

Emergency Legal Preparedness & Novel Coronavirus: A Primer

As of February 13, 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

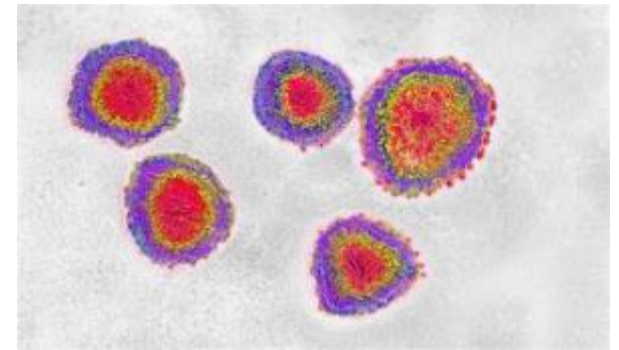
james.hodge.1@asu.edu

Brief Overview – Novel Coronavirus

International Legal Response Efforts

World Health Organization

Foreign Governments



U.S. Legal Preparedness/Response

Additional Resources



Image Source: <http://rensimer.com/>

Note: Limited information is currently available about Novel Coronavirus (COVID-19); data below are subject to change.

Global Confirmed Cases: >60,350 | Deaths: >1,350 | 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:

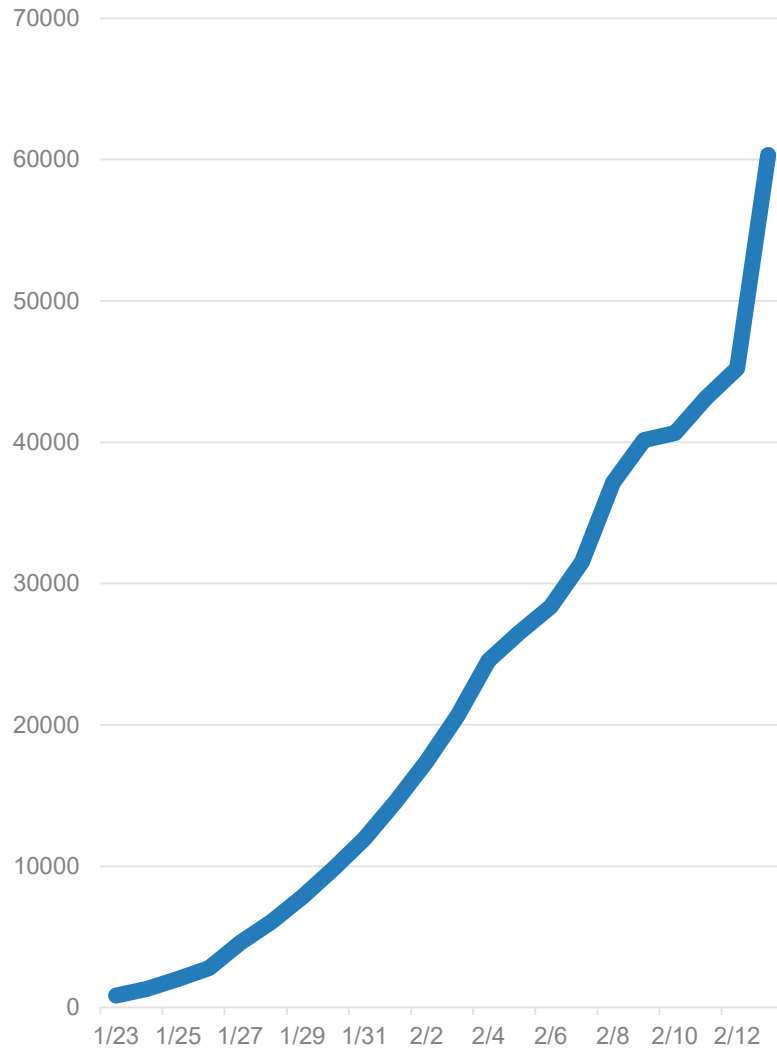
- Respiratory symptoms, fever, cough, breathing difficulties, aches, pains.
- In severe cases (~20%), infection can cause pneumonia, respiratory issues, kidney failure and death (~2%).

