

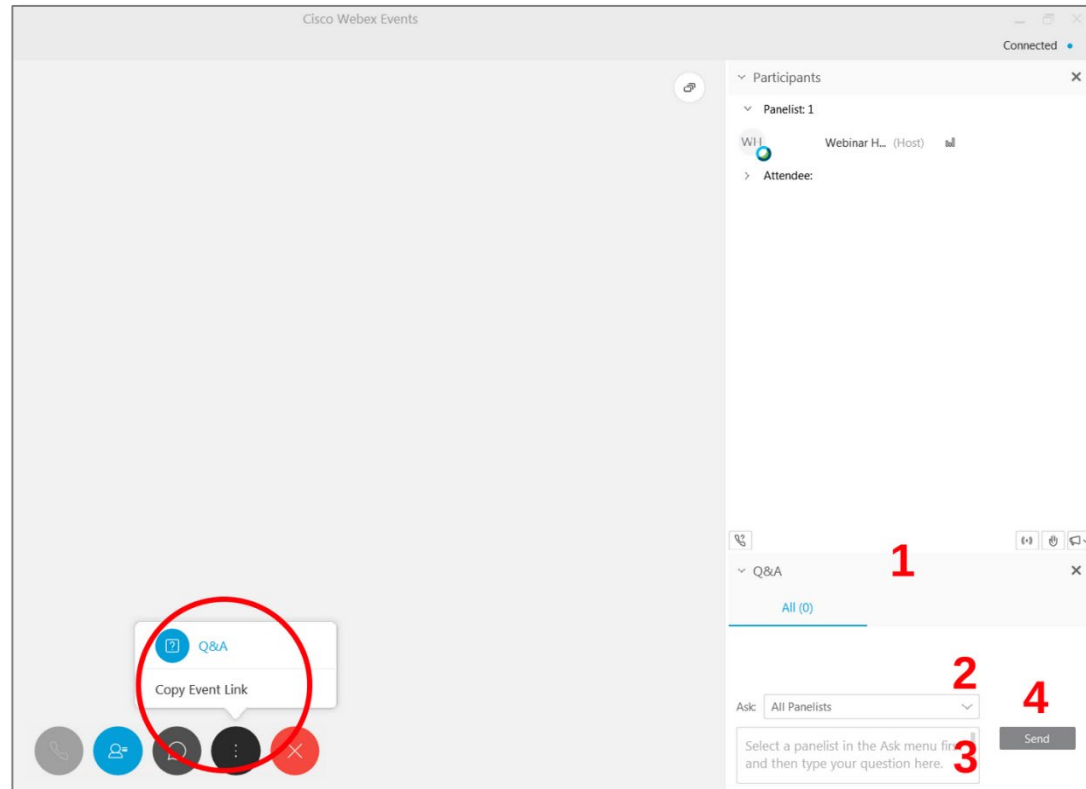
2019 Novel Coronavirus: Legal Preparedness and Public Health Response Efforts

February 6, 2020

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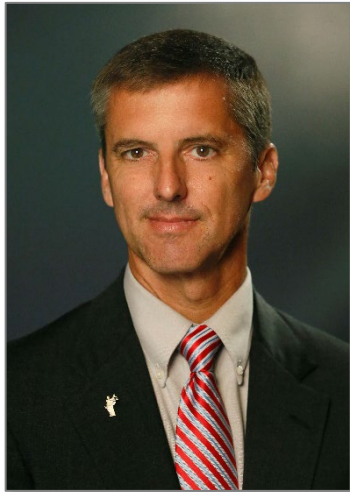
Moderator



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James G. Hodge, Jr., Director, Network for Public Health Law - Western Region; the Peter Kiewit Foundation Professor of Law and Director, Center for Public Health Law and Policy, ASU Sandra Day O'Connor College of Law

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- Research interests/areas of expertise:
 - Emergency Legal Preparedness & Response
 - Vaccinations
 - Preemption
 - Emerging Infectious Diseases
 - Constitutional Rights and Structural Principles

Emergency Legal Preparedness & Novel Coronavirus: A Primer

As of February 6, 2020

James G. Hodge, Jr., J.D., L.L.M.

Peter Kiewit Foundation Professor of Law

Director, Western Region Office, Network for Public Health Law

ASU Sandra Day O'Connor College of Law

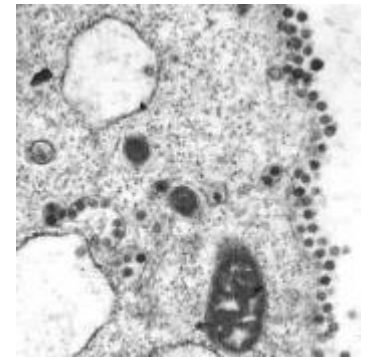
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Brief Overview – Novel Coronavirus

International Legal Response Efforts

World Health Organization

Foreign Governments



U.S. Legal Preparedness/Response

Additional Resources



Note: Limited information is currently available about Novel Coronavirus (2019-nCoV); data below are subject to change.

Global Confirmed Cases: >24,325 | Deaths: >490 | Mortality Rate: ~2%

Transmission:

- Initially-infected persons in Wuhan are linked epidemiologically to a large seafood/animal market.
- Transmissible person-to-person with potential infectivity rate approaching influenza. Asymptomatic persons may likely infect others (under close review).
- Reproductive number [R^0] estimated at 2.2 (similar to influenza).

