March 27, 2020

VIA ELECTRONIC MAIL

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

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, the ACLU Border Rights Center, and the Las Americas Immigrant Advocacy Center write to demand the Department of Homeland Security Office of Inspector General (DHS OIG) take immediate steps to ensure Customs and Border Protection (CBP) head off a burgeoning public health emergency at Border Patrol Station 1 in light of the COVID-19 global pandemic. 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, at its Station 1 facility. This includes, for example, a bathroom where only one of six soap dispensers actually contained soap.

CBP must act promptly to reduce the population at Border Patrol Station 1 by releasing individuals to family, community sponsors, or shelters with proper precautions in place. Immediate release of especially vulnerable individuals is urgently necessary. In addition, CBP must ensure that Border Patrol Station 1 takes appropriate actions to provide for basic hygiene and safety in light of the danger that the COVID-19 pandemic presents to detained individuals’ health and safety. The COVID-19 public health emergency presents particularly “grave risk of severe illness and death” to people in immigration detention.
facilities.\(^1\) As the Centers for Disease Control and Prevention (CDC) has recognized, incarceration and detention conditions present “unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors.”\(^2\) These facilities are “congregate environments”—that is, places where people live, eat, and sleep in close proximity.\(^3\) 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.\(^4\) The extremely high rate of transmission at the Rikers Island jail demonstrates the particular risk to people in detention facilities.\(^5\)

This is especially true in CBP detention facilities, where substandard hygiene conditions are well documented.\(^6\) Moreover, there is essentially no way for detained 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.\(^7\) 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.\(^8\) These conditions


create what has been described as “a COVID-19 timebomb.”

DHS’s own detention standards governing Border Patrol Station 1, the National Standards on Transport, Escort, Detention, and Search (TEDS), which govern Border Patrol Station 1, require that CBP provide appropriate medical care to everyone in its custody. TEDS state “[t]he safety of CBP employees, detainees, and the public is paramount during all aspects of CBP operations.” 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.” 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.” In light of the “grave risk” posed by this global pandemic, these standards compel urgent action to ensure the health of those currently detained.

In order to reduce the risk of a COVID-19 outbreak CBP must be proactive in significantly reducing the number of people detained while simultaneously significantly increasing the level of hygienic care provided for those who remain in detention. These actions, in compliance with the agency’s own detention standards, are necessary to protect health and safety—and ultimately to save lives.

Border Patrol Station 1 has not taken such steps. Accordingly, on a daily basis it is increasing the risk of a COVID-19 outbreak and failing to mitigate the risk of harm to detained individuals and families, particularly those at greatest risk of serious illness or death if an outbreak should occur.

Specifically, notwithstanding the threat from COVID-19, Border Patrol Station 1 has:

• Held over 150 persons in a single room with persons exhibiting flu-like symptoms;


11 TEDS 2.8.

12 TEDS 4.10.

13 Dawson, Declaration of Dr. Jonathan Louis Golob, supra n. 1.

14 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.
• Failed to provide information to detained individuals on the COVID-19 pandemic such as recommended CDC guidelines for preventing transmission of the virus;¹⁵
• Held people in cells where they are forced to be in close contact with each other, including 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;
• Failed to ensure uniform access to masks and gloves for everyone in the detention facility.

The 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. We ask that DHS OIG immediately investigate these conditions and issue recommendations to ensure that CBP take the following action:

• Immediately reduce the detained population by releasing individuals to U.S. shelters or community sponsors, prioritizing vulnerable people;
• Provide sufficient soap in amounts reflective of the increased need to continuously wash one’s hands pursuant to World Health Organization guidelines, and that the soap and clean, warm water is available at times and locations where they are especially needed, including before and after meals and at all sinks near toilets. Migrants should be also be provided with sufficient amounts of other hygienic materials, regular access to showers and 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 sleeping arrangements, provide for sufficient socially distancing at all times;

• 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;
• 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. 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.

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 protects the health and safety of those currently detained by mitigating the risk of severe illness and death from a COVID-19 outbreak at Border Patrol Station 1.

Sincerely,

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