

# United States Senate

March 18, 2020

The Honorable Chad F. Wolf  
Acting Secretary  
Department of Homeland Security  
2801 Nebraska Avenue NW  
Washington, D.C. 20528

Matthew T. Albence  
Acting Director  
U.S. Immigration and Customs Enforcement  
500 12th Street, SW  
Washington, D.C. 20536

Mark A. Morgan  
Acting Commissioner  
Customs and Border Protection  
1300 Pennsylvania Avenue NW  
Washington, D.C. 20229

Dear Acting Secretary Wolf, Acting Director Albence, and Acting Commissioner Morgan:

We write to request information about the policies and procedures that the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP) have in place to prepare for and manage a potential spread of the novel coronavirus among detained individuals in DHS custody and staff at immigration detention facilities.

As of today, a new strain of coronavirus, which causes COVID-19, has infected at least 201,672 people, leading to at least 8,008 deaths worldwide.<sup>1</sup> Over six weeks ago, the U.S. Department of Health and Human Services (HHS) declared the novel coronavirus outbreak a public health emergency and, last week, President Trump declared a national emergency.<sup>2</sup> As of today, there are at least 5,881 confirmed cases and 107 deaths from coronavirus in the United States.<sup>3</sup>

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<sup>1</sup> Johns Hopkins University - Center for Systems Science and Engineering, “Coronavirus COVID-19 Global Cases by Johns Hopkins CSSE” (Mar. 18, 2020), *available at*

<https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6>.

<sup>2</sup> U.S. Department of Health and Human Services, Press Release, “Secretary Azar Declares Public Health Emergency for United States for 2019 Novel Coronavirus” (Jan. 31, 2020), *available at*

<https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>; The White House, “Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak” (Mar. 13, 2020), *available at*

<https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

<sup>3</sup> K.K. Rebecca Lai, Jin Wu, Richard Harris, Allison McCann, Keith Collins, Derek Watkins and Jugal K. Patel, The New York Times, “Coronavirus Map: Tracking the Spread of the Outbreak” (Mar. 18, 2020), *available at* <https://www.nytimes.com/interactive/2020/world/asia/china-wuhan-coronavirus-maps.html>.

There are currently nearly 39,000 individuals in U.S. immigration detention.<sup>4</sup> In May 2019, ICE had detained over 52,000 individuals and the agency has requested capacity to detain 60,000 for FY2021.<sup>5</sup> In addition to detained persons, staff, medical personnel, and attorneys move in and out of immigration detention facilities every day. As a result, the risk of the uncontained spread of coronavirus in immigration detention facilities endangers detained persons, staff, and the general public.

Detained persons are especially vulnerable to the spread of infection and ensuring sufficient care and monitoring is uniquely challenging. According to public health experts, detained individuals “are at special risk of infection, given their living situations,” and “may also be less able to participate in proactive measures to keep themselves safe, and infection control is challenging in these settings.”<sup>6</sup> In China, officials have confirmed the virus spreading at a rapid pace in Chinese prisons, with over 500 reported cases as February 20, 2020, including prison staff.<sup>7</sup> Dr. Homer Venters, the former chief medical officer of the New York City Department of Correction, warned that, because of the separation between prison health care services and the rest of our national health care system, “management of this pandemic will be harder and less effective for incarcerated people, their families and staff in these institutions.”<sup>8</sup>

In addition to the general challenges to providing sufficient medical care in prisons, we are concerned about DHS’ ability to sufficiently protect the health and safety of individuals in its custody. In September 2018, five cases of mumps were reported in U.S. immigration detention facilities and, by August 2019, that number had escalated to 900 cases.<sup>9</sup> On May 30, 2019, the DHS Office of Inspector General issued a report, concluding that “[w]e are concerned that overcrowding and prolonged detention represent an immediate risk to the health and safety not just of the detainees, but also DHS agents and officers. Border Patrol management on site said there is a high incidence of illness among their staff.”<sup>10</sup> Indeed, DHS and its component agencies have faced criticism for failing to provide basic hygiene to detained persons, including the opportunity to bathe, brush their teeth, and access soap.<sup>11</sup>

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<sup>4</sup> ICE, “Detention Statistics” (Mar. 7, 2020), *available at* <https://www.ice.gov/detention-management>.