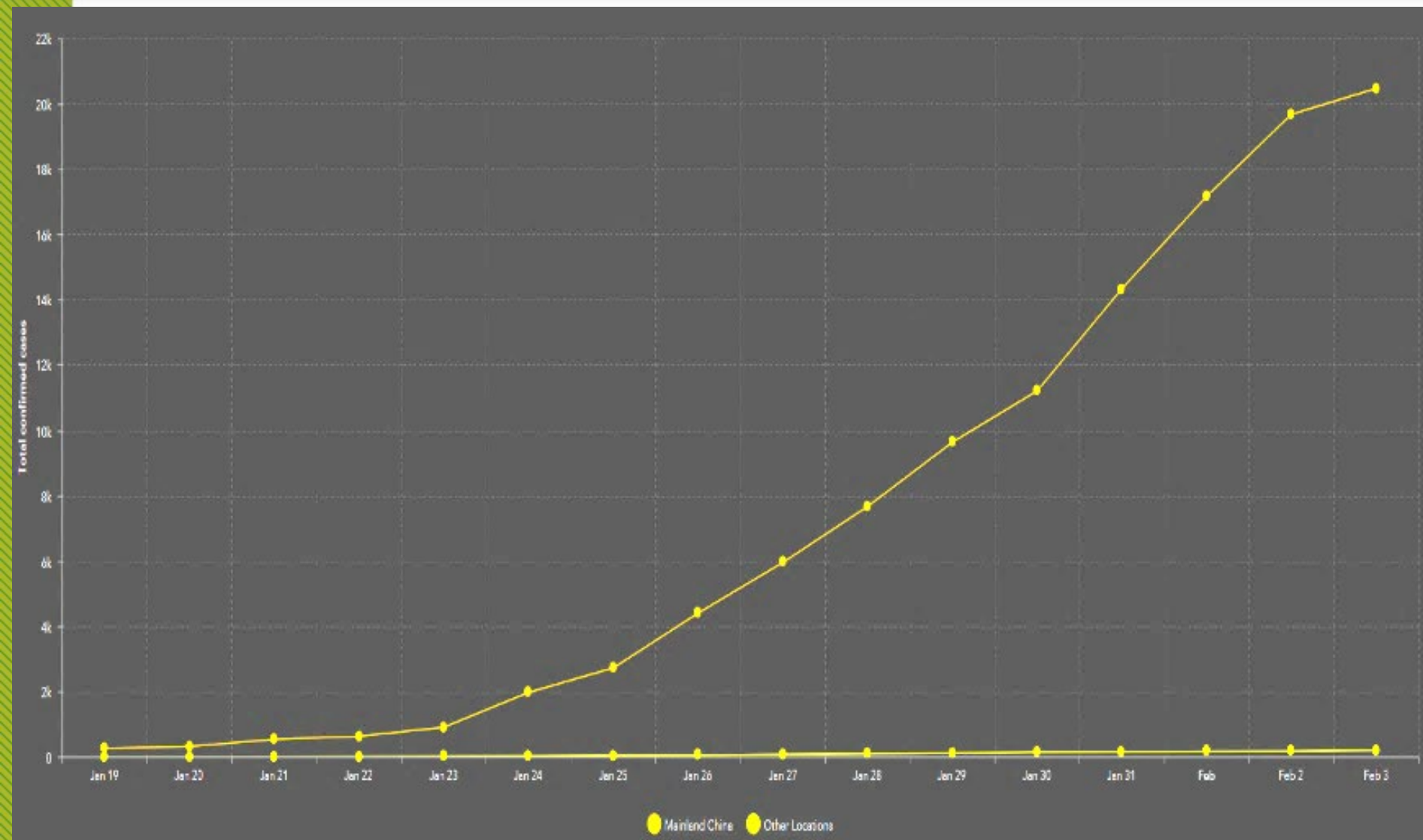
Symptoms:

- Respiratory symptoms, fever, cough, breathing difficulties, aches, pains.
- In severe cases (~20%), infection can cause pneumonia, respiratory issues, kidney failure and death (~2%).

Vaccines, Tests and Treatment:

- No proven vaccines, commercial tests [under development], or specific treatments are available.

2019-nCoV Longitudinally



2019-nCoV Global Distribution



Source: <https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6>

Countries with 2019-nCoV Cases

- China
- Hong Kong
- Macau
- Taiwan
- Australia
- Cambodia
- Canada
- Finland
- France
- Germany
- India
- Russia
- Nepal
- Spain
- Japan
- Malaysia
- Nepal
- Philippines
- Sri Lanka
- Singapore
- Thailand
- South Korea
- United Arab Emirates
- United States
- Vietnam
- United Kingdom
- Sweden

International Legal Response Efforts



China Public Health Responses

Jan. 27, 2020: Chinese authorities prohibit travel into and out of Wuhan, Huanggang, Ezhou, Chibi, Zhijiang, and other cities with populations exceeding 50 million and extends Lunar New Year holiday by multiple days.

Jan. 24, 2020: Affected Chinese citizens reporting distrust of government measures, lack of meaningful information, and concerns over accessing essential health care.

