

# USA: 'WE ARE ADRIFT, ABOUT TO SINK'

THE LOOMING COVID-19 DISASTER IN UNITED STATES  
IMMIGRATION DETENTION FACILITIES

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*Cover photo: Map depicting the locations of ICE immigration detention facilities throughout the USA, with capacities ranging from a single immigration detainee, to more than one thousand. (Map designed and prepared for Amnesty International by AGENCY Architecture in April 2020.)  
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# GLOSSARY

WORD	DESCRIPTION
<b>ASYLUM SEEKER</b>	An asylum seeker is someone who has left their country of origin in search of protection, but has yet to be recognized as a refugee. During the time that their asylum claim is being examined, the asylum seeker must not be forced to return to their country of origin. Under international law, being a refugee is a fact-based status, and arises before the official, legal granting of asylum.
<b>COVID-19</b>	Coronavirus Disease 2019.
<b>CDC</b>	The Centers for Disease Control and Prevention (CDC) is the leading national public health institute of the United States. It is a United States federal agency, under the Department of Health and Human Services.
<b>DHS</b>	US Department of Homeland Security.
<b>FISCAL YEAR (FY)</b>	The US government classifies some official information by the Fiscal Year (FY), which runs from October 1 to September 30 of each year.
<b>FRC</b>	Family Residential Center.
<b>HHS</b>	US Department of Health and Human Services.
<b>ICE</b>	Immigrations and Customs Enforcement (ICE) is an agency of DHS, charged with carrying out detentions and deportations of asylum seekers and migrants.
<b>IHSC</b>	ICE Health Service Corps.
<b>REFUGEE</b>	Refugees are individuals who fled from their countries-of-origin due to a well-founded fear of persecution, from which their governments cannot or will not protect them. Asylum procedures are designed to determine whether someone meets the legal definition of a refugee. When a country recognizes an asylum seeker as a refugee, it gives them international protection as a substitute for the protection of their home country.

# 1. INTRODUCTION

The Trump administration is failing to adequately protect the nearly 40,000 immigrants and asylum seekers whom the US Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) agency is now detaining in over 200 detention centers across the United States.

Amnesty International has received credible, consistent, and disturbing accounts by detainees of dangerous conditions in ICE's immigration detention facilities, which needlessly put all those detained there at a higher risk of contracting Coronavirus Disease 2019 (COVID-19). For detainees who are older or have underlying medical conditions, such exposure is more likely to be fatal.

Detainees and their lawyers shared harrowing details of ICE's reckless endangerment of people in its custody, in violation of US Centers for Disease Control and Prevention (CDC) standards on the prevention of COVID-19 in places of detention.

ICE and its detention facilities have failed to provide detainees with sufficient soap and sanitizer, or facilitate their "social distancing" to prevent the spread of COVID-19 within its crowded detention facilities. Additionally, ICE has not abided by CDC standards for quarantining and medical isolation. Nor has it halted the unnecessary transfers of detainees between ICE facilities, or sufficiently provided detainees with lifesaving information on COVID-19 and necessary precautions to prevent contracting the virus.

As COVID-19 cases increase exponentially across the United States, detainees have launched hunger strikes in multiple ICE immigration detention facilities, demanding their humanitarian parole.

US authorities are fully responsible for all individuals in the custody of ICE, and therefore may be liable for any preventable deaths under their watch. ICE has the authority and obligation to grant humanitarian parole to immigration detainees, before any more people in its custody contract COVID-19 and suffer irreparable harm.

ICE's unnecessary and punitive detention of migrants and asylum seekers, based solely on their migration status, constitutes ill-treatment and discriminatory denial of the right to health, particularly for older people and other individuals at higher-risk of serious harm or death if they contract the virus.

On 24 March, Amnesty International issued guidelines for governments to adopt human rights-compliant responses to COVID-19. Those guidelines reminded states that they must not discriminate or leave vulnerable groups behind in their public health measures, in order to guarantee access to sanitation and healthcare for all.<sup>1</sup>

Amnesty International reiterated that the enjoyment of personal liberty and security should always be any individual's default condition. The right to liberty can only be restricted in specific and the most exceptional of circumstances. The arbitrary detention of migrants and asylum seekers only pushes them deeper into harm's way, in unhygienic and unsafe environments, contrary to international human rights and public health guidelines.

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1. See, Amnesty International, *Americas at a Crossroads in Response to COVID-19* (24 March 2020), available at: <https://www.amnesty.org/en/latest/research/2020/03/americas-at-a-crossroads-in-response-to-covid19/>.

# 2. ICE'S RECKLESS RESPONSE TO COVID-19 THREATENS PUBLIC HEALTH

As of 4 April 2020, ICE had already confirmed cases of COVID-19 in at least 12 of its detention facilities in seven states,<sup>2</sup> yet its response to those cases has been inadequate to prevent a catastrophic COVID-19 outbreak among its personnel and detainees in their custody.<sup>3</sup>

On 24 March, ICE confirmed the first case of COVID-19 in an immigration detention facility in New Jersey.<sup>4</sup> On the same day, news media published a DHS report leaked by a federal intelligence official, showing that ICE had secretly quarantined at least nine detainees suspected of contracting COVID-19, and was monitoring at least 24 other individuals at 10 ICE detention facilities.<sup>5</sup> One week later, ICE publicly confirmed cases of COVID-19 contracted by at least three other detainees and 33 ICE employees and personnel.<sup>6</sup> The number of cases is rising, without adequate safeguards.

Despite the highly contagious nature of COVID-19, ICE personnel and employees have not exercised their discretion to parole detainees in the interest of the public health, and have continued to routinely transport thousands of immigration detainees into (and out of) ICE detention facilities.

**“The Trump administration has been over-utilizing the county jails. The jails are the least able to provide continuity of care in this time of emergency.”**

*- Former senior ICE official*

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2. See, DHS-ICE, “ICE Guidance on COVID-19”, available at: <https://www.ice.gov/coronavirus>. As of 4 April 2020, there were at least 13 confirmed cases of COVID-19 among those who were in ICE custody: two detainees in Bergen County Jail (Hackensack, NJ); one detainee in Essex County Correctional Facility (Newark, NJ); two detainees in Hudson County Jail (Kearny, NJ); one detainee in La Palma Correctional Facility (Eloy, AZ); four detainees in Pike County Correctional Facility (Hawley, PA); one detainee in Pine Prairie ICE Processing Center (Pine Prairie, LA); one detainee in York County Prison (York, PA); and one detainee in Otay Mesa Detention Center (San Diego, CA). There were also seven confirmed cases of COVID-19 among ICE personnel working in five ICE detention facilities, including: two in Aurora Contract Detention Facility (Aurora, CO); one in Elizabeth Contract Detention Facility (Elizabeth, NJ); one in Houston Contract Detention Facility (Houston, TX); one in Hudson County Jail (Kearny, NJ); and two in Alexandria Staging Facility (Alexandria, LA). Additionally, ICE reported 48 confirmed cases of COVID-19 among ICE employees not assigned to detention facilities.
  3. See, *Case of Basank et al. v. Wolf*, at n. 77 below.
  4. See, DHS-ICE, “ICE detainee tests positive for COVID-19 at Bergen County Jail” (24 March 2020), available at: <https://content.govdelivery.com/accounts/USDHSICE/bulletins/282feff>.
  5. See, *The Nation*, “ICE Detainees Are Being Quarantined: A leaked document about the Department of Homeland Security’s Covid-19 response suggests that the crisis has made its way to border detention facilities.” (24 March 2020), available at: <https://www.thenation.com/article/society/corona-covid-immigration-detention/>.
  6. See, DHS-ICE, “ICE Guidance on COVID-19” (as viewed on 31 March 2020), at n. 2 above.

## 2.1 INADEQUATE MONITORING AND PREVENTION IN ICE DETENTION FACILITIES

With a well-documented recent history of gross medical negligence in its facilities,<sup>7</sup> ICE's inappropriate and unnecessary detention of thousands of immigration detainees poses a massive threat to public health in both large and small communities where it runs its more than 200 immigration detention centers.

In June 2019, the ICE Health Service Corps (IHSC) informed a member of the US Congress that it was aware of 308 outbreaks of infectious diseases in 51 ICE detention facilities over the preceding 12 months.<sup>8</sup> IHSC oversaw 112 of those investigations in 15 facilities where it was the medical authority operating the medical clinic, while the other 36 were overseen by contracted facility operators.<sup>9</sup>

IHSC only manages healthcare in 22 of ICE's immigration detention facilities, relying on local contractors – both public and private – to accurately identify and coordinate responses to outbreaks in almost 200 other ICE facilities across the United States.<sup>10</sup>

On 27 March 2020, a former senior ICE official informed Amnesty International by phone:

*“ICE Health Services Corps only has a footprint into 50 percent of the detention population. For the rest they have to get reports from Field Medical Coordinators. That has been lackluster in the past, and it's hard to tell if they're getting accurate reports from all facilities. [...] The Trump administration has been over-utilizing the county jails. The jails are the least able to provide continuity of care in this time of emergency.”<sup>11</sup>*

After a scandalous year of neglect resulting in numerous deaths of migrants and asylum seekers in DHS custody,<sup>12</sup> the US Congress in December 2019 instructed DHS to review “how the Department delivers healthcare to individuals in its custody and to departmental personnel,” including “disease surveillance, reporting, and outbreak response”.<sup>13</sup>

DHS has failed to step up to that challenge, and has instead echoed the Trump administration's broader denial and delayed reaction to the COVID-19 crisis. On 3 March 2020, the acting Secretary of DHS, Chad Wolf, told Congress that DHS's Chief Medical Officer was speaking “twice daily” with CDC and the US Department of Health and Human Services (HHS) in relation to DHS facilities, but insisted that the “threat continues to remain low to Americans.”<sup>14</sup>

Since then, the United States has confirmed more cases of COVID-19 than any other country in the world (over 325,000 as of 5 April<sup>15</sup>), yet ICE continues to fail to adopt a strategy that is consistent or effective to prevent the spreading of COVID-19 in its immigration detention facilities.

