

Congress of the United States

Washington, DC 20510

December 16, 2019

Mark A. Morgan
Acting Commissioner
U.S. Customs and Border Protection
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229

Dear Acting Commissioner Morgan:

We are writing with disappointment and alarm about the failure of U.S. Customs and Border Protection (CBP), under the U.S. Department of Homeland Security (DHS), to provide flu vaccinations to migrants in CBP's care and to request additional information from CBP about its vaccination efforts.

Members of Congress have repeatedly urged you to provide flu vaccinations to migrants in CBP custody. In August 2019, the House Appropriations Subcommittee Chairs responsible for funding DHS and the Department of Health and Human Services (HHS) requested information from the agencies on flu vaccination, screening, testing, surveillance, and post-exposure prophylaxis.¹ In September 2019, thirteen Senators wrote to DHS and HHS urging CBP to implement a flu vaccination program for detainees and asked a series of questions about the agency's failure to do so.² Months later, flu vaccinations remain critical to the health and safety of migrants and CBP employees: last month, the Centers for Disease Control and Prevention (CDC) announced that "the 2019-2020 flu season is under way.... [and that] elevated flu activity is expected to continue for weeks."³

However, despite these repeated requests from Congress and the clear risk of flu transmission to migrants and agents, CBP is still not vaccinating migrants in its custody against the flu. Instead, CBP has failed to respond to House appropriators and submitted a November 15, 2019 response⁴ to U.S. Senators⁵ suggesting that the agency has not taken any meaningful steps

¹ Letter from Congresswoman Rosa L. DeLauro and Congresswoman Lucille Roybal-Allard to U.S. DHS Acting Secretary Kevin McAleenan and U.S. HHS Secretary Alex Azar, August 5, 2019, https://delauro.house.gov/sites/delauro.house.gov/files/DeLauro_Roybal-Allard_Letter_DHS_HHS.pdf.

² U.S. Senator Elizabeth Warren, "Warren, Colleagues Question DHS and HHS on Decision Not to Administer Flu Vaccines for Migrant Families Held at CBP Detention Centers," Press Release, September 9, 2019, <https://www.warren.senate.gov/oversight/letters/warren-colleagues-question-dhs-and-hhs-on-decision-not-to-administer-flu-vaccines-for-migrant-families-held-at-cbp-detention-centers>.

³ Centers for Disease Control and Prevention, Weekly U.S. Influenza Surveillance Report, Key Updates for Week 48, ending November 30, 2019, <https://www.cdc.gov/flu/weekly/>.

⁴ Letter from U.S. CBP Acting Commissioner Mark Morgan to Senator Elizabeth Warren, November 15, 2019.

⁵ Letter from Senator Elizabeth Warren, et al. to U.S. DHS Acting Secretary Kevin McAleenan and U.S. HHS Secretary Alex Azar, September 6, 2019, <https://www.warren.senate.gov/imo/media/doc/2019.09.06%20Letter%20to%20DHS%20HHS%20re%20flu%20vacines%20for%20detained%20immigrants.pdf>.

to address the conditions that contribute to the spread of the flu that is responsible for killing children in CBP's care and sickening hundreds of agents and detainees. Alarming, we have recently learned that CBP's decision not to vaccinate against this preventable disease ignores specific recommendations that the CDC made in January 2019.⁶ This decision is unconscionable and continues to endanger the health and safety of migrant families, CBP personnel, and the American public.

CBP's response to U.S. Senators, which was sent on behalf of DHS and which we are releasing today, raises new questions about the decision not to provide vaccines to detainees or CBP officials. It also raises questions about CBP policies for detection and treatment of flu in its facilities, particularly in light of the CDC recommendations that we are also releasing today.

CBP Has No Rationale for Failing to Provide Vaccines to Detainees

In its response to U.S. Senators, CBP attempted to justify in two ways its position that it "does not conduct vaccinations for the flu." First, CBP cites, in part, the "short term nature of CBP holdings."⁷ While CBP policy states that "detainees should generally not be held for longer than 72 hours,"⁸ a report from the DHS Office of Inspector General (IG) recently found prolonged detention times at every facility it reviewed.⁹ Subsequent reports have confirmed these findings, citing allegations that detainees have been held in CBP custody for up to three weeks.¹⁰ DHS and HHS have also recently announced a misguided new rule to amend the Flores Settlement Agreement, which, if implemented, would allow for the long-term, potentially indefinite detention of children and parents in DHS facilities.¹¹ Although CBP cites "the availability of vaccination services in other venues upon transfer from CBP custody" as a rationale for why the agency will not administer flu vaccinations, reports of and plans for prolonged detentions in CBP custody suggest that transfers from CBP custody are not happening in a timely manner sufficient to obviate the need for flu vaccines.¹²

CBP's letter cites the "operational challenges to conducting vaccination programs" as a second reason why it will not administer flu vaccinations. But this is not an adequate response. CDC's report made a number of suggestions as to how CBP could overcome these operational challenges. For example, CDC suggested leveraging local community partnerships and

⁶ Letter from CDC Director Redfield to Congresswoman Rosa L. DeLauro, November, 7, 2019. [LINK]

⁷ Letter from U.S. CBP Acting Commissioner Mark Morgan to Senator Elizabeth Warren, November 15, 2019.

