



June 2021

# IMMIGRATION DETENTION

## ICE Efforts to Address COVID-19 in Detention Facilities



A Century of Non-Partisan Fact-Based Work

# GAO@100 Highlights

Highlights of [GAO-21-414](#), a report to congressional committees

## Why GAO Did This Study

Detention facilities can present a challenging environment to manage the risk of transmission of infectious diseases, including COVID-19. ICE, within the Department of Homeland Security, is the lead federal agency responsible for providing safe, secure, and humane confinement for detained individuals of foreign nationality while they wait for resolution of their immigration cases, or removal from the United States. As of March 2021, ICE confirmed over 10,000 cases of COVID-19 among detainees within its detention facilities nationwide and recorded eight deaths.

This report examines: (1) ICE's policies and procedures for responding to COVID-19 in immigration detention facilities and how they were implemented at select facilities; (2) ICE's mechanisms for conducting oversight of COVID-19 related health and safety measures; and (3) ICE's data on COVID-19 cases and identified high-risk health factors among detainees. GAO interviewed officials in ICE headquarters and from a non-generalizable sample of six ICE detention facilities selected on the basis of geographic location, facility type, and average population. GAO reviewed ICE's Pandemic Response Requirements for detention facilities and oversight mechanisms, and analyzed ICE data on COVID-19 cases and high-risk detainees in its custody between January 2020 and March 2021.

View [GAO-21-414](#). For more information, contact Rebecca Gambler at (202) 512-8777 or [gablerr@gao.gov](mailto:gablerr@gao.gov).

June 2021

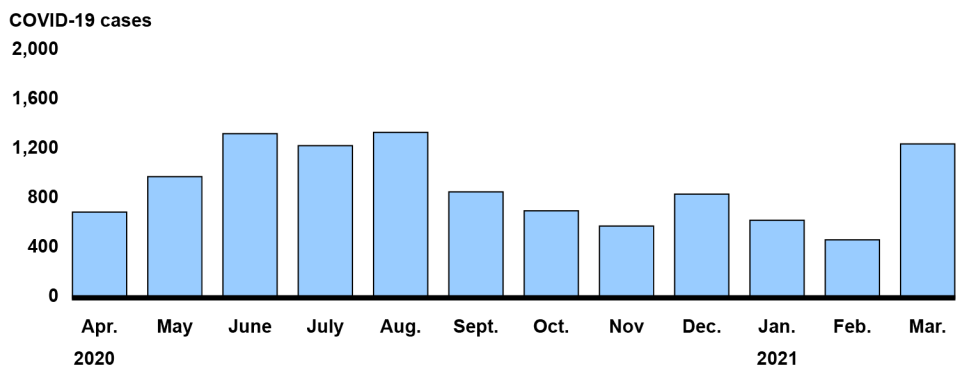
## IMMIGRATION DETENTION

### ICE Efforts to Address COVID-19 in Detention Facilities

## What GAO Found

To guide immigration detention facilities' response to Coronavirus Disease 2019 (COVID-19), U.S. Immigration and Customs Enforcement (ICE) developed the *COVID-19 Pandemic Response Requirements*. These protocols address facility intake processing, screening and testing, and social distancing, among other requirements. According to officials from six selected facilities, these requirements were routinely implemented. However, some reported that quarantine of detainees was difficult at times due to infrastructure limitations, and detainee compliance with mask wearing was an ongoing challenge. As of March 2021, individual facilities were generally responsible for working directly with state and local health authorities to administer COVID-19 vaccines to detainees.

#### Number of Reported COVID-19 Cases among Detainees in ICE Detention Facilities



Source: GAO analysis of ICE data. | GAO-21-414

To oversee detention facilities' management of COVID-19, ICE administers a recurring survey to assess their implementation of the *Pandemic Response Requirements*. According to ICE, field officials review the survey responses and follow up with facilities on areas requiring attention. Officials told GAO the survey helped identify areas of potential noncompliance, but also noted some challenges, such as a lack of on-site facility monitoring to validate responses. In December 2020, ICE revised the survey to obtain more information on facilities' adherence to requirements and implemented an on-site compliance check. As of March 2021, officials reported three monthly surveys were completed, plans for corrective actions were initiated at 11 facilities, and they plan to review survey data more systematically for trends.

