



March 17, 2020

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U.S. Department of Homeland Security
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Dear Acting Commissioner Morgan and Chief Scott,

We are writing to urge you to immediately develop evidence-based and proactive plans for the prevention and management of COVID-19 for all people in U.S. Customs and Border Protection (CBP) custody, including port facilities and “short-term” Border Patrol holding cells. We would like to meet with you within the next two weeks (via teleconference) to discuss how CBP will protect the health of the people in your custody.

Detained people are highly vulnerable to outbreaks of contagious illnesses: often, they are held in close quarters and not provided with adequate healthcare. We are particularly concerned about the health and safety of people in CBP custody, given documented failures to provide timely and adequate medical care in the past.¹

CBP leadership (including Border Patrol Sector Chiefs) must immediately take preventative measures to protect those in custody, *and* immediately release any person with health conditions that increase their vulnerability to contagious illnesses. If you have not already, we ask

¹ See, e.g., Sheri Fink and Caitlin Dickerson, *Border Patrol Facilities Put Detainees With Medical Conditions at Risk*, N.Y. TIMES, Mar. 5, 2019, <https://www.nytimes.com/2019/03/05/us/border-patrol-deaths-migrant-children.html>; Wendy Fry, *CBP denies access to doctors seeking flu vaccinations for migrant children*, SAN DIEGO UNION TRIBUNE, Dec. 9, 2019, <https://www.sandiegouniontribune.com/news/border-baja-california/story/2019-12-09/doctors-flu-shots>.

that CBP leadership immediately connect with the public health departments in all jurisdictions where CBP (including the Border Patrol) currently houses detainees, and develop a plan to address COVID-19 throughout the CBP detention network.

While CBP's plan should be developed collaboratively with public health officials, some of the critical issues that must be addressed are:

- **Releasing detainees:** Consistent with public health officials' calls for social distancing to curtail and slow the spread of COVID-19, CBP should mitigate the risk of an outbreak in its facilities by reducing the overall population of people in CBP custody. This can be achieved through release of detainees to U.S. shelters or community sponsors. At the very least, CBP should immediately release from custody all vulnerable populations, including people at increased risk of the disease. CBP should also implement a policy whereby every person suspected or showing symptoms of COVID-19 should immediately be given a medical evaluation and hospitalized if necessary. If hospitalization is not required, the person should be released to self-isolate outside a detention facility, with access to a hospital or other medical facility should they require additional medical care.
- **Provision of hygiene supplies:** The most basic aspect of infection control is hygiene. There must be consistent and ongoing access to warm water and adequate hygiene supplies in all CBP detention facilities, both for cleaning the facilities and to ensure detained people and staff can regularly wash their hands. Detainees should also be provided with regular access to showers.
- **Routine screening and prompt testing of people in CBP custody:** The plan must include guidance, based on the best science available, on how and when to screen and test people in CBP detention facilities for the virus.
- **Housing and release of persons exposed to the virus:** The plan must describe how and where people in CBP custody will be housed if they are exposed to the virus, and a procedure for rapid transfer of such people from CBP custody to local hospitals. The plan should emphasize the principle of social distancing, but *exposure to the virus must not result in prolonged detention or solitary confinement.*
- **Treatment:** All those exhibiting symptoms should be immediately transferred from CBP custody to the care of local hospitals or medical facilities equipped to treat the disease and mitigate its spread. To the extent CBP provides detained people with any treatment, such treatment must be evidence-based, available immediately, and in compliance with scientifically-based public health protocols.
- **Vulnerable Populations:** The plan must provide for additional precautions for those detainees who are at high risk of serious illness if they are infected, such as pregnant women and people with chronic illnesses, compromised immune systems, or disabilities, and people whose housing placements restrict their access to medical care and limit CBP personnel's ability to observe them. As already noted, it is our recommendation that all vulnerable populations be released from CBP custody immediately, to prevent unnecessary exposure to the disease while in detention.

- **Data collection:** The collection of data regarding COVID-19 will be part of the public health response. As with any contagious disease, data collection is critical to understanding and fighting the virus. CBP must be part of this process: you must track the same public health information being recorded in our communities within CBP detention facilities (including Border Patrol holding cells), and make that information available to public health officials as needed. In no way, however, should the medical information of individual detainees be treated as less private or sensitive than comparable medical information or data of individuals who are not in detention.
- **Educating detainees and training facility staff:** Detainees and facility staff need to be informed about the virus and the measures they can take to minimize their risk of contracting or spreading the virus. This education must include instruction on proper handwashing, coughing into one's elbow, and social distancing to the extent possible. Facility staff must be provided with clear protocols and instructions on hygiene and other methods to reduce COVID-19 exposure, as well as on the requirements to screen, test and pursue medical transfer of individuals. Staff must be promptly trained on these protocols. Information about the spread of the virus, the risks associated with it, and prevention and treatment measures must be based on the best available science. Conditions in custody must ensure detained persons can follow such best practices. For example, detained persons require full access to soap and running water and should not be held in cells that prevent adequate social distancing. Overcrowding must be avoided.

This is an urgent matter. It is essential that CBP have an appropriate, evidence-based plan in place to prevent an outbreak (or minimize its impact, if an outbreak does occur). Not having a plan in place may cost lives.

Please let us know via written response to Astrid Dominguez, ADominguez@aclutx.org, and Andrea Flores, AFlores@aclu.org, by Friday, March 20, 2020 when you will be available to discuss your plans with us.

Sincerely,

ACLU Border Rights Center

ACLU of San Diego & Imperial Counties

ACLU of Arizona

ACLU of New Mexico

ACLU of Texas

ACLU National Political Advocacy Department

ACLU National Prison Project

cc: Department of Homeland Security Office for Civil Rights and Civil Liberties