



**Submission of the Southern Border Communities Coalition (SBCC) and the Center
for Human Rights and Constitutional Law (CHRCL) to the United Nations
Universal Periodic Review of the United States of America**

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A. Introduction

The United States' federal border enforcement agency U.S. Customs and Border Protection ("CBP") has persistently violated international human rights law by using makeshift detention sites known as Open Air Detention Sites ("OADS") along the U.S.-Mexico border to detain migrants, including children, for indefinite periods of time while they await formal processing.ⁱ SBCC and CHRCL urge the Human Rights Council ("HRC") to recommend that the United States ensure its border authorities' laws, policies, and practices comply with relevant international law and standards, and call on the HRC to urge that all conditions of immigrant detention comply with international human rights law and to find that Open Air Detention, in any form or location, constitutes a violation of the United States' treaty obligations.

B. About SBCC and CHRCL

Formed in March 2011, the **Southern Border Communities Coalition (SBCC)** brings together organizations from across the southwest border region within the United States. SBCC is made up of more than 100 organizations and is governed by a Steering Committee composed of representatives from California, Arizona, New Mexico, and Texas. SBCC's primary mission is to ensure that border enforcement policies and practices are accountable and fair, respect human dignity and human rights, and prevent the loss of life in the region. <https://www.southernborder.org/>. Since 2023, SBCC has documented, provided aid at, and advocated against Open Air Detention Sites at the US-Mexico border.

Founded in 1980, the **Center for Human Rights and Constitutional Law (CHRCL)** is a legal NGO committed to protecting and advancing the rights of immigrants through legal action, advocacy, and education. Through impact litigation, we challenge unlawful immigration policies to drive systemic change and establish stronger legal protections for immigrants. At the local, state, and federal levels, we advocate for fair and humane policies that uphold the rights of all immigrants. CHRCL, alongside co-counsel, provides legal representation in *Flores v. Meese* (formerly *Flores v. Reno*), Case No. 2:85-cv-4544-DMG-AGR. This landmark case resulted in the 1997 *Flores* Settlement Agreement (FSA), which established national minimum standards for the treatment, placement, and release of detained immigrant children. As part of its ongoing efforts to ensure compliance with the FSA, *Flores* Counsel actively monitors the government's adherence to its terms. In 2024, CHRCL conducted multiple monitoring visits to OADS, leading *Flores* Counsel to successfully file for enforcement of the FSA with respect to OADS.

C. Background on CBP's Use of Open Air Detention

Since at least February 2023, CBP, the unified national border agency that oversees the U.S. Border Patrol, has operated at least a dozen dangerous outdoor detention sites in California. These sites have held vulnerable individuals – including children, women, the elderly, LGBTQ individuals, people with serious medical conditions, and those with disabilities – outside for

hours or even days, exposed to the elements without access to food, water, shelter, basic sanitation, or medical care.ⁱⁱ This inhumane treatment constitutes a clear violation of their fundamental human rights.

Despite the fact that migrants detained by U.S. authorities are legally entitled to food, water, shelter, sanitation, healthcare, and nondiscriminatory treatment under domestic and international law, CBP continues to deprive migrants arriving at the border of these basic protections. Volunteer organizations have sought to fill these gaps by providing humanitarian aid, but CBP exercises full control over when, where, and whether volunteers are permitted to provide essential aid, at times restricting volunteers' ability to provide basic necessities.

