

United States Senate
WASHINGTON, DC 20510

April 28, 2020

VIA ELECTRONIC SUBMISSION

The Honorable Joseph V. Cuffari
Inspector General
Office of the Inspector General
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, D.C. 20528

Dear Inspector General Cuffari:

We write to seek your immediate review of concerns with the current conditions in Immigration and Customs Enforcement (ICE) detention facilities. Due to the novel coronavirus pandemic, COVID-19, we request you conduct site visits to ICE facilities to identify and assess whether the facilities' operations, management, standards, and conditions have sufficiently changed to address the threat of COVID-19 to both the staff and detained population. Public health requires that policies and practices be in place now to mitigate viral outbreaks within these facilities.

Reports have revealed that as of April 16, 2020, ICE had 32,300 people in detention.^[1] To date, 360 detainees, 35 ICE employees at detention facilities, and 89 ICE employees not assigned to detention facilities have tested positive for COVID-19.^[2] It has also come to our attention that an unknown number of contract employees assigned to ICE detention facilities have tested positive, and ICE has even acknowledged that, sadly, some contract employees have died from it.^[3] As the numbers of detainees and detention facility staff infected with COVID-19 continue to climb, we share the unease that public health experts have expressed about the spread of the coronavirus pandemic in congregate settings, like detention facilities. Not only are detainees at higher risk because they are in such close proximity to others, people in detention and incarceration are more likely to have other preexisting health conditions, which places them at even higher risk for mortality from the virus. Further, outbreaks inside congregate settings often affect employees who then can spread the disease into their broader communities.

The Centers for Disease Control and Prevention (CDC) has provided guidance to correctional and detention facilities for operational preparedness, prevention, and management of COVID-19, which include developing an emergency plan in addition to intensified cleaning, disinfecting, and reinforcement of hygiene practices. ICE recently published its own set of COVID-19 Pandemic Response Requirements on its website, which attempt to incorporate recommendations from the CDC.^[4] Even with these guidelines, detention facilities are not following

^[1] Matt Katz, *ICE Releases Hundreds Of Immigrants As Coronavirus Spreads in Detention Centers*, NPR, Apr. 16, 2020, <https://www.npr.org/sections/coronavirus-live-updates/2020/04/16/835886346/ice-releases-hundreds-as-coronavirus-spreads-in-detention-centers>.

^[2] *ICE Guidance on COVID-19: Confirmed Cases*, Apr. 20, 2020, <https://www.ice.gov/coronavirus>.

^[3] Declaration of Russel Hott, Acting Assistant Director for the Custody Management Division, Enforcement and Removal Operations, U.S. Immigration Customs and Enforcement, Apr. 15, 2020, *Fraihat v. ICE*, No. 5:19-cv-01546-JGB (SHKx) (C.D. Cal.).

^[4] U.S. Immigration and Customs Enforcement, *Enforcement and Removal Operations: COVID-19 Pandemic Response Requirements*, Apr. 10, 2020, <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>.

best practices. There are reports across the country of detention facility staff working without masks or gloves in facilities that have confirmed cases; these reports follow detainees' inability to practice social distancing, and instances where ICE has even failed to provide detainees with soap to wash their hands.^[5] On telephonic briefings with Congressional staff, ICE claimed that it has set an occupancy threshold of 70% inside its facilities to reduce the number of detainees, but also admitted that this threshold was likely insufficient to meet CDC-recommended social distancing guidelines. Indeed, a U.S. District Judge in California recently wrote, "the evidence suggests system wide inaction [by ICE] that goes beyond a mere 'difference of medical opinion or negligence.'"^[6]

Recently, the Department of Justice's Inspector General initiated remote inspections of Bureau of Prisons facilities to ensure they are following best practices to mitigate the spread of the coronavirus after hundreds of federal inmates tested positive for the virus.^[7] In an effort to confront the health risks of the pandemic, some facilities have swiftly moved to decrease prison populations. ICE has even more reason and discretion than BOP to manage its population, as ICE detainees are *civilly* detained, and many of them are asylum seekers.^[8]

In order to mitigate the spread of this virus in its congregate settings, we request that, similar to the Justice Department Inspector General's remote inspections of BOP facilities, you expeditiously conduct site inspections of ICE facilities that have identified positive cases among staff or detainees, and at facilities in geographic areas that have emerged as hot spots. Second, we ask that you immediately examine and assess the sufficiency of policies and practices in place at each facility to mitigate the spread of COVID-19. As you conduct your inspections, we request that you:

1. Contract with medical and public health experts – or work in coordination with the DHS Office for Civil Rights and Civil Liberties and its expert consultants – so that these experts can accompany your team of investigators during the course of the inspection.
2. Identify whether ICE Health Service Corps (IHSC) and non-IHSC detention facilities are adequately tracking potential and actual COVID-19 cases; evaluate whether detention facilities continue to hold medically vulnerable individuals, including pregnant and postpartum detainees, and in what settings; and assess how well each facility chosen for inspection is handling COVID-19 prevention, identification, and treatment. In these assessments, please determine the adequacy of each facility's onsite healthcare capabilities, and whether the facilities have the capacity to evaluate and test detainees, ICE employees and contract employees for potential illness.
3. Review ICE's COVID-19 Pandemic Response Requirements, as well as ICE's standards for detention, including the Performance Based National Detention Standards 2011 (revised December 2016) and 2019 National Detention Standards, to identify any concerns and ways ICE and its contractors can improve current protocols being implemented to meet guidelines set by the CDC. In an effort to promote transparency, we ask that you require ICE to place any and all protocols addressing IHSC and non-IHSC facility practices and protocols addressing COVID-19 on ICE's website and make them available to the public.
4. Evaluate the impact of detainee transfers across detention facilities and general population management practices on mitigation efforts to contain COVID-19.

While nearly all of ICE's federal detention centers nationwide are operated by third party contractors, ICE bears ultimate responsibility for managing and conducting oversight over these contractors and the policies and

^[5] Ian Gomez, Maria Clark & Rebecca Plevin, *Terrified Of Dying': Immigrants Beg to Be Released from Immigration Detention As Coronavirus Spreads*, USA TODAY, Apr. 8, 2020, <https://www.usatoday.com/story/news/nation/2020/04/07/covid-19-hits-ice-detention-migrants-say-they-cant-clean-stay-safe/2953170001/>.

^[6] *Fraihat v. U.S. Immigration & Customs Enf't*, 2020 WL 1932570, at *32, (C.D. Cal. Apr. 20, 2020).

^[7] Sarah N. Lynch, *U.S. Justice Department Watchdog to Inspect Federal Prisons' Handling of Coronavirus*, REUTERS, Apr. 15, 2020, <https://www.reuters.com/article/us-health-coronavirus-usa-prisons/u-s-justice-department-watchdog-to-inspect-federal-prisons-handling-of-coronavirus-idUSKCN21X2Q0>.

^[8] Memorandum from Attorney General William P. Barr to Director of the Federal Bureau of Prisons Michael Carvajal, April 3, 2020, Office of the Attorney General, 1, <https://www.politico.com/f/?id=00000171-4255-d6b1-a3f1-c6d51b810000>.

practices the contractors are developing to manage this pandemic. We appreciate your guidance and prompt attention to the issues we have raised, and we look forward to your assessment of ICE detention facilities.

Sincerely,

/s/ Tom Udall
United States Senator

/s/ Charles E. Schumer
United States Senator

/s/ Richard Blumenthal
United States Senator

/s/ Tim Kaine
United States Senator

/s/ Mazie Hirono
United States Senator

/s/ Kyrsten Sinema
United States Senator

/s/ Sherrod Brown
United States Senator

/s/ Edward J. Markey
United States Senator

/s/ Elizabeth Warren
United States Senator

/s/ Corey A. Booker
United States Senator

/s/ Tammy Baldwin
United States Senator

/s/ Jeff Merkley
United States Senator

/s/ Robert Menendez
United States Senator

/s/ Richard J. Durbin
United States Senator

/s/ Benjamin L. Cardin
United States Senator

/s/ Kamala D. Harris
United States Senator

/s/ Amy Klobuchar
United States Senator

/s/ Catherine Cortez Masto
United States Senator

/s/ Patty Murray
United States Senator

/s/ Patrick Leahy
United States Senator

/s/ Ron Wyden
United States Senator

/s/ Jacky Rosen
United States Senator

/s/ Dianne Feinstein
United States Senator

/s/ Martin Heinrich
United States Senator

/s/ Mark R. Warner
United States Senator

/s/ Kirsten E. Gillibrand
United States Senator