Jan. 23, 2020: Hospitals running low on some essential supplies as increased numbers of persons seek treatment.

Jan. 21, 2020: Ruling Communist Party committee temporarily posts that anyone deliberately hiding disease infection in China will be “forever nailed to history’s pillar of shame.”



Jan. 22, 2020: WHO convenes emergency committee meeting but postpones decision on declaring PHEIC.

Jan. 21, 2020: WHO confirms 1st case of 2019-nCoV in the Republic of Korea, identified as a Chinese national residing in Wuhan.

Jan. 13, 2020: WHO confirms 1st case of 2019-nCoV in Thailand, identified as a traveler from Wuhan.

Jan. 9, 2020: WHO statement on Chinese authorities making a preliminary determination of 2019-nCoV, identified in a hospitalized person with pneumonia in Wuhan.

Dec. 31, 2019: Outbreak of pneumonia of unknown etiology in Wuhan initially reported to WHO.

Jan. 30, 2020: WHO reconvenes emergency committee for 2nd time and declares a public health emergency of international concern (PHEIC).



World Health
Organization

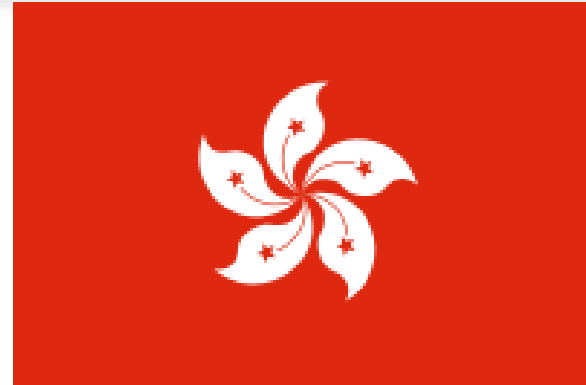
- **Organized Responses.** Engage in containment, active surveillance, early detection, isolation and case management & contact tracing.
- **Data Sharing.** Share data with WHO via IHR legal requirements.
- **Prevention.** Focus on reducing human infection & preventing secondary transmission
- **Communication.** Engage in multi-sectoral communication, collaboration & active participation in increasing knowledge and research.
- **Restrict Movement.** Restricting movement of people/goods may be temporarily useful in settings with limited response capacities or there is high intensity of transmission in vulnerable populations.
- **Travel.** Inform WHO about any travel measures taken as required by the IHR.
- **Discrimination.** Avoid actions promoting stigma or discrimination.
- **Developing Countries.** Support low-to-middle-income countries to enable their responses & facilitate access to diagnostics, potential vaccines & therapeutics.
- **Justification.** Additional health measures significantly interfering with international traffic must be justified.

International Emergency Declarations



Jan. 24, 2020

19 Chinese provinces -
highest level of public
health emergency



Jan. 25, 2020

Hong Kong State of Emergency



Jan. 31, 2020

Italy State of Emergency



Feb. 3, 2020

Kerala State of Calamity

VIEWPOINT

The Novel Coronavirus Originating in Wuhan, China Challenges for Global Health Governance

Alexandra L. Phelan, SJD, LL.M.
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Center for Global Health Science and Security, Georgetown University, Washington, DC.

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On December 31, 2019, China reported to the World Health Organization (WHO) cases of pneumonia in Wuhan, Hubei Province, China, caused by a novel coronavirus, currently designated 2019-nCoV. Mounting cases and deaths pose major public health and governance challenges. China's imposition of an unprecedented *cordon sanitaire* (a guarded area preventing anyone from leaving) in Hubei Province has also sparked controversy concerning its implementation and effectiveness. Cases have now spread to at least 4 continents. As of January 28, there are more than 4500 confirmed cases (98% in China) and more than 100 deaths.¹ In this Viewpoint, we describe the current status of 2019-nCoV, assess the response, and offer proposals for strategies to bring the outbreak under control.

Current Status

China rapidly isolated the novel coronavirus on January 7 and shared viral genome data with the international community 3 days later. Since that time, China has reported increasing numbers of cases and deaths, partly attributable to wider diagnostic testing as awareness of the outbreak grows. Health officials have identified evidence of transmission along a chain of 4 "generations" (a person who originally contracted the virus from a nonhuman source infected someone else, who infected another individual, who then infected another individual), suggesting sustained human-to-human transmission. Current estimates suggest that 2019-nCoV has spread

gatherings in Beijing as well as intraprovince bus service into the nation's capital. China's Finance Ministry announced ¥1 billion (US \$145 million) to fund the response as well as the rapid construction of 2 hospitals in Wuhan to treat those affected.

The Hong Kong Special Administrative Region declared its highest-tier emergency, curtailed public events, and barred travelers from Hubei Province. Travelers from mainland China must complete health declarations. Hong Kong has also closed schools and universities at least until mid-February.⁴

Control Measures by Governments Worldwide

As travel-associated cases of 2019-nCoV escalate, countries have implemented border screening. China itself sharply curtailed travel to and from Hubei Province. Consequently, governments have not yet felt the need to ban travel from China, with 2 exceptions: North Korea has prohibited entry of all Chinese travelers and Kyrgyzstan has closed its border with China. During previous outbreaks like SARS (severe acute respiratory syndrome) and Ebola, governments curtailed travel and trade, so future directives seem reasonably foreseeable.