7. See, for instance, Human Rights Watch, *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention* (20 June 2018), available at: <https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration>.

8. See, “Treatment of Detainees at ICE Detention Facilities”, Letters from ICE to Representative Jason Crow (Colorado), dated 18 and 28 June 2019, Congressional Record (9 July 2019), Extensions of Remarks (at p. E877), available at: <https://www.congress.gov/116/crec/2019/07/09/CREC-2019-07-09-pt1-PgE877-2.pdf>.

9. Ibid. Following are the 51 facilities in which public health investigations occurred in response to outbreaks of infectious disease during the one-year period until June 2019. The 15 of those facilities where IHSC is the medical authority are: Alexandria Staging Facility; Buffalo (Batavia) Service Processing Center; Caroline Detention Facility; El Paso Service Processing Center; Elizabeth Detention Center; Eloy Federal Contract Facility; Florence Service Processing Center; Houston Contract Detention Facility; LaSalle ICE Processing Center (Jena); Montgomery Processing Center (Houston); Otay Mesa Detention Center (San Diego CDF); Port Isabel; South Texas Family Residential Center (Dilley); South Texas ICE Processing Center (Pearsall); T. Don Hutto Residential Center. The 36 of those facilities where IHSC is not the medical authority are: Adelanto ICE Processing Center; Albany County Jail; Broward Transitional Center; Central Arizona Florence Correctional Complex East; Cibola County Correctional Center; Coastal Bend Detention Facility; Aurora Detention Facility; East Hidalgo Detention Center; El Valle Detention Facility; Folkston ICE Processing Center (D. Ray James); Geauga County Jail (OH); IAH Polk Adult Detention Facility; Imperial Regional Detention Facility; James A. Musick Facility; Jerome Combs Detention Center; Joe Corley Detention Center; Johnson County Law Enforcement; La Palma Correctional Center; Laredo Processing Center; LaSalle County Regional Detention Center (TX); McHenry County Jail (IL); Mesa Verde ICE Processing Center; Northeast Ohio Correctional Center (Youngstown CDF); Otay Mesa Detention Center (San Diego CDF); Otero County Processing Center; Pine Prairie ICE Processing Center; Prairieland Detention Facility; Pulaski County Detention Center; Rio Grande Detention Center; San Luis Detention Facility; Stewart Detention Center; Tallahatchie County Correctional Center; Theo Lacey; Webb County Detention Center (CCA); West Texas Detention Center; York County Prison.

10. Ibid.

11. Phone interview on 27 March 2020.

12. Over the last 12 months, both CBP and ICE acknowledged at least 12 deaths of migrants or asylum seekers in their respective custodies. See, American Immigration Lawyers Association (AILA), “Featured Issue: Conditions in CBP Custody” (20 March 2020), available at <https://www.aila.org/advo-media/issues/all/featured-issue-conditions-in-cbp-custody>; and AILA, “Deaths at Adult Detention Centers” (23 March 2020), available at: <https://www.aila.org/infonet/deaths-at-adult-detention-centers>. See also, ICE, “Death Detainee Report” (viewed on 30 March 2020), available at: <https://www.ice.gov/death-detainee-report>.

13. See, Fiscal Year (FY) 2020 Consolidated Appropriations Act (at p. 716), available at: <https://www.govinfo.gov/content/pkg/CPRT-116HPRT38678/pdf/CPRT-116HPRT38678.pdf>.

14. See, C-SPAN, “DHS Fiscal Year 2021 Budget Request” (3 March 2020), available at: <https://www.c-span.org/video/?c4858629/user-clip-keeping-country-safe-covid-19>.

15. See, Coronavirus COVID-19 Global Cases by the Center for Systems Science and Engineering (CSSE) at Johns Hopkins University (viewed on 5 April 2020), available at: <https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6>. See also, CDC map of infections in USA: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>.



*Housing unit at the Aurora Detention Facility, located outside of Denver, Colorado. (Roche Constructors, 2008)*

## 2.1.1 AURORA DETENTION FACILITY

In March 2020, the Aurora Detention Facility – operated by the for-profit private prison contractor GEO Group, outside of Denver, Colorado – was one of the first ICE immigration detention facilities to confirm cases of COVID-19 among its personnel.

### ***Insufficient preparation for COVID-19***

Despite its history of medical neglect and outbreaks of infectious diseases,<sup>16</sup> the Aurora Detention Facility apparently had no comprehensive plan in place to prevent and address COVID-19 cases, as of late February 2020.

On 24 February, medical staff at the facility informed a visiting Congressman that, if COVID-19 were detected at the facility, they would receive instructions from ICE’s Health Services Corps. However, ICE had informed the same Congressman eight months earlier in writing that, at contract facilities such as the Aurora Detention Facility, “each facility’s medical authority is responsible for overseeing public health investigations in collaboration with their local health department.”<sup>17</sup>

16. On 28 June 2019, ICE informed Representative Jason Crow in writing (above at n. 8) that the facility had at least “seven cases of varicella and 15 probable or confirmed cases of mumps over the past year”. See also, Rocky Mountain PBS News, “ICE review of immigration detainee’s death finds medical care deficiencies at Aurora facility” (20 May 2019), available at: [www.rmpbs.org/blogs/news/ice-review-of-death-in-aurora-immigration-detention-facility-finds-deficiencies-in-detainees-medical-care/](http://www.rmpbs.org/blogs/news/ice-review-of-death-in-aurora-immigration-detention-facility-finds-deficiencies-in-detainees-medical-care/). In June 2019, the DHS Office of Inspector General (OIG) also found that, “Detainees in segregation at [...] Aurora were not treated with the care required under ICE detention standards.” See, DHS-OIG, “Concerns about ICE Detainee Treatment and Care at Four Detention Facilities” (3 June 2019), available at: <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.

17. See, Letter from ICE to Representative Jason Crow (18 June 2018), above at n. 8.

On 9 March, a representative of ICE's Office of Congressional Relations provided the Congressman's office with a written update on the Aurora facility's COVID-19 preparation, which mostly comprised a copied-and-pasted excerpt of ICE's 2008 policy on detention standards for medical care,<sup>18</sup> with the addition of the clause "in this case COVID-19".<sup>19</sup>

### ***Inappropriate responses to suspected cases of COVID-19***

In its next report on 20 March, ICE informed the Congressman's office that 10 detainees were "cohorted"<sup>20</sup> or quarantined on 12 March, after a visiting attorney alerted authorities that he appeared to have symptoms consistent with COVID-19.<sup>21</sup>

In a response apparently contrary to CDC guidelines,<sup>22</sup> ICE reported that facility personnel cohorted 10 detainees together, even though none of the detainees had been tested and found positive for COVID-19. After being cohorted, one of the 10 detainees was released on bond.<sup>23</sup>

On 25 March, two out of 77 detainees in another housing unit at Aurora showed flu symptoms, so were put into medical isolation and tested for COVID-19. As of 1 April 2020, ICE reported that the two detainees had tested negative for COVID-19. Yet the other 75 detainees remained in cohort, and had not been tested for COVID-19.<sup>24</sup>

### ***ICE continued to transfer hundreds of detainees in and out of Aurora***

Underscoring ICE's poor preparation and response to the COVID-19 virus, the facility continued to transfer hundreds of detainees to and from other ICE detention facilities during this period. ICE only noted as available COVID-19 prevention measures a potential quarantine regime apparently inconsistent with CDC guidelines:

*"In any scenario where detainees arrive from county jails, if there is anyone who could potential [sic] be exposed to COVID-19, when they arrive there could be a potential for them to be cohorted. For those that arrive, you won't put them in the general population right away."<sup>25</sup> (emphasis added)*

In the two weeks following the cohorting of 10 detainees, the Aurora Detention Facility received 312 new detainees from other facilities, and either transferred or released 231 others.<sup>26</sup>

**"Three guys have gotten fevers and haven't been moved out of the general population. These guys are sitting ducks for contracting COVID-19. My husband especially needs out right now. He'll die of illness!"**

*- Spouse of an immigration detainee being held at Aurora Detention Facility in Colorado.*

18. See, ICE/DRO Detention Standard on Medical Care (2 December 2008), at para. C(1) on "Communicable Disease and Infection Control", available at: [https://www.ice.gov/doclib/dro/detention-standards/pdf/medical\\_care.pdf](https://www.ice.gov/doclib/dro/detention-standards/pdf/medical_care.pdf).

19. See, ICE Aurora Contract Detention Facility, Accountability Report (dated 9 March 2020), available at: <https://crow.house.gov/sites/crow.house.gov/files/ICE%20Accountability%20Report%20Electronic%20Request%203-9-20%20FINAL.pdf>.

20. For a definition of "cohorting" (versus "medical isolation" of a single confirmed case), see CDC, "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities" (23 March 2020), available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#Definitions>. "Cohorting – Cohorting refers to the practice of isolating multiple laboratory-confirmed COVID-19 cases together as a group, or quarantining close contacts of a particular case together as a group. Ideally, cases should be isolated individually, and close contacts should be quarantined individually. However, some correctional facilities and detention centers do not have enough individual cells to do so and must consider cohorting as an alternative. See Quarantine and Medical Isolation sections below for specific details about ways to implement cohorting to minimize the risk of disease spread and adverse health outcomes."

21. See, ICE Aurora Contract Detention Facility, Accountability Report (dated 20 March 2020), available at: <https://crow.house.gov/sites/crow.house.gov/files/ICE%20Accountability%20Report%20Electronic%203-20-20%20FINAL.pdf>.

