

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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March 11, 2020

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
245 Murray Lane, S.W.
Washington, D.C. 20528

Dear Acting Secretary Wolf:

We are seeking information on your plan for preventing and responding to a potential outbreak of the COVID-19 virus in Immigration and Customs Enforcement (ICE) and Customs and Border Patrol (CBP) migrant detention facilities and in the broader immigrant community.

The Department of Homeland Security (DHS) has a well-documented history of failing to prevent the spread of disease among vulnerable populations in detention facilities. Between September 1, 2018, and August 22, 2019, there were almost 900 cases of mumps in ICE detainees across 57 facilities in 19 states. According to the Centers for Disease Control and Prevention (CDC), almost 84% of patients were exposed while in the custody of ICE or another U.S. agency, with only 5% being exposed prior to being held in custody.¹

Other diseases, such as chicken pox and the flu, have also spread in ICE and CBP facilities.²

The Oversight Committee wrote to you in December about the Department's handling of the flu in CBP facilities.³ Your continued failure to respond to that letter raises further concerns about the Department's ability to address new public health issues in its facilities.

¹ *Almost 900 Migrants Were Exposed to a Mumps Outbreak While in Detention, CDC Says*, NBC News (Aug. 30, 2010) (online at www.nbcnews.com/news/latino/almost-900-migrants-were-exposed-mumps-outbreak-while-detention-cdc-n1048261).

² *5,200 People in ICE Custody Quarantined for Exposure to Mumps or Chicken Pox*, CNN (June 14, 2019) (online at www.cnn.com/2019/06/14/politics/mumps-chicken-pox-quarantine-ice/index.html); *CDC Recommended that Migrants Receive Flu Vaccine, But CBP Rejected the Idea*, Washington Post (Nov. 25, 2019) (online at www.washingtonpost.com/immigration/cdc-recommended-that-migrants-receive-flu-vaccine-but-cbp-rejected-the-idea/2019/11/25/8aba198e-0fb8-11ea-b0fc-62cc38411ebb_story.html).

³ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Acting Secretary Chad F. Wolf, Department of Homeland Security (Dec. 23, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-12-23.CBM%20to%20Wolf%20re%20Death%20in%20Custody.pdf>).

DHS detention facilities may be especially vulnerable to the spread of coronavirus because of the Administration's excessive use of detention. This Administration's immigration policies have grown the daily detainee population by more than 40%, resulting in severe overcrowding at detention facilities.⁴ Overcrowding creates dangerous conditions that increase the likelihood that disease will spread and make it more difficult to effectively quarantine contagious detainees.⁵

The CDC believes that widespread transmission of coronavirus is likely to occur in the United States, affecting "critical infrastructure, such as law enforcement, emergency medical services, and [the] transportation industry."⁶ The World Health Organization stated that coronavirus spreads between people in close contact, through respiratory droplets when an infected person coughs or sneezes, and possibly by touching infected surfaces.⁷

The Administration must ensure that the conditions of detainees in DHS facilities are not compromised by haphazard, ineffective, or punitive quarantine policies. During a prior quarantine for a mumps outbreak at an ICE facility, hundreds of detainees reportedly were placed on lockdown and deprived of access to their lawyers even though their immigration court cases were not stayed. At least one quarantined detainee was ordered deported after facing an immigration judge without access to counsel.⁸

We also call on you to adapt DHS policies to support the government-wide effort to prevent and contain the spread of the coronavirus within the United States. Protecting the public health requires that both documented and undocumented persons be able to seek out testing and receive treatment. As COVID-19 begins to spread in the United States, DHS must remove barriers preventing immigrants from receiving the care they need.

The Administration's public charge rule, which took effect on February 24, 2020, threatens to punish immigrants for seeking care related to coronavirus if they use any public benefits. DHS recently argued in court that immigrants concerned about coronavirus should seek

⁴ *Detained: How the U.S. Built the World's Largest Immigrant Detention System*, The Guardian (Sept. 24, 2019) (online at www.theguardian.com/us-news/2019/sep/24/detained-us-largest-immigrant-detention-trump).