Multiple countries (eg, Australia, Thailand, South Korea, Japan, India, Italy, Singapore, Malaysia, and Nigeria) have commenced temperature screening, symptom screening, and/or questionnaires for arriving passengers from China. The US Centers for Disease Control and Prevention launched enhanced monitoring



JOHNS HOPKINS
BLOOMBERG SCHOOL
of PUBLIC HEALTH

Center for
Health Security

February 3, 2020:

G-7 HEALTH OFFICIALS TO MEET TO COORDINATE NCOV RESPONSE: Health ministers from the U.S., Canada, France, Britain, Germany, Japan, and Italy are meeting to discuss the ongoing 2019-nCoV outbreak. The aim of the meeting is to ensure a unified approach to responding to the outbreak. Updates forthcoming.



Viewpoint

Border and Travel Restrictions

Jan. 28, 2020: Mongolia closes Chinese border.

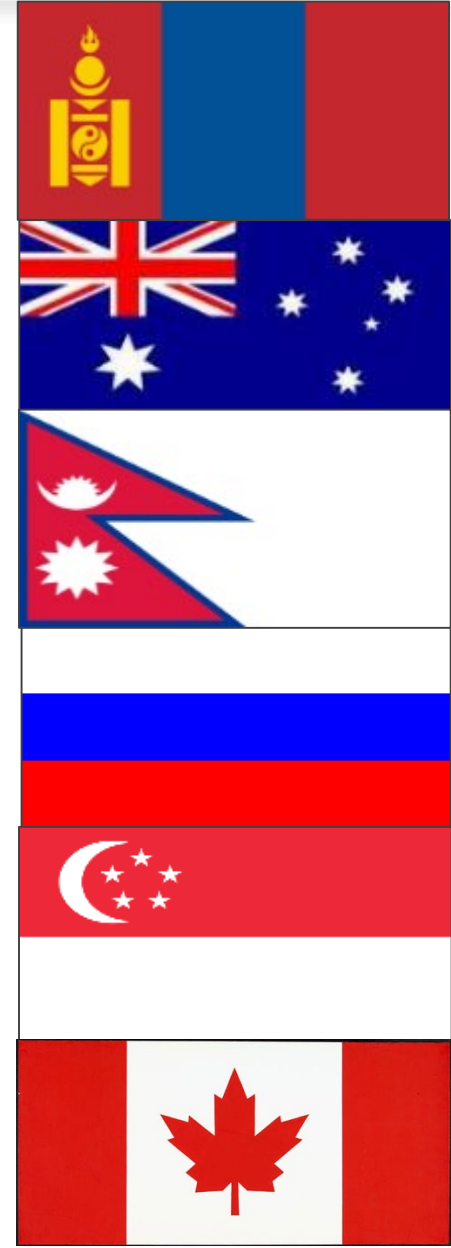
Jan. 29, 2020: Foreign Minister Marise Payne advises Australians to “reconsider your need to travel to China overall,” and “do not travel to Hubei Province.”

Jan. 29, 2020: Nepal closes border with China for 15 days.

Jan. 30, 2020: Russia shuts border with China.

Jan. 31, 2020: Singapore closes Chinese border.

Feb. 4, 2020: Canadian authorities elect not to impose explicit travel bans re: 2019-nCoV, aligning to WHO recommendations.



As Coronavirus Spreads, So Does Anti-Chinese Sentiment



By Motoko Rich

The New York Times

Jan. 30, 2020

Outbreaks of xenophobia in west as coronavirus spreads

Angela Giuffrida in Rome
and Kim Willsher in Paris

The
Guardian

Fri 31 Jan 2020 07:28 EST

Morning Mix

‘Stop normalizing racism’: Amid backlash, UC-Berkeley apologizes for listing xenophobia under ‘common reactions’ to coronavirus

By Allyson Chiu

Jan. 31, 2020 at 5:08 a.m. MST

The Washington Post


‘No Chinese allowed’: Racism and fear are now spreading along with the coronavirus

Published: Jan 31, 2020 1:41 a.m. ET

NEW ZEALAND

Coronavirus outbreak: Calm urged as anti-Chinese sentiment felt in New Zealand

21 Jan, 2020 12:18pm

 The New Zealand Herald

Fear and caution surrounding the spread of the deadly coronavirus has led to a spike in incidents of racial discrimination, Chinese-Australians say.

UPDATED 14 HOURS AGO

BY EVAN YOUNG



SHARE



U.S. Legal Response Efforts



Jan. 22, 2020: *“We have it totally under control. It's one person coming in from China. It's going to be just fine.”*

Jan. 27, 2020: *“Our experts are extraordinary!”*

Jan. 29, 2020: *Announces formation of the President's Coronavirus Task Force.*



President Donald Trump

Feb. 2, 2020: *“We pretty much shut [travel] down coming in from China. . . We can't have thousands of people coming in who may have this problem.”*

Feb. 4, 2020: *“Protecting Americans' health also means fighting infectious diseases. We are coordinating with the Chinese government and working closely together on the coronavirus outbreak in China. My administration will take all necessary steps to safeguard our citizens from this threat.”*

Congress Calls for HHS to Declare Public Health Emergency



Jan. 24, 2020: Senator
Rick Scott (R-FL)