22. Ibid. CDC's "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities" provides: "If cohorting is necessary: Only individuals who are laboratory-confirmed COVID-19 cases should be placed under medical isolation as a cohort. Do not cohort confirmed cases with suspected cases or case contacts".

23. See, ICE Aurora Contract Detention Facility, Accountability Report (dated 20 March 2020), at n. 21 above.

24. See, ICE Aurora Contract Detention Facility, Accountability Report, dated 25 March 2020, available at: <https://crow.house.gov/sites/crow.house.gov/files/ICE%20Accountability%20Report%20Electronic%203-25-20%20FINAL.pdf>. See also, ICE Aurora Contract Detention Facility, Accountability Report, dated 30 March 2020, available at: <https://crow.house.gov/sites/crow.house.gov/files/ICE%20Accountability%20Report%20Electronic%203-30-20%20FINAL.pdf>.

25. Ibid.

26. See, ICE Aurora Contract Detention Facility, Accountability Report, dated 20 March 2020 at n. 21 above; and Accountability Report, dated 25 March 2020, at n. 24 above.

***Detainees fell ill, as ICE confirmed COVID-19 cases among personnel***

On 25 March, ICE reported that an administrative assistant at the Aurora Detention Facility, who had been out of the office teleworking since 18 March, had tested positive for COVID-19.<sup>27</sup> As of 27 March, ICE had confirmed a second case of COVID-19 among personnel at the facility.<sup>28</sup>

On the same day, the spouse of a detainee at the Aurora Detention Facility contacted Amnesty International with concerns about the safety of her husband:

*“My husband is at Aurora ICE Processing Center in Colorado. Three guys have gotten fevers and haven’t been moved out of the general population. These guys are sitting ducks for contracting COVID-19. They don’t have proper disinfecting cleaners or anything. Things are going to get super bad super fast there, and probably the same at other centers across the nation. We need these places shut down. These are not inmates. They’re deportees. Non-violent. My husband especially [...] needs out right now. [...] He’ll die of illness!”<sup>29</sup>*

On 28 March, the detainee’s lawyer confirmed to Amnesty International that his client had complained to both his wife and the lawyer about the conditions in the facility: “He has told me that. I *do* know they’re on lock down. I talked to an ICE official, and they wouldn’t tell me anything. They’re very tight-lipped. [...] From what he’s telling me, it’s bad in there. Soap is a luxury item in jails.”<sup>30</sup>



*Housing unit at Otero County Processing Center, located in New Mexico. (AGENCY, 2017)*

27. See, ICE Aurora Contract Detention Facility, Accountability Report, dated 25 March 2020, *ibid*.  
28. See, “ICE Guidance on COVID-19 – Confirmed Cases”, at n. 2 above.  
29. Text message, received on 25 March 2020.  
30. Phone interview on 28 March 2020.

## 2.2 INADEQUATE HYGIENE AND SANITATION IN ICE DETENTION FACILITIES

ICE's own detention standards require that conditions in ICE immigration detention facilities meet CDC guidelines for environmental health and hygiene.<sup>31</sup> On 23 March, CDC provided updated guidance to ICE for its management of COVID-19 in its facilities.<sup>32</sup>

CDC's "Interim Guidance on Management of COVID-19 in Correctional and Detention Facilities" calls on ICE to, *inter alia*:

- "Provide a no-cost supply of soap to incarcerated/detained persons, sufficient to allow frequent hand washing";
- "Provide alcohol-based hand sanitizer with at least 60% alcohol where permissible based on security restrictions";
- "Implement social distancing strategies to increase the physical space between incarcerated/detained persons (ideally 6 feet between all individuals, regardless of the presence of symptoms)"; and
- "Provide clear information to incarcerated/detained persons about the presence of COVID-19 cases within the facility, and the need to increase social distancing and maintain hygiene precautions."<sup>33</sup>

Yet in the week following CDC's issuance of that guidance – as numerous ICE personnel and staff contracted cases of COVID-19, and dozens of detainees were put into quarantine – detainees informed their lawyers and families that ICE failed to adopt even those minimum necessary measures, in order to protect the public health both in and around its sprawling network of immigration detention facilities.

At the Rio Grande Detention Center in Laredo, a detainee informed his immigration lawyer that facility staff declined to provide detainees with sanitizer, face masks, or free soap. Additionally, medical staff told detainees they had no capacity either to screen incoming and newly arrived detainees for COVID-19, nor to track the potential exposure of facility personnel and staff who were entering the facility and could introduce the virus.<sup>34</sup>

As of 29 March 2020, detainees independently announced hunger strikes in at least five ICE detention facilities to protest inadequate hygiene and sanitation conditions, and demand their freedom in response to ICE's failure to protect them.<sup>35</sup>

Among the alarming conditions called out by detainees were:

- No access to soap and hand sanitizer;
- Overcrowding and the inability to practice social distancing;
- Lack of adequate information regarding COVID-19, and related quarantine or isolation practices; and
- Dangerous transfers of detainees between ICE facilities, without adequate quarantine.<sup>36</sup>

Those deficient hygiene and sanitation conditions – consistently described by individuals in ICE's immigration detention facilities across the United States – are in violation of CDC's specific and unambiguous guidance to ICE on how to manage its facilities in relation to COVID-19, as well as ICE's binding detention policy to implement those standards.

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31. See, ICE, Performance-Based National Detention Standards 2011 (Rev. December 2016), at p. 20, available at: <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

32. See, CDC, "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities" (at n. 20 above).

33. *Ibid.*

34. Phone interview with immigration lawyer on 31 March 2020.

35. See, for instance, VICE, "Immigrants Jailed by ICE Are Sick, Panicking, and Can't Get Coronavirus Tests" (29 March 2020), available at: [https://www.vice.com/en\\_us/article/z3b7m5/immigrants-jailed-by-ice-are-sick-panicking-and-cant-get-coronavirus-tests](https://www.vice.com/en_us/article/z3b7m5/immigrants-jailed-by-ice-are-sick-panicking-and-cant-get-coronavirus-tests). See also, La Resistencia, Facebook update, "With NWDC a 'Tinderbox' for COVID-19 Outbreak, Detained People Begin Mass Hunger Strike to Highlight Their Plight – 80+ People Refuse all Food amidst Coronavirus exposure fears" (28 March 2020), available at: <https://www.facebook.com/LaResistenciaNW/posts/breaking-newswith-nwdc-a-tinderbox-for-covid-19-outbreak-detained-people-begin-m/295628077766116/>.

36. See, for instance, National Immigrant Justice Center, "ICE Detention In The Time Of COVID-19: Accounts From NIJC's Detained Clients" (24 March 2020), available at: <https://immigrantjustice.org/staff/blog/ice-detention-time-covid-19-accounts-nijcs-detained-clients>.



Immigration detainees are held in cells and a common area in a housing unit at the Northwest Detention Center, located in Tacoma, Washington. (Tacoma News Tribune, 2010)

## 2.2.1. NORTHWEST DETENTION CENTER

On 26 March, at the Northwest Detention Center – an ICE detention facility, run by the for-profit company GEO Group in Tacoma, Washington – scores of detainees reportedly launched a hunger strike to protest their inadequate detention conditions and access to healthcare.

The undocumented migrant rights activist Maru Mora-Villalpando relayed on Facebook a statement she reported receiving from hunger strikers by phone:

*“We want to be released because, in here, there’s no protection from the virus [...] We are on hunger strike because we know it’s not true that we will receive medical care here in NWDC. In our unit there are 80 people; at least 75 of us are on hunger strike today [Saturday, March 28, 2020]. Two other units have joined us with 20 to 50 people also on hunger strike.”<sup>37</sup>*

Ms. Mora-Villalpando’s migrant solidarity group La Resistencia reported that the hunger strike began soon after a detainee with apparent COVID-19 symptoms was seen vomiting while being removed by guards:

*“When those in the pod inquired about the individual’s condition and whether he tested positive for the Coronavirus, GEO guards refused to answer. Only later did guards inform people that the person from their pod is now in a Tacoma-area hospital receiving intensive medical care.”<sup>38</sup>*

The participants reported to Ms. Mora-Villalpando that the strike was indefinite, and demanded that US authorities: provide detainees with “humanitarian temporary visas”; reunite them with their families; and “stop all deportation and immigration proceedings until the pandemic has concluded.”<sup>39</sup>

37. See, La Resistencia, Facebook update (28 March 2020), available at n. 35 above.

38. Ibid.

39. Ibid.

**“We are adrift, about to sink, because if there is one person to be infected, in our unit we would all perish... We see how guards don’t have the most minimum idea of what safety or medical care means. Here, all of us are going to pay the consequences.”**

*- Immigration detainee on hunger strike at the Northwest Detention Center in Tacoma, Washington.*

A Mexican man detained at the Northwest Detention Center shared a personal statement, relayed by phone to La Resistencia, in which he denounced the conditions at the Northwest Detention Center:

*“Things are getting more difficult with the coronavirus all the time. We are in unit F3, and the GEO officials have been bringing people from Texas and from different detention centers. We don’t agree with bringing more people, because we don’t know if they are contagious with the virus, without knowing at a minimum the state which these people are in. Nobody tells us anything. We know there are people infected with the virus, we asked the ICE official [name omitted], and he said it’s not true that people are infected, he said it’s not true, that all of that is propaganda. We are adrift, about to sink, because if there is one person to be infected, in our unit we would all perish by our poor way of eating, since we receive beans and potatoes every day. Therefore we are only relying on divine help. We see how guards don’t have the most minimum idea of what safety or medical care means. Here, all of us are going to pay the consequences, including the manager, administrators, medical personnel, security guards, and us, the most vulnerable who are detained here. This is a call to all the community to know that the corporation GEO doesn’t provide us with disinfectant, enough toilet paper, to disinfect the tables, phones, etc. Thank you and god bless you all.”<sup>40</sup>*

In a phone conversation on 24 March, Ms. Mora-Villalpando informed Amnesty International of serious hygiene and sanitation problems at the Northwest Detention Center, which she learned of from detainees who called her by phone to relay their fears of facing the COVID-19 pandemic in the detention facility.