⁸ U.S. Customs and Border Protection, "National Standards on Transport, Escort, Detention, and Search," October 2015, <https://www.cbp.gov/sites/default/files/assets/documents/2017-Sep/CBP%20TEDS%20Policy%20Oct2015.pdf>.

⁹ U.S. Department of Homeland Security, Office of Inspector General, "Management Alert – DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grand Valley (Redacted)," July 2, 2019, <https://www.oig.dhs.gov/sites/default/files/assets/2019-07/OIG-19-51-Jul19.pdf>.

¹⁰ Los Angeles Times, "San Diego CBP Holds Migrant Children Longer Than It Is Supposed To, Lawyer Says," Gustavo Solis, October 15, 2019, <https://www.latimes.com/california/story/2019-10-15/cbp-migrants-detention-lawyer-flores-settlement-agreement>

¹¹ U.S. Department of Homeland Security, "DHS and HHS Announce New Rule to Implement the Flores Settlement Agreement; Final Rule Published to Fulfill Obligations Under Flores Settlement Agreement," press release, August 21, 2019, <https://www.dhs.gov/news/2019/08/21/dhs-and-hhs-announce-new-rule-implement-flores-settlement-agreement>.

¹² Letter from U.S. CBP Acting Commissioner Mark Morgan to Senator Elizabeth Warren, November 15, 2019.

coordinating with the Texas State Immunization Program and other state health departments.¹³ In addition, an independent group of doctors has contacted CBP to volunteer to “leverage an already established volunteer network of physicians”—suggesting many medical professionals would be able and willing to provide medical support as needed.¹⁴ Given the seriousness and urgency of this matter, CBP should be making every effort to overcome any “operational challenges” it thinks it may face.

There is no sufficient justification for the failure to vaccinate migrants in CBP custody, and the inadequate justifications you have presented are even more troubling in light of CDC Director Robert Redfield’s recent disclosure to House Labor-Health and Human Services-Education Appropriations Subcommittee Chair Rosa DeLauro that CBP ignored a CDC recommendation to implement a robust vaccination program for detainees. According to Dr. Redfield, after a CDC investigation of some Border Patrol facilities in December 2018 and January 2019, the CDC issued a report recommending, “influenza vaccination should be implemented at the earliest feasible point of entry to allow for maximum protection of migrant[s] and potential to reduce transmission in Border Patrol Facilities.”¹⁵ This is in line with a letter that the CDC sent on behalf of HHS in response to the senators’ September 6, 2019 letter, which we are also releasing today. CDC’s response letter states: “CDC encourages vaccination at the earliest feasible point of entry for all persons at least 6 months of age, which is in concurrence with our general influenza vaccine recommendation.”¹⁶

But CBP did not follow this recommendation. In the time since the CDC made its recommendation, “at least two children...[have] died after being diagnosed with the flu in Border Patrol custody.”¹⁷ The CDC also recommended that CBP prioritize “flu vaccinations for all staff,”¹⁸ but CBP in its November 15, 2019 letter told senators it still “does not mandate flu vaccination for CBP personnel.”¹⁹

CBP’s Response Raises New Concerns about Detection and Treatment of Flu in Detention Facilities

In addition to making clear that CBP is not doing enough to prevent flu in detention centers, CBP’s response raised additional concerns about the detection and treatment of the flu in its facilities. CBP wrote that initial health interviews and health assessments for juveniles in its care are conducted by contracted medical professionals “where available”; otherwise, the interviews are conducted by Border Patrol Agents (BPAs) or CBP officers (CBPOs) and health assessments are conducted by local medical professionals or BPAs or CBPOs “certified as emergency medical technicians or paramedics.”²⁰ According to physician advocates, however,

¹³ Letter from CDC Director Redfield to Congresswoman Rosa L. DeLauro, November, 7, 2019.

¹⁴ Letter from U.S. CBP Acting Commissioner Mark Morgan to Senator Elizabeth Warren, November 15, 2019.