Vaccines, Tests and Treatment:

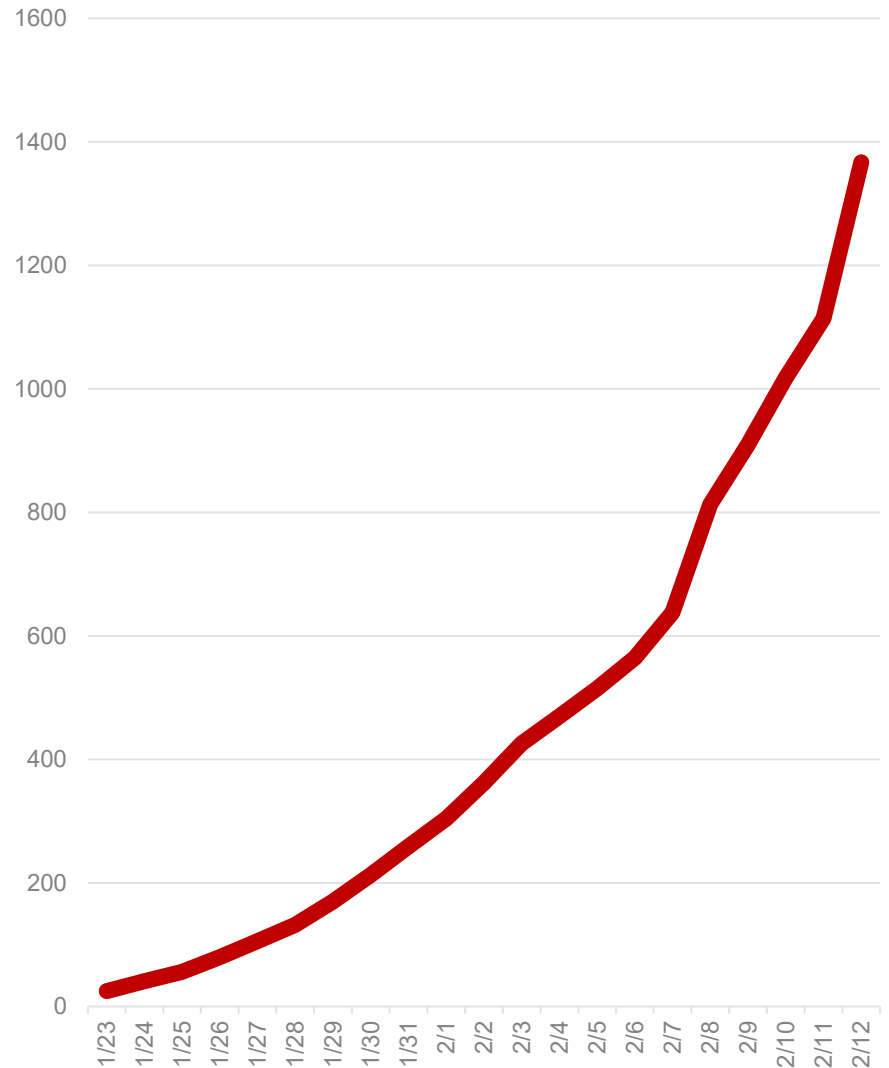
- No proven vaccines, commercial tests [under development], or specific treatments are available.

COVID-19 Longitudinally

Total Number of Cases



Total Number of Deaths





International Legal Response Efforts



Feb. 7, 2020: Chinese authorities intern exposed or infected individuals in Wuhan in specific facilities lacking health care services & other necessities.

