



## Way Too Long: Prolonged Detention in Arizona's Border Patrol Holding Cells, Government Records Show

Each year, the Border Patrol, a division of U.S. Customs and Border Protection (CBP), holds hundreds of thousands of people in detention facilities near the southern border that are extremely cold, frequently overcrowded, and routinely lacking in adequate food, water, medical care, and access to legal counsel. Although CBP intends these facilities only for short-term detention—meaning that a person should be held there less than 12 hours—data obtained by the American Immigration Council through the Freedom of Information Act (FOIA) shows that the Border Patrol regularly uses them to detain people for prolonged periods. Over 80 percent of people detained by the Border Patrol in its Tucson Sector are held for over 24 hours, meaning that men, women and children are forced to sleep on concrete floors and hard benches in holding cells that lack beds and are not equipped for sleeping.

### **Border Patrol Holding Cells: An Overview**

In Fiscal Year (FY) 2014, the Border Patrol apprehended 479,371 individuals along the U.S.-Mexico border.<sup>1</sup> Typically, when Border Patrol agents apprehend an individual near the southern border, they confine that individual in a holding cell while they complete his or her initial processing.<sup>2</sup> After processing, detained individuals are released, repatriated to their home countries via formal removal or informal return,<sup>3</sup> or transferred to the custody of another federal agency.<sup>4</sup>

Although there are no statutes or regulations specifically governing CBP short-term detention facilities, CBP has issued internal guidance regarding standards, specifications, and the operation of its facilities.<sup>5</sup> According to CBP guidance, holding cells generally are rectangular, made of concrete, and minimally furnished, and are neither designed nor equipped for overnight sleeping.<sup>6</sup> Indeed, CBP policies specify that there are “no beds” in holding cells, as they are “not designed for sleeping.”<sup>7</sup> As a Border Patrol spokesman said, “It is what it is. We’re not a long-term hold facility.”<sup>8</sup>

CBP guidance also sets limits on the maximum length of time that an individual should be held in a holding cell. According to a 2008 CBP memorandum, a detainee should not be held for more than 12 hours,” and should be moved “promptly.”<sup>9</sup> Nonetheless, CBP guidance also recognizes that some individuals will be held longer.<sup>10</sup>

In addition, CBP guidelines for holding cells proscribe that detainees will be provided snacks and meals,<sup>11</sup> will be given access to potable drinking water,<sup>12</sup> will have access to bathrooms and toilet items,<sup>13</sup> and will be given necessary medical attention.<sup>14</sup> Further, agents will make reasonable efforts to provide a shower for detainees held for more than 72 hours<sup>15</sup> and detention cells will be regularly cleaned and sanitized.<sup>16</sup>

## Reports of Poor Conditions in Border Patrol Holding Cells

Notwithstanding CBP standards regarding short-term detention, former detainees and others report poor conditions in CBP holding cells—conditions that violate CBP’s own policies and also are alleged to violate the U.S. Constitution.<sup>17</sup> Former detainees vividly describe extremely cold temperatures—so cold that both detainees and guards have come to call the cells “*hieleras*” (Spanish for “freezers” or “iceboxes”).<sup>18</sup> Detainees describe being forced to sit and sleep, sometimes for multiple nights, on cold, concrete floors and benches;<sup>19</sup> receiving little or no food or clean drinking water;<sup>20</sup> being packed into overcrowded and unsanitary holding cells without basic hygiene items;<sup>21</sup> denied adequate medical screening or care;<sup>22</sup> denied communication with family members, legal counsel, or consulates;<sup>23</sup> and coerced into signing deportation papers.<sup>24</sup> Despite numerous reports and articles exposing these conditions, they continue unabated.<sup>25</sup>

CBP’s own records, discussed below, show that thousands of people endure these inhumane detention conditions for prolonged periods of time. Numerous human rights reports, media accounts, and documented complaints of former detainees confirm this. They also indicate that prolonged detention has occurred for years. The Tucson-based humanitarian aid organization No More Deaths reported that—as far back as 2011—approximately 30 percent of more than 12,000 individuals interviewed were detained in short-term CBP facilities for more than 24 hours.<sup>26</sup> In 2013, Americans for Immigrant Justice identified individuals detained for as many as 13 days in Border Patrol holding cells.<sup>27</sup>

CBP Commissioner Gil Kerlikowske has acknowledged that individuals are detained overnight in these facilities, stating publicly that detainees should not have to sleep on a concrete floor.<sup>28</sup>

