

United States Senate
WASHINGTON, DC 20510

May 27, 2020

The Honorable Mark T. Esper
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

Dear Secretary Esper:

We write to seek information about the Department of Defense's (DoD's) efforts to prevent the spread of the coronavirus disease 2019 (COVID-19) pandemic among detainees in the prison facility at the United States Naval Station Guantanamo Bay, Cuba (Guantanamo), as well as efforts to protect servicemembers responsible for detention operations and all other military personnel at the base. Given current U.S. law's restrictions on the transfer of detainees off the base and the lack of comprehensive medical infrastructure on the premises, we are concerned that the incidence of COVID-19 on the base combined with an already at-risk detainee population could cause a significant outbreak endangering the health and safety of all.

On March 24, 2020, the Department of the Navy announced the first confirmed positive case of COVID-19 at the Naval Station Guantanamo Bay in a sailor who is apparently not involved in detention operations.¹ The Navy also announced efforts to mitigate potential coronavirus outbreaks, including "screening all personnel coming aboard the installation, enforcing social distancing, minimizing group gatherings, [and] conducting deep cleaning,"² and has been making announcements of further mitigation efforts on social media.³ At the prison facility, meetings between detainees and their legal counsel are still permitted under social distancing guidelines, and visitors have their temperature checked and are required to use masks and sanitizers.⁴ United States Southern Command (SOUTHCOM), which oversees the Guantanamo prison, reaffirmed these measures after reportedly disclosing on April 7, 2020 that one individual involved in detention operations tested positive for COVID-19.⁵

However, it remains unclear whether the Department's coronavirus infection control efforts will be enough to protect the health of the 40 detainees at the Guantanamo prison

¹ U.S. Department of the Navy, "Naval Station Guantanamo Bay Announces Positive COVID-19 Case," March 24, 2020, https://www.navy.mil/submit/display.asp?story_id=112454.

² *Id.*

³ Naval Station Guantanamo Bay's official Facebook page, <https://www.facebook.com/NSGuantanamoBay/>.

⁴ New York Times, "At Guantanamo Bay, Temperature Checks and a Ban on Sharing Food," Carol Rosenberg, March 14, 2020, <https://www.nytimes.com/live/2020/coronavirus-update-03-14>.

⁵ New York Times, "9/11 Prisoners May Get Video Chats to Bridge the Coronavirus Divide," Carol Rosenberg, May 2, 2020, <https://www.nytimes.com/2020/05/02/us/politics/guantanamo-september-11-coronavirus.html>.

facility,⁶ some of whom are “aging detainees [who] could require specialized treatment for issues such as heart attack, stroke, kidney failure, or even cancer.”⁷ Moreover, according to a report by the Center for Victims of Torture (CVT) and Physicians for Human Rights, there are serious concerns “about Guantanamo’s ability to provide medical care to the remaining detainees as time passes and with seemingly no prospect of their release,” noting that the facility “did not have the ‘specialists and equipment’ necessary” to care for them.⁸ This aging and chronically ill population, some of whom retain the mental and physical wounds of torture, may be at greater risk of serious medical complications from COVID-19.⁹ Another complicating factor is current U.S. law, which strictly prohibits the transfer of Guantanamo detainees off the base to other U.S. territory.¹⁰ Although the Senate adopted an amendment to a version of the Fiscal Year (FY) 2020 National Defense Authorization Act (NDAA) that would have permitted temporary detainee transfers to DoD medical facilities in the United States for “emergency or critical medical treatment,” this provision was not included in the final law.¹¹

Of the 40 detainees at the Guantanamo detention facility, five are “recommended for transfer if security conditions [are] met,” and these five and several others have been in indefinite detention for over 17 years.¹² Some of the Guantanamo detainees’ “health conditions are also worsened by the prolonged, indefinite detention [...], a form of abuse that has been extensively documented to carry severe and long-lasting health consequences.”¹³ Given the incidence of COVID-19 at the Guantanamo Bay Naval Station, the serious and deteriorating health conditions of detainees, the deficient infrastructure to care for complex medical needs at the prison facility,¹⁴ and the strict prohibition on detainee transfers to the United States – even temporary transfers for urgent medical reasons – we are concerned that our military personnel responsible for detention operations, as well as the detainees themselves, are at a heightened risk of contracting COVID-19 and suffering severe health consequences.

⁶ New York Times, “The Guantanamo Docket,”

<https://www.nytimes.com/interactive/projects/guantanamo/detainees/current>.

⁷ The Center for Victims of Torture & Physicians for Human Rights, “Deprivation and Despair: The Crisis of Medical Care at Guantanamo,” June 2019,

https://www.cvt.org/sites/default/files/attachments/u131/downloads/2019_phr-medical-report_v5.pdf.

⁸ *Id.*

⁹ Centers for Disease Control and Prevention, “People Who Are at Higher Risk for Severe Illness,”

<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

¹⁰ National Defense Authorization Act for Fiscal Year 2020, <https://www.congress.gov/bill/116th-congress/senate-bill/1790/text?format=txt&q=%7B%22search%22%3A%5B%22s1790%22%5D%7D&r=1&s=1>.

