



Immigration-Related Requests for Coronavirus Package 3 (Supplemental)

March 18, 2020

Americans are looking to our government to come together and protect *all our communities* as we struggle to cope with the COVID-19 pandemic. Tragically, the administration's requested third supplemental funding package leaves immigrant communities in the cold and, in so doing, puts *all our health and safety* at risk. Now is not the time for the administration to assert its anti-immigrant agenda by yet again manipulating the appropriations process. Now is the time for unity and smart public health oriented responses.

This document provides context for three critical immigration-related requests with regard to the 3rd supplemental COVID-19 package:

1. [Eliminate Immigrant Restrictions on the New Medicaid State Option for COVID Testing](#)
2. [Oppose All DHS Funds for ICE and CBP](#)
3. [Restrict Transfer and Reprogramming of Funds for Immigration Enforcement](#)

Eliminate Immigrant Restrictions on the New Medicaid State Option for COVID Testing

Emergency response measures to COVID-19 **must ensure that *all persons* are able to receive free COVID-19 testing.** Leaving out some communities leaves all communities at greater risk.

Numerous provisions of law restrict immigrants' ability to access Medicaid. Some restrictions are in Title XIX of the Social Security Act, the Medicaid statute itself, but the most important ones are in Title 8 of the U.S. code, which codifies immigration law. Sections 1611 and 1613 of Title 8 restrict Medicaid eligibility to "qualified" immigrants which is defined to include specified categories, such as green card holders, refugees, etc. Undocumented immigrants, people with DACA, TPS holders, U-visa applicants and holders, and others are excluded from the definition. Under section 1613, even qualified immigrants are ineligible for Medicaid during their first 5 years here, with some exceptions. There is a narrow exception in both section 1611 and 1613 for emergency Medicaid, as that term is defined in section 42 U.S.C. 1396b(v), but coronavirus testing doesn't meet the statutory definition of an emergency service.

Unfortunately, the definition of "uninsured individual" in the new section 42 U.S.C. 1396a(ss) doesn't address any restrictions outside of Title XIX, so the restrictions in sections 8 U.S. C. 1611 and 1613 would continue to apply.

The preferred fix is to **provide that testing under the new state option be considered treatment for an emergency condition under 42 U.S.C. 1396b(v)**, which would also have the benefit of preventing any public charge considerations. An alternative change is to amend the notwithstanding clause in section (ss) from "notwithstanding any other provision of this title" to "notwithstanding any other provision of law."

There is no justification for leaving so many people out of testing, treatment, or care for the virus. This fix is more than a footnote. Failure to address the problem will directly impact millions of people, undermine efforts to contain the virus, and put further strain on providers and states who will be stuck with uncompensated care costs at a time of particular vulnerability.

Oppose All DHS Funds for ICE and CBP

We oppose all additional funds for ICE and CBP as part of the COVID-19 response because a) DHS has more than sufficient funds to take steps necessary to protect the health of those in its custody; and b) DHS should *not* be in charge of quarantine facilities. The most effective measure DHS could take in response to COVID-19 would be to release all immigrants eligible for discretionary release on humanitarian parole; having done that, the agency has more than sufficient funds to take the precautions [advised by public health experts](#) for those who remain in custody and those processed at the border.

DHS should not be in charge of medical services or quarantines. To the extent that migrants are exhibiting symptoms, they should be in hospitals and other emergency care facilities that are prepared to handle public health emergencies. Health work is much more appropriately done by medical professionals in clinical settings, rather than with agencies that have repeatedly helped manufacture crises to score political points, harm immigrants and border communities, and override congressional intent. *Furthermore, DHS has proven itself literally incapable of adequately caring for the basic health and safety of those in its custody in ordinary times, let alone during a pandemic (for some relevant history on ICE [see here](#) and CBP [see here](#)).*

Rather than seeking additional funds, **ICE should immediately cease all immigration enforcement activities and release people from detention** in order to mitigate the incredible risk to both staff and people who are detained in that setting. Public health experts have [spoken resoundingly](#) to this point: DHS does not need more funds, it needs to release as many immigrants as possible. ICE has full authority to do so pursuant to its humanitarian parole authority; see 8 C.F.R. 212.5. These releases do not require ATD programming; they can be

made to community sponsors on recognizance. Similarly, consistent with public health officials' calls for social distancing to curtail and slow the spread of COVID-19, **CBP should mitigate the risk of an outbreak in its facilities by drastically reducing the overall population of people in CBP custody** through the release of individuals to U.S. shelters or community sponsors, not seek additional funding for facilities and staffing to detain migrants.