At OADS, CBP provides no shelter, leaving migrants fully exposed to the elements. Detained families are forced to sleep outside on dirt strewn with garbage, vulnerable to scorpions, snakes, and insects. Some migrants have been forced to take refuge in portable toilets or dumpsters to escape the harsh weather, including wind and rain.ⁱⁱⁱ While private humanitarian aid volunteers have provided assistance through the provision of tents and tarps, resources are always insufficient, and conditions remain both unsafe and unsanitary.^{iv}

Due to their desert locations, OADS experience extreme temperature fluctuations, with intense heat and dry conditions during the day and temperatures plummeting below freezing at night. While CBP occasionally provides mylar blankets, the detained migrants receive no other protection from the harsh elements. Desperate to stay warm, migrants at OADS are forced to burn brush and garbage for heat, including plants that are highly toxic when burned.^v Humanitarian volunteers witnessed these hazardous fires and reported that migrants, including those with asthma and other respiratory conditions, suffered worsened health symptoms due to prolonged exposure to toxic smoke at OADS.^{vi}

OADS lack permanent toilets or showers, and CBP fails to provide basic hygiene items to those detained.^{vii} While some portable toilets were once set up, most have since been removed and were never regularly serviced and are far too few to accommodate the number of people needing them, rendering them quickly unusable. In some cases, the conditions are so unsanitary that people are forced to relieve themselves outdoors. Although some OAD sites have had dumpsters, they too were rarely serviced and have mostly been removed, leaving the sites strewn with garbage.

CBP provides inadequate and inconsistent access to food and clean water. At times, CBP agents distribute only a single bottle of water and a granola bar or a few crackers per person, while on other occasions, they provide no food or water at all.^{viii} Before humanitarian volunteers stepped in to provide assistance, including food and water, detained migrants would "routinely go days without eating."^{ix} Moreover, CBP officers have actively sought to prevent migrants from receiving basic sustenance, even threatening to arrest humanitarian volunteers for distributing food and water to migrants at the Whiskey 8 OAD in September 2023.^x

CBP provides no first aid or medical care at OADS, despite many migrants arriving sick or injured, or becoming ill while detained there. Instead, CBP agents and migrants rely on humanitarian volunteers to administer basic first aid.^{xi} When migrants, including children, are too sick or injured to remain at OADS, volunteers have to plead with CBP for access to emergency medical services. Even when emergency care is requested, ambulances sometimes refuse to come to OADS due to their remote location and the rugged terrain. At least one site requires a CBP agent to open a gate and grant an ambulance entry.^{xii}

On February 21, 2024 at the Tower 177 OAD in Jacumba, California, CHRCL then-Interim Executive Director Sarah Kahn observed a child under the age of two, soaked and visibly shaking, whom she believed to be hypothermic, crying uncontrollably.^{xiii} Also at Tower 177, Kahn and a private medical volunteer checked on a woman in severe pain who was unable to stand or walk and was determined to be pre-hypothermic.^{xiv} In these instances and many others, no medical personnel were present to provide care, nor did CBP officers take any action to secure medical assistance or even basic warmth.

CBP agents have also actively obstructed access to medical care, including by barring medical volunteers from the sites. CBP undermines migrants' ability to receive necessary medical treatment by threatening those seeking medical assistance with the loss of their right to seek asylum. On February 3, 2024, Kahn observed a father trying to warm his infant over a dying fire.^{xv} Noticing the infant appeared "completely still with closed eyes and bright red cheeks," Kahn and other volunteers offered to help, asking if medical assistance was needed.^{xvi} However, the father and other migrants expressed fear that leaving the site would result in them being unable to request asylum.^{xvii} CBP agents have also accused migrants of faking illness in an attempt to leave the OADS.^{xviii}

D. Open Air Detention Violates International Human Rights Law

The United States' use of OADS demonstrates that longstanding cruel and inhumane treatment of migrants in the country is worsening. In November 2023, the U.N. Human Rights Committee concluded its review of the United States' compliance with its obligations under the International Covenant on Civil and Political Rights (ICCPR), which the US has ratified. The Committee expressed concern about the U.S. government's treatment of migrants, specifically "poor conditions of detention, including overcrowding and inadequate access to food, water and medical care," and stated that the United States "should take all measures necessary to enhance protection of migrants, refugees and asylum seekers" and ensure that immigration policy is aligned "with international human rights and humanitarian standards."^{xix} It further directed the U.S. to take measures to remedy the violations, as required under Article 2 of the ICCPR.