Jan. 28, 2020: Representative Vern Buchanan (FL-16)



Jan. 26, 2020: Senator
Chuck Schumer (D-NY)



Jan. 31, 2020: HHS Sec. Alex Azar declares national public health emergency





HHS Public Health Emergency Powers



- **Frees up federal resources**
- **Encourages interjurisdictional coordination**
- **Allows waivers of specific federal laws**
- **Authorizes real-time countermeasures through emergency use authorizations**
- **Supports social distancing measures (e.g., travel or border limits, quarantine)**

Federal Agency Responses



CDC Preparedness & Response



Centers for Disease Control and Prevention

CDC 24/7: Saving Lives, Protecting People™

[Link here](#) for
additional, varied
guidance and
resources

1/31/20

Ordered 14-day quarantine of 195 Americans returning from Wuhan at U.S. military base in California.

1/28/20

Offers to send response team to China to help contain virus spread.

1/23/20

Raised travel alert to highest Level 4.

1/21/20

Added screening to Atlanta's Hartsfield-Jackson International and Chicago's O'Hare International Airport.

1/21/20

Began entry screening of passengers on direct and connecting flights from Wuhan, China to 3 main ports of entry in the U.S.

1/20/20

Activated emergency operations center with Global Migration, Medical Care/ Countermeasures, and Epidemiology/Surveillance Task Forces.

1/17/20

Issued updated interim Health Alert Notice Advisory informing state/local health departments & providers about the outbreak.



Jan. 27, 2020: FDA Announces
Key Actions to Advance
Development of Novel Coronavirus
Medical Countermeasures

Emergency Use Authorization of Medical Products and Related Authorities

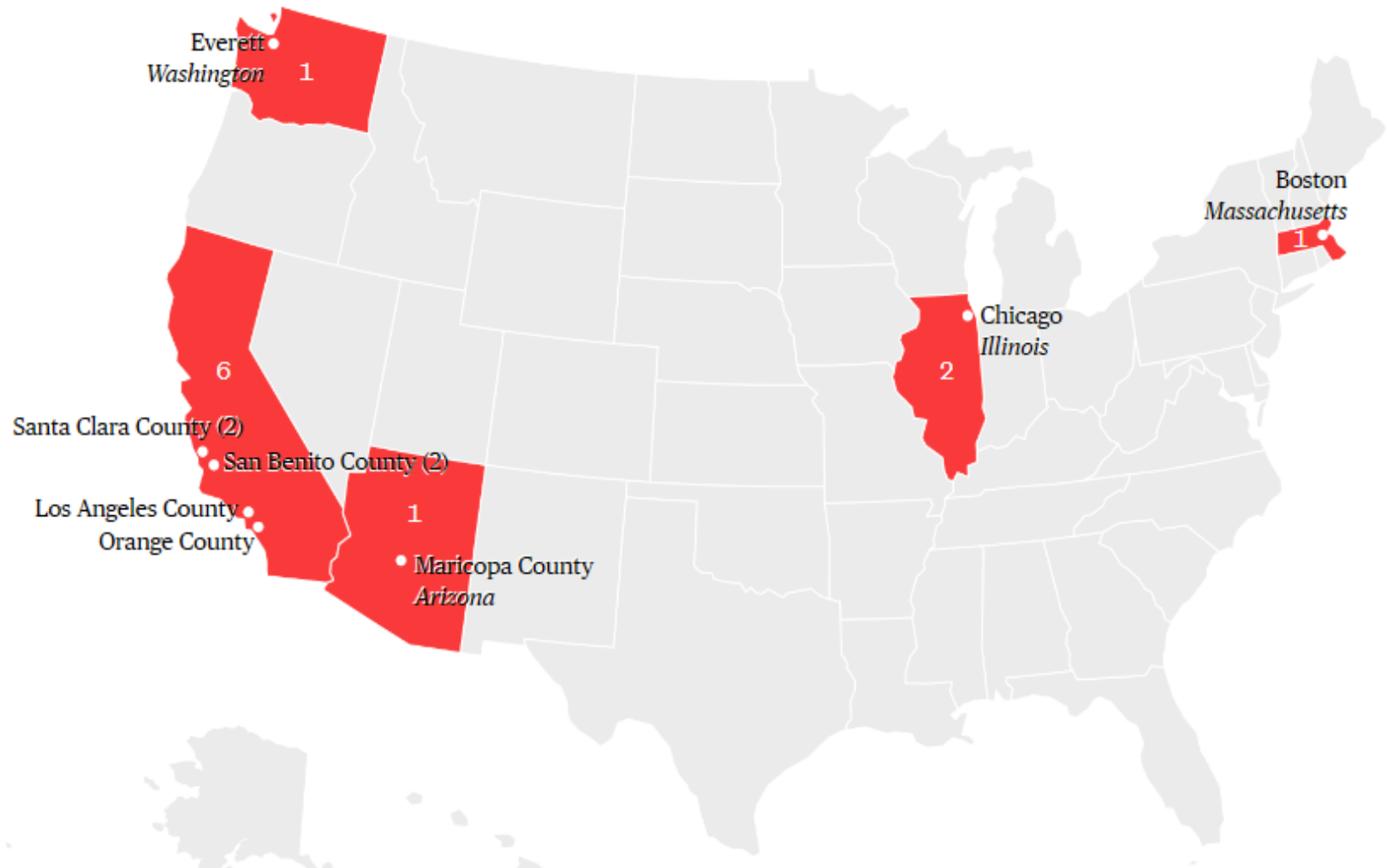
Guidance for Industry and Other Stakeholders

Feb. 4, 2020: FDA grants
EUA for CDC's 2019-nCoV
Real-Time PCR Diagnostic
Panel.