*“The cleaning of [detention] pods is being done the same as previously: by detainees. They don’t have the cleaning supplies necessary to do so. There are flyers saying to wash their hands, but not enough soap to start with, and no hand sanitizer at all. When asked how many people are in each pod, they estimate ranges from 50 to 100, so they’re almost at capacity for the ones that are occupied. When asked the approximate area, people estimated 400 square meters for 70 or 80 people. When asked how many bathrooms, there were about 3 toilets, 4 urinals, and showers shared by all of them. The phones are supposed to be cleaned every hour, but it’s not happening and there are inadequate supplies.*

*“For sure, people are not being tested [for COVID-19]. We’ve asked everyone who has called us. At least one pod has been placed in isolation, or ‘cohort’, since they see the sign on the pod that says ‘cohort’. There are about five individuals and at least one pod in isolation. The pod that was in isolation did not even last for two weeks. People are really scared inside: they’ve seen people moved to isolation; they’ve seen people sick; and they’ve seen new people moving in. They don’t know when they’re going to get sick, but they know that when they do get sick, it’s going to spread like wild fire and people are going to die. That’s what people have been saying. It’s not meeting the standards of social distancing and hygiene.”<sup>41</sup>*

On 27 March 2020, as the hunger strike started, the University of Washington’s Center for Human Rights published the first in a series of reports called, “Human Rights Conditions at the Northwest Detention Center”. Based on thousands of pages of written detainee grievances and over 100 written complaints to the DHS Office of Civil Liberties and Human Rights, filed from 2012 to 2019, the report identifies serious sanitation concerns that are “all the more urgent in light of the COVID-19 pandemic.”<sup>42</sup>

On 1 April, Ms. Mora-Villalpando updated Amnesty International that the hunger strike was ongoing, yet that ICE-contracted personnel had retaliated against several of the detainees for participating: “At least five were sent to segregation for joining. Others were forced to sign deportation orders. Others were moved to smaller pods where they all are very crowded. [...] Guards were not social distancing or wearing masks.”

40. Statement of detainee, received by Amnesty International by email on 24 March 2020, from Maru Mora-Villalpando, organizer at the Northwest Detention Center Resistance (La Resistencia).

41. Phone interview with Maru Mora-Villalpando on 24 March 2020.

42. See, University of Washington Center for Human Rights, “Human Rights Conditions at the Northwest Detention Center” (27 March 2020), available at: <https://jhs.washington.edu/humanrights/projects/human-rights-at-home/conditions-at-the-northwest-detention-center/>.



*Isolation unit for two detainees, at Otero County Processing Center, located in New Mexico. (AGENCY, 2017)*



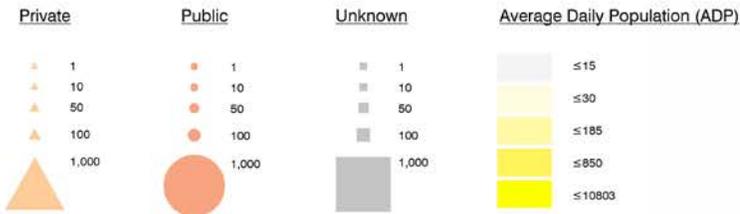


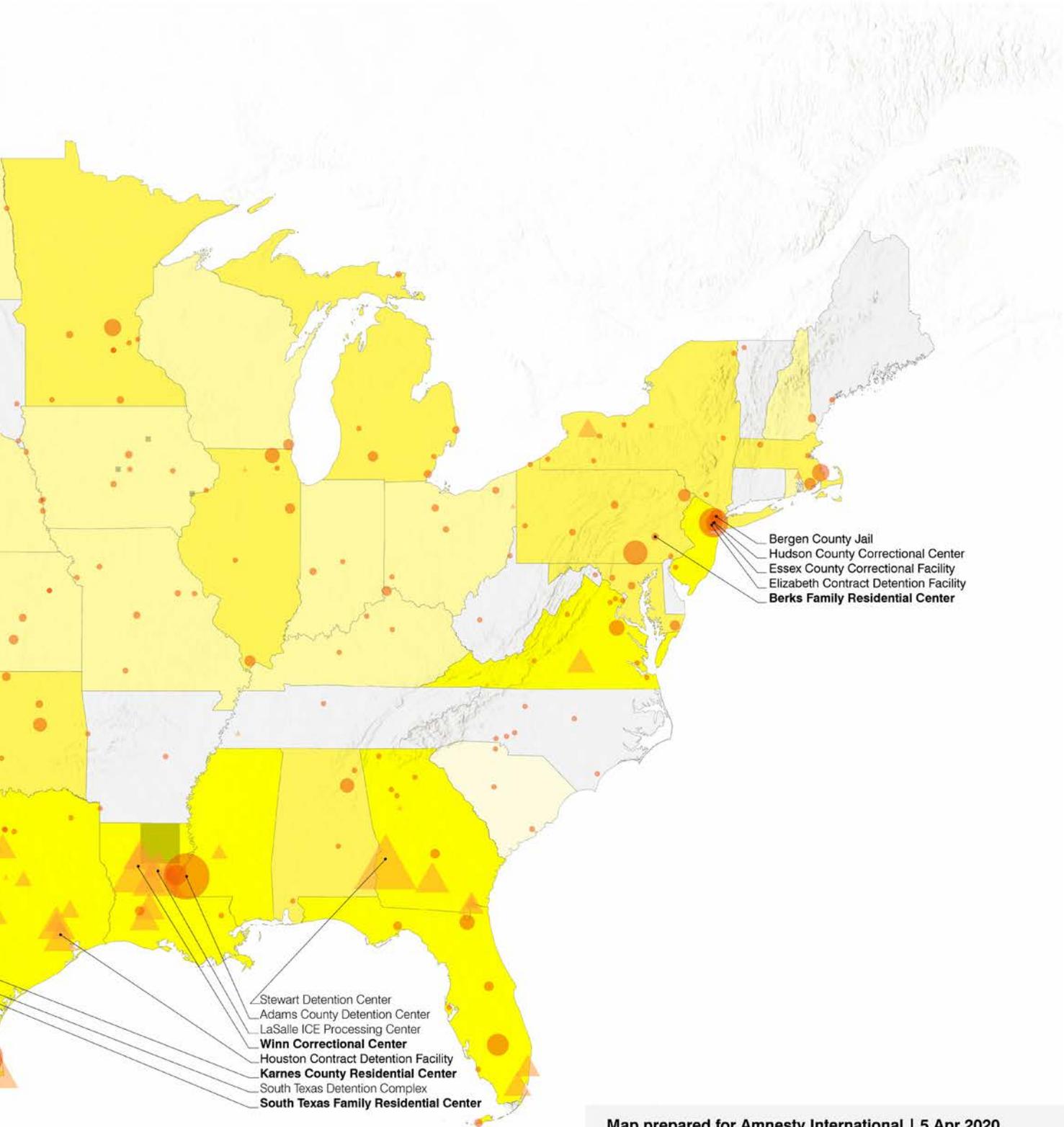
- Northwest Detention Center
- Aurora Detention Facility
- Cibola County Correctional Center
- Otero County Prison Facility
- Eloy Federal Contract Facility
- La Palma Correctional Center
- Adelanto ICE Processing Center

# US Immigration Detention Facilities

Facilities by Type

FY2020 ADP by State





Map prepared for Amnesty International | 5 Apr 2020

AGENCY

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Sources:

ICE Facility List, 2017 (ILRC FOIA); ICE "Authorized Dedicated Facility List", 3 Mar 2020; ICE "Authorized Non-dedicated Facility List," 3 Mar 2020; OIG-18-67, "ICE's Inspections and Monitoring of Detention Facilities"; OIG-19-18, "ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements"; TRAC Immigration, "Immigration and Customs Enforcement Detention"

## 2.3 ICE CONCEALS COVID-19 QUARANTINES AND POTENTIAL OUTBREAKS

Contrary to CDC guidance,<sup>43</sup> ICE has apparently concealed vital information about potential COVID-19 outbreaks from detainees, their lawyers and loved ones, and the broader public.

Acting DHS Secretary Chad Wolf told the US Congress on 3 March that: “We’re being as transparent as possible, sharing what we know and what we don’t know.”<sup>44</sup> However, Amnesty International has received reports of suspected COVID-19 cases and lockdowns in multiple ICE facilities, where lawyers said ICE officials refused to comment on the health situations.

On its COVID-19 information website, ICE only reports “confirmed cases” and not the facilities in which it is conducting “cohorting”, quarantines, or medical isolation. Detainees and their lawyers have reported that they lack information about risks in ICE facilities, and that those being monitored for COVID-19 are often not being tested.

While ICE publicly announced the first confirmed case of COVID-19 in immigration detention facilities on 24 March, a leaked document from DHS showed that ICE was already quarantining and monitoring COVID-19 cases in detention facilities for more than a week prior to then unannounced.<sup>45</sup>

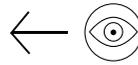
While downplaying the risk of COVID-19 outbreaks in its detention facilities, ICE has also failed to facilitate adequate sanitation, hygiene, and social distancing between detainees, as is required under CDC guidance and necessary to prevent a devastating outbreak.

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43. See CDC, “Interim Guidance on Management of COVID-19 in Correctional and Detention Facilities” (23 March 2020), above at n. 20. In “Management Strategies for Incarcerated/Detained Persons without COVID-19 Symptoms”, the guidance suggests that ICE: “Provide clear information to incarcerated/detained persons about the presence of COVID-19 cases within the facility, and the need to increase social distancing and maintain hygiene precautions.”

