

April 21, 2020

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, D.C. 20016

The Honorable Mark A. Morgan
Acting Commissioner
U.S. Customs and Border Protection
U.S. Department of Homeland Security
1300 Pennsylvania Avenue, NW
Washington, D.C. 20229



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Susan Herman
President

Anthony Romero
Executive Director

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National Political Director

Re: CBP civil interior enforcement, detention, and border wall construction during the COVID-19 pandemic

Dear Acting Secretary Wolf and Acting Commissioner Morgan,

On behalf of the American Civil Liberties Union (ACLU), and our more than eight million members, supporters, and activists, we write to ask you to **immediately and temporarily suspend all Customs and Border Protection (CBP) civil interior enforcement, release all people in CBP custody, and halt all border wall construction for the duration of the COVID-19 pandemic.** These steps are necessary to ensure that individuals are not deterred or blocked from accessing testing and care, to reduce the spread of COVID-19, and to save lives — protecting officers and agents, their communities, people in detention, and the general public. Based upon the rapid spread of — and increasing fatalities from — COVID-19, all government agencies, including CBP, must take vital steps to combat the pandemic.

1. Temporarily Suspend Civil Immigration Enforcement in the 100-Mile Border Zone

We are extremely concerned that civil immigration enforcement activities continue near the Southern and Northern borders. Border Patrol immigration checks, at interior checkpoints or elsewhere, could discourage border residents from traveling to access medical care or other essential services or to care for family members. As of April 14, 236 CBP employees have tested positive for COVID-19. Continued civil enforcement that necessitates close and prolonged contact between CBP staff and border residents creates a risk of transmission that is

not justified by any government interest. Finally, continued civil enforcement adds to the detained population at a time when public health experts warn that detention must be reduced to prevent the spread of COVID-19 in communities across the country.

CBP should issue a clear and unequivocal statement temporarily suspending civil interior enforcement activity during the COVID-19 pandemic so all people, regardless of immigration status, are able to access the care they need. Specifically, CBP must temporarily suspend all civil immigration enforcement activities: (1) at interior checkpoints, (2) via roving patrols, (3) in collaboration with state and local law enforcement, and (4) at sensitive locations, including all locations deemed essential services by local or state orders.

Public health experts have emphasized that our “individual and collective health” is undermined “if individuals do not feel safe to utilize care” due to immigration status.¹ Immigrants and communities of color already face disproportionate burdens in accessing health care.² Even though the CDC is unfortunately not collecting or publicly reporting the racial and ethnic demographics of those affected by COVID-19, racial and socio-economic disparities are already apparent.³ Border communities — largely communities of color,⁴ often rural,⁵ and



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¹ Gonsalves, Gregg et. al., 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), https://law.yale.edu/sites/default/files/area/center/ghjp/documents/march6_2020_final_covid-19_letter_from_public_health_and_legal_experts_2.pdf.

² Health Coverage of Immigrants, Kaiser Family Foundation (Mar. 18, 2020), <https://www.kff.org/disparities-policy/fact-sheet/health-coverage-of-immigrants/>.

³ Letter from Senator Warren, et. al., to Secretary U.S. Department of Health and Human Services Alex M. Azar II (Mar. 27, 2020), <https://pressley.house.gov/sites/pressley.house.gov/files/2020.03.27%20Letter%20to%20HHS%20re%20racial%20disparities%20in%20COVID%20response.pdf>; Max Fisher and Emma Bubola, “As Coronavirus Deepens Inequality, Inequality Worsens Its Spread.” *The New York Times*. (March 15, 2020) <https://www.nytimes.com/2020/03/15/world/europe/coronavirus-inequality.html>.

⁴ Anna Brown and Mark Hugo Lopez, “Mapping the Latino Population by State, County, and City.” *Pew Research Center*. (Aug. 29, 2013.) <https://www.pewresearch.org/hispanic/2013/08/29/mapping-the-latino-population-by-state-county-and-city/>.

⁵ The Chartis Center for Rural Health, “The Rural Health Safety Net Under Pressure: Rural Hospital Vulnerability.” (Feb. 2020) https://www.ivantageindex.com/wp-content/uploads/2020/02/CCRH_Vulnerability-Research_FiNAL-02.14.20.pdf.



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among the most impoverished in the country⁶ — are likely to face major health care access and economic challenges during the COVID-19 pandemic.⁷ CBP should not further obstruct border residents’ ability to access care and essential resources through their enforcement activities.

