



U.S. Immigration and Customs Enforcement

Statement

of

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“Examining Best Practices for Incarceration and Detention During COVID-19”

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Introduction

Chairman Graham, Ranking Member Feinstein, and distinguished members of the Committee, thank you for the opportunity to appear before you today on behalf of U.S. Immigration and Customs Enforcement (ICE) to discuss the agency's response to the Coronavirus Disease 2019 (COVID-19) pandemic.

Before I begin to explain in detail all the work ICE's Enforcement and Removal Operations (ERO) has done to help detect, prevent, and mitigate the spread of the virus, I want to first recognize all the officers, health care workers and staff at ICE who have remained committed to keeping detainees, themselves, and the public safe during this unprecedented time. The immigration enforcement, detention and removal processes, even absent a pandemic, are complex and require intricate planning and remarkable execution. But in the face of this pandemic, our staff has shown its commitment to the health and welfare of detainees as well as their professionalism and adaptability. These attributes have allowed us to develop, implement, and refine the pertinent guidelines and procedures.

Since the onset of reports of COVID-19, ICE Health Service Corps (IHSC) has been tracking Centers for Disease Control and Prevention's (CDC) guidance and updates on the virus, collaborating with state and local health partners, updating the agency's infection prevention and control protocols to reflect the evolving dynamics of the virus, and issuing guidance to staff and detention contractors regarding appropriate screening and management protocols for those with potential COVID-19 exposure or infection. Like any law enforcement agency working with a detained population, ICE is well-versed in how to optimize operations to limit the spread of communicable infections among those in our custody. We have procedures in place to control infections like measles, mumps and chicken pox – and we were able to modify and bolster these

plans for COVID-19. In Fiscal Year (FY) 2019 alone, IHSC provided 276,538 intake screenings; 154,038 physical exams; 202,381 sick calls; 31,887 urgent care visits; 25,675 emergency room/off-site referrals; 29,158 dental visits; 103,517 mental health interventions; and 343,677 prescriptions across the IHSC health system. This diverse team provides direct care for the detained population in IHSC-staffed facilities and guidance and support to medical staff in those facilities in which medical care is provided by contract staff, which has unique medical, dental, and mental health needs. IHSC's work also extends to medical case management and oversight. IHSC does it all with empathy, pragmatism, and an unmatched commitment to the mission.

ICE Guidance on COVID-19

ICE began developing and implementing comprehensive protocols in accordance with CDC guidance on January 22, 2020, and publicly shared our expertise in ICE custodial environments with the CDC during its development of the *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*. The CDC remains the authoritative source for information on how to protect individuals and reduce exposure to COVID-19. Guidance provided by the CDC has evolved as epidemiologists and public health experts have learned more about COVID-19; and, as a result, ICE medical and operational personnel monitor and review this guidance daily, and continually update applicable policies and procedures.

In addition, ICE has taken a number of proactive measures to prevent the spread of COVID-19 including:

- Throughout March, coordinating with a multitude of stakeholders to include the CDC, the U.S. Marshals Service and the Federal Bureau of Prisons to discuss best

practices at detention facilities by ensuring detainees are appropriately housed and that available mitigation measures are implemented during the COVID-19 pandemic.

- Also, in March, convening a working group of medical professionals, disease control specialists, detention experts, and field operators to identify enhanced steps to minimize the spread of the virus.
- Maintaining regular communication and providing guidance to our facility staff and partners who house ICE detainees—and highlighting applicable CDC guidance for dedicated ICE detention facilities, while encouraging non-dedicated facilities to adopt these best practices.
- Implementing COVID-19-specific plan outlining Pandemic Response Requirements (PRR), which builds upon previously issued guidance and sets forth specific procedures to be adopted by all detention facilities housing ICE detainees and identifies best practices for such facilities. This includes procedures on intake screening, testing, management, prevention, and visitation. The PRR has been developed in consultation with the CDC and is a dynamic document that will be updated as additional or revised information and best practices become available.

Accountability to the Public

For ICE, it has been critically important to be transparent about our response to this pandemic. Of course, that also means dispelling rumors and misinformation.

Our agency immediately posted a dedicated web page where *everyone*, not just the media or Congressional staff, could find information about how ICE's operations were being modified.

Our website lists statistics outlining, among other things: the current number of COVID-19 cases we are managing at each facility, the number of tests we have administered, and our current detainee population totals.