44. See, C-SPAN, “DHS Fiscal Year 2021 Budget Request” (3 March 2020), available at: <https://www.c-span.org/video/?c4858629/user-clip-keeping-country-safe-covid-19>.

45. See, *The Nation*, “ICE Detainees Are Being Quarantined” (24 March 2020), above at n. 5.



*Housing unit at Adelanto Detention Center  
(GEO Group, 2012)*

## 2.3.1 ADELANTO ICE PROCESSING CENTER

On 26 March, an immigration lawyer in Los Angeles, California, told Amnesty International that her clients detained at the nearby Adelanto ICE Processing Center lacked basic access to sanitizer, and could not socially distance themselves from each other at the facility.

The lawyer also told Amnesty International that large sections of the Adelanto facility appeared to be under quarantine, though for less than the CDC-mandated two-week period.<sup>46</sup>

*“There’s no social distancing; they’re living in close quarters. They don’t have access to hand sanitizer for the detainees. We became aware last week that there was a suspected COVID-19 case. Adelanto’s divided into East and West. The east is the women’s section. All of the East section was on quarantine. And two of the five parts of the West Section were on quarantine. The person they suspected was infected was pulled out and put into solitary quarantine. Yet it’s unlikely that they got tested. Maybe that one person got tested*

46. Phone interview on 26 March 2020.

*potentially, but others didn't appear to. One of the sections is coming out of quarantine, so it appears to be under two weeks [as required by CDC guidelines]. That's my best assessment.*"<sup>47</sup>

The lawyer said ICE and GEO Group authorities who manage the Adelanto facility did not inform her, or her clients, of the reason for the lockdown and any potential health risks at the facility.<sup>48</sup>

In recent years, Members of Congress and immigration detainees held at the Adelanto facility have called out persistent allegations of poor conditions and inadequate health care.<sup>49</sup>

## 2.4 PERSONS LIVING WITH UNDERLYING ILLNESSES AT HEIGHTENED RISK OF COVID-19

Migrants and asylum seekers living with underlying illnesses – including those who are immunocompromised due to HIV – have shared through their lawyers consistent and disturbing accounts of substandard health care and inadequate conditions in ICE immigration detention facilities.<sup>50</sup> Those conditions and inadequate care put them at heightened risk to contract and become severely ill or die from COVID-19.<sup>51</sup>

For instance, at both the Aurora Detention Facility in Colorado and the Winn Correctional Center in Louisiana, ICE has reportedly failed to adopt necessary measures recommended by CDC to prevent the spread of COVID-19 among vulnerable detainees in their custody, including immunocompromised asylum seekers living with HIV at both facilities.

In a letter to DHS leadership and oversight mechanisms, a coalition of eight nongovernmental organizations described substandard conditions experienced by asylum seekers living with HIV at the Winn Correctional Center in Louisiana.<sup>52</sup> Those conditions included poor hygiene and sanitation, inadequate and unresponsive health care, and the continued introduction of new detainees to the closed facilities, contrary to CDC standards on the prevention and containment of COVID-19.

**“We were told about COVID-19 when they took away the one detainee for quarantine. ... I am one of two HIV-positive women in the room. ... In both 2019 and 2020, I have been told that my CD4 count is low, and that I must avoid infection.”**

*- “Linda”, a transgender woman asylum seeker being detained at Aurora Detention Facility.*

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47. Ibid.

48. Ibid.

49. See, *Mother Jones* magazine, “In 3 Months, 3 Immigrants Have Died at a Private Detention Center in California: Members of Congress have cited the Adelanto Detention Facility for ‘egregious’ medical errors” (2 June 2017), available at: <https://www.motherjones.com/politics/2017/06/adelanto-death-immigration-detention-geo/>.

50. See, Immigration Equality statement, “ICE Refuses to Release Detained HIV-Positive Asylum Seekers Despite Life-Threatening COVID-19 Risk” (23 March 2020), available at: <https://www.immigrationequality.org/ice-refuses-to-release-detained-hiv-positive-asylum-seekers-despite-life-threatening-covid-19-risk-2/#.XoU6lHKhPY>. See also, Immigration Equality complaint to the DHS Office of Civil Liberties and Civil Rights, “HIV-Positive Asylum Seekers Who Receive Grossly Negligent Medical Care in Immigration Detention and Are Particularly Vulnerable to COVID-19 Must Be Released Immediately” (23 March 2020), available at: <https://www.immigrationequality.org/wp-content/uploads/2020/03/Complaint-to-Office-of-Civil-Rights-and-Civil-Liberties-Re-HIV-Care-in-Detention-Facilities.pdf>.

51. See, CDC, “What to Know About HIV and COVID-19” (18 March 2020), available at: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/hiv.html>. CDC’s guidance provides: “Older adults and people of any age who have a serious underlying medical condition might be at higher risk for severe illness, including people who are immunocompromised. The risk for people with HIV getting very sick is greatest in: People with a low CD4 cell count, and People not on HIV treatment (antiretroviral therapy or ART). People with HIV can also be at increased risk of getting very sick with COVID-19 based on their age and other medical conditions. [...] People with HIV should also continue to maintain a healthy lifestyle.”

52. See, joint letter by eight non-governmental organizations, “Detention Conditions Impacting the Health and Safety of LGBTQI/HIV+ Immigrants Detained at the Winn Correctional Center in Winnfield, LA” (dated 26 March 2020), available at: <https://www.washingtonblade.com/content/files/2020/03/March262020WinnConditionsLetter.pdf>.

## 2.4.1 AURORA DETENTION FACILITY

At the Aurora Detention Facility, personnel on 13 March began monitoring 10 transgender women for COVID-19, two of whom were living with HIV. Amnesty International reviewed a written declaration from 21 March by one of those trans women, named “Linda” (pseudonym), who is living with HIV, liver disease, and hepatitis B.

The details in Linda’s account suggested that her group of 10 trans women was likely the same quarantined group whom ICE described to a US Congressman in late March.<sup>53</sup>

Linda was transferred to Aurora in January 2020 from the “trans pod” in the Cibola County Correctional Center<sup>54</sup> in New Mexico, after two months of gross medical negligence at Cibola, where medical personnel failed to provide her with antiretroviral drugs to treat her HIV.<sup>55</sup>

She provided consistent and alarming details of her detention with nine other trans women at Aurora, describing their unpreparedness to protect themselves from potential COVID-19 infection, due to lack of hygiene and sanitation supplies, and the impossibility of “socially distancing” in their cramped quarters:

“The transgender women all stay in the one room together. Counting me, there are currently 10 people being detained together. We sleep in bunk beds. Staff does not clean the room where we stay. We ask in the morning for disinfectant to clean with. [...] We all eat in the same room where we sleep. I have a large jacket, but the room is always cold. The water in the shower and sink are also very cold.

“I first heard about the COVID-19 pandemic weeks ago because I am able to listen to the radio. The first time I saw anything out of the ordinary at Aurora with respect to COVID-19 was Friday March 13, 2020. Staff came in with masks and had one transgender detainee changed her clothes and her bedsheets. Then they took her away to quarantine. I heard that a lawyer was in Court who may have had COVID-19. We were told about COVID-19 when they took away the one detainee for quarantine.

“We asked for hand sanitizer but were told to use the disinfectant spray. Staff had on masks, but detainees cannot get masks. We were told that if we get a fever or a cough we should write a note for medical attention. Aurora staff screened one person from the transgender unit at random each day or each shift by taking their temperature.

“On March 20, 2020, staff gave us a handbook on COVID-19. It is in English and Spanish and says how we should wash our hands and stay six feet away from other people. It is impossible to stay six feet away from the people I am being detained with. We sleep in bunk beds, and often people gather near a television set. After March 13 we have been out to play volleyball together, just the 10 of us, and we were unable to keep 6 feet apart from each other.

“Staff sometimes wear gloves and masks, but do not keep six feet apart from each other. I do not know how or if the staff is being screened. I do not know when the staff were told about COVID 19. I clean everything because I fear getting an infection, but not everyone I am detained with is as careful about infection as I am. All 10 of us take medication. I am one of two HIV-positive women in the room. As of March 21, 2020 only the one person has been taken away for quarantine. [...] In both 2019 and 2020 I have been told that my CD4 count is low, and that I must avoid infection.”

As Linda described, facility personnel provided the women with information on how to prevent COVID-19, yet the layout of the facility made it impossible to practice “social distancing”, and personnel denied their requests for hand sanitizer and face masks, contrary to CDC’s guidelines.

According to Linda, facility personnel told the women on 19 March that they would be moved into a room for 18 trans women, some of whom were being transferred into Aurora from other facilities – further undermining their ability to minimize potential exposure to the virus.

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53. See profile of Aurora Detention Facility above, at n. 16. According to Linda, facility personnel reportedly removed one of the 10 trans women from her group, who was then put into medical isolation and/or released, as ICE had also described in its account to the Congressman.

54. For background on the inadequate and unresponsive health care provided to trans women at the Cibola County Correctional Center, see the Amnesty International report, *‘You Don’t Have Any Rights Here’: Illegal Pushbacks, Arbitrary Detention & Ill-treatment of Asylum-seekers in the United States* (11 October 2018), at p. 54. Available at: <https://www.amnesty.org/en/latest/research/2018/10/usa-treatment-of-asylum-seekers-southern-border/>.

55. Written declaration by Linda, received from her attorney.



*Exterior of the South Texas Detention Complex in Pearsall, Texas. (Amnesty International, May 2018)*

## **2.5 HUNDREDS OF FAMILIES REPORTEDLY SICK IN ICE’S FAMILY DETENTION CENTERS**

ICE manages three immigration detention facilities for families – referred to as “family residential centers” (FRCs). Those facilities include the Berks Family Residential Center in Pennsylvania; and the South Texas Family Residential Center (“Dilley”) and Karnes County Residential Center, both in Texas.

