



March 27, 2020

VIA ELECTRONIC MAIL

Joseph Cuffari
Inspector General
U.S. Department of Homeland Security
254 Murray Lane SW
Washington, D.C. 20528
JointIntake@dhs.gov

Re: ***Border Patrol Station 1 in El Paso, Texas: Failure to Adequately Respond to COVID-19 Pandemic***

Dear Mr. Cuffari,

The American Civil Liberties Union of Texas (ACLU of Texas), the ACLU Border Rights Center, and Las Americas Immigrant Advocacy Center submit this administrative complaint to the Department of Homeland Security's Office of Inspector General (DHS OIG) regarding Customs and Border Protection's (CBP) failure to adequately respond to the public health emergency posed by the COVID-19 global pandemic at Border Patrol Station 1 in El Paso, Texas. The ACLU of Texas, the ACLU Border Rights Center, and Las Americas request that DHS OIG take immediate steps to investigate and issue a management alert with recommendations based on the information contained in this complaint. This complaint is based on interviews with detained persons conducted by Las Americas, which provides direct representation to individuals detained by CBP.

Such an investigation is urgently necessary. Border Patrol, a sub-component of CBP, has failed to take even the most basic actions to prevent an outbreak of COVID-19 or mitigate the risk of harm to migrants, particularly the most vulnerable, from such an outbreak at its Station 1 facility. Border Patrol must act promptly to release all individuals detained in its custody at Station 1. In addition, for as long as any individuals remain detained, Border Patrol must take appropriate actions to provide for basic hygiene and safety at Station 1 in light of the danger that the COVID-19 pandemic presents to detained individuals' health and safety. Its failure to take these steps compels immediate action by OIG.

Specifically, notwithstanding the threat from COVID-19, Border Patrol has in its El Paso Station 1 facility:

- Held over 150 persons in a single room with persons exhibiting flu-like symptoms;
- Failed to provide information to detained individuals on the COVID-19 pandemic, such as recommended Center for Disease Control and Prevention (CDC) guidelines for preventing transmission of the virus;¹
- Held people in cells where they are forced to be in close contact with each other, including by sleeping approximately three feet apart;
- Failed to provide detained individuals with sufficient soap. For example, migrants reported that in one bathroom, only one of six sinks had a soap dispenser that in fact contained soap;
- Provided only a single square of toilet paper per use;
- Denied detained individuals access to hand sanitizer;
- Failed to provide adequate medical screening of detained individuals not exhibiting symptoms of illness; and
- Failed to ensure uniform access to personal protective equipment for everyone in the detention facility.

The COVID-19 public health emergency presents a particularly “grave risk of severe illness and death” to people in immigration detention facilities like Border Patrol Station 1.² As the Centers for Disease Control and Prevention has recognized, incarceration and detention conditions present “unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors.”³ These facilities are “congregate environments”—that is, places where people live, eat, and sleep in close proximity.⁴ Such congregate environments present a heightened risk for COVID-19 transmission, as shown by the virus’s rapid spread on cruise ships and in nursing homes.⁵ The extremely high rate of transmission at the Rikers Island jail demonstrates the particular risk to people in detention facilities.⁶

This is especially true in CBP detention facilities, where substandard hygiene conditions are well documented.⁷ Moreover, there is essentially no way for detained

¹ CDC, “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,” March 23, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

² *Dawson v. Asher*, 2:20-cv-00409 (W.D. Wash.), Declaration of Dr. Jonathan Louis Golob, ¶ 14, available at https://www.aclu.org/sites/default/files/field_document/5_declaration_of_dr_jonathan_louis_golob.pdf.

³ CDC, available at “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,” *supra* n. 1.

⁴ *Dawson*, Declaration of Dr. Marc Stern, ¶ 7, available at https://www.aclu.org/sites/default/files/field_document/6_declaration_of_dr_marc_stern.pdf.

⁵ *Id.*; *Dawson*, Declaration of Dr. Robert B. Greifinger, ¶ 8, available at https://www.aclu.org/sites/default/files/field_document/4_declaration_of_robert_b_greifinger_1.pdf.

⁶ Nick Pinto, *If Coronavirus Deaths Start Piling Up in Rikers Island Jails, We’ll Know Who to Blame*, The Intercept, March 23, 2020, available at <https://theintercept.com/2020/03/23/coronavirus-rikers-jail-de-blasio-cuomo/>.

⁷ DHS Office of Inspector General, *Management Alert – DHS Needs to Address Dangerous Overcrowding Among Single Adults at El Paso Del Norte Processing Center (Redacted)*, OIG-19-46, (May 30, 2019) 3, available at

individuals to engage in the social distancing necessary to slow the virus's spread. In fact, detained individuals are unable to exercise the most basic of recommendations issued by the CDC, such as keeping a distance of 6 feet from others and regular handwashing, to protect themselves from catching and spreading the virus.⁸ By the time COVID-19 cases are detected, CBP's poor track record in providing medical care, combined with the factors that increase risk of transmission, threatens both rapid spread and severe harm.⁹ These conditions create what has been described as "a COVID-19 timebomb."¹⁰

DHS's own detention standards governing Border Patrol Station 1, the National Standards on Transport, Escort, Detention, and Search (TEDS), require that CBP provide appropriate medical care to everyone in its custody. The TEDS state that "[t]he safety of CBP employees, detainees, and the public is paramount during all aspects of CBP operations."¹¹ CBP staff are required to take "appropriate protective precautions" if they suspect "a detainee has an observed or reported medical condition, such as a contagious disease."¹² If CBP staff "suspects or a detainee reports that a detainee may have a contagious disease, the detainee should be separated whenever operationally feasible, and all other appropriate precautions must be taken and required notifications made, according to the operational office's policies and procedures."¹³ In light of the "grave risk" posed by this global pandemic,¹⁴ these standards compel urgent action to ensure the health of those currently detained.