One of the first rumors we had to debunk was that ICE was conducting operations at hospitals or testing sites. As I hope you know by now, that is not how ICE operates. We have a Sensitive Locations policy that limits operations at hospitals or other health care facilities. We stated publicly and on our website that our Sensitive Locations policy remains in effect during the COVID-19 pandemic, and individuals should not avoid seeking medical care because they wish to avoid civil immigration enforcement.

We also made it a point in mid-March to clearly announce how ICE adjusted its enforcement posture to more directly focus its immigration enforcement efforts on public safety threats and aliens subject to mandatory detention under the immigration laws.

Temporary Reduction of the Detained Population

ICE continues to take important steps to safeguard the health and safety of those detained in its custody, including efforts to allow for increased social distancing. To this end, ICE has significantly reduced the number of detainees in its custody. While ICE had more than 55,000 single adults in detention during the summer of 2019, by early February 2020, this had fallen to approximately 40,000, and by the end of May 2020, it has fallen still further to approximately 26,000. While ICE's detained population has decreased in part due to ICE's temporary adjustment of its interior enforcement posture, another major contributing factor is the decline in book-ins resulting from Customs and Border Protection (CBP) apprehensions, which has helped

ICE efforts to reduce the population at detention facilities to significantly below capacity to comply with CDC recommendations for social distancing.

As a result of the ICE working group convened in March 2020, ERO developed a comprehensive plan to reduce the population at detention facilities to 75 percent of capacity or less in order to enable increased social distancing opportunities. ICE ERO has asked local jails to meet this target as quickly as possible and has made significant progress toward achieving these metrics. As of May 26, 2020, the detained population is down to 44 percent across all dedicated ICE facilities and is below 75 percent across its detention network.

As part of ICE's plan to promote social distancing for those in detention is a targeted review of cases to determine whether acceptance into custody or continued detention is appropriate. In April, ICE reviewed the cases of the approximately 34,000 aliens in detention nationwide to identify those that may be within CDC guidelines for higher risk of severe illness as a result of COVID-19. As of April 25, 2020, ICE's independent review resulted in the release of more than 900 aliens after thoroughly evaluating each alien's known medical vulnerabilities against their specific immigration histories, criminal records, potential threat posed to the public, flight risk, and national security concerns.

ICE continues to evaluate aliens on a case-by-case basis to determine if remaining in ICE custody is appropriate. When custody determinations are made, ICE considers appropriate release conditions that might mitigate the risk of flight, including enrollment in an alternatives to detention (ATD) program, based on the individual circumstances. However, not all aliens released from ICE custody are eligible for enrollment in the ATD program, such as those aliens who present a flight or public safety risk. In addition, ICE must also follow statutory

requirements that mandate detention and preclude discretionary release regardless of external circumstances, such as the current pandemic.

Additionally, while ICE continues to exercise its discretion on a case-by-case basis in accordance with existing laws and current policies, and recognizes the unique circumstances posed by the COVID-19 pandemic, the agency must continue to execute its mission. ICE ERO's mission, through the authority bestowed by Congress, is to arrest, detain, and remove aliens subject to final orders of removal, to protect public safety, and uphold the rule of law.

As such, ICE is concerned by the growing number of aliens who have been released as a result of federal court orders issued in response to lawsuits by detainees in ICE custody who are using COVID-19 to avoid appropriate detention and removal. As of May 28, 2020, 392 ICE detainees have been released as a result of such court orders. These judicial releases continue to occur in jurisdictions across the country, and do not necessarily undergo the same comprehensive criminal history, public safety, flight risk, or medical analyses that ICE undertakes when conducting its own discretionary custody determinations. The vast majority – 290 of the 392 aliens – ordered by federal courts to be released have extensive criminal histories including convictions and charges for homicide, manslaughter, rape, aggravated assault, domestic violence, sexual contact or lewd acts with a minor, child cruelty, drug and weapons offenses, and driving under the influence.

Screening and Testing

ICE has implemented enhanced health screening for both facility staff nationwide and detainees who are brought into custody. For facility staff, health screening includes taking a temperature check and querying on symptoms associated with COVID-19. Staff who do not

pass the screening process, or refuse the enhanced health screening, are denied entry and advised to follow CDC-recommended steps for persons experiencing COVID-19 symptoms. ICE facilities have also developed contingency plans for operating with reduced workforces due to absences, coordinated with public health and correctional partners, and communicated with staff and detainees about how the necessary operational adjustments may temporarily alter daily life.