## Border Patrol’s Tucson Sector

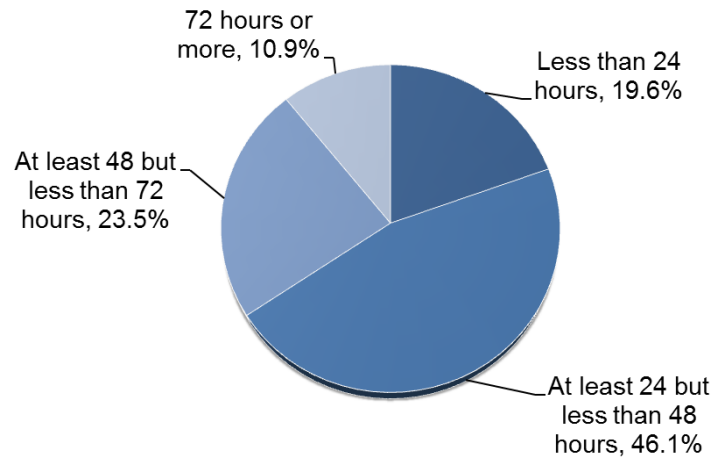
CBP maintains and operates multiple detention facilities in its Tucson Sector.<sup>29</sup> The Tucson Sector covers most of Arizona, from the New Mexico state line to the edge of Yuma County, AZ. The sector includes the Cochise, Pima, Pinal, and Santa Cruz counties of Arizona. The Border Patrol describes its Tucson Sector as “one of the busiest sectors in the country.”<sup>30</sup> In the past two fiscal years, the Border Patrol apprehended more than 200,000 people in the Tucson Sector alone.<sup>31</sup> Of the 479,371 Border Patrol apprehensions along the U.S.-Mexico border in Fiscal Year 2014, approximately 18 percent occurred in the Tucson Sector.<sup>32</sup>

## Government Data Shows Lengthy Detention in Tucson Sector Holding Cells

In response to a FOIA request by the American Immigration Council, CBP provided data regarding the number of individuals detained in the Tucson Sector between January 1, 2013 and June 30, 2013, and the length of time they were detained.<sup>33</sup> The data shows that CBP held 72,198 individuals during this six-month period and that the vast majority were detained for at least one night, with many detained for significantly longer periods of time.

CBP held these individuals in detention for an **average** of **49.9 hours**, with a **median** of **39.4 hours**.<sup>34</sup> This data shows that the average individual detained by Border Patrol agents was forced to sleep in facilities not intended for sleeping—that is, forced to sleep without a bed on concrete floors or hard benches. A shocking 58,083 individuals, or 80.4 percent of the total number detained during this period, were held in detention for 24 hours or more. Moreover, over one-third (34.4 percent, or 24,832) were held for 48 hours or more, and 10.9 percent (7,839) were held for 72 hours or more.

**Length of CBP Detention, Border Patrol Tucson Sector, January 1 - May 2, 2013**



Source: American Immigration Council--Data Obtained From U.S. Customs and Border Protection through Freedom of Information Act. Percentages may not total 100% because of rounding.

## Conclusion

This newly released data shows that the Border Patrol routinely forces its detainees to sleep in cells that lack beds or other reasonable sleeping accommodations, often for multiple nights. During this time, detainees are forced to endure severe conditions, such as extreme cold, overcrowding, and limited (or no) food and water. The Border Patrol routinely fails to follow even its own minimal detention standards in the Tucson Sector. Several detainees recently filed a class action lawsuit against CBP, claiming that the lack of beds and other terrible conditions in holding cells in the Tucson Sector violated their Constitutional rights.<sup>35</sup> Other reports indicate that the Border Patrol is holding individuals in substandard conditions for extended periods in other CBP sectors as well.<sup>36</sup>

Though CBP Commissioner Kerlikowske has publicly committed CBP to the “highest levels of transparency and accountability” to ensure the trust of the American people,<sup>37</sup> this data—and documented accounts of deplorable detention conditions—demonstrate that additional oversight of the Border Patrol is critical and agency accountability is long overdue.<sup>38</sup>