⁵ *The U.S. Won't Provide Flu Vaccines to Migrant Families at Border Detention Camps*, CNBC (Aug. 20, 2019) (online at www.cnn.com/2019/08/20/the-us-wont-vaccinate-migrant-children-against-the-flu-at-border-camps.html); *Government Watchdog Find 'Dangerous Overcrowding' at U.S. Border Facility*, Reuters (May 31, 2019) (online at www.reuters.com/article/us-usa-immigration-border/government-watchdog-finds-dangerous-overcrowding-at-us-border-facility-idUSKCN1T12GI).

⁶ Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19) Situation Summary* (Feb. 29, 2020) (online at www.cdc.gov/coronavirus/2019-ncov/summary.html).

⁷ *What We Know About Coronavirus, From Symptoms to Who is at Risk*, Wall Street Journal (Mar. 3, 2020) (online at www.wsj.com/articles/what-we-know-about-the-wuhan-virus-11579716128).

⁸ *Mumps, Other Outbreaks Force U.S. Detention Centers to Quarantine Over 2,000 Migrants*, Reuters (Mar. 10, 2019) (online at www.reuters.com/article/us-usa-immigration-outbreaks/mumps-other-outbreaks-force-us-detention-centers-to-quarantine-over-2000-migrants-idUSKBN1QR0EW).

private care and pay for it themselves rather than rely on public benefits.⁹ Any application of the public charge rule that discourages people from getting tested or treated for COVID-19 poses a serious and direct threat to everyone's health and threatens to further spread the disease within this country. DHS must make clear that the public charge rule will not apply to anyone relying on public benefits to seek testing or treatment for COVID-19.

For all these reasons, we request that DHS provide information and documents sufficient to show the following:

1. Whether DHS is testing detainees for COVID-19, and, if so:
 - a. what testing protocol DHS is using;
 - b. when the testing began;
 - c. how many detainees have been tested and in which facilities; and
 - d. how many of the tested detainees in each facility tested positive for the virus how many tested negative, and how many had test results that were inconclusive;
2. How DHS will house or quarantine presumptive or confirmed cases of COVID-19 to protect both high risk and otherwise healthy detainees and staff from contracting the virus;
3. What medical care DHS will provide to detainees with presumptive or confirmed cases of COVID-19;
4. How DHS will collect data and keep records on detainees with presumptive or confirmed cases of diagnosed COVID-19;
5. What steps DHS will take to reduce overcrowding in DHS facilities and free up space for effective quarantines of sick detainees, including by reducing the number of migrants detained unnecessarily;
6. How DHS will ensure that detainees will be able to receive meaningful access to their attorneys even if the detainee or the facility is subject to quarantine procedures or take other steps to ensure their cases are not prejudiced by limited access to their attorneys should this occur;
7. Whether and how DHS is coordinating with state and local governments on COVID-19 matters in areas where detention facilities are located;

⁹ *Days After New Immigration Restrictions Take Effect, Federal Judges in Chicago Grill Trump Administration Lawyer on So-Called Public Charge Rule*, Chicago Tribune (Feb. 26, 2020) (online at www.chicagotribune.com/news/ct-immigration-wealth-test-public-charge-illinois-court-20200227-xood6pswtzbo3kugsd6spmpee-story.html).

8. How DHS will address the potential spread of coronavirus in its detention facilities; and
9. What steps DHS will take to remove barriers to immigrants receiving testing or treatment for COVID-19, including whether DHS will suspend the public charge rule for immigrants using public benefits to seek testing or treatment for COVID-19.

Please provide the requested written information by March 18, 2020, as well as a briefing to Committee staff by March 18, 2020. The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X.

An attachment to this letter provides additional instructions for responding to the Committee’s request. If you have any questions regarding this request, please contact Committee staff at (202)-225-5051.

Sincerely,



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Jamie Raskin
Chairman
Subcommittee on Civil Rights and Civil Liberties

Enclosure

cc: The Honorable Jim Jordan, Ranking Member
Committee on Oversight and reform

The Honorable Chip Roy, Ranking Member
Subcommittee on Civil Rights and Civil Liberties

Responding to Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committees.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committees' preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committees should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committees should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committees' letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee on Oversight and Reform, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building. When documents are produced to the Committee on Financial Services, production sets shall be delivered to the Majority Staff in Room 2129 of the Rayburn House Office Building and the Minority Staff in Room 4340 of the O'Neill House Office Building. When documents are produced to the Permanent Select Committee on Intelligence, production sets shall be delivered to Majority and Minority Staff in Room HVC-304 of the Capital Visitor Center.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a

part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.