¹⁵ Letter from CDC Director Redfield to Congresswoman Rosa L. DeLauro, November, 7, 2019.

¹⁶ Letter from CDC Director Robert Redfield to Senator Elizabeth Warren, et al., November 27, 2019.

¹⁷ NBC News, “Doctors Offer to Give Free Flu Shots to Detained Migrants, Warn Trump Admin. Of Epidemic,” Suzanna Gamboa, November 19, 2019, <https://www.nbcnews.com/news/latino/doctors-offer-give-free-flu-shots-detained-migrants-warn-trump-n1085206>.

¹⁸ Letter from CDC Director Robert Redfield to Congresswoman Rosa L. DeLauro, November 7, 2019.

¹⁹ Letter from U.S. CBP Acting Commissioner Mark Morgan to Senator Elizabeth Warren, November 15, 2019.

²⁰ Id.

BPA's and CBPO's are "grossly unqualified" to make health assessments, and that "even those who are certified as EMT's or paramedics are practicing out of their scope if they are doing health screenings."²¹ CBP's medical services contract includes only "four pediatricians," who are "not typically involved in the daily care and treatment of pediatric patients," suggesting that unqualified BPA's or CBPO's are conducting a significant number of health assessments for identifying migrant children in need of medical assistance.²²

Furthermore, when CBP personnel do detect the flu, CBP's letter states that it "has procedures to conduct such isolation and quarantine as required and appropriate." But the CBP letter does not provide any additional information about what those procedures are or what other treatment options are made available.²³ This is concerning, given that CBP's largest detention center, located in McAllen, Texas, temporarily stopped processing migrants earlier this year due to a flu outbreak that was not sufficiently contained and affected nearly three dozen detainees.²⁴

New information about the case of Carlos Gregorio Hernandez Vasquez, a 16-year-old Guatemalan migrant who was diagnosed with the flu while in CBP custody at the McAllen facility, raises additional concerns. Vasquez died at the Weslaco Border Patrol Station in Texas in May 2019. ProPublica reported that it obtained video of Vasquez's final hours, which "shows that Border Patrol agents and health care workers at the Weslaco holding facility missed increasingly obvious signs that his condition was perilous."²⁵ The "video shows Carlos writhing for at least 25 minutes on the floor and a concrete bench. It shows him staggering to the toilet and collapsing on the floor, where he remained in the same position for the next four and a half hours." The disturbing details that have emerged about this case makes it even more important for Congress to receive information about CBP's procedures for isolating and quarantining individuals with the flu at CBP detention centers. In addition, Senator Warren wrote to CBP's then-Acting Commissioner on May 21, 2019, posing questions about CBP's procedures and handling of Vasquez's and others' cases,²⁶ but did not receive a reply. This lack of transparency and accountability is completely unacceptable. The evidence that CBP has misled the American people about the circumstances of Vasquez's death—including misstating how his body was discovered and possibly suppressing video surveillance—has already prompted members of the Congressional Hispanic Caucus to request an investigation by the DHS IG.²⁷

²¹ Correspondence from physicians who are members of Doctors for Camp Closure to Senator Elizabeth Warren.

²² Letter from U.S. CBP Acting Commissioner Mark Morgan to Senator Elizabeth Warren, November 15, 2019.

²³ Id.

²⁴ New York Times, "Flu Outbreak Prompts Largest Border Detention Center to Stop Processing Migrants," Manny Fernandez and Zolan Kanno-Youngs, May 22, 2019, <https://www.nytimes.com/2019/05/22/us/flu-outbreak-border-detention-center.html>.

²⁵ ProPublica, "Inside the Cell Where a Sick 16-Year-Old Boy Died in Border Patrol Care," Robert Moore, Susan Schmidt, and Maryam Jameel, December 5, 2019, <https://www.propublica.org/article/inside-the-cell-where-a-sick-16-year-old-boy-died-in-border-patrol-care>.

²⁶ Senator Elizabeth Warren, "Warren Demands Answers from U.S. Customs and Border Protection Following Recent Deaths of Children Detained at Border," press release, May 22, 2019, <https://www.warren.senate.gov/oversight/letters/warren-demands-answers-from-us-customs-and-border-protection-following-recent-deaths-of-children-detained-at-border>.

²⁷ Letter from Congressional Hispanic Caucus Chair Joaquin Castro, et al. to Department of Homeland Security Inspector General Joseph V. Cuffari, December 6, 2011, <https://chc.house.gov/sites/congressionalhispaniccaucus.house.gov/files/12.6.19%20CHC%20Letter%20to%20DHS%20OIG%20re%20Carlos%20Surveillance%20Video.pdf>.

