



One Hundred Sixteenth Congress
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

February 11, 2020

The Honorable Chad Wolf
Acting Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Acting Secretary Wolf:

As part of the Committee on Homeland Security's ongoing investigation of the circumstances surrounding the deaths of children in the custody of U.S. Customs and Border Protection (CBP), among other matters, the Committee seeks to understand the policies and protocols guiding the medical assessment of children taken into custody by CBP, including the interim and final directives on enhanced medical efforts issued in 2019. The Committee also seeks to understand how children who have been diagnosed with communicable illnesses are managed while in CBP custody.

While we appreciate the testimony of Mr. Brian Hastings and Dr. Alex Eastman before the Committee on January 14, 2020, numerous questions remain unanswered.¹ The Department is apparently unwilling to meet with Committee staff to begin to answer these questions. For example, on January 28, 2020, Committee staff sought an in-depth briefing with CBP personnel regarding the "Enhanced Medical Support Efforts" directive issued by CBP on December 30, 2019.² Today, CBP staff informed Committee staff that because CBP personnel are "responding to multiple requests for briefings," CBP cannot schedule a meeting with the Homeland Security Committee staff to discuss the directive "at this time."³

The Department's failure to provide in a timely manner the documents requested—and subsequently subpoenaed—by the Committee has significantly impeded the Committee's investigation of this critical issue. The Committee requests the immediate and complete

¹ Committee on Homeland Security, Subcommittee on Border Security, Facilitation, and Operations, "Assessing the Adequacy of DHS Efforts to Prevent Child Deaths in Custody," (Jan. 14, 2020) (online at <https://homeland.house.gov/assessing-the-adequacy-of-dhs-efforts-to-prevent-child-deaths-in-custody>).

² Email from Staff, Committee on Homeland Security, to Staff, Customs and Border Protection (Jan. 28, 2020).

³ Email from Staff, Customs and Border Protection, to Staff, Committee on Homeland Security (Feb. 11, 2020).

production of all documents required by the subpoena issued by the Committee on November 20, 2019.⁴

In addition, I request production by March 3, 2020, of the additional documents identified later in this letter that are necessary to enable the Committee to conduct a comprehensive review of the medical treatment of children in CBP custody. The Committee is ready to move forward with its investigation and is therefore making this new document request even as other requests remain pending.

History of CBP's Productions to the Committee

On January 4, 2019, I wrote to then-Secretary Kirstjen M. Nielsen to request that the Department produce by January 18, 2019, among other documents, the following:

“Any document, record, memo, correspondence, or other communication related to the care and treatment of children in CBP custody from November 1, 2018, to the present, including documents related to the deaths of Jakelin Caal Maquin and Felipe Alonzo-Gomez.”⁵

The Department failed to produce any documents by the return date specified in that letter. As of September 3, 2019, the Department had produced fewer than ten pages of documents referring to Jakelin and/or Felipe.

On November 20, 2019, following the Department's failure to produce all documents requested in my letter of January 4, 2019, the Committee issued a narrowly tailored subpoena requiring the production by noon on December 11, 2019 of, among other documents, the following:

“Any document, record and/or communication related to the care and treatment of children in the U.S. Customs and Border Protection custody from November 1, 2018 to January 4, 2019, including those related to the deaths of Jakelin Caal Maquin and Felipe Alonzo Gomez.”⁶

The Department failed to produce a single document by the subpoena's return date. In response, on December 18, 2019, Ranking Member Rogers and I wrote to you urging “you to ensure the Department complies with the subpoena without further delay.”⁷ On December 21, 2019, you responded to our letter by assuring us that you are committed “to be fully cooperative, open and transparent” with us. You also wrote:

⁴ Letter and Accompanying Schedule and Subpoena Instructions, from Chairman Bennie G. Thompson, Committee on Homeland Security, to Acting Secretary Chad F. Wolf, Department of Homeland Security (Nov. 20, 2019).