¹¹ National Defense Authorization Act for Fiscal Year 2020, S. 1790, <https://www.congress.gov/bill/116th-congress/senate-bill/1790/text/es?format=txt&q=%7B%22search%22%3A%5B%22s1790%22%5D%7D&r=1> (version passed in the Senate); National Defense Authorization Act for Fiscal Year 2020,

<https://www.congress.gov/bill/116th-congress/senate-bill/1790/text?format=txt&q=%7B%22search%22%3A%5B%22s1790%22%5D%7D&r=1&s=1>.

¹² New York Times, “The Guantanamo Docket,”

<https://www.nytimes.com/interactive/projects/guantanamo/detainees/current>.

¹³ The Center for Victims of Torture & Physicians for Human Rights, “Deprivation and Despair: The Crisis of Medical Care at Guantanamo,” June 2019,

https://www.cvt.org/sites/default/files/attachments/u131/downloads/2019_phr-medical-report_v5.pdf.

¹⁴ Defense One, “Guantanamo Is Becoming a Nursing Home for Its Aging Terror Suspects,” Katie Bo Williams, April 26, 2019, <https://www.defenseone.com/politics/2019/04/guantanamo-nursing-home-terrorist-suspects/156575/>.

Unfortunately, current law's rigid restrictions on detainee transfers prevent the United States from securely resettling or repatriating Guantanamo detainees, and in effect, prevent the fair adjudication of cases against any remaining detainees under U.S. domestic criminal law. In particular, an act of Congress would be required to authorize temporary and conditional medical transfers of detainees to DoD medical facilities in the United States. Congress and the Trump Administration should work together to close the Guantanamo Bay prison facility, which represents a "legal black hole"¹⁵ for detainees and reportedly costs \$540 million per year to operate, or \$13 million per prisoner.¹⁶ In the meantime, we seek to ensure that our detention operations serve the best interest of the health and safety of everyone on base.

Accordingly, we request answers to the following questions by June 10, 2020:

1. What procedures are in place to address a confirmed or presumed positive case of COVID-19 among detainees or military personnel involved in detainee operations? Please include a discussion of the capacity of medical care available at the facility. Are prevention and treatment options at the base consistent with applicable Centers for Disease Control and Prevention (CDC)¹⁷ standards?
2. Are independent medical experts currently available, either in person or remotely, to all the 40 detainees currently held at Guantanamo, if requested by them or their legal counsel? If so, please state how many experts are currently available and the hours and days during which those medical experts are available to examine and treat detainees.
3. If detainees provide their informed consent, are their counsel, independent medical experts, and any other authorized parties provided full, unredacted copies of their medical records, as well as updates to those records?
4. What is the status of DoD's appointment of a Chief Medical Officer at the U.S. Naval Station Guantanamo Bay, as required by the FY 2020 NDAA?¹⁸

Thank you for your attention.

¹⁵ Los Angeles Times, "Editorial: Guantanamo detainees are still trapped in a legal black hole," June 12, 2019, <https://www.latimes.com/opinion/editorials/la-ed-breyer-guantanamo-20190612-story.html>; Al-Alwi v. Trump, No. 18-740 (Sup. Ct. June 10, 2019) (Denying pet. for writ of cert., statement of Breyer, J.) ("The Government represents that such hostilities are ongoing, but does not state that any end is in sight. Brief in Opposition 4-5. As a consequence, al-Alwi faces the real prospect that he will spend the rest of his life in detention based on his status as an enemy combatant a generation ago, even though today's conflict may differ substantially from the one Congress anticipated when it passed the AUMF, as well as those "conflicts that informed the development of the law of war.").

¹⁶ New York Times, "The Cost of Running Guantanamo Bay: \$13 Million Per Prisoner," Carol Rosenberg, September 16, 2019, <https://www.nytimes.com/2019/09/16/us/politics/guantanamo-bay-cost-prison.html>.

¹⁷ Centers for Disease Control and Prevention, "Infection Control Guidance for Healthcare Professionals about Coronavirus (COVID-19)," <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control.html>.

¹⁸ National Defense Authorization Act for Fiscal Year 2020, <https://www.congress.gov/bill/116th-congress/senate-bill/1790/text?format=txt&q=%7B%22search%22%3A%5B%22s1790%22%5D%7D&r=1&s=1>.

Sincerely,

_____/s/
Elizabeth Warren
United States Senator

_____/s/
Jack Reed
United States Senator

_____/s/
Bernard Sanders
United States Senator

_____/s/
Edward J. Markey
United States Senator

_____/s/
Dianne Feinstein
United States Senator

_____/s/
Sherrod Brown
United States Senator

_____/s/
Richard J. Durbin
United States Senator

_____/s/
Tammy Baldwin
United States Senator

_____/s/
Cory A. Booker
United States Senator

_____/s/
Patrick Leahy
United States Senator

_____/s/
Christopher A. Coons
United States Senator

_____/s/
Jeffrey A. Merkley
United States Senator

_____/s/
Ron Wyden
United States Senator

_____/s/
Benjamin L. Cardin
United States Senator

_____/s/
Thomas R. Carper
United States Senator