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



World Health
Organization

Organized Responses | Engage in containment, active surveillance, early detection, isolation & contact tracing

Data Sharing | Share data with WHO via IHR legal requirements

Prevention | Focus on reducing human infection/secondary transmission

Communication | Engage in multi-sectoral communication re: knowledge & research

Restrict Movement | Restricting movement of people/goods may be temporarily useful under limited response capacities or intense cases

Travel | Inform WHO about travel measures as required by the IHR

Discrimination | Avoid actions promoting stigma or discrimination

Developing Countries | Support LMICs to enable their responses & facilitate access to diagnostics, vaccines & therapeutics

Justification | Justify health measures significantly interfering with international traffic

International Emergency Declarations/Invocations



Jan. 24, 2020

**19 Chinese provinces - highest level
of public health emergency**



Jan. 25, 2020

Hong Kong State of Emergency



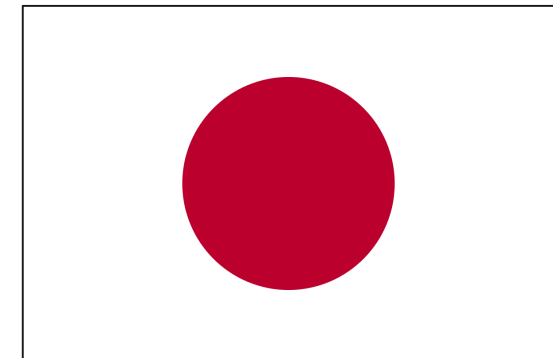
Jan. 31, 2020

**Italy State of
Emergency**



Feb. 10, 2020

**Secretary of State declares
COVID-19 a “serious and
imminent threat to public
health”**



Feb.13, 2020

**Invokes emergency
COVID-19 plan**

Jan. 28, 2020: Mongolia closes Chinese border.

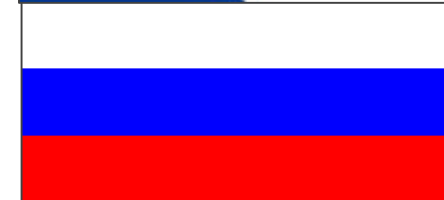
Jan. 29, 2020: Foreign Minister Marise Payne advises Australians to “reconsider your need to travel to China overall,” and “do not travel to Hubei Province.”

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.