## Endnotes

1. United States Border Patrol, "Sector Profile - Fiscal Year 2014 (Oct. 1st through Sept. 30th)," <http://www.cbp.gov/sites/default/files/documents/USBP%20Stats%20FY2014%20sector%20profile.pdf>.
2. CBP defines a hold room, including a Border Patrol hold room, as "a secure facility for the detention of aliens encountered and processed by operational components of CBP." "CBP Security Policy and Procedures Handbook, HB1400-02B," at 492 (Aug. 13, 2009), <http://bit.ly/1wfidWl> (hereinafter "2009 CBP Handbook").
3. In FY 2013, of 420,789 individuals that CBP apprehended (414,397 along the southern border), CBP formally removed 107,770 and informally returned 143,079 (both at ports of entry and between them). Other individuals were likely transferred to another U.S. law-enforcement agency, as described in the main text. See U.S. Department of Homeland Security, "Immigration Enforcement Actions: 2013" (Sept. 2014), <http://www.dhs.gov/publication/immigration-enforcement-actions-2013>, at p. 3, 5, and 7. DHS defines an informal "return" as "the confirmed movement of an inadmissible or deportable alien out of the United States not based on an order of removal," while DHS defines a formal "removal" as the "*compulsory and* confirmed movement... based on an order of removal" (emphasis added), and clarifies that "An alien who is removed has administrative or criminal consequences placed on subsequent reentry." *Ibid.* at 2. The U.S. has employed formal removals increasingly in recent years relative to informal returns. Adam Goodman, "How the deportation numbers mislead," *Al Jazeera America* (Jan. 24, 2014), <http://america.aljazeera.com/opinions/2014/1/what-the-deportationnumbersdonattell.html>.
4. Individuals are transferred either to DHS's Immigration and Customs Enforcement (ICE) unit for civil removal proceedings (see U.S. Immigration and Customs Enforcement, "Enforcement and Removal Operations," <http://www.ice.gov/ero>); to the Department of Health and Human Services' (HHS's) Office of Refugee Resettlement (ORR) if the detainee is an unaccompanied child (8 U.S.C. § 1232(b)(3) (2013), <https://www.law.cornell.edu/uscode/text/8/1232>); or to the United States Marshals Service for possible federal criminal proceedings, such as prosecution for illegal re-entry under Operation Streamline. Operation Streamline "is a partnership program among CBP, U.S. Attorneys, and District Court judges in certain border districts to expedite criminal justice processing. The program permits groups of criminal defendants to have their cases heard at the same time ... and arranges in most cases for aliens facing felony charges for illegal re-entry to plead guilty to misdemeanor illegal entry charges." Congressional Research Service, "Border Security between Ports of Entry" (Dec. 18, 2014), <http://bit.ly/16vnqET>, at p. 8.
5. See U.S. Border Patrol Policy, Subject: Detention Standards, Reference No: 08-11267 (Jan. 31, 2008), available at [http://www.law.yale.edu/documents/pdf/conference/ILR13\\_GDUSBorderPatrol.pdf](http://www.law.yale.edu/documents/pdf/conference/ILR13_GDUSBorderPatrol.pdf), hereinafter "Jan. 31, 2008 CBP Memorandum"; see also "Defendants' Response In Opposition To Plaintiffs' Motion To Enforce Settlement Of Class Action, Flores v. Holder," No. 85-cv-4544, Dkt #121 (Feb. 27, 2015) (stating that "CBP sets and enforces clear standards for safe and sanitary conditions at the Border Patrol stations through facilities design guides and written policy guidance," and citing Jan. 31, 2008 CBP Memorandum), <http://www.slideshare.net/amjolaw/opposition-to-enforcement-of-action>, at p. 20-22,
6. See 2009 CBP Handbook at 492-95.
7. *Ibid.* at 494 ("No beds; hold rooms are not designed for sleeping").
8. Amy Bracken, "Immigrants, Legal Groups Allege Harsh Treatment at the Border," *PRI*, August 1, 2013, <http://bit.ly/1zdjAGL>.
9. Jan. 31, 2008 CBP Memorandum at ¶ 6.2.1 ("every effort will be made to promptly process, transfer, transport, remove, or release those in custody as appropriate and as operationally functional").
10. *Ibid.*, ¶ 6.2.4.1 ("In cases where the [Patrol Agent In Charge] has reason to believe that the [unaccompanied child's] detention will exceed 72 hours or exceeds 72 hours [the agent] will notify a sector staff officer immediately.") See also, *ibid.* at ¶ 6.2.4.2 ("Under extenuating circumstances, the maximum time allowed for placing [unaccompanied children] in an ORR-approved facility is five days. In cases where [children] are detained longer than five days, sector staff will immediately contact the [Detention and Removal Office] liaison officer [.]")
11. *Ibid.*, ¶ 6.8: "Detainees will be provided snacks and juice every four hours. Detainees whether in a hold room or not, will be provided a meal if detained more than 8 hours or if their detention is anticipated to exceed 8 hours. Regardless of the time in custody, juvenile will be provided with meal service, and at least every six hours thereafter; two of the three meals must be hot. Juveniles, small children, toddlers, babies, and pregnant women will have regular access to snacks, milk, or juice at all times."
12. *Ibid.*, ¶ 6.9 "Potable drinking water will be available to detainees. The supervisor is responsible for ensuring that drinking water is available."
13. *Ibid.*, ¶ 6.10 "Detainees using the restrooms will have access to toilet items, such a soap, toilet paper, and sanitary napkins. Families with small children will also have access to diapers and wipes."
14. *Ibid.*, ¶ 6.7.
15. *Ibid.*, ¶ 6.14 "Agents will make reasonable efforts to provide a shower to a detainee held for more than 72 hours. Detainees that are showering will be provided a clean towel and basic toiletries. Agents will make every reasonable effort to provide unaccompanied [ ] children who are held more than 48 hours with access to a shower and clean towel, clean clothing and basic hygiene articles..."
16. *Ibid.*, ¶ 6.16 "Supervisors will ensure that detention cells will be regularly cleaned and sanitized."
17. *Doe v. Johnson*, No. 15-00250, Complaint (D. Ariz. filed June 8, 2015), [http://www.legalactioncenter.org/sites/default/files/docs/lac/Complaint\\_15-](http://www.legalactioncenter.org/sites/default/files/docs/lac/Complaint_15-)

