

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
MINORITY (202) 225-5074
<http://oversight.house.gov>

May 14, 2020

The Honorable Chad F. Wolf
Acting Secretary
Department of Homeland Security
245 Murray Lane, S.W.
Washington, D.C. 20528

Mr. Matthew T. Albence
Acting Director
Immigration and Customs Enforcement
Department of Homeland Security
500 12th Street, S.W.
Washington, D.C. 20536

Dear Acting Secretary Wolf and Acting Director Albence:

We write to you for the third time regarding the inability of the Department of Homeland Security (DHS) to prevent the now deadly spread of coronavirus in detention centers housing Immigration and Customs Enforcement (ICE) detainees. We previously wrote to you on March 11, 2020, and April 7, 2020, requesting information about DHS's coronavirus plans for detention facilities.¹ We received a staff briefing on March 20, 2020, and a Member briefing on April 17, 2020. Despite our repeated attempts to secure information, ICE has failed to fully respond to our requests, casting serious doubt on its preparedness for this crisis.

ICE has failed to take this crisis seriously, and three people—that Congress and the American people know about—have now died. At each step of the way, the agency has waited rather than acted, prioritizing continued detention of thousands of non-violent detainees regardless of the life-and-death consequences for immigrants, employees, contractors, or their

¹ Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Jamie Raskin, Subcommittee on Civil Rights and Civil Liberties, to Acting Secretary Chad F. Wolf, Department of Homeland Security (Mar. 11, 2020) (<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-03-11.CBM%20and%20JR%20to%20Wolf-DHS%20re%20COVID-19.pdf>); Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, and Chairman Jamie Raskin, Subcommittee on Civil Rights and Civil Liberties, to Acting Secretary Chad F. Wolf, Department of Homeland Security, Acting Director Matthew T. Albence, Immigration and Customs Enforcement, and Acting Commissioner Mark Morgan, Customs and Border Protection (Apr. 7, 2020) (https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-04-07.CBM%20JR%20to%20DHS%20re%20Protecting%20Immigrants_0.pdf).

families. One federal judge has ruled that ICE's "systemwide inaction" has "likely exhibited callous indifference to the safety and wellbeing" of ICE detainees.²

Compounding this indifference, ICE has provided inconsistent and misleading statements to this Committee and the public, obscuring the true nature of the crisis in its facilities. ICE's actions are inconsistent with its public statements and guidance from the Centers for Disease Control and Prevention (CDC), leading to conditions far more dangerous than those faced by the general public.

For these reasons, we renew our call for ICE to parole detainees whose release does not require a court order, including those among the nearly 11,000 non-violent people in its custody and the over 5,000 people who have established their claims for asylum.³

ICE Contradicting CDC Guidance on "Cohorting"

On March 23, 2020, the CDC issued "Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities" "to ensure continuation of essential public services and protection of the health and safety of incarcerated and detained persons, staff, and visitors."⁴ ICE insists that it is acting consistent with that guidance.⁵ It is not.

The CDC recommends against cohorting detainees who have been exposed to a confirmed case of coronavirus. Specifically, the CDC warns:

Facilities should make every possible effort to quarantine close contacts of COVID-19 cases individually. Cohorting multiple quarantined close contacts of a COVID-19 case could transmit COVID-19 from those who are infected to those who are uninfected. Cohorting should only be practiced if there are no other available options.⁶

In direct contradiction to this guidance, ICE cohorts exposed detainees together as a matter of course, not as a last resort. In multiple statements posted to its website, ICE stated that

² *Fraihat. vs. U.S. Immigration and Customs Enforcement*, No. 5:19-cv-01546-JGB-SHK (C.D. Cal. Apr. 20, 2020) (online at www.splcenter.org/sites/default/files/fraihat_pi_grant.pdf).

³ Immigration and Customs Enforcement, *Detention Management* (online at www.ice.gov/detention-management) (accessed May 14, 2020).

⁴ Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020) (online at www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html).

⁵ Immigration and Customs Enforcement, *ICE Guidance on COVID-19* (online at www.ice.gov/coronavirus) (accessed May 14, 2020).

⁶ Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020) (online at www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html).