Additionally, ICE has taken multiple steps to protect the health and safety of those who are detained. ICE facility staff perform a detailed medical screening when an alien is booked into custody at all facilities housing ICE detainees, assess symptoms and identify those who meet the CDC's criteria for epidemiologic risk of exposure to COVID-19. Based on this medical evaluation, a medical provider then determines, in accordance with CDC guidance, whether COVID-19 testing is indicated. In some cases, medical staff at ICE detention facilities collect specimens from ICE detainees for processing at a commercial or public health lab, while in other cases, including when a detainee requires a higher level of care, he or she will be transported to a local hospital and tested at the discretion of the treating provider at the hospital. Medical staff at ICE detention facilities also consult with local health departments, as appropriate, and notify local health authorities if any detainee tests positive for COVID-19.

Like other state and local agencies and facilities adversely affected across the country, ICE has been continually evaluating its testing process and ramping up testing capabilities since the pandemic began. As of May 29, 2020, ICE has tested 2,781 detainees for COVID-19. ICE continues to work with federal, state, local, and private sector partners to acquire test kits, and has acquired 10 Abbott COVID-19 rapid testing machines and 2,000 testing kits from the Department of Health and Human Services (HHS). ICE is slated to receive an additional 2,000 tests per month from HHS for the foreseeable future.

Preventing the Spread of COVID-19 Within Detention

In addition to intake screening and testing for COVID-19, ICE has established protocols for managing the spread of infectious diseases. Individuals who show symptoms of fever and/or of respiratory illness are immediately isolated. Isolation protocols include housing the detainee in a private medical housing room, which may be an airborne infection isolation room equipped with negative pressure, if available, and implementation of transmission-based precautions. If a single occupancy medical housing room is unavailable, placement in other areas of the facility may be utilized to house the detainee separately from the general detained population. Detainees isolated for respiratory illness who have epidemiologic risk for COVID-19 exposure are instructed to wear a surgical mask when outside of the isolation room. Similar to identification upon intake, ICE isolates detainees who later present with fever and/or respiratory symptoms in a single medical housing unit, or in a medical airborne infection isolation room equipped with negative pressure. Based on evaluation, a medical provider determines whether COVID-19 testing is indicated in accordance with CDC guidance.

ICE also utilizes an infection prevention strategy known as cohorting, which involves housing together detainees who are believed to have been exposed to a person with an infectious agent but are asymptomatic. Cohorting is a standard infection control practice used in congregate settings; when applied to asymptomatic, exposed detainees, cohorting is equivalent to the practice of quarantine. In order to minimize the risks associated with COVID-19 as much as possible, ICE's guidance encourages facilities to implement cohorting for new arrivals before they are placed into the general population. Given the significant variance in facility attributes and characteristics, cohorting options and capabilities will differ across the various detention facilities housing ICE detainees. Cohorting lasts for the duration of the incubation period, so in

the case of COVID-19, the duration of cohorting is 14 days from the time of the most recent exposure. Since individuals afflicted with these and other communicable diseases may be contagious *prior* to developing symptoms, such protocols are important to maintain the health and safety of the overall detained population and staff. Detainees who are cohorted following exposure and subsequently develop fever and/or other symptoms are referred to a medical provider, evaluated, and if suspected of having COVID-19, are housed in isolation and considered for testing at the discretion of the treating medical provider.

Further, comprehensive protocols are in place for the protection of staff and patients, including the appropriate use of personal protective equipment (PPE), in accordance with CDC guidance. Disposable gloves are also made available to detainees on an “as needed” basis. As such, ICE will continue providing appropriate PPE to individuals in ICE custody.

ICE ERO continues to adhere to the CDC recommendations for cleaning and disinfection during the COVID-19 response and is utilizing a broad range of enhanced measures to ensure hygiene within facilities and protect against the spread of infection. This includes cleaning and disinfecting surfaces, objects, and shared equipment that are frequently touched; supplying and routinely rechecking that hygiene supplies or products, such as hand and bath soap and paper towels, are available in bathrooms and work areas within the facilities; and placing alcohol-based sanitizer in visitor entrances, exits, waiting areas whenever possible. In many ICE facilities, Detention Service Monitors verify that the facility is providing the necessary supplies and appropriate education to reduce the risk of the virus. Everyday cleaning supplies, such as soap dispensers and paper towels, are routinely checked, and detainees are encouraged to communicate with local staff when additional hygiene supplies or products are needed.