As the COVID-19 pandemic spread in the US since January 2020, ICE continued to receive and detain families in its family residential centers. In doing so, the government has taken insufficient precautions to prevent the spread of COVID-19 among detainees, in some cases receiving families who were already symptomatic of illness, according to lawyers.

In a lawsuit filed against ICE on 21 March 2020,<sup>56</sup> detainees complained that conditions at the facilities were unsafe and unsanitary, without adequate protective measures or health care, and they feared that they or their family members would die when COVID-19 enters their facilities.

The three main organizations that provide legal assistance to detainees in the family residential centers (and brought the aforementioned lawsuit) all reported observing that ICE was not following CDC guidelines to prevent the spread of COVID-19 at the three facilities.

The lawsuit complained that: “Hundreds of families in the FRCs are exhibiting symptoms of COVID-19, including coughs, fever, shortness of breath, but are not being tested for COVID-19, or getting adequate medicine to address these symptoms.”<sup>57</sup>

Moreover, ICE failed to provide detainees with: hand sanitizer; consistent access to soap; instructions on relevant hygiene practices; adequate procedures for social distancing; and protective masks or gloves. Neither did ICE-contracted employees working at the facilities use masks or gloves, practice social distancing, or minimize physical contact with each other.<sup>58</sup>

On 26 March, counsel for the *Flores* Settlement Agreement, which governs the treatment, detention, and release of migrant children, also filed suit in federal court, to compel ICE to abide by the terms of the *Flores* agreement. Citing to children detained in congregate care with inappropriate medical care and unsafe and unsanitary conditions, the lawsuit also reported that by ICE’s own account, over 1,861 children had been detained for three months or longer with no efforts made to release them.<sup>59</sup>

As the lead lawyer observed, “When the alternative is to leave children on the tracks with the COVID-19 train fast approaching, [...] not releasing minors without unnecessary delay and ICE’s blatant violation of the Agreement and this Court’s Orders, are unconscionable.”<sup>60</sup>

**“I fear me, my daughter, and my unborn fetus will die if we become sick in detention. [...] I am most afraid because I cannot keep a sufficient distance from other people to keep myself safe from contracting the virus if they have it.”**

*-A pregnant mother from Honduras, detained by ICE with her 4-year-old daughter at the South Texas Family Residential Center.*

## 2.5.1 SOUTH TEXAS FAMILY RESIDENTIAL CENTER (“DILLEY”)

At the Dilley facility, personnel of ICE and GEO Group failed to provide detainees with COVID-19 education, hand sanitizer, or adequate protective or cleaning supplies, despite some detainees’ pre-existing health conditions.

Facility staff did not make testing for COVID-19 available to detainees, and had no plans to do so. Rather, ICE leadership stated that medical-screening procedures for families detained at Dilley had not changed in response to the COVID-19 outbreak.

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56. *OMG v. Wolf*, Emergency Verified Petition for a Writ of Mandamus and Complaint for Declaratory and Injunctive Relief (filed 21 March 2020), available at: <https://clearinghouse.net/chDocs/public/IM-DC-0070-0001.pdf>. To view Exhibits to Complaint, please see: <https://clearinghouse.net/chDocs/public/IM-DC-0070-0002.pdf>.

57. See *OMG v. Wolf*, *ibid.*, at p. 9.

58. *Ibid.*

59. Memorandum of Points and Authorities in Support Of Plaintiffs’ Ex Parte Application for Temporary Restraining Order and Order to Show Cause Re Preliminary Injunction at p. 20 (filed 26 March 2020), available at: <https://www.law360.com/articles/1257622/attachments/0>.

60. *Ibid.*

61. *Ibid.*, at pp. 23 to 26.

62. *Ibid.*, at paras. 18-22, 25.

63. *Ibid.*, Exhibit 5, Declaration of Allison Herre, at para. 5 to 6.

A pregnant mother from Honduras, who was seeking asylum with her 4-year-old daughter, described her fear of contracting COVID-19 and dying, due to the inadequate conditions and care at ICE's Dilly facility:

*"I fear me, my daughter, and my unborn fetus will die if we become sick in detention. [...] I have a history of complications in pregnancy that have gone untreated while detained. I have previously had a miscarriage. [...] I am most afraid because I cannot keep a sufficient distance from other people to keep myself safe from contracting the virus if they have it. I must be close to others all of the time. I share a room, bathroom, and the dining hall. All locations in this jail are communal."<sup>64</sup>*

## 2.5.2 KARNES FAMILY RESIDENTIAL CENTER

Neither did facility staff at Karnes have access to COVID-19 tests or follow CDC guidelines for preventing the spread of COVID-19. Nearly all families reported routinely poor health care, which was not adequate for even basic medical needs such as headaches and the common cold.<sup>65</sup>

A Haitian asylum seeker at Karnes, detained with her husband and their 4-year-old and 19-month-old children, described the lack of measures to protect detainees and inadequate care and conditions: "[N]either GEO or ICE are taking the measures necessary to protect us. [...] There is also no hand sanitizer in our rooms or in common areas. When we go eat, hundreds of people, about 200, eat at a time in addition to standing in line much closer than six feet away from one another."<sup>66</sup>

## 2.5.3 BERKS FAMILY RESIDENTIAL CENTER

After the filing of the 21 March lawsuit, Berks stopped receiving families. Until then, ICE was transferring families from all over the US by public transportation and on long distances to Berks. They received no education on COVID-19 and resorted to learning about it from television news.<sup>67</sup> There was even a note posted on the outside of the facility that misidentified the COVID-19 pandemic as the "flu" to the general public and those who entered the building.

Detainees reported to their lawyers that numerous parents and children in the facility were sick with cold-like symptoms, such as coughs, congestion, and fever and numerous staff exhibited similar cold-like symptoms. While staff wore gloves, they did not consistently wear masks or practice social distancing. Families did not have access to hand sanitizer or adequate soap, and were only provided gloves to clean the facility or their rooms. There were three families in a room and shared bathrooms. Sixty to 70 people congregated in the cafeteria for meals.

Describing a 6-month-year old who had been detained at Berks since 22 February, the lawyers told Amnesty International: "When she coughs, it's like an old man who coughs – you can hear her coughing in another room."

After displaying COVID-19-like symptoms, a 5-year-old girl was sent to the hospital with her mother for testing. However, ICE refused to tell her lawyers whether she was tested for COVID-19 and, if so, what the results were. At one point, ICE told the family's lawyers, "Out of courtesy, we will not be sharing these documents."<sup>68</sup> A lawyer of the girl expressed outrage to Amnesty International over ICE's treatment of the family: "This case is emblematic of the catastrophe waiting to happen in detention centers and there is no reason for it to be like this. ICE could have helped and did not."<sup>69</sup>

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64. See, Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions, Agnes Callamard (7 August 2018), UN Doc. A/73/314; available at: <https://undocs.org/A/73/314>.

65. Ibid., Exhibit 7, Declaration of Andrea Meza, at paras. 9, 18; Exhibit 8, Declaration of Julia Valero, at para. 6; Exhibit 9, Declaration of Laila Ayub, at para. 9.

66. Ibid., Exhibit 11, Declaration of T.F., at paras. 7 to 10.

67. O.M.G. v. Wolf, Exhibit 2, Declaration of Bridget Cambria at para. 27; Exhibit 3, Declaration of M.B.G. at paras. 8 and 10.

68. Phone conversation with Amnesty International on 27 March 2020. The family's lawyers only received the information they sought when a reporter asked ICE about the child's condition. She had been tested for COVID-19 and received a negative result.

# A HALL

A1	1-60
A2	1-60
A3	1-60
A4	1-60

Court  
نم نم نم  
Medical  
نم نم نم  
Int  
نم نم نم

# B HALL

B1	1-50
B2	1-50
B3	1-50
B4	1-50

# SHU

# MEDICAL

A	10-110
B	10-110
C	10-110

1-10	1-2
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Wall located at Otero County Processing Center, showing logistics information for the transfer of ICE detainees. (AGENCY, 2017)

# C HALL

C1	1-50
C2	1-50
C3	1-50
C4	1-50
C5	1-50
C6	1-50

# D HALL

D1	1-50
D2	1-50
D3	1-50
D4	1-50
D5	1-50
D6	1-50



# 3. ICE MUST RELEASE IMMIGRATION DETAINEES TO PROTECT PUBLIC HEALTH

ICE has set a public-health ticking time bomb by warehousing nearly 40,000 migrants and asylum seekers in cramped, unhygienic and unsanitary detention facilities, without adequate protections. Unless ICE acts immediately to release migrants and asylum seekers, and reduce the number of at-risk individuals in its custody, there is likely soon to be a larger-scale and deadly COVID-19 outbreak in its immigration detention facilities.

ICE already has the legal authority to release any detained people in its custody for “urgent humanitarian reasons” or a “significant public benefit”. Those who are especially vulnerable to severe illness or death if they contract COVID-19 can moreover be released due to their “serious medical conditions in which continued detention would not be appropriate”.<sup>70</sup>

Leading health professionals and former senior ICE officials have sounded the alarm, and called on ICE to protect its staff and personnel, detainees in their custody, and local communities surrounding their facilities from preventable deaths and serious harm.

**“ICE needs to release as many people as is safe to do. The fewer people in these facilities, the better the situation.”**

*- Dr. Marc Stern, professor of public health and leading expert on healthcare in detention facilities.*

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70. See, 8 CFR. §212.5(b)(1), available at: <https://www.law.cornell.edu/cfr/text/8/212.5>.