Due to the threat posed by COVID-19, CBP must release all individuals detained in its custody at Border Patrol Station 1. In addition, for as long as any individuals remain detained, CBP must significantly improve medical care, hygiene, and other efforts to mitigate the risk posed by COVID-19.¹⁵ These actions, in compliance with the agency's own detention standards, are necessary to protect health and safety—and ultimately to save lives.

<https://www.oig.dhs.gov/sites/default/files/assets/2019-05/OIG-19-46-May19.pdf>; Human Rights Watch, *In the Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells* (Feb. 2018), available at <https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells>.

⁸ CDC, "How to Protect Yourself," March 25, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>.

⁹ Sheri Fink & Caitlin Dickerson, *Border Patrol Facilities Put Detainees With Medical Conditions at Risk*, N.Y. Times, March 5, 2019 (describing "signs of entrenched problems that have repeatedly put detainees with medical conditions at risk"), available at <https://www.nytimes.com/2019/03/05/us/border-patrol-deaths-migrant-children.html>; ACLU Border Litigation Project et al., *Neglect & Abuse of Unaccompanied Children by U.S. Customs and Border Protection* (2018) 21-23, available at <https://www.aclusandiego.org/civil-rights-civil-liberties/>; ACLU San Diego & ACLU Border Rights Center, *Re: U.S. Customs and Border Protection and Border Patrol's Abuse and Mistreatment of Detained Sick Children* (Feb. 18, 2020), available at <https://www.aclusandiego.org/wp-content/uploads/2020/02/2020-02-18-OIG-Complaint-2-FINAL.pdf>.

¹⁰ Judy Stone, *Immigrant Detainees Are Sitting On A COVID-19 Time Bomb - First Infection Reported*, Forbes, March 24, 2020, available at <https://www.forbes.com/sites/judystone/2020/03/24/immigrant-detainees-are-sitting-on-a-covid-19-time-bombfirst-infection-reported/#6878d1043af2>.

¹¹ TEDS 1.1, available at <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf>.

¹² TEDS 2.8.

¹³ TEDS 4.10.

¹⁴ *Dawson*, Declaration of Dr. Jonathan Louis Golob, *supra* n. 2.

¹⁵ The CDC recognizes that "[c]onsistent application of specific preparation, prevention, and management measures can help reduce the risk of transmission and severe disease from COVID-19." CDC, "How to Protect Yourself," *supra* n. 7.

CBP has not taken such steps. This inexcusable lack of action is currently endangering the lives of all those detained at Border Patrol Station 1, the agents, other staff, and the surrounding community. The ACLU has previously detailed steps CBP should take to protect detained populations at all its facilities.¹⁶ Here, we specifically ask that DHS OIG immediately investigate these conditions and issue recommendations to ensure that CBP takes the following actions at Border Patrol Station 1, including the following actions to mitigate the risk of COVID-19 for as long as any individuals remain detained:

- Immediately release all individuals detained in its custody.
- Provide sufficient soap in amounts reflective of the increased need to continuously wash one's hands pursuant to World Health Organization guidelines, and ensure that the soap and clean, warm water are available at times and locations where they are especially needed, including before and after meals and at all sinks near toilets. Migrants should also be provided with sufficient amounts of other hygienic materials and regular access to showers. Facilities should be cleaned frequently.
- Provide immediate medical evaluation and hospitalization, if needed, to any detained individual exhibiting symptoms of COVID-19—including fever, coughing, or shortness of breath. 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.
- Ensure all conditions in custody, including any sleeping arrangements, provide for sufficient social distancing at all times, for as long as individuals remain detained.
- Provide facility staff with the appropriate personal protective equipment, including gloves and masks, relevant to the contact they will have with confirmed or suspected COVID-19 cases. 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.
- Immediately begin educating those detained on the existence of a global COVID-19 pandemic; the steps that the facility is taking to mitigate the spread of the disease; the ways in which detainees can communicate with attorneys and loved ones during this time of uncertainty and anxiety; and the steps that individuals can take while detained to attempt to mitigate COVID-19 spread and to access medical care. All protocols and trainings to prevent the spread of the virus, the risks associated with it, and prevention and treatment measures must be based on the best available science.

¹⁶ AM. CIVIL LIBERTIES UNION, LETTER TO CBP RE: COVID-19 PREVENTION AND MANAGEMENT (March 2020), available at <https://www.aclu.org/letter/aclu-letter-cbp-and-border-patrol-detention-and-covid-19>. It is the ACLU's position that these facilities are categorically unsuitable and inappropriate for any period of detention beyond the time required for initial processing, which should in no case exceed 12 hours.

The conditions described above would be inadequate and inhumane under any normal circumstance, but during this global pandemic, they are inexcusable. Every day that these conditions persist increases the risk of a full-blown COVID-19 outbreak within Border Patrol Station 1. Accordingly, we request that DHS OIG take immediate action to investigate these conditions and ensure that CBP acts to protect the health and safety of those currently detained, through release and through steps to mitigate risk while individuals remain detained, in order to prevent severe illness and death from a COVID-19 outbreak at Border Patrol Station 1.

Sincerely,

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