the types of complaints.

**Table 3: Types of Complaints Related to U.S. Customs and Border Protection (CBP) Short-Term Custody**

Complaint mechanism and responsible entity	Top categories of complaints	Illustrative examples
CBP Office of Professional Responsibility (OPR) Joint Intake Center	Time in Custody	Reports of unaccompanied children held in custody for more than 72 hours.
	Physical Abuse	Reports of individuals experiencing violent and excessive use of force during apprehension such as kicking, striking and pushing.
Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL)	Time in Custody	Reports of unaccompanied children held in custody for more than 72 hours.
	Detention Conditions	Reports of poor food quality and that the temperature was extremely cold.
	Abuse	Reports that CBP officers used vulgar language and force.
DHS Office of Inspector General (OIG)	Time in Custody	Reports of individuals and unaccompanied children held in custody for more than 72 hours.
	Detention Conditions	Reports of overcrowding, sleeping on the floor, and limited or no showers.

Source: GAO analysis of CBP and DHS complaints data. | GAO-105321

Note: Each responsible entity provided a range of details in their complaint narratives. In general, we reviewed any additional notes, statements or documentation that the entity provided for each case narrative. The DHS OIG provided data for April through September 30, 2021; CBP OPR provided data for fiscal years 2019, 2020 and 2021. The top categories of complaints for CRCL are based on a random sample of 88 relevant complaints from a total of 4,492 from fiscal years 2019, 2020 and 2021. These data were the most recent available at the time of our review.

Using their data on complaints, some DHS and CBP entities have analyzed short-term custody complaint information to identify corrective actions or additional steps that CBP could take to address the cause of the allegation or complaint. For example, DHS OIG conducts unannounced inspections along the southwest border and as part of this effort, OIG employees review complaint information to better understand the types of concerns that individuals in custody are raising at the location. Further, CBP OPR established a team dedicated to analyzing detention-related complaints in 2022 and plans to expand its efforts during the year to produce reports that identify patterns and trends to help

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mitigate complaints at certain CBP holding locations, according to CBP OPR officials.

In addition, DHS CRCL has analyzed complaints to identify systemic deficiencies at CBP facilities, including those along the southwest border, and investigated and made recommendations to adjust existing CBP policies, as needed. For example, in February 2020, DHS CRCL conducted an onsite investigation at the Yuma station, including its soft-sided facility, based on complaint information. As a result of this investigation, it produced a report with 20 recommendations related to time in custody, hold room conditions, health screening, and others.<sup>32</sup> As of May 2021, the Yuma station had implemented most of these recommendations by developing electronic dashboards that track the amount of time in custody and other tools that improve operations at the location. DHS CRCL also produces annual reports that include information on complaints in holding facilities. These reports provide a breakdown of the types of allegations that relate to CBP holding facilities such as detention conditions, sexual abuse and excessive or inappropriate use of force.

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## Conclusions

CBP's TEDS standards, along with monitoring mechanisms at the headquarters and field levels, are designed to help ensure that CBP personnel are providing appropriate care to individuals in its holding facilities. While both OFO and Border Patrol have several mechanisms to monitor adherence to TEDS, Border Patrol does not have an agency-wide mechanism to verify that agents complete 15-minute welfare checks for certain at-risk individuals in the field, as required in CBP policy. Such at-risk individuals include those who are ill and for whom their health conditions are at risk to change rapidly. Without such a mechanism, Border Patrol does not have sufficient insights across the agency on its compliance with the required welfare checks for individuals who face health risks and information needed to help ensure that individuals held within its custody are receiving the appropriate care.

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## Recommendation for Executive Action

We are making one recommendation to Border Patrol.

The Chief of the Border Patrol should develop and implement a mechanism to monitor the agency's compliance with welfare check

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<sup>32</sup>According to CBP officials, these reports are provided for internal agency consideration.

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requirements for certain at-risk individuals in custody (Recommendation 1).

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## Agency Comments

We provided a draft of this report to DHS for review and comment. DHS provided written comments, which are reproduced in Appendix I. DHS concurred with our recommendation and described planned actions to address it. DHS also provided technical comments, which we incorporated as appropriate.