[00250.pdf](#), ¶¶ 1-12, 81-88, 89-93 (overcrowding), 94-97 (overnight detention), 98-107 (inability to sleep), 108-113 (cold temperatures), 114-126 (filthy cells and access to hygiene products), 127-135 (lack of access to medical treatment), 136-45 (inadequate food and water), 146-53 (lack of access to family and legal assistance). See also *Doe v. Johnson*, No. 15-00250, Motion for Class Certification (D. Ariz. filed June 8, 2015), [http://www.legalactioncenter.org/sites/default/files/docs/lac/Class%20certification%20motion\\_15-00250.pdf](http://www.legalactioncenter.org/sites/default/files/docs/lac/Class%20certification%20motion_15-00250.pdf).

18. Americans for Immigrant Justice, “The ‘Hieleras’: A Report on Human and Civil Rights Abuses Committed by Customs and Border Protection Agency” (2013) (hereinafter “The Hieleras”), <http://bit.ly/1AcleeW>; No More Deaths (NMD), “Culture of Cruelty: Abuse and Impunity In Short-term U.S. Border Patrol Custody,” at 21 (2011) (hereinafter “*Culture of Cruelty*”), <http://bit.ly/1HfBwlz> (noting reports of agents “turning on the air conditioning or placing fans outside the cells after receiving complaints about cold cells”); see also *Doe v. Johnson*, Complaint, note 17, ¶¶ 108-113.
19. See, e.g., Ed Pilkington, “It Was Cold, Very Cold’: Migrant Children Endure Border Patrol ‘Ice Boxes’,” *Guardian*, Jan. 26, 2015, <http://bit.ly/1H4xZzf> (“Tatiana was 16 at the time of her detention, a child herself. ‘The room was so cold you almost couldn’t breathe, it made your nose hurt,’ she said. There was no bedding, not even a blanket, and she slept fitfully with [her infant son] Rafael in her arms. After a few days the baby caught a cold and stopped eating solids, and for a couple of days he wouldn’t even take his mother’s milk. His weight fell from 23lbs when he arrived at the border station to 15lbs.”); Women’s Refugee Commission and Orrick Herrington & Sutcliffe LLP, “Halfway Home: Unaccompanied Children in Immigration Custody” (2009), <http://bit.ly/1hvPc8M>, see e.g., p. 11; see also *Doe v. Johnson*, Complaint, note 17, ¶¶ 94-107.
20. *The Hieleras*, note 13, at 3, 6; see also *Doe v. Johnson*, Complaint, note 17, ¶¶ 136-45.
21. *The Hieleras*, note 13, at 3 (“Detainees are not given even the most basic supplies, like toothbrushes, soap, combs or ample sanitary napkins, and are unable to shower or change clothing.”); see also *Doe v. Johnson*, Complaint, note 17, ¶¶ 114-126.
22. In 2011, No More Deaths reported that, following interviews with over 12,000 individuals released from Border Patrol custody, the majority of those who needed emergency medical care or medications were denied treatment. No More Deaths, *Culture of Cruelty*, note 13, at 20-21. In 2014, the ACLU submitted complaints to DHS on behalf of children in CBP detention whose medical care was ignored or overlooked, including several who required hospitalization. See American Civil Liberties Union, et al., “Letter regarding Systemic Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection” (2014), <http://bit.ly/XqyyOt>. See also Jessica Bakeman, “New York quietly expands role in caring for immigrant children,” *Capital New York*, Oct. 20, 2014, available at <http://bit.ly/1wn2zOU> (“When the children arrive at New York-area airports from the federal facilities, they often require extensive medical care for broken bones that healed improperly or illnesses such as appendicitis and pneumonia, nonprofit officials said . . . ‘Some of them have not eaten for long periods of time,’ said Henry Ackermann, chief development officer at [a children’s facility in New York] . . . ‘They come to us malnourished. They come to us sometimes with unset broken arms or legs, with bronchial or respiratory issues.’”); see also *Doe v. Johnson*, Complaint, note 17, ¶¶ 127-135.
