

United States Senate

WASHINGTON, DC 20510

December 28, 2018

The Honorable Kirstjen Nielsen
Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Avenue N.W.
Washington, D.C 20528

Kevin K. McAleenan
Commissioner
U.S Customs and Border Protection
1300 Pennsylvania Avenue
Washington D.C. 20229

Mr. John V. Kelly
Senior Official Performing the Duties of the Inspector General
Office of Inspector General/MAIL STOP 0305
Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Nielsen, Commissioner McAleenan, and Mr. John Kelly,

We write to express our profound concern and sadness and to request an immediate investigation into the death of Felipe Alonzo-Gomez—the second child to die in Customs and Border Protection (CBP) custody this month. Eight-year-old Felipe died shortly before midnight on December 24th after suffering from flu-like symptoms. His death is unacceptable. We seek immediate answers from the Department of Homeland Security (DHS) and CBP about how they will ensure the health and safety of children at our borders, adequately train CBP agents and officers and allocate resources, and prevent such tragedies from happening in the future. We remain deeply concerned about the Administration's anti-immigrant policies for enforcement operations against individuals who pose no threat to our nation, as well as the policies and practices that may be causing asylum seekers to attempt a dangerous journey of crossing between ports of entry.

The following timeline of events was provided by CBP: Border Patrol agents apprehended Felipe and his father at around 1pm on December 18, 2018, approximately three miles west of the Paso Del Norte Port of Entry in El Paso, Texas. After 3.5 hours, CBP transferred them to the Paso Del Norte processing center, where they were held for nearly two days. CBP then transferred them to the El Paso Border Patrol Station, where they were held for 2.5 days, and then to the Alamogordo Border Patrol Station late in the evening of December 22nd. Notably, CBP failed to request an Immigration and Customs Enforcement (ICE) transfer placement for Felipe and his father until the morning of December 24th, nearly a week after their apprehension.

The same morning of December 24th, after Felipe was transferred to the Alamogordo Station, CBP agents there noticed that he was coughing and had glossy eyes and they transferred him to General Champion Regional Medical Center in Alamogordo, New Mexico. There, Felipe was diagnosed with the common cold, given Tylenol, registered a 103 degree fever, and prescribed amoxicillin. After the hospital discharged Felipe a few hours later, CBP agents took him to the Highway 70 checkpoint temporary holding facility, where there were no EMT trained staff on duty. At around 7:00pm, CBP agents there noted that Felipe appeared lethargic and had vomited. At around 10:00pm, they transported him back to the hospital but reported that he lost consciousness on the way. Hospital staff were unable to revive him and they pronounced him dead at 11:48 pm.

CBP temporary holding facilities are not designed for overnight custody yet CBP routinely uses these facilities in this way, and has been detaining people for prolonged periods of time because of this Administration's policies. CBP's own "National Standards on Transport, Escort, Detention, and Search" (TEDS) policy states that any detention should be "temporary" and "for the least amount of time necessary to complete processing, transfer, and/or repatriation."¹ It also establishes that "detainees should generally not be held for longer than 72 hours in CBP hold rooms or holding facilities." The *Flores Settlement*² also mandates release or transfer of any minor in custody within three to five days of apprehension. As in this case and countless others, the 72-hour limit appears to be meaningless.

Following Felipe's death, Secretary Nielsen announced that, "Moving forward, all children will receive a more thorough hands-on assessment at the earliest possible time post-apprehension — whether or not the accompanying adult has asked for one." It is well past the time for CBP to reevaluate its policies and procedures for the care and treatment of children. We expect a full detailed report on these secondary medical screening procedures.

We request complete responses to the following by January 15, 2019:

- Complete accounting and documentation from DHS, CBP, and the DHS Office of Inspector General about their investigations into Felipe's death and a follow-up briefing on their findings.
- A meeting with the CBP Commissioner as soon as possible to discuss:
 - The appropriateness of holding children in CBP temporary holding facilities, which were never designed to hold children;
 - CBP agent and officer training for medical evaluation and care, and child welfare;
 - Policies for language access for detainees; and
 - Policy changes that will prevent all such future tragedies and deaths.
- Complete accounting and documentation from CBP on specific training provided to its officers, agents, and contractors relating to processing, medical evaluation and care, language access, and safety of all migrants, adults and children, in custody.

¹ U.S. Customs and Border Protection, *National Standards on Transport, Escort, Detention, and Search*, October 2015, <https://www.cbp.gov/sites/default/files/assets/documents/2017-Sep/CBP%20TEDS%20Policy%20Oct2015.pdf>.

² *The Flores Settlement Agreement*, Case No. CV 85-4544-RJK(Px), available at <https://www.aila.org/File/Related/14111359b.pdf>.

- A complete accounting of medical personnel staffing at each CBP facility, including where Felipe and his father were detained.
- Complete accounting and explanation from CBP for:
 - CBP agents' decision to not immediately transport Felipe back to the hospital after he vomited at 7:00 pm on December 24th;
 - The 3.5 hours that Felipe and his father were detained at the point of apprehension before being transferred to the Paso Del Norte Port of Entry;
 - CBP agents' decision to transport Felipe and his father to the Alamogordo Border Patrol Station in the middle of the night; and
 - CBP's current compliance and plans for future compliance with the *Flores Settlement* and its TEDS standards.
- A complete and detailed report on DHS' new secondary medical screening procedures.
- A complete report for options CBP is considering to assist with surge medical assistance from interagency partners.

The timeline, action, and factors that led to Felipe's death are still developing, but the information that has become public so far is alarming and demands immediate attention and investigation. We look forward to your timely response to the following questions and notification that an investigation has been opened. Thank you for your prompt attention to this matter.

Sincerely,



Tom Udall
United States Senator



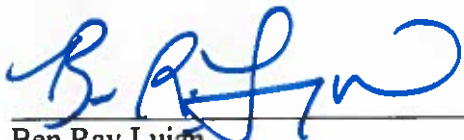
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United States Senator



Kamala D. Harris
United States Senator



Kirsten Gillibrand
United States Senator



Ben Ray Lujan
Assistant Speaker-designate