“those who have come in contact with the individuals have been cohorted and are being monitored for symptoms.”⁷

Reports indicate that at some facilities, ICE is making little effort to isolate exposed detainees. At the Otay Mesa facility, Marciela Ortiz was assigned with 15 other women to begin working in the kitchen, the same workspace where another detainee had tested positive for the virus. Within days, Ms. Ortiz and other women on the kitchen detail began experiencing coronavirus symptoms. When Ms. Ortiz sought help, she was told to walk around and take a shower. Ms. Ortiz and others with symptoms were left in the general population rather than being isolated. Ms. Ortiz was not able to get tested for coronavirus until after she was released on bond. She tested positive. ICE also released two other detainees with *confirmed* cases into the general population after only a four-day quarantine.⁸

ICE Contradicting CDC Guidance on Transfers

CDC guidance states that, in order to prevent an outbreak of coronavirus, detention facilities should:

Restrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding. ... Transfers should be avoided due to the potential to introduce infection to another facility.⁹

However, news reports indicate that ICE has continued transferring detainees between facilities across the country, increasing the risk of spreading coronavirus. In April, ICE transferred 72 people from New York and Pennsylvania facilities with confirmed positive coronavirus cases among the detainee population. Those 72 immigrants went to a facility in Prairieland, Texas, where, at the time, no positive cases had been detected. Since the transfer, 41 Prairieland detainees have tested positive, including 21 of the 72 transferees. At least one detainee was transferred from Bergen County Jail, the site of the first confirmed coronavirus case in ICE custody, to the New York facility before being sent to Texas.¹⁰

⁷ Immigration and Customs Enforcement, *ICE Guidance on COVID-19* (online at www.ice.gov/coronavirus) (accessed May 14, 2020).

⁸ *Federal Detainees Say They Aren't Isolated While Awaiting Coronavirus Test Results*, Los Angeles Times (May 4, 2020) (online at www.latimes.com/california/story/2020-05-04/otay-mesa-federal-detainees-coronavirus-test-results).

⁹ Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020) (online at www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html).

¹⁰ *ICE Moved Dozens of Detainees Across the Country During the Coronavirus Pandemic. Now Many Have COVID-19*, BuzzFeed News (Apr. 29, 2020) (online at www.buzzfeednews.com/article/hamedaleaziz/ice-immigrant-transfer-jail-coronavirus).

ICE Contradicting CDC Guidance on Social Distancing

CDC recommends that detention facilities “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).”¹¹

ICE has failed to comply with this guidance. Many detainees are still sleeping in crowded rooms within arms-reach of each other.¹² In at least one facility, ICE consolidated two housing units into a single dorm, doubling the number of people sharing a common area.¹³

ICE has asserted in court that the CDC guidance does not mandate social distancing. The agency’s arguments ignore that CDC has warned that, even in detention, social distancing “is a cornerstone of reducing transmission of respiratory diseases such as COVID-19.” A federal judge rejected ICE’s argument and found that “it is undisputed that the agency has not come close to achieving social distancing for most detainees.”¹⁴

ICE Contradicting CDC Guidance on Personal Protective Equipment

CDC recommends that staff and detained individuals wear face masks in certain circumstances:

- “If cohorted, quarantined individuals should wear face masks at all times to prevent transmission from infected to uninfected individuals.”
- “Incarcerated/detained individuals with COVID-19 symptoms should wear a face mask and should be placed under medical isolation immediately.”
- “Staff having direct contact with asymptomatic incarcerated detained persons under quarantine as close contacts of a COVID_19 case” should wear a “face mask,” “eye protection,” and “gloves.”¹⁵

¹¹ Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020) (online at www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html).

¹² *Rivas v. Jennings*, No. 3:20-cv-02731-VC (N.D. Cal. Apr. 27, 2020) (online at www.courthousenews.com/wp-content/uploads/2020/04/TovarICECovid-TROTentative.pdf).

¹³ “*Burials are Cheaper than Deportations*”: *Virus Unleashes Terror in a Troubled ICE Detention Center*, The Intercept (Apr. 12, 2020) (online at <https://theintercept.com/2020/04/12/coronavirus-ice-detention-jail-alabama/>).

¹⁴ *Rivas v. Jennings*, No. 3:20-cv-02731-VC (N.D. Cal. Apr. 27, 2020) (online at www.courthousenews.com/wp-content/uploads/2020/04/TovarICECovid-TROTentative.pdf).

¹⁵ Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020) (online at www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html).