The U.S submitted its report to the U.N. Committee against Torture in September 2021 after failing to do so by its November 2018 deadline. Although the Committee has not yet issued its Concluding Observations, it is likely that when it does, it will identify a number of concerning

issues related to immigration detention conditions. The Committee against Torture has previously emphasized that Article 16 of the CAT requires that detention conditions be in line with internationally recognized standards, in particular the Nelson Mandela Rules. Moreover, the Special Rapporteur on Torture has previously expressed concern with the use of “refoulment in disguise” where immigration detention and its associated conditions are used to coerce migrants into “voluntarily” returning to their countries of origin.^{xx} The Special Rapporteur recognized that “grossly inadequate detention conditions can even amount to torture if they are intentionally imposed, encouraged or tolerated by states for reasons based on discrimination of any kind, including based on immigration status, or for the purposes of deterring, intimidating, or punishing migrants or their families, coercing them into withdrawing their requests for asylum, subsidiary protection or other stay, [or] agreeing to voluntary return.”^{xxi} The OADS exemplify these violations of the CAT.

Finally, in 2017, the Working Group on Arbitrary Detention, in its report on its 2016 visit to the U.S. recognized the criminalization of immigrants as well as the poor conditions in detention centers.^{xxii} In its conclusions, the WGAD acknowledged the large flow of asylum-seekers into the U.S. but said that the government “must respond in a way which upholds its international human rights obligations.”^{xxiii} In particular, the WGAD observed that “the current system of detaining immigrants and asylum seekers is, in many cases, punitive, unreasonably long, unnecessary ... carried out in degrading conditions, and a deterrent to legitimate asylum claims.”^{xxiv}

E. The United States Continues to Rely on Open Air Detention Despite Appeals to Domestic and International Law

On May 13, 2023, SBCC filed an administrative complaint with CBP’s parent agency, the Department of Homeland Security, via its Office for Civil Rights and Civil Liberties (CRCL)^{xxv}, documenting the border agency’s use of open-air detention sites between border walls in California.^{xxvi} In the complaint, SBCC documented Border Patrol agents’ failure to provide adequate water, food, shelter, sanitation, and medical assistance to asylum seekers and migrants at the sites. It also provided examples of Border Patrol agents verbally mistreating migrants.^{xxvii}

On September 28, 2023, CRCL sent SBCC a letter purporting to close the matter and failed to adequately address the dire situation at the sites, stating only that CRCL “raised concerns about conditions” with CBP and suggested that “CBP have humanitarian assistance plans in place to ensure these conditions do not recur.”^{xxviii} Conditions did not improve and outcomes worsened.

On December 11, 2023, SBCC and partners filed a renewed administrative complaint urging immediate corrective action^{xxix} after at least one individual died at an open-air detention site as CBP continued to subject migrants to detention there. In February 2024, counsel for the *Flores* Settlement Agreement (“FSA”)^{xxx} brought a motion to enforce the FSA as to the children held in OADS^{xxxi}, and since then, the numbers of migrants being detained at OADS for any substantial

period of time has decreased. However, repeated attempts to urge CBP to completely end the harmful use of OADS have ended in inaction, and it is expected that the regular use of OADS may return with any increase in border crossings and proposed policy changes.

F. The Second Trump Administration Plans to Expand Open Air Detention

On March 19, 2025, U.S. media reported that the Trump Administration is planning to expand open air detention along the border in New Mexico, Arizona, and California by using the U.S. military, which would “take control of a buffer zone along a sprawling stretch of the southern border and empower active-duty U.S. troops to temporarily hold migrants who cross into the United States.”^{xxxiii} The United States currently controls a narrow 60-foot stretch of land spanning from New Mexico to California known as the Roosevelt Reservation, that historically was managed by the land conservation agency, the Department of the Interior, but has also been used to facilitate border wall construction as well.