## 3.1 PUBLIC HEALTH AUTHORITIES

Over 3,000 doctors in mid-March called on ICE to release immigration detainees through alternative-to-detention programs, in order to slow the COVID-19 pandemic and avert preventable deaths.<sup>71</sup>

In an interview with Amnesty International, Dr. Marc Stern, a professor of public health and leading expert on healthcare in closed detention facilities, outlined the serious risks posed by ICE's immigration detention facilities to the public health of surrounding US communities:

*“There are thousands of ICE detainees held in county jails and other detention facilities, which are congregate settings where infections, like COVID-19, can spread more easily, thwarting public health efforts to contain the virus. To fix this problem, ICE needs to release as many people as is safe to do. The fewer people in these facilities, the better the situation. And for those who remain, ICE should follow all the regulations of prevention and mitigation, which requires adequate funding and personnel.”<sup>72</sup>*

## 3.2 FORMER SENIOR ICE OFFICIALS

A former acting Director of ICE, John Sandweg, likewise publicly called on ICE to release all non-violent civil detainees in ICE's immigration detention facilities, through alternative-to-detention programs. Sandweg warned that ICE detention facilities make social distancing and other necessary prevention measures almost impossible, and therefore contribute to the spread of COVID-19:

*“The design of these facilities requires inmates to remain in close contact with one another—the opposite of the social distancing now recommended for stopping the spread of the lethal coronavirus.”<sup>73</sup>*

On 27 March, in an interview with Amnesty International, another former senior ICE official said the public health dangers of largescale immigration detention far outweigh any risk in releasing civil detainees through already-existing alternative-to-detention programs:

*“With civil detention, ‘do what you can’ means release them. The threat is not from within – it’s a threat of people working in jails bringing it [COVID-19] into the congregate setting. And then you have a dormitory setting of people in pools who have no way of protecting themselves from infection.*

*“So from a public health perspective, there is no reason to keep them there, when ICE has a cadre of alternative-to-detention programs run by the same actors, who can still track them. Why subject guards to this? Why subject food workers to this, when alternatives to detention exist to ensure immigration compliance that don’t rival public health guidelines?”<sup>74</sup>*

**“With civil detention, ‘do what you can’ means release them. The threat is not from within – it’s a threat of people working in jails bringing it [COVID-19] into the congregate setting.”**

*- Former senior ICE official.*

71. See, “Open Letter to ICE From Medical Professionals Regarding COVID-19”, available at: [https://docs.google.com/document/d/1eNyNmy-6220jVILFSwgyplTPK0eAt5yLg-SkS\\_7\\_Ovv8/edit](https://docs.google.com/document/d/1eNyNmy-6220jVILFSwgyplTPK0eAt5yLg-SkS_7_Ovv8/edit). See also, VICE, “Thousands of Doctors Demand ICE Release Detainees to Stop a COVID-19 Disaster” (18 March 2020), available at: [https://www.vice.com/en\\_us/article/4agp4w/thousands-of-doctors-demand-ice-release-detainees-to-stop-a-covid-19-disaster](https://www.vice.com/en_us/article/4agp4w/thousands-of-doctors-demand-ice-release-detainees-to-stop-a-covid-19-disaster).

72. Phone interview on 25 March 2020.

73. See, commentary by John Sandweg in *The Atlantic*, “I Used to Run ICE. We Need to Release the Nonviolent Detainees. It’s the only way to protect detention facilities and the people in them from COVID-19” (22 March 2020), available at: <https://www.theatlantic.com/ideas/archive/2020/03/release-ice-detainees/608536/>.

74. Phone interview on 27 March 2020.

### 3.3 STATE AND LOCAL AUTHORITIES

Acknowledging the threats of unsanitary immigration detention facilities to public health, state and local authorities have already begun releasing thousands of civil and criminal detainees from jails and detention facilities.<sup>75</sup>

On 17 March, Amnesty International and partner organizations called on the 11 US governors whose states host the majority of US immigration detainees, to use their “public health and licensing authority to instruct federal immigration detention facilities and county and local jails and prisons to substantially reduce their detainee occupancy capacity”.<sup>76</sup>

ICE has said in its COVID-19 guidance that it will transfer detainees “with moderate to severe symptoms, or those who require higher levels of care or monitoring, to appropriate hospitals with expertise in high risk care.” Yet this approach risks preventable infections and deaths in unsanitary immigration detention facilities, and unnecessarily overburdening the US healthcare system, which can be avoided by dramatically reducing the population of detention centers now.

### 3.4 JUDICIAL AUTHORITIES

US federal courts have started ordering the federal government to take concrete measures to avoid irreparable harm and countless preventable deaths. On 26 March, a federal judge in New York ordered ICE to release 10 detainees from its custody in New Jersey, including at the Bergen County jail where ICE confirmed the first case of a detainee contracting COVID-19.<sup>77</sup>

The court ordered the detainees’ release due to the substantial risk they would “face a severe, and quite possibly fatal, infection if they remain in immigration detention.” In contrast, the court found that ICE officials:

*“have exhibited, and continue to exhibit, deliberate indifference to [detainees’] medical needs. The spread of COVID-19 is measured in a matter of a single day—not weeks, months, or years—and [ICE] appear to ignore this condition of confinement that will likely cause imminent, life-threatening illness.”*

The Court specifically referred to ICE’s screening and isolation policies as “patently insufficient to protect” detainees in their custody at the ICE facilities, including due to ICE’s failure to comply with CDC guidelines on social distancing, or to adopt special protection measures for older or other higher-risk detainees.

On 28 March, the federal judge overseeing the *Flores* agreement ordered ICE to make every effort to promptly and safely release children from detention, further ordering the agency to report on its progress by 6 April. The judge also ordered inspection of the detention centers for their population levels and implementation of CDC-compliant guidance. On 10 April, ICE and other agencies detaining children are to appear in court to explain why children continue to be detained.<sup>78</sup>

At a hearing on 30 March, and in response to the 21 March lawsuit, another federal judge directed ICE to report on their efforts to release families in custody, the detention center’s capacity, and implementation of CDC guidelines, and to provide videotapes of living conditions by 6 April.<sup>79</sup>

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75. See, *The Washington Post*, “‘Disaster waiting to happen’: Thousands of inmates released as jails and prisons face coronavirus threat” (25 March 2020), available at: [https://www.washingtonpost.com/national/disaster-waiting-to-happen-thousands-of-inmates-released-as-jails-face-coronavirus-threat/2020/03/24/761c2d84-6b8c-11ea-b313-df458622c2cc\\_story.html](https://www.washingtonpost.com/national/disaster-waiting-to-happen-thousands-of-inmates-released-as-jails-face-coronavirus-threat/2020/03/24/761c2d84-6b8c-11ea-b313-df458622c2cc_story.html). For a list of state and local government measures that have already been adopted to slow the spread of COVID-19, including through the release of at-risk detainees and prisoners, see also the Prison Policy Initiative, “Responses to the COVID-19 pandemic” (viewed 30 March 2020), available at: <https://www.prisonpolicy.org/virus/virusresponse.html>.

76. See, Amnesty International USA et al., “Human Rights Advocates with Medical and Legal Expertise Call on Governors, State Health Officials to Direct Reduction, Release of Immigration Detainees to Prevent Coronavirus Spread” (17 March 2020), available at: <https://www.amnestyusa.org/press-releases/human-rights-advocates-with-medical-and-legal-expertise-call-on-governors-state-health-officials-to-direct-reduction-release-of-immigration-detainees-to-prevent-coronavirus-spread/>.

77. See, Memorandum and Order of Justice Torres (dated 26 March 2020), US District Court for the Southern District of New York, *Case of Basank et al. v. Wolf*, available at: <https://www.politico.com/f/?id=00000171-1a1a-da0d-a17b-fe5bec870000>.

78. Temporary Restraining Order, *Jenny L Flores v. Edwin Meese*, No. 2:85-cv-04544 (C.D. Cal. 28 March 2020), available at: <https://www.usatoday.com/documents/6820808-Temporary-Restraining-Order/>.

79. Copy of Minute Order in *OMG v. Wolf* (1:20-cv-00786-JEB Notice) provided to Amnesty International on 1 April 2020. See also, “U.S. judge widens order, urging ICE to release migrant families with young children in Coronavirus outbreak,” *The Washington Post* (30 March 2020), available at: [https://www.washingtonpost.com/local/legal-issues/us-judge-widens-order-urging-ice-release-of-migrant-families-with-young-children-in-coronavirus-outbreak/2020/03/30/8226ed06-7296-11ea-85cb-8670579b863d\\_story.html](https://www.washingtonpost.com/local/legal-issues/us-judge-widens-order-urging-ice-release-of-migrant-families-with-young-children-in-coronavirus-outbreak/2020/03/30/8226ed06-7296-11ea-85cb-8670579b863d_story.html).

# 4. OVERSIGHT NEEDED TO PROTECT ICE DETAINEES AND PERSONNEL FROM COVID-19

ICE has concealed and understated the number of detainees who may have been exposed to or contracted COVID-19 within its more than 200 immigration detention facilities across the country.<sup>80</sup>

Nonetheless, ICE personnel and employees have constituted the majority of confirmed cases of COVID-19 in ICE operations, and face significant workplace risks of contracting COVID-19, which they can then transmit to immigration detainees and their home communities.

Over 75 percent of immigration detainees in ICE's custody are held in privately operated prisons run by for-profit companies,<sup>81</sup> so there is a vital role for state and local governments and health authorities to conduct oversight and provide support for ICE personnel and detainees in their custody,<sup>82</sup> until such time as those detainees can be released from detention.

