



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

Mark Morgan  
Acting Commissioner  
Customs and Border Protection

*Submitted via email*

March 17, 2020

Dear Mr. Morgan:

We write to you on behalf of the American Immigration Lawyers Association (AILA) concerning the impact of the COVID-19/coronavirus public health emergency on Customs and Border Protection (CBP) activities throughout ports of entry and CBP holding facilities.

On March 11, 2020, the World Health Organization (WHO) declared the COVID-19 outbreak a global pandemic. Subsequently, on March 13, 2020, President Trump declared a national state of emergency over the coronavirus outbreak. To date, there are more than 3,800 diagnosed cases of coronavirus in the United States, and more than 65 deaths.

Understanding that this national emergency presents unique issues for your agency and its staff, AILA requests that CBP take measures that will ensure an effective and efficient handling of individuals passing through preclearance sites and ports of entry, and the safety of those currently being held in CBP facilities on the southern border. Adhering to these suggestions will help mitigate the spread of the COVID-19 among CBP stakeholders and staff, and further work to ensure the safety and well-being of the nation at large.

The measures that CBP adopts and implements in response to COVID-19 will have a significant impact on the health and safety of its stakeholders, staff, and contracted workers, as well as the health of our nation at large.

### **CBP Office of Field Operations**

President Trump has issued four proclamations in recent weeks suspending entry into the United States, as immigrants or nonimmigrants, of individuals who were physically present within the Schengen Area, the United Kingdom and Ireland, the Islamic Republic of Iran, and the People's Republic of China during the 14-day period preceding their entry or attempted entry into the United States, subject to certain exceptions. CBP has been entrusted with the enforcement of these proclamations as they pertain to individuals seeking admission to the United States at CBP preclearance and ports of entry throughout the United States, especially those individuals exempted from the proclamations.

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AILA appreciates the work that CBP has done in keeping those in the United States safe from the spreading of COVID-19, by for example, helping to conduct medical screenings at 13 designated airports. We also urge CBP, where possible, to issue additional guidance that assists in mitigating the risk of infection for individuals seeking admission to or currently in the United States. AILA provides the following recommendations for CBP to consider implementing in order to ensure the continued safety of the general public. AILA also requests that CBP continue to provide stakeholders with updated guidance concerning its role in responding to this outbreak.

- **Satisfactory Departure Requests:** CBP should issue a national directive standardizing a process for requesting “Satisfactory Departure” at CBP port locations. In order to mitigate the potential spread of COVID-19 both within and outside of the United States, it is important to provide a mechanism for those currently present in the country under the ESTA/VWP program to remain safe throughout this global pandemic without the risk of overstaying their designated admission period. CBP personnel at several ports in Seattle, Dallas, Chicago, Boston, among others, are following the lead of John F. Kennedy International Airport (JFK) in implementing mechanisms by which these requests may be made over telephone and/or email. JFK has also opened its process to those who entered through Newark Liberty International Airport (EWR). AILA recommends that CBP implement similar procedures at all ports of entry, allowing individuals to contact the port via telephone or email to make these requests and listing the information and documentation needed to do so.
- **Satisfactory Departure Validity:** Currently, it is unclear how long our nation and nations across the globe will be confronting the COVID-19 pandemic. AILA understands that under 8 CFR 217.3(a) a period of Satisfactory Departure may not exceed 30 days. In the event that CBP is unable to grant periods of Satisfactory Departure in excess of 30 days, AILA requests that CBP provide guidance on how stakeholders may request additional periods of Satisfactory Departure should the national emergency continue.
- **Automatic Extension of I-94 Validity:** CBP should automatically extend the I-94 validity of individuals currently in the United States in nonimmigrant status for a period of at least 90 days from the date on which the national emergency ends. This extension will ensure that those currently in the United States are able to remain safe without overstaying their period of admission. It is in the public’s interest that nonimmigrants in the country be more concerned about staying healthy and not spreading the virus than to seek help in extending their status.
- **ESTA Revocations:** CBP should publicly confirm that ESTA revocations of those temporarily barred from traveling to the United States due to the COVID-19 emergency were done without prejudice and primarily to ensure that those unable to travel to the United States do not attempt to do so. AILA further requests that CBP confirm that travelers impacted will be able to reapply for ESTA in the future.
- **CBP’s Adjudication of Exceptions to Presidential Proclamations:** CBP should confirm its role in the adjudication of exceptions to the presidential proclamations suspending entry to individuals from impacted nations and also confirm the best method by which an individual might request an exemption with CBP. AILA understands that the Department of State also has the authority to adjudicate these requests. However, given that Department

of State consular posts have or will be temporarily reducing or suspending visa services, it is important to understand how requests for exceptions may be made with CBP.