Finally, ICE and CBP have both been over-funded for years. As many other chronically under-funded parts of our federal government struggle to meet the scope of this crisis, ICE and CBP should be looking first to transfer funds from their pet projects--like the billions available for more border wall construction--rather than asking for more taxpayer dollars. For accounts that can be used to support the priorities outlined here, such as the Alternatives to Detention account, the agency has more than sufficient funds to reallocate priorities as necessary. Furthermore, if additional ATD slots are necessary for those currently arriving at the border, ICE has plentiful discretion to step-down the tens of thousands of individuals currently in the program for whom supervision is no longer necessary to create new slots.

Restrict Transfer and Reprogramming of Funds for Immigration Enforcement

All supplemental funding packages must include an across-the-board restriction against the transfer or reprogramming of funds for ICE and CBP immigration detention and enforcement operations, including border wall construction. Any funds that are appropriated for use by the President should also be restricted so that funds cannot be used for immigration enforcement or the wall. This administration has a [proven track record](#) of manipulating the appropriations process to transfer and reprogram funds intended to go toward public health and safety to fund immigration enforcement measures including the expansion of detention and more border wall. It is critical that Congress not hand the administration another opportunity to manipulate a public health crisis toward its anti-immigrant agenda.

Addendum

In addition to these top legislative priorities above, we hope members will support the following actions by the Administration or in legislation if possible:

USCIS:

- Automatic extension of work authorization
- Halt the DHS and DOS public charge rules, and implementing manuals and forms, and revert to the policy in the 1999 field guidance
- Toll application or other deadlines, and expirations of status, occurring during national emergency designation; allow no less than 30 days after return to normal business for people to fulfill time-sensitive requirements
- Sustain application processing operations that can be performed remotely, to the extent possible, to avoid additional increase in backlogs
- Waive biometrics requirements during pendency of emergency for people who have previously had biometrics collected

Protections for Immigrants in Detention:

- Release people in jails and detention centers including families held by ICE, those housed in pre-trial detention, or rehabilitated people; elderly incarcerated people often pose little public safety risk but disproportionately suffer from chronic medical conditions and thus are at the highest risk of dying from COVID-19
- Bar use of solitary confinement or lockdowns, which would only put more individuals at risk of mental harm or which could put incarcerated people in fear of isolation and therefore delay notification of medical staff should symptoms arise.
- Release detainees under age 21, the elderly, disabled, pregnant women, nursing mothers and other high risk populations
- Ensure robust access to legal services and social visitation for those in custody through the use of *free* telephonic and video visitation

Address the Healthcare and Needs of Immigrants:

- Limited English-proficient individuals should have access to information and services
- Unemployment and paid sick leave should be extended to refugees and Special Immigrant Visa (SIV) holders, who have arrived recently and thus may not have the work history to make them eligible for either.
- No immigration enforcement activities at hospitals, clinics, and other sensitive locations that go beyond the current policy but are critical for families impacted by COVID-19, such as food distribution sites and emergency shelters
- Suspend immigration enforcement at interior Border Patrol checkpoints that interfere with border communities' ability to access medical care

- Suspend in-person ICE check-in appointments
- Urge the Census Bureau to spend contingency funds to adapt outreach and operations to reach and count members of hard-to-count communities. Support the Bureau in monitoring operations, maintaining flexibility, and in moving to change operational plans as needed going forward, consistent with the goal of ensuring a complete and accurate count of all residents

Protections for U.S. and Foreign Workers at Employers at Using Guestworker Programs

- Ensure access to handwashing facilities for all workers, even when not required to do so under current regulations
- Employers should be required to help workers access medical care, if needed; this will be important for guest workers living in remote areas who often must rely on their employers for transportation
- Employer provided housing must allow for social distancing. U.S. workers and guest workers should not be forced into crowded worker housing
- If an employer lays off a temporary work visa holder, the employer should be required to pay for all of the return trip expenses regardless of when the temporary visa holder was laid off

Department of Justice:

- Suspend all immigration court cases including for children
- The Department of Justice and Department of Homeland Security must adopt policies to ensure that no in absentia orders are issued in the months following the resolution of the pandemic, and that all immigrants are granted at least two presumptive continuances even if they do not appear in light of the national crisis
- Stop implementation of the Department of Justice [final rule](#) authorizing DHS to collect DNA samples from all immigrant arrestees and detainees including those seeking asylum
- Instruct all local law enforcement, particularly in 287(g) jurisdictions, to cease any involvement in immigration enforcement

Department of State:

- Extend the validity period of issued visas. Afghan Special Immigrant Visa recipients, in particular, may see their travel to the United States disrupted. Inability to travel during the limited visa validity period should not require an applicant to start the years-long process from the beginning.
- Clarify that individuals will receive exemptions from the INA 203(g) requirement to apply for an available visa within one year, allowing extensions for the duration of COVID-related travel restrictions in their country of residence.