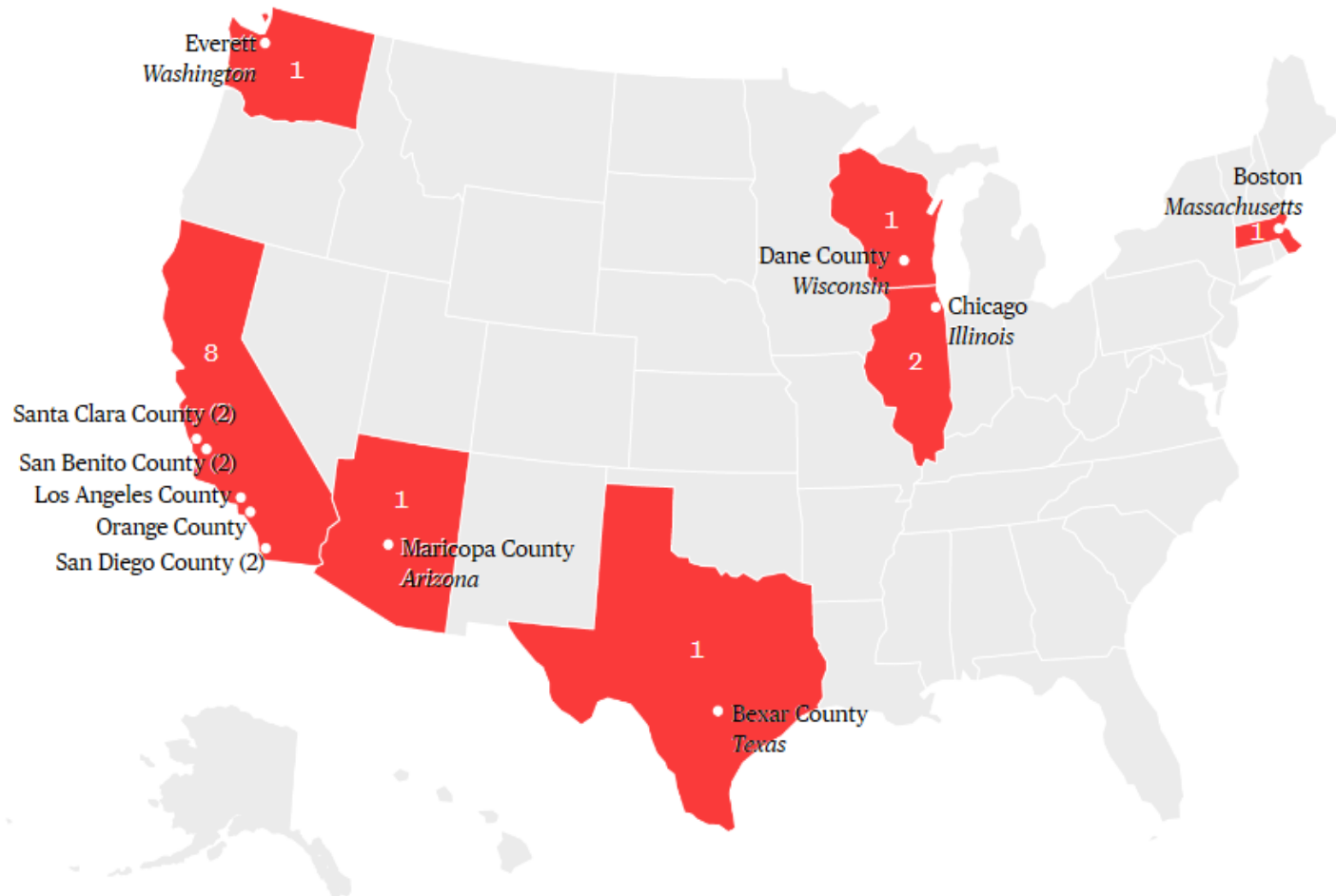
Feb. 4, 2020: Canada elects not to impose explicit travel bans re: COVID-19.



U.S. Legal Response Efforts



Confirmed cases of the COVID-19 in the United States



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: *“Our experts are extraordinary!”*

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

Feb. 2: *“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 . . . My administration will take all necessary steps to safeguard our citizens from this threat.*



President Donald Trump



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





Centers for Disease Control and Prevention

CDC 24/7: Saving Lives, Protecting People™

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

2/12/20

CDC Director: “At some point in time it is highly probable that we’ll have to transition to mitigation” as a public health strategy.

2/5/20

Orders quarantine of 4 additional flights.

1/31/20

Orders 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

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.