⁵ Letter from Chairman Bennie G. Thompson, Committee on Homeland Security, to Secretary Kirstjen M. Nielsen, Department of Homeland Security (Jan. 4, 2019).

⁶ Letter and Accompanying Schedule and Subpoena Instructions, from Chairman Bennie G. Thompson, Committee on Homeland Security, to Acting Secretary Chad F. Wolf, Department of Homeland Security (Nov. 20, 2019).

⁷ Letter from Chairman Bennie G. Thompson and Ranking Member Mike Rogers, Committee on Homeland Security, to Acting Secretary Chad F. Wolf, Department of Homeland Security (Dec. 18, 2019).

“Finally, I want to assure you and indeed each member of the Committee that I will be more responsive in the future. As I indicated in our initial meetings in November 2019, you have my full commitment to cooperate with you as you conduct the Committee’s important business of DHS oversight.”⁸

On December 30, 2019, the Department produced approximately 545 pages of documents to the Committee. None of these documents relates to Jakelin and/or Felipe. Finally, on January 28, 2020, the Department produced another 285 pages of documents, including approximately 255 pages related to Jakelin and/or Felipe.

Committee’s Investigation of the Medical Care Provided to Children in CBP Custody

The Committee received the results of the Office of Inspector General’s investigations into the circumstances surrounding the deaths of Felipe and Jakelin. Subsequently, the Committee also conducted an *in camera* review of materials provided by CBP to the Inspector General regarding the deaths of these two children.

The Committee expects that all documents responsive to its subpoena will be produced in full, including documents made available to the Committee for *in camera* review and all responsive documents that were not among the documents provided for *in camera* review. For example, the Inspector General’s report indicates that:

“The Department of Homeland Security (DHS), Office of Inspector General (OIG), initiated this investigation after the U.S. Customs and Border Protection (CBP), U.S. Border Patrol (USBP), notified the CBP, Office of Professional Responsibility (OPR), El Paso, TX, of the custodial death of Felipe Gomez-Alonso, an eight-year-old boy from Guatemala.”⁹

The Committee has not yet been provided any documents pertaining to the notifications that were made to CBP OPR, the OIG, or any other CBP or DHS official regarding the death of Felipe. Similarly, the Committee has not yet been provided any documents pertaining to any notifications made to anyone at CBP, the OIG, or DHS regarding the death of Jakelin. The Committee has also not been provided any communications involving any CBP and/or DHS personnel before notification of either death was made to OPR and/or the Inspector General.

In addition, there are documents referenced in the Inspector General’s reports that the Committee has not been provided. For example, in the Inspector General’s report on Felipe’s death, the “Memorandum of Activity” discussing the interview of “Agent 9” states that after Felipe and his father were transported to the hospital for the first time on the morning of December 24, 2018, Agent 9 “began preparing an Evolving Report for his management.”¹⁰ The Committee has not

⁸ Letter from Acting Secretary Chad F. Wolf, Department of Homeland Security, to Chairman Bennie G. Thompson and Ranking Member Mike Rogers, Committee on Homeland Security (Dec. 21, 2019).

⁹ Department of Homeland Security, Office of Inspector General, *Report of Investigation: Circumstances Surrounding the Custodial Death of Felipe Gomez-Alonso*, (I19-BP-ELP-06106) (Dec. 13, 2019).

¹⁰ *Id.*

been provided the Evolving Report for Felipe. The Memorandum of Activity discussing the interview of Agent 9 also states that after Agent 5 drove Felipe and his father to the hospital the first time, Agent 9 “contacted [CBP Agent 5] approximately every half hour via calling or by text.”¹¹ However, the Department has not produced any texts or phone records between Agent 9 and Agent 5. In fact, the Department has not produced to the Committee any internal CBP communications regarding either Felipe or Jakelin.