Questions about CBP's Ongoing Failure to Provide Flu Vaccines

CBP acknowledges that there is an “unprecedented” humanitarian crisis at the Southwest Border, and yet, despite this admission, insists on adhering to its “long-standing practice” of not conducting vaccinations for the flu in its facilities.²⁸ CBP must reverse this decision, which continues to endanger the health and safety of migrant families, CBP personnel, and the American public. In response to our concerns, I ask that you provide answers to the following questions no later than December 30, 2019.

1. CBP states that “to address influenza concerns, CBP has enhanced infection prevention and control measures and, through contracted medical support personnel, is able to conduct onsite rapid flu testing, provide antiviral treatment, and provide antiviral prophylaxis as appropriate.”²⁹
 - a. What is CBP’s protocol for conducting this rapid on-site flu testing and antiviral treatment?
 - b. What are the medications that CBP is providing for prophylaxis?
 - c. Has CBP conducted any cost–benefit or comparative analysis regarding the use of prophylaxis versus the use of flu vaccines?
 - d. Are flu vaccines available to those who request them?
2. Given the aforementioned prevention and control measures in place at CBP, what are the remaining operational challenges that are preventing CBP from running a vaccination program itself or allowing others to run a vaccination program in its detention centers? What prevents CBP from engaging another federal or state public health entity from running a vaccine program at its facilities, especially facilities with capacity for large numbers of migrants?
3. Does CBP believe that contracting with only four pediatricians is sufficient for ensuring the health of the children in its care? If so, why? If it is not, how many pediatricians are needed to ensure children have appropriate care? Please provide a copy of CBP’s medical services contract, scope of work, including information about these pediatricians.
4. What training do BPAs and CBPOs have to provide health screenings and assessments? Please provide all written protocols for CBP’s health screening process, including the questions asked of incoming migrants and information about which individuals are referred to screening by medical providers and under what circumstances.
5. How many initial health interviews did CBP conduct over the last year? How many of these interviews were conducted by contracted medical professionals? How many were conducted by local medical professionals? How many were conducted by BPAs or CBPOs?
6. How many medical assessments did CBP conduct over the last year? How many of these assessments were conducted by contracted medical professionals? How many were


²⁸ Letter from U.S. CBP Acting Commissioner Mark Morgan to Senator Elizabeth Warren, November 15, 2019.

²⁹ Id.

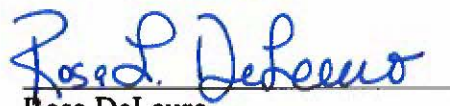
conducted by local medical professionals? How many were conducted by BPAs or CBPOs?

7. CBP states that its officers are trained to “refer/transport persons in custody to the local health system for signs, symptoms, or concerns for health issues – including infectious disease.”³⁰ What is this training? Please provide CBP’s procedures for conducting this training, including what material is covered and which individuals are required to receive it. How many persons in custody have been referred to or transported to local health systems in each of the last 12 months? Did CBP follow its own procedures in the case of Carlos Gregorio Hernandez Vasquez?
8. Do BPAs and CBPOs who are not EMTs or paramedics receive training to identify symptoms of the flu or other common conditions, especially in vulnerable populations such as children and pregnant women? Please also detail any differences between the protocols, policies, and authorities used by CBPOs and those used by BPAs to provide influenza testing, treatment, and immunization.
9. What are CBP’s procedures for isolating and quarantining individuals with the flu at CBP detention centers? Please provide all written policies and guidances for conducting this isolation. How many individuals have been quarantined in each of the last 12 months? How many of those individuals were unaccompanied minor children?
10. CBP “does not mandate flu vaccination for CBP personnel.”³¹ However, “CBP contracted medical personnel are required to receive [a] flu vaccine.”³² Why does CBP not require its own personnel to receive flu vaccines when it requires this protection for its contracted medical personnel? Does CBP offer vaccinations to its staff? How many CBP staff working at detainee facilities have contracted the flu in each of the last 12 months?

Sincerely,




Elizabeth Warren
United States Senator



Rosa DeLauro
Chair, U.S. House Appropriations
Subcommittee on Labor, Health and Human
Services, Education, and Related Agencies



Richard Blumenthal
United States Senator




Tom Udall
United States Senator


³⁰ Letter from U.S. CBP Acting Commissioner Mark Morgan to Senator Elizabeth Warren, November 15, 2019.

³¹ Id.

³² Id.