U.S. Department of Health and Human Services
Food and Drug Administration
Office of the Commissioner
Office of the Chief Scientist
Office of Counterterrorism and Emerging Threats

U.S. Cases of 2019-nCoV

Confirmed cases of the coronavirus in the United States





Pre 9/11

- Existing federal and state legal infrastructures focused on general emergency or disaster responses
- Governments took an “all hazards” approach to various exigencies

Post 9/11

- Emergency laws at the federal and state levels are reformed to address and include “public health emergencies”
- Based in part on the Model State Emergency Health Powers Act

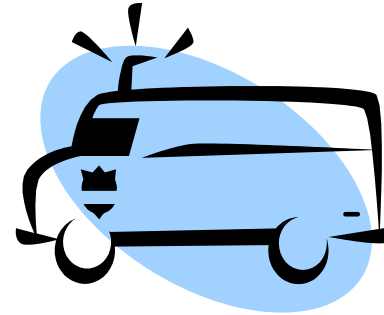
Public Health Emergency Powers



Government is vested with specific, expedited powers to facilitate emergency responses



Individuals are given special protections and entitlements



Emergency responders may be protected from civil liability



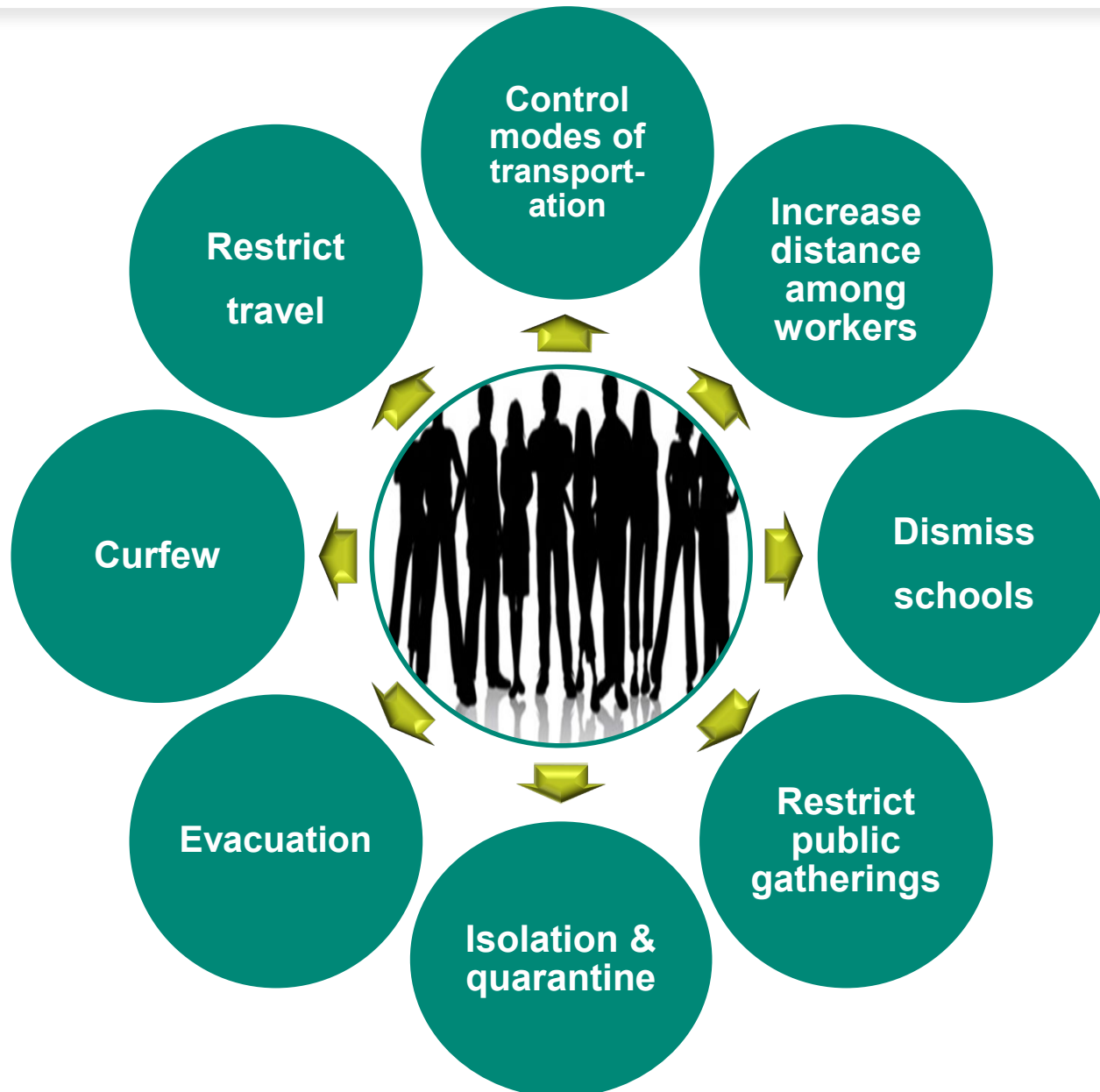
Normal procedures and practices may be waived

Crisis Standards of Care

“Crisis standards of care” during declared emergencies allow for legal adaptation to changing circumstances and increased demands.