ICE identifies and tracks COVID-19 cases among detainees in its custody as well as those detainees determined to be at high-risk for severe illness due to COVID-19. In calendar year 2020, ICE tested 80,200 detainees for COVID-19, identified 8,622 positive cases (10.8 percent), and recorded eight deaths. ICE further identified 14,729 high-risk detainees in its custody nationwide among whom 528 (3.6 percent) tested positive for COVID-19.

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## Abbreviations

CDC	Centers for Disease Control and Prevention
COVID-19	Coronavirus Disease 2019
DHS	Department of Homeland Security
ERO	Enforcement and Removal Operations
ICE	U.S. Immigration and Customs Enforcement
IGSA	Intergovernmental service agreement
IHSC	ICE Health Service Corps
PPE	personal protective equipment

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June 30, 2021

### Congressional Committees

As of March 2021, over 10,000 cases of Coronavirus Disease 2019 (COVID-19) were confirmed within immigration detention facilities, including eight reported deaths among detainees. Within the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) is the lead federal agency responsible for providing safe, secure, and humane confinement for detained individuals of foreign nationality while they wait for resolution of their immigration cases, or removal from the United States.

According to the Centers for Disease Control and Prevention (CDC), the densely-populated environment of detention facilities may place detainees, such as those in ICE custody, at higher risk of infection and transmission. COVID-19 can pose a variety of health risks and some detainees may be at increased risk due to pre-existing health conditions. Numerous lawsuits have been filed in federal courts seeking relief on behalf of detainees based on various allegations related to conditions of detention during the COVID-19 pandemic.

We were asked to review ICE's management of COVID-19 within immigration detention facilities. In addition, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) includes a provision for us to monitor and oversee, offer regular briefings, and publish reports on activities and funding under the CARES Act or any other act to address the COVID-19 pandemic and its effects on the health, economy, and public and private institutions of the United States, including the federal government's public health and homeland security efforts.<sup>1</sup> This report examines (1) ICE's policies and procedures for responding to COVID-19 in immigration detention facilities and how they were implemented at select facilities; (2) ICE's mechanisms for conducting oversight of COVID-

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<sup>1</sup>Pub. L. No. 116-136, div. B, title IX, § 19010, 134 Stat. 281, 579-81 (2020). We regularly issue government-wide reports on the federal response to COVID-19. For the latest report, see GAO, *COVID-19: Sustained Federal Action Is Crucial as Pandemic Enters Its Second Year*, GAO-21-387 (Washington, D.C.: Mar. 31, 2021). Our next government-wide report will be issued in July 2021 and will be available on GAO's website at <https://www.gao.gov/coronavirus>.

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19 related health and safety measures; and (3) ICE's data on COVID-19 cases and identified high-risk health factors among detainees.

To describe ICE's policies and procedures for addressing COVID-19 and how they were implemented within select immigration detention facilities, we reviewed ICE documentation and interviewed ICE officials and select facility operators. Key documents we reviewed included ICE's *COVID-19 Pandemic Response Requirements*, which establishes requirements, protocols, and procedures for managing COVID-19 within immigration detention facilities.<sup>2</sup> Specifically, this guidance contains detailed requirements on various health and safety measures, including COVID-19 screening and testing procedures, intake and quarantine protocols, and recommended social distancing practices, among others. We also reviewed other guidance from ICE health officials, as well as email memoranda and recommendations issued by ICE headquarters to field offices related to managing the pandemic.<sup>3</sup> Lastly, we reviewed ICE's *COVID-19 Reconstitution Plan*, which establishes a phased process for restoring on-site activities at ICE detention facilities, among other things.<sup>4</sup>