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

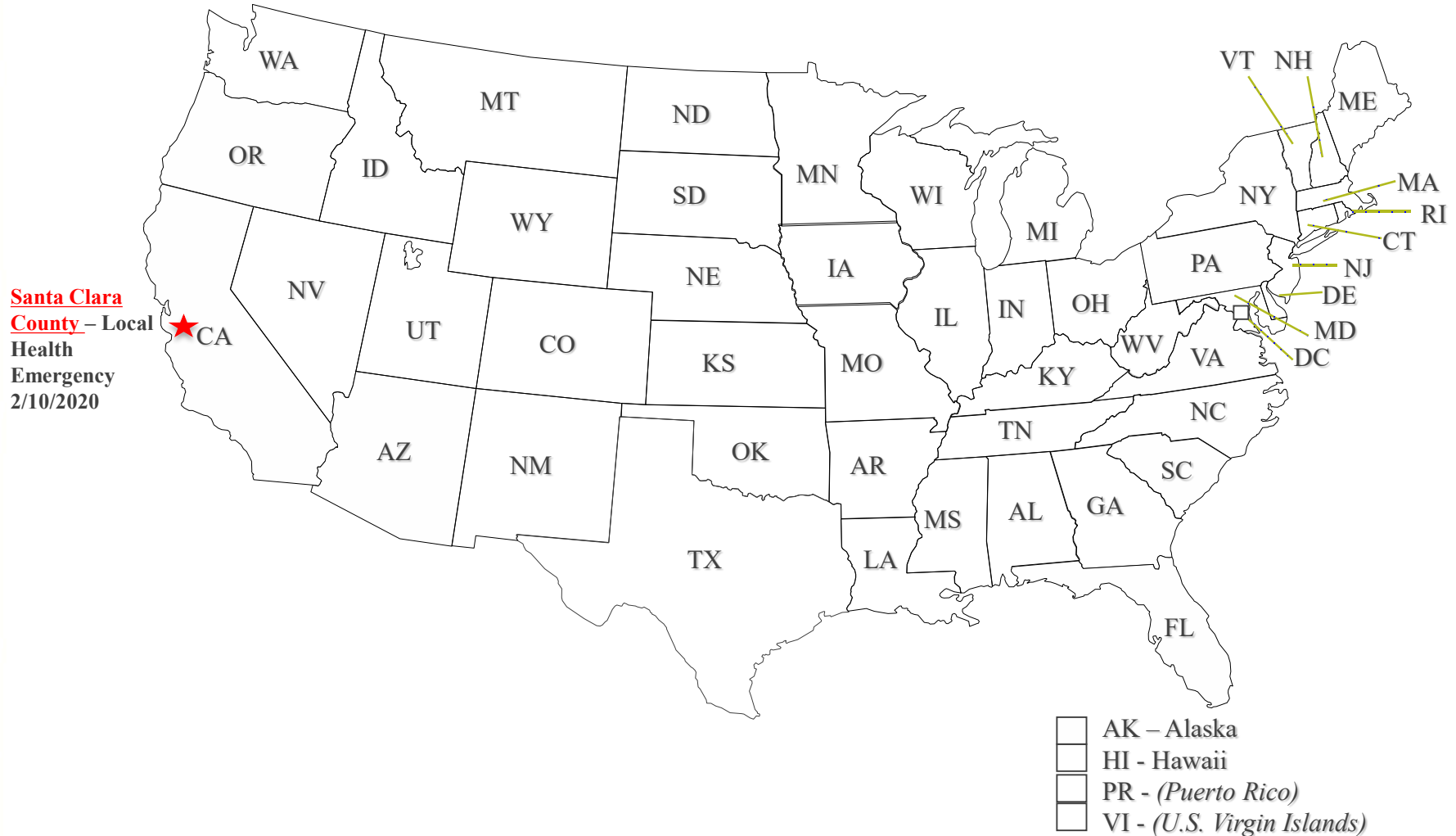
Emergency Use Authorization of Medical Products and Related Authorities

Guidance for Industry and Other Stakeholders

Feb. 4, 2020: FDA grants
EUA for CDC's COVID-19
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

State or Local Declared Emergencies





[Click on image to access:](#)

VIEWPOINT

US Emergency Legal Responses to Novel Coronavirus Balancing Public Health and Civil Liberties

Lawrence O. Gostin, JD
O'Neill Institute for
National and Global
Health Law,
Georgetown University
Law Center,
Washington, DC.

James G. Hodge Jr, JD,
LLM
Center for Public
Health Law and Policy,
Sandra Day O'Connor
College of Law, Arizona
State University,
Phoenix.



[Viewpoint](#)



[Audio](#)

With increasing numbers of cases of coronavirus disease 2019 (COVID-19) globally and in the United States, Health and Human Services (HHS) Secretary Alex Azar declared a national public health emergency on January 31.¹ The emergency declaration of the HHS authorizes additional resources, enhanced federal powers, interjurisdictional coordination, and waivers of specific regulations. State and local public health emergency declarations are also likely. During crises, government has a special responsibility to thoughtfully balance public health protections and civil liberties.