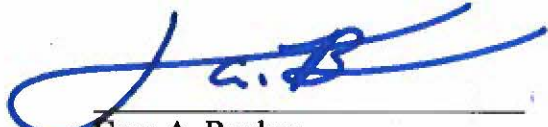
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United States Senator



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United States Senator



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Jacky Rosen
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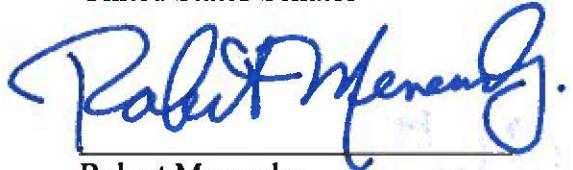
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Juan Vargas
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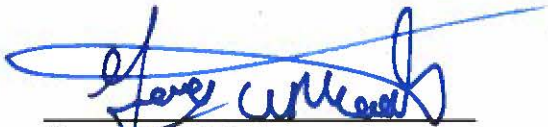
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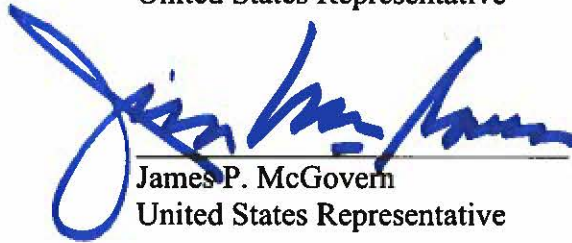
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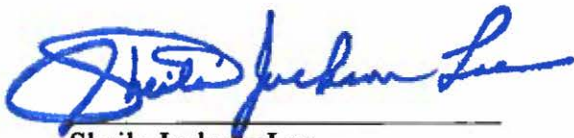
John B. Larson
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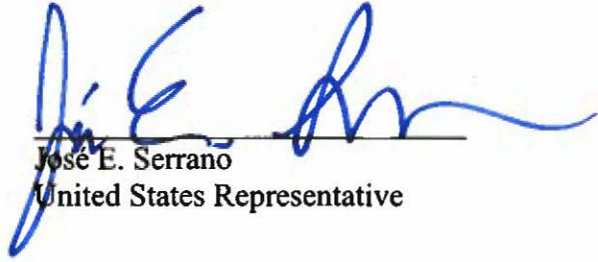
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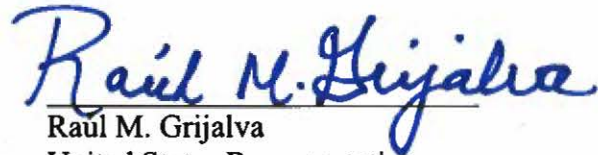
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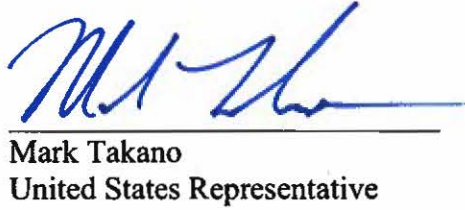
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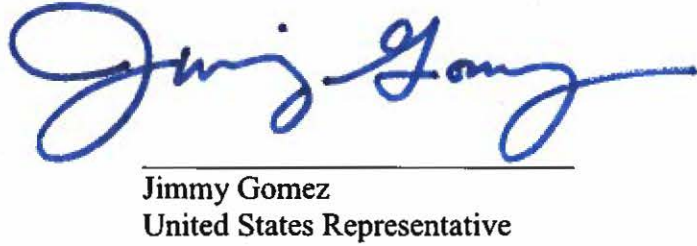


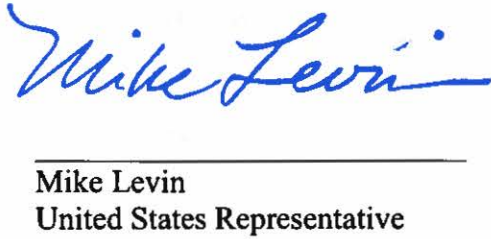
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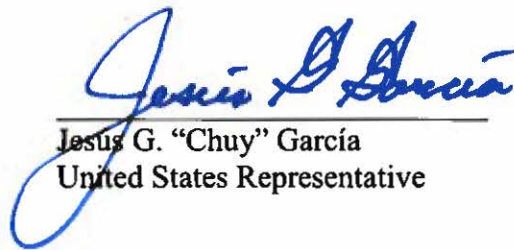

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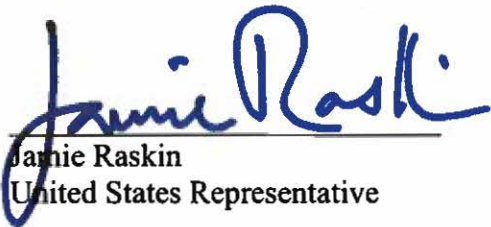

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