At the headquarters level, we interviewed officials from ICE's Enforcement Removal Operations (ERO), which oversees the confinement of ICE detainees across facilities in accordance with immigration detention standards. Specifically, we met with officials from ERO's Custody Management Division, Field Operations Division, and ICE Health Services Corps (IHSC). For our field interviews, we selected a non-generalizable sample of six ICE immigration detention facilities that represent variation among a range of factors including field office location, facility type, average detainee population, and the number of COVID-19

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<sup>2</sup>ICE, *COVID-19 Pandemic Response Requirements, Version 1* (Washington, D.C.: April 10, 2020).

<sup>3</sup>We reviewed principal guidance and correspondence dated between February 2020 and April 2020 that describe ICE's initial steps to manage COVID-19 within immigration detention facilities.

<sup>4</sup>ICE, *COVID-19 Reconstitution Plan*, (Washington, D.C.: July 29, 2020). ICE's *COVID-19 Reconstitution Plan* establishes a phased approach to returning to a pre-pandemic operating posture as health and safety conditions permit.

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cases identified at the facility.<sup>5</sup> At each immigration detention facility, we interviewed ICE field office management, facility operators, facility medical personnel, and the assigned ICE Detention Service Manager, among others.<sup>6</sup> During these meetings, we discussed each facility's implementation of the Pandemic Response Requirements and other COVID-19 guidance, as well as any associated challenges.

To describe ICE mechanisms for conducting oversight of COVID-19 related health and safety measures, we reviewed relevant ICE documents and interviewed ICE headquarters and field officials. Specifically, we selected and reviewed two sets of responses to the COVID-19 Facility Checklists for each of the six immigration detention facilities in our non-generalizable sample.<sup>7</sup> ICE requires all facilities that hold detainees over 72 hours to complete these checklists to assess facility implementation of the Pandemic Response Requirements.<sup>8</sup> At the headquarters level, we met with ICE officials to discuss the development and implementation of the facility checklists, as well as related findings or actions taken to address potential noncompliance. Within the field, we interviewed the facility personnel responsible for completing the facility checklists and ICE

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<sup>5</sup>ICE utilizes a variety of detention facility types. These generally include (1) service processing centers, which ICE owns and primarily operates; (2) contracted detention facilities, which are generally owned and operated by private companies; (3) dedicated and non-dedicated intergovernmental service agreement facilities, which are owned and operated by state, or local governments; and (4) U.S. Marshals Service intergovernmental agreement or contract facilities, which are generally owned by state or local government or private entities and are operated under an agreement or contract with the U.S. Marshals Service. Average detainee population refers to the average number of detainees in custody on a given day within a specified period, and the number of COVID-19 cases refers to the number of detainees who tested positive for COVID-19 while in ICE custody or who were sick with COVID-19 for a period of time that included ICE custody. Based on these criteria, we selected a non-generalizable sample that included (1) the El Paso Service Processing Center, (2) the Otay Mesa Detention Center, (3) the Tacoma ICE Processing Center, (4) the Immigration Centers of America (Farmville), (5) the BlueBonnet Detention Facility, and (6) the Limestone County Detention Center.

<sup>6</sup>ICE Detention Service Managers routinely maintain a presence at approximately 57 facilities to conduct ongoing compliance reviews and assist the facility in developing and monitoring corrective actions to ensure compliance with national detention standards is achieved and maintained.

<sup>7</sup>According to officials, ICE issued the initial version of the facility checklist in April 2020 and expanded use of the checklist to all over-72-hour facilities by June 2020. For each of the six selected facilities, we requested and reviewed survey responses for two different time periods – one from April/June 2020 and one completed in November/December 2020.

<sup>8</sup>These facilities house exclusively adult detainees for over 72 hours. ICE also houses detainees in shorter-term, under-72-hour detention facilities, as well as temporary holding facilities typically for 12 hours or less.