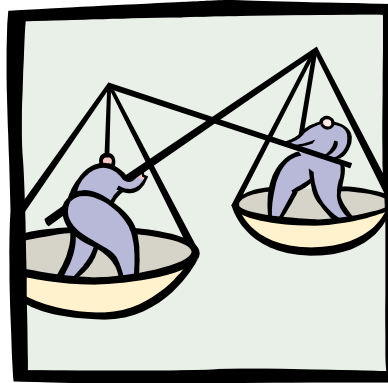
Social Distancing Measures



Constitutional Issues



Freedom of
Religion



Equal
Protection



Freedom of
Movement



Privacy



Right to
Assemble

Jan. 24, 2020: Senator Josh Hawley (R-MO) issues letter to HHS seeking [incoming] travel restrictions; later notes after Congressional briefing “[health officials] don’t think that that’s necessary quite yet.”



After the briefing, NIH’s Dr. Anthony Fauci responded: “It’s not something that I think we’re even considering.”



Jan. 31, 2020: Trump Administration bans foreign national travel for those who have been in China within the last 14 days and pose a risk.



Quarantine & Isolation

Quarantine

Separation from others of people who are exposed to a contagious condition prior to knowing if they may be ill or contagious



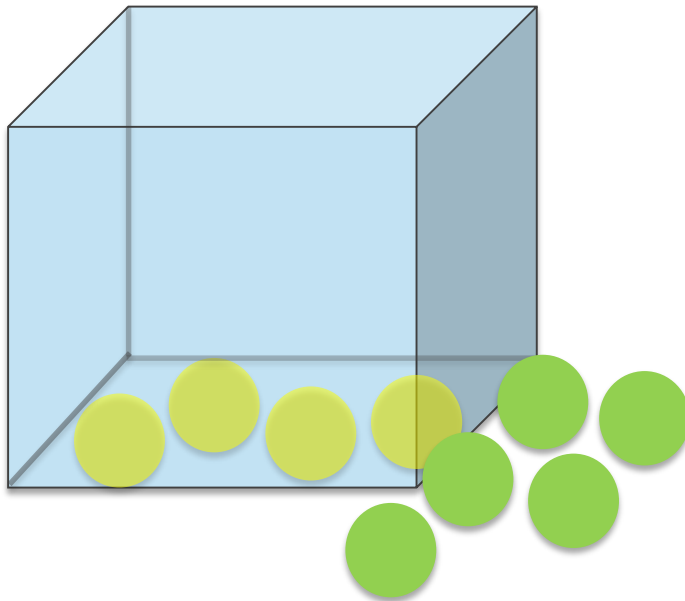
Isolation




Separation from others of people known to be infected with a contagious condition



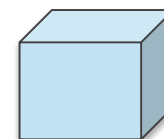
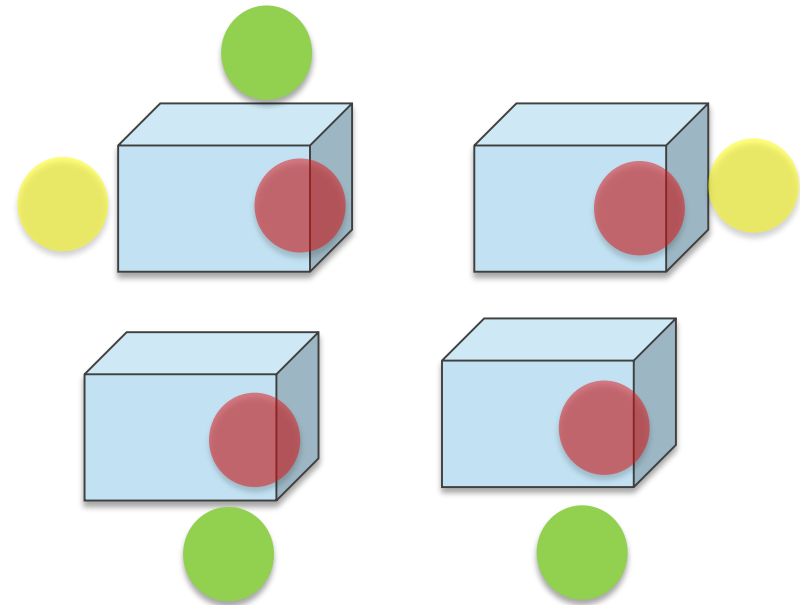
Quarantine & Isolation

Quarantine



-  **Known, infected individual**
-  **Individual exposed to contagious disease**
-  **Healthy individual**

Isolation



**Place of isolation
or quarantine**

Practicality/Timing

Factual Justification

Constitutional Protections

Authorities/ Enforcement

Feasibility

Emergency Settings

Routine

- Due Process May Require:
 - Notice
 - Hearing
 - Right to review (Appeal)
- Equal Protection May Require:
 - Similar treatment for like individuals
 - Avoidance of discrimination for protected classes



Declared Emergency

- Expedited isolation and quarantine powers may be authorized so long as due process, equal protection, and other constitutional interests are respected to the fullest extent possible.