Medical Care in Detention

ICE ensures that all those in its custody receive timely access to medical services and treatment, including an initial health intake screening and follow-up for any existing or emergent health conditions. Care includes access to 24-hour emergency services, as well as referrals to specialists in cases where medically necessary. The provision of necessary medical care is a key area of ICE ERO's mission and a significant portion of the agency's budget goes to ensure this care is provided. In FY 2019, \$278 million was allocated for detainees to receive medical, mental, dental, and public health services.

With regard to evaluation and treatment for possible COVID-19 infection, detainees who develop fever, respiratory or other COVID-related symptoms while in detention are referred to a medical provider, evaluated, and, if suspected of having COVID-19, housed in isolation and considered for testing at the medical provider's discretion. While detainees with mild symptoms are managed by onsite medical professionals, ICE transports individuals with moderate to severe symptoms, or those who require higher levels of care or monitoring, to hospitals with appropriate expertise in high-risk care. Detainees returned to a detention facility while still within the contagious period will be placed in isolation and managed by a medical provider. However, detainees returned to the detention facility after discontinuation of isolation, according to CDC guidance, will be evaluated and placed in general population and managed per usual protocols.

Social Visitation and Legal Assistance

In mid-March, in an effort to mitigate the spread of COVID-19, social visits with ICE detainees at all detention facilities were suspended in favor of remote communication in order to mitigate the potential transmission of COVID-19. ICE recognizes the considerable impact of

suspending in-person social visitation and encourages the use of communication services such as teleconferencing, video visitation (e.g., Skype, Facetime), and/or email, where possible. As a result, on April 22, 2020, ICE began providing 520 free phone minutes per month at facilities served by Talton Communications (serving approximately 57 percent of the ICE population) and has been negotiating with all other facilities to provide the same.

In addition, ICE detainees remain able to make free calls to pro bono legal service providers on the ICE-provided list to obtain initial legal representation, contact consular officials, the DHS Office of Inspector General, the ICE Office of Professional Responsibility Joint Intake Center, as well as numerous charity and advocacy groups on ICE's pro bono platform.

ICE recognizes the importance of detainee access to attorneys and legal representatives, and reasonable access by detainees to legal representation remains paramount. As a result, despite the COVID-19 pandemic, detention facility operators have been instructed to accommodate such access to the maximum extent practicable, and legal visitation continues unless determined to pose a risk to the safety and security of the facility. Remote legal visitation (e.g., Skype or teleconference) is made available wherever possible to limit potential exposure, but in-person non-contact visitation remains permitted. Prior to the in-person visit, legal representatives must undergo the same screening required for staff entry into the facility including questions and temperature check, and representatives must wear PPE for in-person visits. As of May 1, 2020, if a legal representative who must conduct an in-person visit does not have their own PPE, facilities provide PPE free of charge, subject to availability.

Removal Operations

At this time, ICE removal operations continue with heightened precautions in place, and ICE continues to expect that foreign governments will honor their obligations to accept the return of their nationals. However, ICE does not generally remove aliens who are not fit for travel, which includes any detainee confirmed or suspected of having COVID-19.

In an effort to determine if an alien is fit for travel, ICE's flight medical provider conducts a visual screening for any outward symptoms of illness, consistent with longstanding ICE policy for all removal flights. In conjunction with these standard medical screening procedures, and in light of several individuals recently testing positive for COVID-19 subsequent to their removal, DHS and ICE have taken several additional steps to mitigate the repatriation of aliens with COVID-19, including lowering each detainee's flight boarding temperature threshold and requiring that all detainees wear masks during the flight's duration. In addition, detainees with a temperature of 99 degrees or higher are immediately referred to a medical provider for further evaluation and observation.

Further, in an effort to avoid the removal of aliens with active COVID-19 cases, ICE has begun testing a subset of aliens in custody prior to removal. To most effectively utilize DHS's test kit supply, ICE is coordinating with foreign governments to prioritize testing of detainees with final orders of removal who are both already manifested for travel and who do not exhibit symptoms of COVID-19.

Conclusion

ICE continues to follow closely the evolving dynamics of the COVID-19 pandemic, and to update its guidance in line with CDC recommendations and the unique needs of the ICE

detention environment. While ICE law enforcement officers and agents continue to fulfill ICE's enforcement mission by prioritizing enforcement action against those individuals who threaten national security and public safety, ICE is firmly committed to ensuring the health and safety of individuals in its custody, its employees, contractors, and the general public. This is not a duty we accept lightly. We are aware of the key role we play in mitigating any additional impact to those in our custody and the American public.

Thank you again for the opportunity to appear before you today to discuss this important issue, and I look forward to answering your questions.