Continued interior enforcement also places CBP personnel at risk. Agents and officers cannot know if they were exposed to COVID-19 in the course of their enforcement activities. They are putting themselves and their families’ health at risk through unnecessary exposure. Following the announcement by DHS officials that protective gear in the national stockpile is nearly depleted, agency leadership has an obligation not to further diminish these supplies by continuing civil enforcement activity during the COVID-19 pandemic.⁸

a. Interior checkpoints are a particular barrier to essential services

CBP operates some 41 permanent interior checkpoints within the 100-mile border zone along the Southern border.⁹ Due to these checkpoints, hundreds of thousands of border residents cannot travel to access essential services without engaging with a Border Patrol agent at a checkpoint. Notably, Border Patrol agents routinely exceed the brief immigration inquiries the Supreme Court has authorized at checkpoints and regularly and unlawfully conduct investigations and searches that exceed their legal authority at such checkpoints.¹⁰

⁶ Zoraima Diaz-Pineda and Nick Mitchell-Bennett, “There Is an Emergency at the Border. It’s Poverty.” *Shelterforce*. (July 19, 2019)
<https://shelterforce.org/2019/07/19/there-is-an-emergency-at-the-border-its-poverty/>.

⁷ Miriam Jordan, “We’re Petrified’: Immigrants Afraid to Seek Medical Care for Coronavirus.” *The New York Times* (Mar. 18, 2020),
<https://www.nytimes.com/2020/03/18/us/coronavirus-immigrants.html?auth=login-email&login=email>.

⁸ Nick Miroff, “Protective gear in national stockpile is nearly depleted, DHS officials say.” *The Washington Post*. (Apr. 1 2020)
https://www.washingtonpost.com/national/coronavirus-protective-gear-stockpile-depleted/2020/04/01/44d6592a-741f-11ea-ae50-7148009252e3_story.html.

⁹ List on file with the ACLU. CBP claims authority to conduct suspicionless searches and seizures, as well as warrantless intrusions to property and operate fixed internal checkpoints, within 100 air miles of land or coastal borders. An area that encompasses roughly two-thirds the United States’ population. See ACLU, “The Constitution in the 100-Mile Border Zone,” <https://www.aclu.org/other/constitution-100-mile-border-zone>.

¹⁰ Patrick G. Eddington, “Introducing ‘Checkpoint: America.’” CATO Institute (April 11, 2018)
<https://www.cato.org/blog/introducing-checkpoint-america>.

Moreover, undocumented residents and mixed-status families in border communities have long been cut off from adequate medical care and other essential services by CBP interior checkpoints.¹¹ This is now a grave public health concern.¹² For example, Deming, New Mexico, lacks adequate medical services, but its residents can only travel to the larger city of Las Cruces by passing through a CBP checkpoint on I-10. None of the counties in South Texas' Rio Grande Valley have public hospitals that can serve the uninsured; the closest facilities are all on the other side of CBP checkpoints.¹³ Border communities are similarly cut off from other essential services and from family members in need that may lay beyond the checkpoints.



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b. Enforcement at sensitive locations is a particular barrier to essential services

CBP has previously faced criticism for deploying agents to sensitive locations, such as hospitals, and for pressuring doctors to discharge patients quickly for further detention.¹⁴ Recently, Arizona community members reported the presence of Border Patrol at hospitals providing free drive-thru COVID-19 testing.¹⁵ CBP's actions and failure to announce a halt to enforcement at sensitive locations unnecessarily exacerbates health risks for border residents. Public health experts explicitly state that "[h]ealthcare facilities must be immigration

¹¹ John Burnett, "Fearing Checkpoints, Undocumented Immigrants Cut Off From Medical Care." *National Public Radio*. (Nov. 3, 2017), <https://www.npr.org/2017/11/03/561883665/fearing-checkpoints-undocumented-immigrants-cut-off-from-medical-care>; Elena Mejia Lutz, "At Border Patrol Checkpoints, an Impossible Choice Between Health Care and Deportation." *Texas Observer*. (Feb. 13, 2018) <https://www.texasobserver.org/border-patrol-checkpoints-impossible-choice-health-care-deportation/>.

¹² Jeremy Schwartz and Lomi Kriel, "Along the border, the population is high risk for coronavirus, but testing is in short supply." *Texas Tribune*. (April 3, 2020) <https://www.texastribune.org/2020/04/03/texas-coronavirus-testing-short-supply-along-border/>.

¹³ Christopher Collins, "The 7 Most Pressing Issues Facing Rural Texas." *Texas Observer*. (Dec. 20, 2017) <https://www.texasobserver.org/7-pressing-issues-facing-rural-texas/>.

¹⁴ Sheri Fink, "Migrants in Custody at Hospitals Are Treated Like Felons, Doctors Say." *The New York Times*. (June 10, 2019) <https://www.nytimes.com/2019/06/10/us/border-migrants-medical-health-doctors.html>.