The Inspector General’s investigations provide important information regarding the events that occurred from the time Jakelin and Felipe were taken into CBP custody until they passed away in December 2018. However, these investigations—at least one of which was conducted “in conjunction with” CBP—appear to have been limited in their scope and narrowly focused on determining whether there was any misconduct or malfeasance by CBP personnel.¹² These investigations were not comprehensive reviews of the totality of the circumstances surrounding the deaths of these two children.

Moreover, the Inspector General, acting in conjunction with CBP, apparently failed to interview all parties with information relevant even to the narrow scope of their investigation. For example, neither the Inspector General nor CBP appear to have interviewed any personnel from the Gerald Champion Regional Medical Center (GCRMC) involved with providing medical care to Felipe (although according to the Inspector General’s report, the CBP OPR provided an “affidavit” regarding an “interview” with a GCRMC employee who is apparently not a member of the medical staff and who is variously identified as a “Public Information Officer” and a “Director of Marketing”).¹³ Similarly, medical personnel from the Hidalgo County Emergency Medical Services and from the hospital where Jakelin was treated do not appear to have been interviewed by the Inspector General or CBP. CBP obtained Felipe’s medical records from GCRMC and they are included in the Inspector General’s report provided to the Committee regarding the circumstances surrounding Felipe’s death. The Inspector General’s report on the circumstances surrounding the death of Jakelin does not contain any medical records pertaining to her treatment. The report states that “DHS OIG reviewed all available audio, video and medical records” pertaining to her case but it is unclear whether all of Jakelin’s medical records were made available to the Inspector General.

The Inspector General’s reports also do not provide any information regarding any review of the policies and protocols in effect at the time of the deaths of Jakelin and Felipe governing the assessment of the medical status of children taken into custody or the management of children who are diagnosed with illnesses, including communicable illnesses. While the Border Patrol agents who attended Jakelin and Felipe demonstrated great compassion for both children, it is not clear if the Inspector General examined whether these agents were provided with the resources or instructions necessary to enable them to carry out the stressful responsibility of providing care for critically ill children. It also does not appear that the Inspector General—whether alone or in conjunction with CBP—reviewed documents or conducted interviews to examine whether the policies and procedures in effect at the time of the deaths of Jakelin and Felipe were adequate, whether they were fully followed, or whether the policies and protocols should be altered in any

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

way to ensure that CBP is prepared to identify and appropriately manage children with serious illnesses.

Committee's Document Requests

In addition to the documents already subpoenaed by the Committee, as part of the Committee's ongoing investigation, the Committee requests that CBP provide from the time period of November 1, 2018, to the present:

1. All documents—including all internal communications—referring or relating to the deaths in CBP custody of all children under the age of 18;
2. All documents referring or relating to policies and protocols regarding
 - a. the assessment of the health status of children taken into custody;
 - b. the actions to be taken when an illness is identified or suspected in a child taken into custody;
 - c. the management of children who have been diagnosed with illnesses, including communicable illnesses;
3. All documents referring or relating to assessments by CBP or by any outside entity engaged by CBP through any mechanism (whether compensated or uncompensated) of the adequacy and effectiveness of policies and protocols in effect to guide the assessment of the health status of children taken into custody and the management of children with confirmed diagnoses of illness, including communicable illnesses;
4. All documents referring or relating to requests for any form of guidance or resource related to the medical assessment and treatment of children in CBP custody and the actions taken by CBP in response to such requests;
5. Documents sufficient to show in a manner disaggregated by month for each month from November 1, 2018 to the present:
 - a. the number of children arriving in the El Paso Sector and the Rio Grande Valley Sector;
 - b. the number of children transported to any type of medical facility while in CBP custody in each of the two Sectors;
 - c. among those transported to any type of medical facility in each of the two Sectors, the number diagnosed with communicable illnesses;