The plan “would turn the buffer zone into an expansive satellite military installation” across the southwest desert, “potentially allowing a greater portion of the Defense Department’s mammoth budget to pay for President Donald Trump’s border crackdown while creating new legal jeopardy” for migrants.^{xxxiii}

G. Suggested Question for the United States

We suggest the following question for the Human Rights Council to ask the United States:

Will the United States commit to disuse of Open Air Detention and ensure that border authorities’ laws, policies, and practices comply with relevant international law and standards, including Article 7 of the ICCPR and the Convention Against Torture?

How is the United States ensuring that all conditions of immigrant detention comply with international human rights law?

H. Recommendations

We respectfully call upon the Human Rights Council to recommend that the United States ensure that border authorities’ laws, policies, and practices comply with relevant international law and standards, including Article 7 of the ICCPR and the Convention Against Torture. We also call upon the Council to urge that all conditions of immigrant detention comply with international human rights law and find that Open Air Detention in any location or context violates the United States’ treaty obligations.

Thank you for your consideration of this submission. Please do not hesitate to contact us if you have questions or require additional information.

Respectfully submitted,

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ⁱ Memorandum in Support of Motion to Enforce Settlement re Open-Air Detention Sites at 2, *Flores v. Garland*, 2:85-cv-4544 (C.D. Cal. Feb. 29, 2024) (Dkt. 1392-1), https://www.centerforhumanrights.org/files/ugd/ba2119_000ea584289146e586aa57d411c413bd.pdf; Exhibit 2 (Declaration of Pedro Rios) in Support of Motion to Enforce Settlement re Open-Air Detention Sites, *Flores v. Garland*, 2:85-cv-4544 (C.D. Cal. Feb. 29, 2024) (Dkt. 1392-5), https://www.centerforhumanrights.org/files/ugd/ba2119_f602874a02604815b5ae72ce0447eda4.pdf.

ⁱⁱ See SBCC, Civil Rights Civil Liberties Complaint, RE: CBP Violations of Custody Standards and International Human Rights By Failing to Provide Water, Food, Shelter, Sanitation and Medical Assistance to Migrants Detained in Open-Air Corridor Between Border Wall Layers Near San Ysidro Port of Entry (May 13, 2023), https://assets.nationbuilder.com/alliancesandiego/pages/3468/attachments/original/1684125230/SBCC_Complaint_to_CRCL_5.13.23.pdf?1684125230

ⁱⁱⁱ See Motion to Enforce Settlement Re: Open Air Detention Sites, *Flores v. Garland*, Case No. 2:85-cv-04544-DMG, (C.D. Cal. Feb. 29, 2024), ECF No 1392-1, at 3 (“Motion to Enforce Settlement”); Exhibit 7, Declaration of Sarah Kahn at ¶¶ 101,105 *Flores v. Garland*, Case No. 2:85-cv-04544-DMG, (C.D. Cal. Feb. 29, 2024), ECF No 1392-10 (“Declaration of Sarah Kahn”) (On February 2, 2024, people at the Moon Valley OAD huddled inside a portable toilet, desperately seeking warmth and shelter from the extreme wind and freezing temperatures.).

^{iv} Motion to Enforce Settlement at 3.

^v Motion to Enforce Settlement at 3-4; Exhibit 4, Declaration of Erika Pinheiro at ¶ 46, *Flores v. Garland*, Case No. 2:85-cv-04544-DMG, (C.D. Cal. Feb. 29, 2024), ECF No 1392-7 (“Declaration of Erika Pinheiro”).

^{vi} Declaration of Erika Pinheiro at ¶ 46.

^{vii} Motion to Enforce Settlement at 4.

^{viii} Motion to Enforce at 5.

^{ix} Exhibit 11, Declaration of Lilian Serrano at ¶ 19, *Flores v. Garland*, Case No. 2:85-cv-04544-DMG, (C.D. Cal. Feb. 29, 2024), ECF No 1392-14 (“Declaration of Lilian Serrano”).

^x *Id.* at ¶ 20.