Public Health Risk Assessment

While epidemiological data are evolving, human-to-human transmission of COVID-19 has been documented over an incubation period of 2 to 14 days.² Based on available data, the case fatality rate appears lower than that associated with other novel coronaviruses (severe acute respiratory syndrome [SARS] and Middle East respiratory syndrome [MERS]), likely no

eral powers in response to COVID-19 beyond those used for previous health emergencies such as SARS, H1N1 influenza, and Ebola. The administration premised the exercise of federal powers on the need to avert "cascading public health, economic, national security, and societal consequences."⁴

Travel Warnings and Recall of Nonessential Personnel Immediately following the emergency declaration of the HHS, federal agencies implemented travel warnings, entry bans, and border protections. On January 31, the State Department issued its strongest warning ("do not travel") applying to mainland China.⁵ Additional warnings may take effect with "little or no advance notice."⁵ Nonessential diplomatic, military, and other personnel in affected regions are being called back. Customs and Border Protection agents are actively screening persons for signs of illness at ports of entry, separating those exposed to, or infected with, COVID-19.

Airport Preparedness & Response: Legal Rights, Powers & Duties

Legal Research Digest 34

AIRPORT PUBLIC HEALTH PREPAREDNESS AND RESPONSE: LEGAL RIGHTS, POWERS, AND DUTIES

This digest was prepared under ACRP Project 11-01, "Legal Aspects of Airport Programs," for which the Transportation Research Board (TRB) is the agency coordinating the research. Under Topic 09-01, this digest was prepared by Leila Barraza, Mel and Enid Zuckerman College of Public Health, University of Arizona, Tucson, AZ, and Elizabeth Hall-Lipsy, College of Pharmacy, University of Arizona, Tucson, AZ.

Background

There are over 4,000 airports in the country and most of these airports are owned by governments. A 2003 survey conducted by Airports Council International-North America concluded that city ownership accounts for 38 percent, followed by regional airports at 25 percent, single county at 17 percent, and multi-jurisdictional at 9 percent. Primary legal services to these airports are, in most cases, provided by municipal, county, and state attorneys.

Research reports and summaries produced by the Airport Continuing Legal Studies Project and published as ACRP Legal Research Digests are developed to assist these attorneys seeking to deal with the myriad of legal problems encountered during airport development and operations. Such substantive areas as eminent domain, environmental concerns, leasing, contracting, security, insurance, civil rights, and tort liability present cutting-edge legal issues where research is useful and indeed needed. Airport legal research, when conducted through the TRB's legal studies process, either collects primary data that usually are not available elsewhere or performs analysis of existing literature.

Foreword

Modern air travel has frequently been cited as a leading cause for the rapid spread of disease within countries and

internationally. Recent outbreaks of SARS, MERS, Ebola, and Zika have focused the debate on a number of issues surrounding air travel, including isolation and quarantine, restrictions on freedom of travel, and screening protocols. A number of issues expose the lack of clarity on the respective powers and duties of airport and airline personnel, governments (including federal, state, and local entities) and public health authorities, and the insufficient communication and coordination among local, state, national and international stakeholders.

Numerous legal issues are associated with these inherent challenges, but through planning and coordination with relevant stakeholders they can be addressed. This digest addresses the legal issues concerning the measures to detect communicable diseases, regulations to control communicable diseases, methods for decontamination, emergency legal preparedness, privacy, and potential sources of liability. This digest provides a checklist that airport attorneys and other staff can use to help prepare, plan, and coordinate with their partners in response to a threat of a communicable disease.

This legal digest provides the background on multimodal or intermodal facilities. The history of the laws, rules, and regulations in this area are provided, as well as case studies to assist airport operators in understanding and navigating the complexity of multimodal developments.

- 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 COVID-19 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.”

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.”