ICE does not follow these guidelines or apparently require its contractors to follow them. Detainees report that they are not provided masks and that detention officers often enter units and deliver food without gloves or masks.¹⁶

In April, Carl Lenard and Stanton Johnson, contract employees for LaSalle Corrections at the Richwood facility in Monroe, Louisiana, died from coronavirus. Their families allege that they had been barred from wearing masks at work.¹⁷ Employees for another contractor, CoreCivic, have sued, alleging that they were also barred from wearing masks at ICE facilities.¹⁸

ICE Misleads Committee on Review of Detainee Population

During the April 17, 2020, briefing for Members of the Committee, Acting Director Albence told Members that ICE had completed a review of its detainee population—which at the time included roughly 32,000 people—to determine whether medically vulnerable detainees could be released.¹⁹

Recent court filings call into question how thorough ICE’s review has been. In a case before the Northern District of California, ICE conceded that it did not have a list of medically vulnerable detainees in the state of California and that compiling such a list would be unduly burdensome. The judge responded:

I would expect ICE would have the information at the ready if it was making a meaningful attempt to assess which detainees should be released in light of the crisis. What has ICE been doing in the last month to protect the safety of detainees if not gathering information about everyone’s health conditions and criminal record to determine who could be reasonably released during the crisis?²⁰

During the April 17, 2020, briefing, Acting Director Albence stated that ICE’s “entire population has gone through screening process to make those determinations” about release of

¹⁶ *Coronavirus: Immigration Detention Centres in Crisis*, British Broadcasting Corporation (May 1, 2020) (online at www.bbc.com/news/world-us-canada-52476131).

¹⁷ *2 Guards at ICE Jail Die after Contracting Coronavirus*, New York Times (Apr. 29, 2020) (online at www.nytimes.com/aponline/2020/04/29/us/ap-us-virus-outbreak-immigration-detention.html?searchResultPosition=2).

¹⁸ *Guards Sue CoreCivic Over Allegedly Dangerous Workplace Amid COVID-19*, San Diego Tribune (Apr. 30, 2020) (online at www.sandiegouniontribune.com/news/watchdog/story/2020-04-30/guards-sue-corecivic-over-allegedly-dangerous-workplace-amid-covid-19).

¹⁹ Committee on Oversight and Reform, *Press Release: DHS Officials Refuse to Release Asylum Seekers and Other Non-Violent Detainees Despite Spread of Coronavirus* (Apr. 17, 2020) (online at <https://oversight.house.gov/news/press-releases/dhs-officials-refuse-to-release-asylum-seekers-and-other-non-violent-detainees>).

²⁰ *Judge Scolds ICE for Failing to Protect Detainees from Coronavirus*, Courthouse News Service (Apr. 28, 2020) (online at www.courthousenews.com/judge-scolds-ice-for-failing-to-protect-detainees-from-coronavirus/).

medically vulnerable detainees. The agency's statements to the court indicate that this review did not happen as described to the Committee.

ICE Continues to Unnecessarily Detain Medically Vulnerable Immigrants

During the same briefing, Acting Director Albence told Committee Members that ICE released fewer than 700 medically vulnerable detainees and that it was not detaining any medically vulnerable detainees who could be safely released.²¹

On May 6, 2020, Carlos Ernesto Escobar Mejia, an ICE detainee, died from coronavirus contracted in ICE custody. He was medically vulnerable, suffering from hypertension and diabetes that had resulted in an amputation. ICE refused to release him, reportedly based on criminal convictions from three decades ago, including a DUI, and a 2012 arrest for possession of a controlled substance, which was later expunged. Mr. Mejia's family has said that his bond hearing was delayed as the judge awaited more information about a domestic violence charge that ICE claimed was on Mr. Mejia's record. That charge was one of mistaken identity and had been dismissed when it was revealed that police arrested the wrong person. Mr. Mejia died before ICE's allegations about him could be proven false.²²

Mr. Mejia is one of several medically vulnerable detainees who have pleaded for release. To date, judges have ordered ICE to release at least 192 people who ICE continues to detain unnecessarily.²³ Others with cancer, diabetes, and other medical conditions continue to languish in ICE custody.²⁴

ICE has begun posting to its website the number of detainees ordered released who have criminal convictions or charges.²⁵ ICE's website does not clarify that federal judges have reviewed the criminal histories of each immigrant they have ordered released.²⁶ Further, ICE has

²¹ Committee on Oversight and Reform, *Press Release: DHS Officials Refuse to Release Asylum Seekers and Other Non-Violent Detainees Despite Spread of Coronavirus* (Apr. 17, 2020) (online at <https://oversight.house.gov/news/press-releases/dhs-officials-refuse-to-release-asylum-seekers-and-other-non-violent-detainees>).