^{xi} Motion to Enforce at 6 (describing situations including where Border Patrol did not assist dying 13-year-old boy until volunteer doctor requested help and CBP agent asked volunteers to monitor boy with a high fever).

^{xii} *Id.*

^{xiii} Declaration of Sarah Kahn at ¶ 81.

^{xiv} *Id.* at ¶ 96.

^{xv} *Id.* at ¶ 67.

^{xvi} *Id.* at ¶ 68.

^{xvii} *Id.*

^{xviii} Motion to Enforce at 7.

^{xix} U.N. Human Rights Comm., Concluding Observations on the Fifth Periodic Report of the United States of America ¶¶ 54-55 (Nov. 3, 2023), U.N. Doc. CCPR/C/USA/CO/5.

^{xx} Nils Melzer (Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment), *Report of the Special Rapporteur to the Human Rights Council Thirty-Seventh Session*, ¶¶ 20, 43 U.N. Doc. A/HRC/37/50 (Nov. 28, 2018).

^{xxi} *Id.* at ¶ 19.

^{xxii} Working Grp. on Arbitrary Det., *Report of the Working Grp. on Arbitrary Det. on its Visit to the U.S.*, ¶ 34, U.N. Doc. A/HRC/36/37/Add.2 (Jul. 17, 2017).

^{xxiii} *Id.* at ¶ 86.

^{xxiv} *Id.* at ¶ 87.

^{xxv} On March 21, 2025, U.S. media reported that the Trump Administration was shutting down CRCL and two other organizations overseeing immigration matters. Zolan Kanno-Youngs, Hamed Aleaziz, Adam Goldman and Eileen Sullivan, New York Times, *Trump Shuts Down 3 Watchdog Agencies Overseeing Immigration Crackdown* (Mar. 25, 2025), <https://www.nytimes.com/2025/03/21/us/politics/trump-civil-rights-homeland-security-deportations.html>

^{xxvi} SBCC, Civil Rights and Civil Liberties Complaint (May 13, 2023), https://assets.nationbuilder.com/alliancesandiego/pages/3468/attachments/original/1684125230/SBCC_Complaint_to_CRCL_5.13.23.pdf?1684125230

^{xxvii} *Id.*

^{xxviii} U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties, Letter responding to Complaint, No. 006336-23-CBP (Sept. 28, 2023).

^{xxix} SBCC, Civil Rights Civil Liberties Complaint, CBP Violations of Custody Standards and Human Rights of Individuals Detained in Open-Air Detention Sites in the San Diego Sector Require Immediate Attention to Save Lives (Dec. 11, 2023),

https://assets.nationbuilder.com/alliancesandiego/pages/3500/attachments/original/1702482964/OADS_CRCL_Complaint_Final_Combined_for_Submission_2023.12.11.pdf

^{xxx} Under the 1997 *Flores* Settlement Agreement (“FSA”), the U.S. is legally obligated to protect children held in federal immigration custody. The FSA establishes national minimum standards for the treatment of detained immigrant children. See Stipulated Settlement Agreement, *Flores v. Meese*, 2:85-cv-4544 (C.D. Cal. 1997), https://www.centerforhumanrights.org/files/ugd/ba2119_d9558e4d3a0f473aa05cf2a481408693.pdf.

^{xxxi} Notice of Motion and Motion to Enforce Settlement re Open-Air Detention Sites, *Flores v. Garland*, 2:85-cv-4544 (C.D. Cal. Feb. 29, 2024) (Dkt. 1392), <https://youthlaw.org/sites/default/files/2024-12/Motion%20to%20Enforce%20Settlement%20re%20Open-Air%20Detention%20Sites.pdf>.

^{xxxii} Dan Lamothe, Washington Post, Trump team makes plans for military to hold migrants at border (Mar. 19, 2025), <https://www.washingtonpost.com/national-security/2025/03/19/trump-border-military-buffer-zone/>

^{xxxiii} *Id.*