<sup>5</sup> Hamed Aleaziz, BuzzFeed News, “More Than 52,000 People Are Now Being Detained By ICE, An Apparent All-Time High” (May 20, 2019), *available at* <https://www.buzzfeednews.com/article/hamedaleaziz/ice-detention-record-immigrants-border>.

<sup>6</sup> “Achieving A Fair and Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States” (Mar. 2, 2020), *available at* [https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final\\_covid-19\\_letter\\_from\\_public\\_health\\_and\\_legal\\_experts.pdf](https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final_covid-19_letter_from_public_health_and_legal_experts.pdf).

<sup>7</sup> Evelyn Cheng and Huileng Tan, CNBC, “China says more than 500 cases of the new coronavirus stemmed from prisons” (Feb. 20, 2020), *available at* <https://www.cnbc.com/2020/02/21/coronavirus-china-says-two-prisons-reported-nearly-250-cases.html>.

<sup>8</sup> Dr. Homer Venters, The Hill, “4 ways to protect our jails and prisons from coronavirus” (Feb. 29, 2020), *available at* <https://thehill.com/opinion/criminal-justice/485236-4-ways-to-protect-our-jails-and-prisons-from-coronavirus>.

<sup>9</sup> Amanda Holpuch, The Guardian, “Coronavirus inevitable in prison-like US immigration centers, doctors say” (Mar. 11, 2020), *available at*

<https://www.theguardian.com/world/2020/mar/11/coronavirus-outbreak-us-immigration-centers>.

<sup>10</sup> DHS, Office of Inspector General, OIG-19-46, “Management Alert - DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center (Redacted)” (May 30, 2019), *available at* <https://www.oig.dhs.gov/sites/default/files/assets/2019-05/OIG-19-46-May19.pdf>.

<sup>11</sup> Caitlin Dickerson, The New York Times, “‘There Is a Stench’: Soiled Clothes and No Baths for Migrant Children at a Texas Center” (June 21, 2019), *available at*

<https://www.nytimes.com/2019/06/21/us/migrant-children-border-soap.html>.

Given the spread of the virus in the U.S.—and the particular vulnerability of individuals in immigration detention and staff—it is critical that DHS, ICE, and CBP have plans to help prevent the spread of the novel coronavirus at DHS facilities and to protect detained persons, facility staff, and the general public. Although we understand that ICE has taken certain measures in light of the ongoing public health crisis,<sup>12</sup> including the indefinite suspension of visitation from non-legal services providers, it is imperative that DHS, ICE, and CBP have specific plans to manage any outbreak within the detained population and provide treatment to detained persons and staff who become infected and that Congress receives documentation of those plans. To inform Congress on the state of each of your agencies’ coronavirus preparedness, particularly in light of the reduced transparency that may result from ICE’s March 13 announcement suspending visitation, please respond to the following questions no later than March 25, 2020.

1. Given the specific vulnerability of individuals in confined detention facilities to the spread of infection during the ongoing pandemic, and to prevent the further spread of coronavirus particularly to vulnerable individuals:
  - a. What, if any, guidance has DHS, ICE, and CBP issued regarding the application of discretion, including the discretion to release individuals on recognizance, bond, parole, or via enrollment of individuals in alternatives to detention programs?<sup>13</sup>
  - b. What, if any, steps has ICE taken to ensure compliance by its field offices with ICE’s December 8, 2009 Directive regarding individualized parole determinations for arriving asylum seekers?<sup>14</sup>
2. What policies or procedures do DHS, ICE, and CBP have in place to prevent the spread of the novel coronavirus among individuals detained at DHS facilities to protect detained persons, facility staff, and their families? Please provide copies of any relevant policies and procedures.
  - a. A March 13, 2020 congressional notification from ICE stated that “applicable parts” of an existing plan were instituted in January 2020, that ICE epidemiologists have been “regularly updating infection prevention and control protocols, and issuing guidance,” that “additional guidance to address assumed risks and interim workplace controls” was issued, that testing “[g]uidance is updated and promulgated to field units on a real-time basis,” and that “ICE has instituted screening guidance for new arrival detainees.” Please include copies of all versions of guidance referenced in the March 13 ICE notification, subsequent notifications, and the “ICE Guidance on COVID-19” website in your response.
3. How do DHS, ICE, and CBP plan to identify individuals in DHS custody or staff at facilities who are at heightened risk of serious illness if they become infected with coronavirus, including pregnant women, and individuals with compromised immune systems and chronic illnesses?
4. How will DHS, ICE, and CBP ensure that individuals in segregation are properly monitored for signs of infection?
5. How will DHS, ICE, and CBP address staffing concerns if a significant number of staff become infected or quarantined and are unable to work?