²² *San Diego Detainee is First in ICE Custody to Die of COVID-19*, Los Angeles Times (May 6, 2020) (online at www.latimes.com/california/story/2020-05-06/first-ice-detainee-dies-coronavirus-otay-mesa-detention-center).

²³ Immigration and Customs Enforcement, *ICE Guidance on COVID-19* (online at www.ice.gov/coronavirus) (accessed May 14, 2020).

²⁴ *Women in ICE Detention Face Reprisal for Speaking Up About Fears of COVID-19*, The Intercept (Apr. 28, 2020) (online at <https://theintercept.com/2020/04/28/ice-detention-coronavirus-videos/>).

²⁵ Immigration and Customs Enforcement, *ICE Guidance on COVID-19* (online at www.ice.gov/coronavirus) (accessed May 14, 2020).

²⁶ *Coronavirus Prompts Federal Judge to Order Release of at Least 33 Immigrant Detainees in Massachusetts*, Mass Live (Apr. 9, 2020) (online at www.masslive.com/coronavirus/2020/04/coronavirus-prompts-federal-judge-to-order-release-of-at-least-33-immigrant-detainees-in-massachusetts.html); *Judge Criticizes ICE for*

not indicated how many of those detainees have records with unproven charges, expunged charges, or decades-old convictions. ICE has maintained that detention in its facilities is not punitive, but the agency effectively sentenced Mr. Mejia to death when it opposed his release.²⁷ ICE is currently holding over 11,000 people with no criminal charges and has refused to release them.²⁸

ICE Has an Infection Rate Higher Than Any State and No Contingency Plan

ICE has a higher infection rate among its detainees than any state in the nation. At a rate of 3,177 people per 100,000, it is 78% higher than New York State's—the epicenter of the virus in the U.S.—which has an infection rate of 1,786 per 100,000.²⁹

The true number of infections is likely far higher. Only 1,788 detainees have been tested, meaning that a staggering 53% of those tested are positive. According to CDC, only 18% of Americans who have been tested were positive.³⁰

In a briefing with Committee staff on March 20, 2020, ICE conceded that it has no contingency plan to treat detainees requiring hospitalization if local hospitals become overwhelmed.³¹

In the six weeks since that briefing, there has been no apparent progress. ICE has not provided the Committee with any information regarding a plan, and officials reportedly told

Failing to 'Respond Meaningfully' to Coronavirus Crisis, Fresno Bee (May 1, 2020) (online at www.fresnobee.com/news/coronavirus/article242389436.html);

²⁷ “Never Prepared”: Report Details Poor Conditions at ICE Jails with Coronavirus Cases, CBS News (Apr. 30, 2020) (online at www.cbsnews.com/news/coronavirus-ice-immigration-detention-aclu-report/).

²⁸ Immigration and Customs Enforcement, *Detention Management* (online at www.ice.gov/detention-management) (accessed May 14, 2020). *Coronavirus Prompts Federal Judge to Order Release of at Least 33 Immigrant Detainees in Massachusetts*, Mass Live (Apr. 9, 2020) (online at www.masslive.com/coronavirus/2020/04/coronavirus-prompts-federal-judge-to-order-release-of-at-least-33-immigrant-detainees-in-massachusetts.html); *Judge Criticizes ICE for Failing to 'Respond Meaningfully' to Coronavirus Crisis*, Fresno Bee (May 1, 2020) (online at www.fresnobee.com/news/coronavirus/article242389436.html);

²⁹ Immigration and Customs Enforcement, *ICE Guidance on COVID-19* (online at www.ice.gov/coronavirus) (accessed May 14, 2020); *Coronavirus in the U.S.: Latest Map and Case Count*, New York Times (online at www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#states) (accessed May 14, 2020).

³⁰ Centers for Disease Control and Prevention, *COVIDView* (May 1, 2020) (online at www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html).