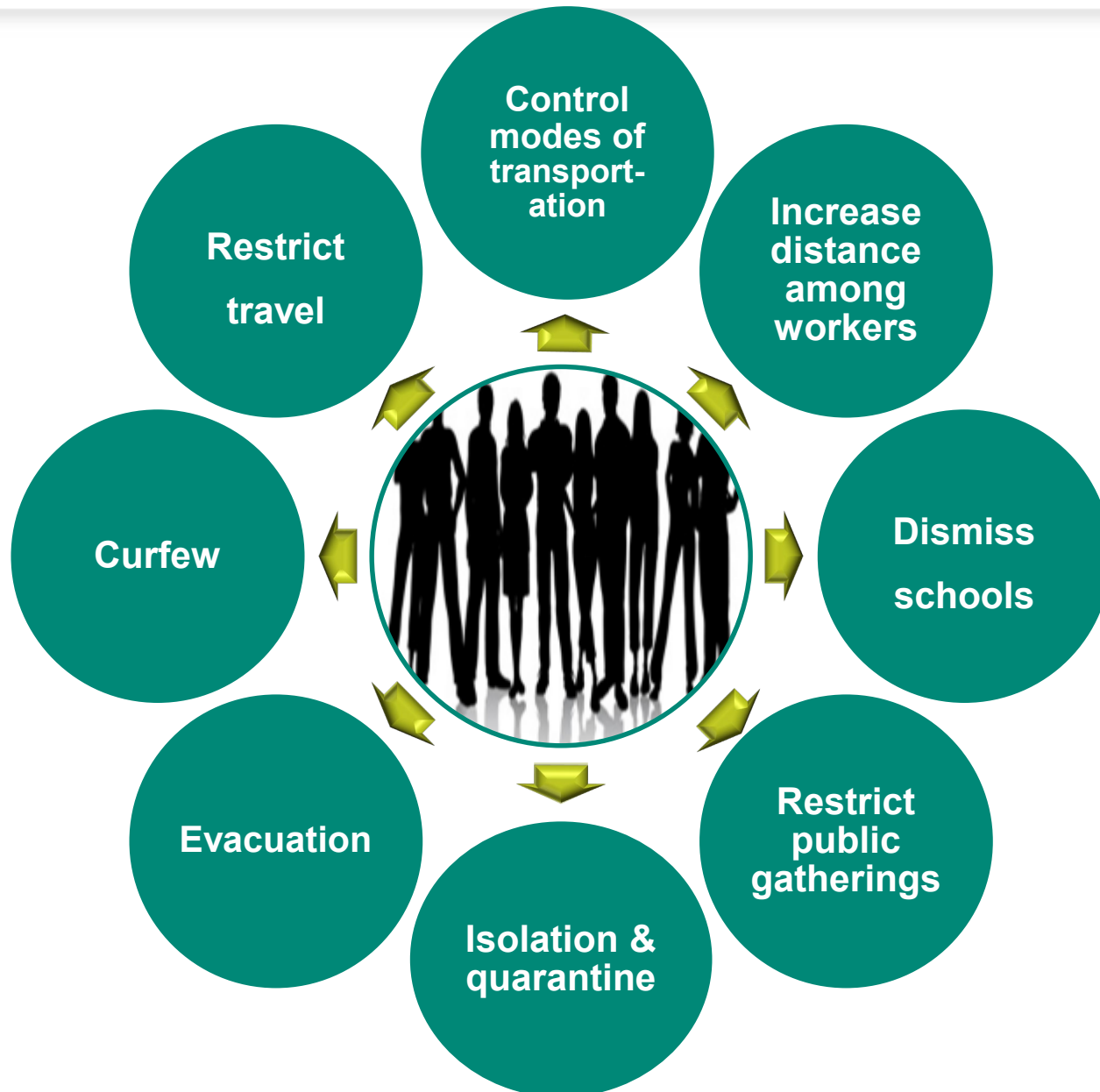
After the briefing, NIH’s Dr. Anthony Fauci responded: “It’s not something that I think we’re even considering.”



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.



Social Distancing Measures



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





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. As of February 10, 2020, 4 flights amassing more than 800 Americans are under quarantine at 4 military bases.



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.

[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, Claudia M. Reeves, and Erica N. White** at the Network - Western Region Office for their research and assistance
- **Ask the Network** concerning questions or comments relating to this information or ongoing COVID-19 legal preparedness and response efforts
- **james.hodge.1@asu.edu** | **@jghodgejr**