23. No More Deaths, *Culture of Cruelty*, note 13, at 32-33 (reporting “Failure to inform people of their rights to legal counsel and the Mexican Consulate,” and detainees reporting denials of the ability to call a lawyer, family or their consulate); see also *Doe v. Johnson*, Complaint, note 17, ¶¶ 146-53.
24. CBP and Border Patrol’s widespread practice of coercing detained individuals into signing removal papers in southern California was the subject of the class action lawsuit *Lopez-Venegas v. Johnson*, No. 13-3972 (S.D. Cal. settlement agreement filed Aug. 18, 2014). In a recent settlement in that case, the agencies agreed to “supplement their existing procedures” in southern California with additional due process protections. Richard Marosi, “Feds to Allow Some Immigrant Deportees to Return Under New Settlement”, *LA Times*, Aug. 27, 2014, <http://lat.ms/1rBcv5K>.
25. In addition to the reports and articles cited throughout this fact sheet, there have been numerous other public news articles discussing the conditions in CBP detention. See, e.g., Ed Pilkington, “Freezing Cells and Sleep Deprivation: The Brutal Conditions Migrants Still Face After Capture,” *Guardian* (Dec. 12, 2014), <http://bit.ly/1uxlzVi>; Brianna Lee, “Child Migrants Report Freezing in ‘Icebox’ U.S. Border Patrol Centers,” *International Business Times* (Aug. 1, 2014), <http://bit.ly/1EKfQET>; John Burnett, “Amid Wave Of Child Immigrants, Reports of Abuse By Border Patrol”, *National Public Radio (NPR)* (June 24, 2014), <http://n.pr/1zTvivK>; Molly Redden, “Why Are Immigration Detention Facilities So Cold?,” *Mother Jones* (July 16, 2014), <http://bit.ly/1LRDPnB>; Courthouse News, “Border Patrol Lockups Called Inhumane” (May 22, 2014), <http://bit.ly/1yOs4oU>; Alfonso Chardy, “Immigrants Recount Horror of Being Detained in ‘Iceboxes’ Before Transfer to South Florida,” *Miami Herald* (Apr. 19, 2014), <http://hrld.us/18SxKj>; Peter O’Dowd and Rachael Bale, “Cold Storage: Migrants Refer to Border Cells as Freezers,” *Fronteras* (Nov. 18, 2013), <http://bit.ly/1zf1LYP>; Cindy Carcamo and Richard Simon, “Immigrant Groups Complain of ‘Icebox’ Detention Cells,” *L.A. Times* (Dec. 5, 2013), <http://lat.ms/1ugnSS8>; Brian Epstein, “Crossing the Line: Part II,” *PBS* (July 20, 2012), <http://to.pbs.org/1zUBp4s>; Brad Poole, “Report Alleges Border Patrol Abuse of Illegal Immigrants,” *Reuters* (Sept. 21, 2011), <http://reut.rs/1nznTrq>.
26. No More Deaths, *Culture of Cruelty*, note 13, at p. 14 (2011).
27. The “*Hieleras*,” note 13, at 3. See also Women’s Refugee Commission, *Halfway Home*, note 14, at 9 (“significant numbers of the children we interviewed at [children’s] facilities consistently reported being detained by ICE and Border Patrol for much longer than 72 hours.”)
28. NPR, Transcript: “Commissioner Kerlikowske’s Full Interview, July 18, 2014,” <http://n.pr/1kCh2wg>. In this July 2014 press interview regarding a complaint filed on behalf of 116 unaccompanied children who experienced similar degrading conditions in Border Patrol holding cells—including complaints of “being put in excessively uncomfortable rooms, being left with the lights on all night so that they couldn’t sleep, being denied medical care”—Kerlikowske stated that the complaints about the facility conditions were “absolutely spot on.”
29. Tucson Sector Border Patrol Stations are located in Bisbee, Casa Grande, Douglas, Nogales, Sonoita, Tucson, Why, Willcox, and Three Points”). See “Tucson Sector Arizona,” U.S. Customs and Border Protection website, <http://1.usa.gov/1vuFTNw>.