³¹ Committee on Oversight and Reform, *Press Release: Chairs Maloney and Raskin Call on DHS to Release Non-Violent Migrant Detainees to Prevent Coronavirus Outbreak in Detention Facilities* (Apr. 7, 2020) (online at <https://oversight.house.gov/news/press-releases/chairs-maloney-and-raskin-call-on-dhs-to-release-non-violent-migrant-detainees>).

detainees at the Irwin County Detention Center in Georgia that ICE could not do anything if detainees fell ill, that the hospitals were full, and that there is no place to send sick detainees.³²

The Trump Administration has surged detainee populations in remote, sparsely populated, rural areas with little medical infrastructure. For example, in Adams County Correctional Center in Natchez, Mississippi, at least 15 detainees have tested positive. Adams County has only 15 ICU beds.³³ An outbreak at Adams could easily overwhelm the local hospitals, endangering not only detainees, but the whole community.

ICE Has Repeatedly Failed to Provide Critical Information to the Committee

Despite multiple requests from Committee Members and staff, ICE has repeatedly failed to provide key information in response to the following questions:

1. How many detainees have been tested in each facility, how many tested negative, and how many had test results that were inconclusive?
2. How many people in ICE custody are medically vulnerable or at high risk of infection and complications from coronavirus?
3. What is ICE's plan to treat detainees if local hospitals cannot absorb them?
4. How is ICE coordinating with state and local governments on coronavirus matters in areas where detention facilities are located?
5. What guidance has ICE given to its facilities, including private contractors and local jails with ICE detainees, on how to handle coronavirus?

ICE has also failed to produce documents and incident reports regarding coronavirus protests by detainees, including any punishment or retaliation.

ICE has not reported publicly how many employees at contract facilities and local jails have tested positive for or died from coronavirus. More than 80% of people in ICE custody are detained in privately-run prisons.³⁴ The Committee has learned from GEO Group, one of ICE's largest contractors, that, as of April 24, 2020, 62 of its employees at ICE facilities were self-quarantining due to exposure to coronavirus and 13 had tested positive. The Committee has also

³² *Women in ICE Detention Face Reprisal for Speaking Up About Fears of COVID-19*, The Intercept (Apr. 28, 2020) (online at <https://theintercept.com/2020/04/28/ice-detention-coronavirus-videos/>).

³³ *'Like Petri Dishes for the Virus': ICE Detention Centers Threaten the Rural South*, Politico (May 5, 2020) (online at www.politico.com/news/magazine/2020/05/05/coronavirus-ice-detention-rural-communities-186688).

³⁴ *Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration*, American Civil Liberties Union (Apr. 2020) (online at www.aclu.org/sites/default/files/field_document/justice-free_zones_immigrant_detention_report_aclu_hrwnijc_0.pdf).

learned from CoreCivic, another major contractor, that, as of May 7, 2020, 28 of its employees were in quarantine and 69 had tested positive. Failing to report on contractor employees, including contractor deaths, obscures the true extent of the outbreak in ICE facilities.

ICE is also continuing to withhold the results of prior investigations into the deaths of numerous detainees in ICE custody that were requested by the Committee in July 2019.³⁵ The results of these investigations are directly relevant to how ICE is handling the current medical crisis across its facilities. They should be provided immediately.

Request for Information and Briefing

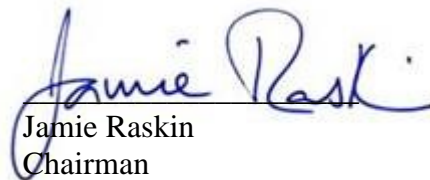
For the reasons set forth above, we request that ICE provide the information previously requested by the Committee by May 21, 2020. We also request a briefing and all documents related to the death of Carlos Ernesto Escobar Mejia by May 22, 2020.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” and “any time” under House Rule X. An attachment to this letter provides additional instructions for responding to the Committee’s request. If you have any questions regarding this request, please contact Committee staff at (202)-225-5051.

Sincerely,



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Jamie Raskin
Chairman
Subcommittee on Civil Rights and
Civil Liberties

Enclosure

cc: The Honorable Jim Jordan, Ranking Member

The Honorable Chip Roy, Ranking Member
Subcommittee on Civil Rights and Civil Liberties

³⁵ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, and Chairman Jamie Raskin, Subcommittee on Civil Rights and Civil Liberties, to Acting Director Matthew T. Albence, Immigration and Customs Enforcement (July 10, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-07-10.EEC%20JR%20to%20Albence-ICE%20re%20Detention%20Contractors.pdf>).