- **Efficient and Effective Medical Screening:** CBP should take steps, in conjunction with the Center for Disease Control and Prevention (CDC) to minimize wait times at U.S. airports in order to avoid unnecessary exposure to COVID-19. Beginning March 14, 2020 reports began to surface of extensive wait times at U.S. airports related to the enhanced medical screenings implemented by DHS. While AILA understands the importance of these screenings, subjecting flyers to an hours long wait in close proximity to individuals possibly infected with COVID-19 puts CBP personnel and travelers at risk. CBP has stated that it currently has between 150 and 200 officers currently assisting in these screenings. In the immediate aftermath of the presidential proclamations suspending travel from certain countries and in anticipation of any others that may be issued, AILA recommends that CBP increase the number of officers performing this screening and take other steps in order to ensure a more efficient review that allows travelers to remain adequately separated and reduces the possibility over overcrowding in airport terminals and U.S. customs areas.

### **CBP Holding Facilities**

Many of the CBP holding facilities, including the tent court facilities in Laredo and Brownsville, Texas, are operating at maximum capacity and run the risk of facilitating the rapid transmission of COVID-19. Maintaining these facilities endangers the health and safety of those individuals in CBP custody, CBP personnel, attorneys, and government contractors. A large segment of the people detained in CBP holding facilities include people who do not present a flight risk and can readily demonstrate that they have U.S. sponsors and ties to the community. CBP should consider taking immediate steps to mitigate the risk of an outbreak by taking the following steps.

- **Release and Parole Vulnerable Populations:** CBP should release and/or parole all vulnerable populations from CBP custody and temporary holding facilities, including those persons who are at high risk of serious illness if they are infected, such as pregnant people, people 60 and over, and people with chronic illnesses, compromised immune systems, or disabilities.
- **Decrease the Number of People in CBP Temporary Holding Facilities to Limit Exposure:** CBP should liberally use its discretion to parole individuals instead of transferring them to ICE custody or subjecting them to the Prompt Asylum Claim Review and Humanitarian Asylum Review Process.
- **Take Proper Care to Prevent Transmission While in Custody:** CBP should immediately test all individuals in CBP custody who exhibit any symptoms and/or present risk factors, as delayed confirmation of cases will necessarily be too late to prevent transmission. CBP should also provide proper hygienic supplies at all temporary holding facilities. CBP should halt all transfers from facility-to-facility and to out-of-state locations in order to prevent the spread of the coronavirus throughout individual states and the U.S.
- **Engage in ongoing and open communication with stakeholders and the public:** CBP should regularly share with stakeholders and public what the agency is doing and its procedures and decisions related to managing COVID-19 in all CBP holding facilities.

## **Migrant Protection Protocols (MPP):**

- **Parole All Respondents in the MPP program on the Date of their Scheduled Hearing:** CBP should immediately parole all respondents in the MPP program into the U.S. on the date of their scheduled immigration court hearing date and work with EOIR to provide them with a new hearing date on a non-detained docket.
- **CBP should work with EOIR to allow individuals in MPP with hearing dates to approach the CBP ports of entry and be processed by CBP:** It is essential that individuals in MPP who have not been paroled be provided an opportunity to request *non-refoulement* interviews. Additionally, individuals in this program should be allowed an opportunity to request exemption from the program and parole if they are medically vulnerable individuals.
- **CBP and EOIR Must Provide Individuals With New MPP Tearsheets:** CBP should work with EOIR to issue a new EOIR hearing notice and CBP must provide the respondent a written copy of both the new EOIR hearing notice and an MPP tear sheet. If the respondent does not have an MPP tearsheet containing a future U.S. immigration court date, the respondent would be out of status in Mexico and Mexico's migration institute (INM) will likely refuse to renew the individuals' temporary status in Mexico, leaving them at risk of deportation from Mexico.
- **CBP should Stagger the Times Individuals Report to the Tent Court:** CBP should stagger reporting times for individuals in MPP arriving for court at the tent courts and other immigration court locations along the border to avoid folks being held in close proximity to one another. Represented respondents can be notified through Counsel.
- **CBP Should Issue NTAs and Not Transfer People to ICE Custody:** When apprehending individuals along the border that have resided in the U.S. for several years, NTAs should be issued and individuals should be released instead of being sent to ICE detention.

AILA understands that CBP is working to implement guidance adhering to these proclamations and stands ready to disseminate any guidance from the agency to our members. It is our hope that sharing this information will ensure effective and efficient engagements between the agency and its stakeholders throughout the national public health emergency brought on by the COVID-19 global pandemic.

We respectfully request a response as soon as possible given the emergent circumstances. Please feel free to contact Sharvari (Shev) Dalal-Dheini at 202-507-7621 or [SDalal-Dheini@aila.org](mailto:SDalal-Dheini@aila.org) or Leidy Perez-Davis, at [LPerez-Davis@aila.org](mailto:LPerez-Davis@aila.org) with any questions you may have.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

CC: Rodney Scott, Chief, U.S. Border Patrol, CBP  
Todd C. Owen, Assistant Commissioner, OFO, CBP  
Luis Mejia, Director, Enforcement Programs Division, Admissibility and Passenger Processing, OFO, CBP