The DHS Office of the Inspector General has consistently found that ICE does not impose penalties or adopt remedial measures for "serious deficiencies" in its contracted immigration detention facilities,<sup>83</sup> "even when identified deficiencies present significant safety and health risks."<sup>84</sup>

In light of those deficiencies, Members of Congress have begun to exercise their oversight authority, including through unannounced visits. Expanding that practice – including in the company of state and local health experts, as appropriate – could help ensure that ICE's immigration detention facilities do not exacerbate the COVID-19 public health emergency.<sup>85</sup>

The establishment of the newly funded office of the Ombudsman for Immigration Detention as an independent, impartial, and competent authority will also provide a valuable mechanism to ensure that ICE's immigration detention facilities do not pose a grave danger to public health during the COVID-19 crisis. If established and operationalized promptly, the Ombudsman could help to prevent the dangerous and unnecessary detention of individuals who are eligible to be released through alternative-to-detention programs, for the protection of both the detainees and ICE employees and personnel.<sup>86</sup>

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80. See, *The Nation*, "Exclusive: ICE Detainees Are Being Quarantined" (24 March 2020), above at n. 5.

81. See, *USA Today*, "'These people are profitable': Under Trump, private prisons are cashing in on ICE detainees" (20 December 2020), available at: <https://www.usatoday.com/in-depth/news/nation/2019/12/19/ice-detention-private-prisons-expands-under-trump-administration/4393366002/>.

82. See, Letter from Amnesty International USA et al., above at n. 76.

83. See, DHS Office of the Inspector General, "Testimony of Assistant Inspector General for Special Reviews and Evaluations, Diana R. Shaw, Before the Committee on Homeland Security's Subcommittee on Oversight, Management, and Accountability; U.S. House of Representatives, 'Oversight of ICE Detention Facilities: Is DHS Doing Enough?'" (26 September 2019), at p. 5. Available at: <https://www.oig.dhs.gov/sites/default/files/assets/TM/2019/oigtm-asst-ig-special-reviews-evaluations-diana-r-shaw-092619.pdf>.

84. See, DHS Office of the Inspector General, "ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards" (29 January 2019), at p. 8. Available at: <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>.

85. See, Fiscal Year (FY) 2020 Consolidated Appropriations Act, Sec. 532 (at p. 710), above at n. 13.

86. See, Fiscal Year (FY) 2020 Consolidated Appropriations Act, Sec. 405 (at p. 683), above at n. 13.

# 5. LIMITATIONS ON IMMIGRATION DETENTION UNDER INTERNATIONAL LAW

The United States has agreed to be bound by international human rights law and international refugee law, both of which require US authorities to respect and ensure personal liberty and security as all individuals' default condition.

Detention of migrants and asylum seekers solely for immigration purposes is only allowed in the most exceptional of circumstances, when no other less restrictive measures are possible. Yet there is a presumption against such detention. During a global public health crisis, such as COVID-19, detention solely for migration-related reasons cannot generally be considered a necessary or proportionate restriction on the right to liberty. Any deprivation of liberty must be clearly prescribed by law, strictly justified, non-arbitrary and as minimally restrictive as possible.

When immigration detainees' right to health cannot be upheld, detainees should be released and authorities must act to ensure people's access – free from discrimination – to essential services, care and safety, including adequate accommodation and healthcare.

On 25 to 27 March 2020, top global public health and human rights institutions – including the World Health Organization, the UN High Commissioner for Human Rights, and the Commissioner on Human Rights of the Council of Europe – called on all governments to urgently release immigration detainees during the COVID-19 crisis, prioritizing the immediate release of children and higher-risk adults.<sup>87</sup> The United Kingdom and three other European states have already done so in recent days.

In a joint statement on 31 March 2020, the four lead UN agencies on human rights, global health, migrants and refugees, issued a joint statement calling for the urgent release of migrants and asylum seekers from immigration detention.<sup>88</sup>

With specific regard to unsanitary and over-cramped immigration detention facilities, the agencies noted:

“Considering the lethal consequences a COVID-19 outbreak would have, they should be released without delay. Migrant children and their families and those detained without a sufficient legal basis should be immediately released.”

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87. See, OHCHR and WHO, “Interim Guidance: COVID-19: Focus on Persons Deprived of Their Liberty” (27 March 2020), available at: <https://interagencystandingcommittee.org/system/files/2020-03/ASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf>. See also, OHCHR, “Urgent action needed to prevent COVID-19 ‘rampaging through places of detention’ – Bachelet” (25 March 2020), available at: <https://www.ohchr.org/en/newsevents/pages/media.aspx>; and, CoE Commissioner on Human Rights, “Commissioner calls for release of immigration detainees while Covid-19 crisis continues” (26 March 2020), available at: <https://www.coe.int/en/web/commissioner/-/commissioner-calls-for-release-of-immigration-detainees-while-covid-19-crisis-continues>.

88. See, Joint statement by UNHCR, IOM, OHCHR and WHO “The rights and health of refugees, migrants and stateless must be protected in COVID-19 response” (31 March 2020), available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25762&LangID=E>. “The situation for refugees and migrants held in formal and informal places of detention, in cramped and unsanitary conditions, is particularly worrying. Considering the lethal consequences a COVID-19 outbreak would have, they should be released without delay. Migrant children and their families and those detained without a sufficient legal basis should be immediately released.”

# 6. CONCLUSION

The United States of America has the largest immigration detention system in the world, with an average daily population of nearly 40,000 immigrants and asylum seekers in over 200 immigration detention facilities. Those detainees stuck in US immigration detention facilities are at serious risk of a deadly outbreak of COVID-19, as confirmed cases skyrocket exponentially in the USA.

Amnesty International has received credible, consistent, and disturbing accounts from detainees of dangerous conditions in ICE immigration detention facilities, which put those living with HIV and other underlying medical conditions at higher risk of contracting and dying from COVID-19.

DHS officials and ICE facility operators have failed to adopt adequate protection measures, including by supplying soap and sanitizer to those in detention, facilitating social distancing in line with CDC guidelines and global standards, and providing adequate and responsive health care to those exhibiting symptoms of COVID-19.

In order to urgently halt the spread of COVID-19, and avert hundreds of preventable deaths, ICE must reduce to an absolute minimum – as quickly as possible – the number of people held in its immigration detention facilities. As a priority, ICE should provide alternatives to detention and grant humanitarian parole to detainees who are older, have underlying medical conditions, or are otherwise at higher-risk of irreparable harm if they contract COVID-19. All families must be immediately released as it is never in the best interest of a child to be detained on account of their immigration status, and it is not in a child's best interest to be separated from their parents, caretaker, or guardian.

# 7. RECOMMENDATIONS

## **TO THE US CONGRESS:**

- In subsequent supplemental funding bills related to COVID-19, include language mandating the expeditious release of individuals in ICE custody.
- Conduct public oversight to ensure that DHS is using its authority to parole as many individuals from ICE detention as possible, and is complying with CDC guidelines by adopting all necessary protection measures for the safety and security of ICE employees and personnel, as well as those in their custody.
- Coordinate with state and local authorities through constituency offices, in order to ensure that ICE immigration detention facilities are complying with all relevant laws and regulations to guarantee public health.
- Ensure that the public official confirmed to serve as Immigration Detention Ombudsman is an independent, impartial, and competent authority who has expertise working directly with detained immigrants through legal or social services, and is able to discharge the duties and implement the mandate of the position in a nonpartisan manner.

## **TO THE US DEPARTMENT OF HOMELAND SECURITY'S (DHS) IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE):**

- Urgently grant humanitarian parole to as many detainees as possible – prioritizing those who are older and at higher-risk of harm from COVID-19 – so that they can socially distance themselves in safer and sanitary locations during this public health emergency.
- Halt all forced deportations and transfers of immigration detainees to other facilities, unless necessary for public health and to provide medical care.
- Provide regular, full and detailed updates to any members of Congress or their staff representatives on the conditions of ICE immigration detention facilities.
- Release all children from ICE custody expeditiously, in line with federal court orders and the *Flores* Settlement Agreement, along with their parents, guardians, or caretakers in order to prevent family separations and uphold family unity.

## **TO US STATE GOVERNORS AND LOCAL AUTHORITIES:**

- Utilize public health and licensing authority to instruct federal immigration detention facilities, county and local jails to substantially reduce their immigration detainee occupancy capacity.
- Promote and facilitate strong coordination between federal and state authorities, in order to prevent and address any health emergencies in or arising from ICE-contracted immigration detention facilities.
- Require that county jails and privately operated ICE immigration detention facilities comply with state and local laws and regulations related to public health, including any specific executive orders issued by the state in relation to the COVID-19 public health emergency.

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# USA: 'WE ARE ADRIFT, ABOUT TO SINK'

## THE LOOMING COVID-19 DISASTER IN UNITED STATES IMMIGRATION DETENTION FACILITIES

The Trump administration is failing to adequately protect nearly 40,000 immigrants and asylum seekers whom the US Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) agency is now detaining in over 200 detention centers across the United States.

The dangerous conditions in ICE's immigration detention facilities are needlessly placing immigrants and asylum seekers at higher risk of contracting Coronavirus Disease 2019 (COVID-19).

ICE and its detention facilities have failed to provide detainees with sufficient soap and sanitizer, or facilitate their "social distancing" to prevent the spread of the virus within crowded detention facilities. Additionally, ICE has not abided by US national standards set by the Centers for Disease Control and Prevention (CDC) for quarantining and medical isolation. Nor has it halted the unnecessary transfers of detainees between ICE facilities, or sufficiently provided them with lifesaving information on COVID-19 and necessary precautions to prevent contracting the virus.

As COVID-19 cases increase exponentially across the United States, detainees have launched hunger strikes in multiple ICE immigration detention facilities, demanding their humanitarian parole.

ICE's unnecessary and punitive detention of migrants and asylum seekers, based solely on their migration status, constitutes ill-treatment and discriminatory denial of the right to health, particularly for older people and other individuals at higher-risk of irreparable harm or death if they contract the virus.

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