

United States Senate

April 1, 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 follow-up on a letter from 24 Senators to the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP) dated March 18, 2020, to which you have not yet responded.

Since that March 18, 2020 letter, individuals infected by a new strain of coronavirus, which causes COVID-19, have risen from 201,672 people to 874,081 and deaths have risen from 8,008 to 43,291 worldwide.¹ Individuals infected in the United States have risen from 5,881 to 188,247 confirmed cases—the highest number of all countries—and deaths have risen from 107 to 3,921.² Since March 18, 2020, ICE has confirmed that at least four detained persons and five ICE employees and personnel staffing detention facilities have tested positive for COVID-19.

We are deeply concerned about the health and safety of persons in detention, staff, and their families due to the particular vulnerability of individuals in detention to the spread of infection. The increases in confirmed cases worldwide, nationwide, and within DHS facilities since March 18 illustrate the urgency of DHS taking immediate steps to prioritize public health during the ongoing serious public health crisis. Over 3,000 medical professionals across the nation have called on ICE to implement community-based alternatives to detention, with a particular

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

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

² 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” (Apr. 1, 2020), *available at* <https://www.nytimes.com/interactive/2020/world/asia/china-wuhan-coronavirus-maps.html>.

emphasis on vulnerable individuals including pregnant women, people with serious mental illness, and those at higher risk of complications, to avoid preventable deaths in DHS custody.³

DHS is well aware of both the risks these detained individuals face and DHS' own discretion to protect them. Indeed, ICE has reportedly used its discretion to release certain detained persons in New Jersey,⁴ but has declined to issue a policy determination at this time.⁵ In the midst of this crisis, DHS, ICE, and CBP must take reasonable steps to reduce the number of individuals in detention to guard against further exposure to coronavirus and to protect persons in immigration detention and facility staff.

To prevent further, unnecessary harm posed by the novel coronavirus, DHS, ICE, and CBP must take steps to release vulnerable and low-risk detained persons from custody, including release of individuals on recognizance, bond, parole, or via enrollment of individuals in alternatives to detention programs.⁶ DHS, ICE and CBP must also ensure that individuals in detention receive adequate soap, water, and other hygiene products and free access to external communication mechanisms. During this public health crisis, it is imperative that DHS act immediately to protect the health and safety of individuals in its custody. Therefore, we request a response to our letter dated March 18, 2020, in addition to the following questions, by April 8, 2020:

1. On March 24, 2020, *The Nation* issued an article describing an internal DHS report showing that ICE's Health Service Corps had placed nine detained persons in isolation and were monitoring 24 other detained persons at ICE facilities as of March 19.⁷
 - a. Please provide the number of individuals, including detained persons and staff, who have been placed in any type of quarantine, observation, segregation, or other arrangement in connection with suspected coronavirus infection or exposure as of the date of your response to this letter.
2. Please confirm the number of individuals in DHS custody and DHS employees and personnel working in DHS detention facilities that have received testing for COVID-19, including the facilities at which each individual was tested, as of the date of your response to this letter.
3. Please provide the number of testing kits available at DHS detention facilities, broken down by location and facility.

³ Open Letter to ICE from Medical Professionals Regarding COVID-19 (Mar. 2020), *available at* <https://nylpi.org/wp-content/uploads/2020/03/FINAL-LETTER-Open-Letter-to-ICE-From-Medical-Professionals-Regarding-COVID-19.pdf>.

⁴ See Joe Atmonavage, "ICE begins releasing some detainees from two N.J. correctional facilities, source says" (Mar. 25, 2020) *available at* <https://www.nj.com/coronavirus/2020/03/ice-begins-releasing-some-detainees-at-two-nj-correctional-facilities-source-says.html>; Tweet by Matt Katz (Mar. 27, 2020), *available at* <https://twitter.com/mattkatz00/status/1243607258967289856>.

⁵ Ryan Devereaux, *The Intercept*, "How ICE operations in New York set the stage for a coronavirus nightmare in local jails" (Mar. 27, 2020), *available at* <https://theintercept.com/2020/03/27/immigrants-coronavirus-ice-detention-new-york/>.

⁶ 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).

⁷ Ken Klippenstein, *The Nation*, "Exclusive: ICE detainees are being quarantined" (Mar. 24, 2020), *available at* <https://www.thenation.com/article/society/corona-covid-immigration-detention/>.

4. Since our March 18 letter, detained persons are reportedly conducting hunger strikes at ICE detention facilities due to the lack of soap and toilet paper.
 - a. Please describe in detail how DHS is ensuring sufficient quantities of soap, tissue, and other hygiene supplies are available to detained persons in DHS custody.
 - b. Has DHS considered ensuring that detained persons are not charged for additional hygienic supplies, such as soap, hand sanitizer, and other sanitary supplies, to ensure individuals are protected from infection?
5. Please describe in detail any extra precautions that DHS is taking in food preparation and in sanitizing utensils, trays, and eating facilities in detention facilities.
6. Please describe in detail how DHS has been transporting detained persons in a manner consistent with CDC guidance on social distancing.
 - a. Are ICE or CBP conducting transfers between facilities? If so, please describe the basis for each transfer made since January 31, 2020, the impacted facilities, the number of detained persons transferred, and all policies and procedures applied to protect against the spread of coronavirus.
7. What arrangements have been made to provide free, privileged, and confidential videoconferencing and telephone calls to detained persons to ensure access to counsel?
8. On March 20, 2020, ICE issued a solicitation for 45,000 N95 Particulate Respirator/Surgical Masks for 26 Enforcement and Removal Operations (ERO) Field Offices. On March 26, 2020, the solicitation was cancelled “due to changing requirements.”⁸
 - a. Given the nationwide shortage of adequate personal protective equipment at healthcare facilities during the coronavirus pandemic, please describe the considerations ICE is taking into account in determining its “requirements” for masks, including but not limited any steps ICE has taken to account for the nationwide shortage in determining its requirements.

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/ Bernard Sanders
United States Senator

/s/ Edward J. Markey
United States Senator

/s/ Tammy Duckworth
United States Senator

/s/ Mazie K. Hirono
United States Senator

/s/ Richard Blumenthal
United States Senator

⁸ General Services Administration, Notice of Contract Opportunity: N95 Respirator/Surgical Masks for ERO Field Offices, US Immigration and Customs Enforcement (Published Mar. 20, 2020), *available at* <https://beta.sam.gov/opp/c6555a452c9440828427b42c08f4b0fc/view>.

/s/ Elizabeth Warren
United States Senator

/s/ Amy Klobuchar
United States Senator

/s/ Robert Menendez
United States Senator

/s/ Cory A. Booker
United States Senator

/s/ Christopher A. Coons
United States Senator

/s/ Sheldon Whitehouse
United States Senator