Quarantine in Current Practice



Source: <https://www.pbs.org/newshour/health/cdc-issues-quarantine-orders-to-prevent-spread-of-novel-coronavirus>

Federal

On January 31, 2020, CDC Director Robert Redfield ordered a 14-day quarantine of nearly 200 persons arriving at a U.S. military base in California 2 days prior on an evacuation flight from Wuhan, China.



Source: <https://www.nytimes.com/2020/02/04/us/coronavirus-quarantine.html>

State & Local

Thousands of Americans returning from China recently are under quarantine orders or self administering at their residences, apartments, or dormitories.

Airport Preparedness & Response: Legal Rights, Powers & Duties



- Reporting of ill passengers
- Measures to detect communicable diseases
- Surveillance
- Non-invasive procedures
- Invasive procedures (with consent)
- Contact tracing
- Isolation & Quarantine



Ohio

**Department
of Health**

Jan. 24, 2020: Ohio Department of Health classifies 2019-nCoV a “Class A” condition for which “confirmed or suspected cases . . . must be reported immediately to the local health district”).”

Persons required to report include physicians, hospital administrators or others in charge of clinics/institutions/labs providing care or treatment, “**or any individual having knowledge of a person with nCoV.**”

For More Information

[Latest Resources](#)

[Federal Public Health Emergencies](#)

[Social Distancing Powers](#)

[Liability of Health Care Workers and Entities](#)

[Hospital Emergency Legal Preparedness](#)

[State and Local Preparedness](#)

[Emergency Declarations and Powers](#)

[Mental and Behavioral Health Preparedness](#)

[Model Emergency Laws](#)

[Emerging Threats Preparedness and Response](#)

[Crisis Standards of Care](#)

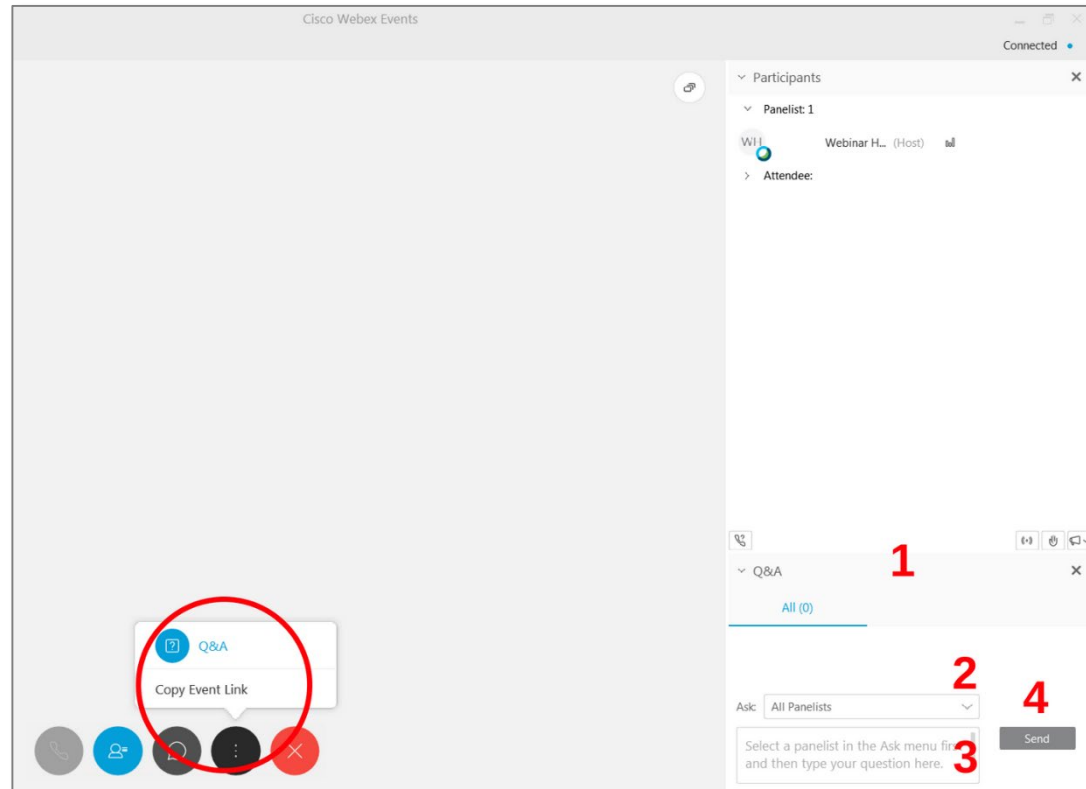
[Public Health Emergency Ethics](#)

Acknowledgements

- Special thanks to **Leila Barraza, JD, MPH, Erica N. White, and Claudia Reeves** at the Network - Western Region Office for their research and assistance
- **Ask the Network** concerning questions or comments relating to this information or ongoing 2019-nCoV legal preparedness and response efforts
- **james.hodge.1@asu.edu**

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The Public Charge Rule and the Threat to Public Health

February 20, 1:00 – 2:30 p.m. EST

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Building and Supporting Healthy Communities for All
September 16 – 18, 2020 | Baltimore, MD



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