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We are sending copies of this report to the appropriate congressional committees, the Department of Homeland Security and other interested parties. In addition, the report is also available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8777 or [gablerr@gao.gov](mailto:gablerr@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs are listed on the last page of this report. GAO staff who made key contributions to this report are listed in appendix II.



Rebecca Gambler  
Director, Homeland Security and Justice

# Appendix I: Comments from the Department of Homeland Security

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

August 31, 2022

Rebecca Gambler  
Director, Homeland Security and Justice  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Re: Management Response to Draft Report GAO-22-105321, "SOUTHWEST BORDER: CBP Oversees Short-Term Custody Standards, but Border Patrol Could Better Monitor Care of At-Risk Individuals"

Dear Ms. Gambler:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

The Department is pleased to note GAO's positive recognition of U.S. Customs and Border Protection's (CBP) use of various mechanisms, at multiple levels of the agency, to monitor and provide appropriate care of individuals in short-term custody and help ensure that CBP personnel are adhering to the October 2015 National Standards on Transportation, Escort, Detention, and Search (TEDS). CBP remains committed to the care of those in its custody by ensuring the health, safety, security, and welfare of each adult and child, including by validating actions related to conducting welfare checks.

The draft report contained one recommendation, with which the Department concurs. Enclosed find our detailed response to the recommendation. DHS previously submitted technical comments addressing several accuracy, contextual, and other issues under a separate cover for GAO's consideration.

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**Appendix I: Comments from the Department of  
Homeland Security**

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Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

JIM H CRUMPACKER  Digitally signed by JIM H  
CRUMPACKER  
Date: 2022.08.31 15:13:00 -04'00'

JIM H. CRUMPACKER, CIA, CFE  
Director  
Departmental GAO-OIG Liaison Office

Enclosure

**Enclosure: Management Response to Recommendation  
Contained in GAO-22-105321**

GAO recommended that the Chief of the U.S. Border Patrol (USBP):

**Recommendation 1:** Develop and implement a mechanism to monitor the agency’s compliance with welfare check requirements for certain at-risk individuals in custody.

**Response:** Concur. USBP Strategic Planning and Analysis Directorate and Law Enforcement Operations Directorate (LEOD) has taken several steps to address this recommendation. For example, on March 13, 2022, a field was added to the e3 database, which is a portal used by USBP to collect and transmit biographical, encounter, and biometric data related to law enforcement activities, to identify individuals classified as at-risk. This was a pre-requisite for reports to be generated based on this demographic. Further, on June 27, 2022, USBP Headquarters emailed guidance entitled “At-Risk Population and Hold Room Monitoring” to the field sectors, which reminded personnel of the requirements for proper monitoring of the at-risk population.

Additional actions that USBP will take include the following:

Action	Estimated Completion Date (ECD)
Email quarterly reminders to USBP field sectors for proper monitoring of the at-risk population as directed in the “Clarification of At-Risk population and Hold Room Monitoring Provisions in the CBP National Standards on Transport, Escort, Search and Detention” memorandum, dated May 24, 2019. On June 27, 2022, LEOD sent the first quarterly reminder to the field sectors.	April 28, 2023
Generate a quarterly report to monitor the agency’s compliance with welfare check requirements for certain at-risk populations in custody, which will be sent to LEOD for distribution and available for ad-hoc reporting as needed.	April 28, 2023
Provide to LEOD one year of quarterly reports to support continuous monitoring of the agency’s compliance with welfare check requirements for certain at-risk individuals in custody.	October 31, 2023

Overall ECD: October 31, 2023.

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# Appendix II: Contacts and Staff Acknowledgments

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## GAO Contact

Rebecca Gambler, (202) 512-8777 or [gablerr@gao.gov](mailto:gablerr@gao.gov).

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## Staff Acknowledgments

In addition to the contact named above, Kirk Kiester (Assistant Director), Nanette Barton (Analyst-in-Charge), Michele Fejfar, Ricki Gaber, and Sasan J. "Jon" Najmi made key contributions to this report. Also contributing to this report were Howard Arp, Benjamin Crossley, Justin Fisher, Jan Montgomery, and Kevin Reeves.

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