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<sup>12</sup> ICE, “ICE Guidance on COVID-19” (Mar. 18, 2020), *available at* <https://www.ice.gov/covid19>.

<sup>13</sup> See 8 C.F.R. 212.5(b)(1)-(2) (providing for the release of people with “serious medical conditions in which continued detention would not be appropriate” and pregnant women).

<sup>14</sup> See ICE, Parole of Arriving Aliens Found To Have A Credible Fear of Persecution or Torture (Dec. 8, 2009), *available at* [https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole\\_of\\_arriving\\_alien\\_found\\_credible\\_fear.pdf](https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alien_found_credible_fear.pdf).

6. How will DHS, ICE, and CBP manage food service if detained persons or facility staff who work in facility kitchens become infected or quarantined and are unable to work?
7. What policies or procedures do DHS, ICE, and CBP have in place to track and collect data on the spread of coronavirus?
8. What steps have DHS, ICE, and CBP taken to ensure that they are integrated with the response plans in the communities and states in which federal facilities are located?
9. How do DHS, ICE, and CBP plan to monitor the outbreak of and response to coronavirus across each of their facilities?
10. Do DHS, ICE, and CBP have plans to rapidly expand the number of nurses and other medical professionals available to monitor cases and treat infected individuals in DHS custody?
11. How do DHS, ICE, and CBP plan to isolate individuals in DHS custody who are exposed to or become infected with the virus?
  - a. Where will they be housed?
  - b. How will DHS, ICE, and CBP ensure that these individuals are properly monitored and treated?
12. Has DHS, ICE, and CBP each appointed a point-person to manage DHS' response to the novel coronavirus within federal immigration detention facilities?
  - a. If so, who is the appointee?
  - b. If not, does each agency plan to do so?
13. How will DHS, ICE, and CBP communicate their coronavirus prevention and response plans with detained persons, staff, and their families, including appropriate provisions for making the information available in multiple languages?
14. Do DHS, ICE, and CBP have sufficient resources to effectively manage a potential coronavirus outbreak? If not, what additional resources are needed?
15. What standards or contractual requirements do DHS, ICE, and CBP have in place to ensure that facilities operated by private contractors are effectively managing the containment of the virus and the treatment of infected individuals in their custody? How do DHS, ICE, and CBP enforce these standards?

Thank you for your attention to this important matter. We look forward to your timely response.

Sincerely,

/s/ Kamala D. Harris  
United States Senator

/s/ Dianne Feinstein  
United States Senator

/s/ Richard J. Durbin  
United States Senator

/s/ Cory A. Booker  
United States Senator

/s/ Richard Blumenthal  
United States Senator

/s/ Christopher A. Coons  
United States Senator

/s/ Robert Menendez  
United States Senator

/s/ Edward J. Markey  
United States Senator

/s/ Amy Klobuchar  
United States Senator

/s/ Jack Reed  
United States Senator

/s/ Michael F. Bennet  
United States Senator

/s/ Ron Wyden  
United States Senator

/s/ Tim Kaine  
United States Senator

/s/ Bernard Sanders  
United States Senator

/s/ Catherine Cortez Masto  
United States Senator

/s/ Tina Smith  
United States Senator

/s/ Mark R. Warner  
United States Senator

/s/ Elizabeth Warren  
United States Senator

/s/ Mazie Hirono  
United States Senator

/s/ Sheldon Whitehouse  
United States Senator

/s/ Chris Van Hollen  
United States Senator

/s/ Tammy Duckworth  
United States Senator

/s/ Jacky Rosen  
United States Senator

/s/ Sherrod Brown  
United States Senator