¹⁵ ACLU letter to Border Patrol Tucson Sector Chief, Roy D. Villareal Re: Border Patrol enforcement at sensitive locations in Arizona, https://www.acluaz.org/sites/default/files/2020.04.13_cbp_sensitive_location_letter.pdf

enforcement-free zones so that immigration status does not prevent a person from seeking care.”¹⁶

The agency has previously recognized that particular care is needed when conducting enforcement activities at or near certain sensitive locations including hospitals, schools, and places of worship.¹⁷ The agency issued a 2013 memo instructing officers to consult supervisors prior to taking action and consider alternative measures to avoid disturbances at such locations. If CBP activities are likely to lead to an apprehension near a sensitive location, written approval was required from Border Patrol leadership.¹⁸ As ICE has already done, CBP must immediately assure the public that they will not conduct any enforcement at doctors’ offices, clinics, hospitals, emergent or urgent care facilities, churches, schools, or any other location deemed essential by state or local orders.¹⁹



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2. Release All People in CBP Custody During the COVID-19 Pandemic

CBP facilities have long been plagued by overcrowding, inadequate medical care, and unsanitary conditions.²⁰ CBP, unlike ICE, has thus far not released any information about the prevalence of COVID-19 in its facilities, and CBP simply cannot keep people in its custody safe in this pandemic.²¹

Specifically, many CBP facilities — including almost all Border Patrol stations — do not provide detained people with access to sinks, soap, or

¹⁶ *Id.* at page 2.

¹⁷ CBP Memorandum regarding U.S. Customs and Border Protection Enforcement Actions at or Near Certain Community Locations. (Jan. 18, 2013), https://foiarr.cbp.gov/docs/Policies_and_Procedures/2013/826326181_1251/130221111_1_CBP_Enforcement_Actions_at_or_Near_Certain_Community_Locations_%7BSigned_M.pdf.

¹⁸ *Id.*

¹⁹ “CBP, What does the Department of Homeland Security mean by the term ‘sensitive location?’” (last visited on April 15, 2020), <https://www.cbp.gov/faqs/what-does-department-homeland-security-mean-term-%E2%80%9Csensitive-location%E2%80%9D>.

²⁰ See e.g. “New Report Calls for DHS to Address Conditions in Detention Centers Uncovered by ACLU,” ACLU of Texas (July 2, 2019), <https://www.aclutx.org/en/press-releases/new-report-calls-dhs-address-conditions-detention-centers-uncovered-aclu>; “CBP’s Long History of Mistreatment of Detained People,” ACLU of San Diego and Imperial Counties, <https://www.aclusandiego.org/legal/blp/cbp-mistreatment-of-detained-people/>.

²¹ CBP has indicated to journalists that it does not plan to provide data on COVID-19 among detainees. See Bob Moore News (April 1, 2020), <https://twitter.com/BobMooreNews/status/1245355631701344256?s=20>.

showers. They are often overcrowded. They generally lack full-time medical staff. People in these facilities endure freezing temperatures, spoiled or frozen food, insufficient potable water, overcrowding, and deprivation of medicine and basic hygiene supplies.

CBP should release all people in their custody to U.S. shelters, family members, or community sponsors as quickly as possible.

The agency lacks the expertise, equipment and training necessary to prevent or address a COVID-19 outbreak. Even with greater resourcing, CBP's track record of abuse and medical neglect make it impossible to trust continued detention of any number of individuals during this pandemic.



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3. Halt All Border Wall Construction During the COVID-19 Pandemic

On March 11, 2020, the same day the WHO declared a global pandemic, CBP announced plans to initiate construction along an additional 175 miles of the U.S.-Mexico border. **CBP should immediately halt all wall construction projects for the duration of the pandemic.**

The construction of border walls has long-lasting environmental impact and harms border communities. As we have long argued, such construction harms border communities by tearing apart delicate ecosystems, instilling fear, and breaking apart communities and families. In addition, the majority of these projects — financed with diverted funds from the Department of Defense and U.S. military — are an unlawful use of taxpayer money not appropriated by Congress for this purpose.

Furthermore, border communities have reason to be concerned that DHS has not implemented proper safety measures to protect workers and the surrounding border communities. In New Mexico, where public health orders currently limit gatherings to five people, a “man camp” was recently erected to house 40 workers coming to the rural area for wall construction.²² DHS must be held to account for the measures it has or has not taken to ensure the health and safety of workers and the communities they will live in. Members of Congress have also

²² Algernon D’Amassa, “Columbus residents, NM delegation question ‘man camp’ for border wall amid coronavirus fears,” *Las Cruces Sun-News*. (April 6, 2020), <https://www.lcsun-news.com/story/news/local/2020/04/06/new-mexico-coronavirus-columbus-residents-want-answers-border-wall-construction/5112717002/>.

called for construction to halt.²³ At a time when public resources are needed to combat the spread of COVID-19, continued construction on the border wall project is antithetical to the current public need.

Thank you for your consideration. If you have any questions, please contact Andrea Flores, ACLU Deputy Director of Policy, and Astrid Dominguez, ACLU Border Rights Center Director.

Sincerely,

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Deputy Director of Policy, Equality Division

Astrid Dominguez
Director
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Cc: Rodney S. Scott, Chief, U.S. Border Patrol

²³ See e.g., Letter from Members of Congress to DHS, Department of Defense and Department of Justice, calling for immediate halt to wall construction during the pandemic (April 8, 2020), https://grijalva.house.gov/uploads/DHS-DOJ-DOD_Covid19_BorderWall_4_8_2020.pdf.