30. Ibid.
31. United States Border Patrol, *Sector Profile - Fiscal Year 2013 (Oct. 1 through Sept. 30)*, available at <http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%202013%20Profile.pdf>; and “Sector Profile - Fiscal Year 2014 (Oct. 1st through Sept. 30th),” note 1.
32. Ibid.
33. On November 15, 2013, the American Immigration Council requested information from CBP including “the number of individuals detained on a daily basis at each station in the Tucson Sector,” and “all documentation reflecting, reporting or stating the length of time individuals are detained by CBP in the Tucson Sector, and, if available, broken down by length of time detained at each station.” American Immigration Council, “Freedom of Information Act (FOIA) Request” (Nov. 15, 2013) (on file with AIC). CBP then provided data that encompassed 72,198 detainees held between January 1, 2013 at 1:00 am and June 30, 2013 at 2:30 pm.
34. The minimum number of hours was 1 and the maximum 2,544.5.
35. *Doe v. Johnson*, Complaint, note 17, 184-93 (deprivation of sleep), 194-98 (deprivation of hygienic and sanitary conditions), 199-205 (deprivation of adequate medical screening and care), 206-13 (deprivation of adequate food and water), 214-18 (deprivation of warmth).
36. See notes 18 through 28.
37. R. Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection, Before the House Appropriations Committee, Subcommittee On Homeland Security, “Hearing On Fiscal Year 2016 Budget Request” (April 23, 2015), <http://docs.house.gov/meetings/AP/AP15/20150423/103348/HHRG-114-AP15-Wstate-KerlikowskeR-20150423.pdf>, at p. 1. See also Guillermo Cantor, “Will CBP Actions Increase Transparency and Accountability?,” Immigration Impact (Sept. 24, 2014), at <http://immigrationimpact.com/2014/09/24/will-cbp-actions-increase-transparency-and-accountability/#sthash.vcRlltFz.dpuf>.
38. Garrett M. Graff, “The Green Monster,” Politico Magazine (November/December 2014), [http://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220.html#.VSM\\_zPzF-So](http://www.politico.com/magazine/story/2014/10/border-patrol-the-green-monster-112220.html#.VSM_zPzF-So). Although legislators have introduced legislation that would mandate standards for CBP detention, to date, this legislation has not been enacted. See Senate Amendment 1260 (submitted June 13, 2013) to S.744—Border Security, Economic Opportunity, and Immigration Modernization Act, 113<sup>th</sup> Cong., <http://1.usa.gov/1EQYdzU> (amendment introduced by Senator Barbara Boxer which would require improved CBP detention standards, including hold room capacity limits, adequate climate control, “sleeping arrangements” for detainees held overnight, and access to hygiene items and medical care); Protect Family Values at the Border Act, 113<sup>th</sup> Cong., H.R. 3130 (introduced September 2013), <http://1.usa.gov/1A6nt5r> (bill introduced by Representative Lucille Roybal-Allard which included reforms similar to the Boxer amendment); see also Press Release of U.S. Senator Barbara Boxer, “Boxer Introduces Bill to Ensure Humane Treatment at Customs and Border Protection Detention Facilities” (Dec. 12, 2013), <https://www.boxer.senate.gov/press/release/boxer-introduces-bill-to-ensure-humane-treatment-at-customs-and-border-protection-detention-facilities/>.