- d. among those transported to any type of medical facility in each of the two Sectors, the number admitted to any form of medical facility for a duration of at least one night;
 - e. among those admitted to any form of medical facility in each of the two Sectors for a duration of at least one night, the number who were released from CBP custody during their stay in a medical facility;
 - f. among those transported to any type of medical facility in each of the two Sectors, the number returned to any form of CBP facility after receiving a diagnosis of a communicable illness, including the number who were transported to any type of medical facility any subsequent time while still in CBP custody and the number of such transports that occurred;
6. All documents referring or relating to the formulation, development, review, or issuance of (i) CBP Directive No. 2210-003, "CBP Interim Enhanced Medical Efforts" dated January 2019 and (ii) CBP Directive No. 2210-004, "Enhanced Medical Support Efforts" dated December 30, 2019, including all documents referring or relating to any advice received by CBP from any entity within or outside of the Federal government during the formulation, development, review, or issuance of these directives;
7. All documents referring or relating to the implementation of CBP Directive No. 2210-003, "CBP Interim Enhanced Medical Efforts" dated January 2019 and CBP Directive No. 2210-004, "Enhanced Medical Support Efforts" dated December 30, 2019, including but not limited to:
 - a. all documents from any source referring or relating to the assessment of the agency's implementation of these directives;
 - b. documents sufficient to show who has the authority to alter, amend, revoke, or in any other manner change the method of implementation of either directive as well as all documents related or referring to any alternation in the implementation of either directive subsequent to the issuance of either directive;
8. All documents referring or relating to any requests for or receipt of resources required to implement CBP Directive No. 2210-003, "CBP Interim Enhanced Medical Efforts (January 2019)" and CBP Directive No. 2210-004, "Enhanced Medical Support Efforts" dated December 30, 2019; and
9. All documents referring or relating to policies and protocols (i) in effect as of December 1, 2018 and (ii) in effect as of the date of this letter for the conduct of investigations into the circumstances of death of any child under the age of 18 in CBP custody.

Documents responsive to this request that are encompassed within the scope of the subpoena issued by the Committee on November 20 are long overdue and are demanded immediately. Production of all other documents is requested by March 3, 2020.

Sincerely,

A handwritten signature in blue ink, reading "Bennie G. Thompson". The signature is written in a cursive style with a prominent initial "B" and a long, sweeping tail.

BENNIE G. THOMPSON
Chairman

Responding to Requests for Documents from the Committee on Homeland Security

Produce all documents responsive to the Committee's request that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.

Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.

In the event that compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by the specified return date. Together with any partial production, include (1) an explanation of why full compliance by the specified date was not possible and (2) identification of the date by which full compliance will be achieved.

In addition:

1. The fact that any other person or entity also possesses non-identical or identical copies of the same documents requested by the Committee shall not be a basis to withhold any information.
2. The pendency of or potential for litigation shall not be a basis to withhold any information.
3. In accordance with 5 U.S.C. §552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
4. Pursuant to 5 U.S.C. §552a(b)(9), the Privacy Act shall not be a basis for withholding any information.
5. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control. If known, identify the party that currently possesses or has custody or control of the document.
6. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read to include that alternative identification.
7. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise

apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

8. This request is continuing in nature and applies to any newly discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.

Means of Production

1. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
2. Each production should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
3. All documents shall be Bates-stamped sequentially and produced sequentially.
4. Documents produced in response to this request shall be produced together with copies of file labels, dividers, and identifying markers with which they were associated when the request was served.
5. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Privilege Log

In the event that a document is withheld from the Committee, provide a privilege log containing the following information concerning any such document:

1. every privilege asserted;
2. the basis for the privilege(s) asserted;
3. the type of document;
4. the general subject matter;
5. the date, author, addressee, and any other recipient(s); and
6. the relationship of the author and addressee to each other.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.

6. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; (b) the individual's business or personal address and phone number; and (c) any and all known aliases.
7. The term "related to" or "referring or relating to," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term "employee" means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term "individual" means all natural persons and all persons or entities acting on their behalf.