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officials responsible for reviewing the checklist responses for the six facilities in our non-generalizable sample. During these interviews, we obtained perspectives on the extent to which the facility checklist is an effective tool for monitoring facilities' implementation of the Pandemic Response Requirements, as well as limitations and related challenges.

To describe ICE data on COVID-19 cases and identified high-risk health factors among detainees, we analyzed ICE data and interviewed ICE headquarters and field officials. Specifically, we analyzed calendar year 2020 data from ICE's Lower Respiratory Illness Tracker, which ICE uses to document and track COVID-19 cases in immigration detention facilities nationwide. The tracker is an Excel spreadsheet accessible to authorized ICE personnel that contains a variety of data on positive cases, including the date for each positive test, the immigration detention facility in which the case occurred, and whether exposure to COVID-19 occurred prior to, during, or overlapping ICE custody. We also analyzed calendar year 2020 data from ICE's high-risk reporting process. ICE identifies and reports on detainees determined to be at high-risk for severe illness due to COVID-19. These data include the reason for high-risk determinations, as well as each high-risk detainee's status in the ICE detention life-cycle. To assess the reliability of these data, we interviewed IHSC headquarters officials; officials from ERO's Law Enforcement Systems and Analysis Division, which collects and analyzes data on ICE operations; and field officials at the six facilities in our non-generalizable sample to obtain information on how data are collected. After assessing ICE's data collection and entry procedures, as well as the steps ICE takes to ensure data are complete and accurate, we determined that the data are sufficiently reliable to report summary statistics on detainees who tested positive for COVID-19 while in ICE custody and on detainees identified as high-risk while in ICE custody.

We conducted this performance audit from May 2020 to June 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

COVID-19 is a communicable disease caused by a novel coronavirus, SARS-CoV-2. The virus is thought to transfer primarily by person-to-person contact through respiratory droplets produced when an infected person coughs or sneezes, and it may transfer through contact with



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surfaces or objects contaminated with these droplets. There is also evidence of asymptomatic or presymptomatic transmission, in which an individual infected with COVID-19 is capable of spreading the virus to others without or before exhibiting symptoms. Symptoms include fever, cough, and shortness of breath, and typically appear 2 to 14 days after exposure. Older adults and people who have chronic medical conditions like heart, lung, or kidney disease are also at higher risk for more severe COVID-19 illness.

ICE owns and operates some of its detention facilities. Others are owned and operated by private companies through contracts with ICE or are owned by state or local governments or private entities and operated under agreements with ICE. Additionally, some facilities exclusively house ICE detainees, and others house ICE detainees and other confined populations, either together or separately. Table 1 describes the types of detention facilities and the number of each type during fiscal year 2020.

**Table 1: U.S. Immigration and Customs Enforcement (ICE) Over-72-Hour Detention Facility Types, Fiscal Year 2020**

Facility Type	Description	Number of Facilities
Service Processing Center	Facility owned and primarily operated by ICE; exclusively houses ICE detainees.	5
Contract Detention Facility	Facility owned and operated by private company under direct ICE contract; exclusively houses ICE detainees.	14
Dedicated intergovernmental service agreement facility	Facility owned by state or local government or private entity, operated under an agreement with ICE; exclusively houses ICE detainees.	22
Nondedicated intergovernmental service agreement facility	Facility owned by state or local government or private entity, operated under an agreement with ICE; houses ICE detainees and other confined populations, either together or separately.	66
U.S. Marshals Service intergovernmental agreement or contract facility	Facility owned by state or local government or private entity, operated under an agreement or contract with U.S. Marshals Service; houses ICE detainees and other populations, either together or separately.	50
<b>Total</b>		<b>157</b>

Source: GAO analysis of ICE information | GAO-21-414

Note: This table presents information on authorized facilities that house exclusively adult detainees for over 72 hours.

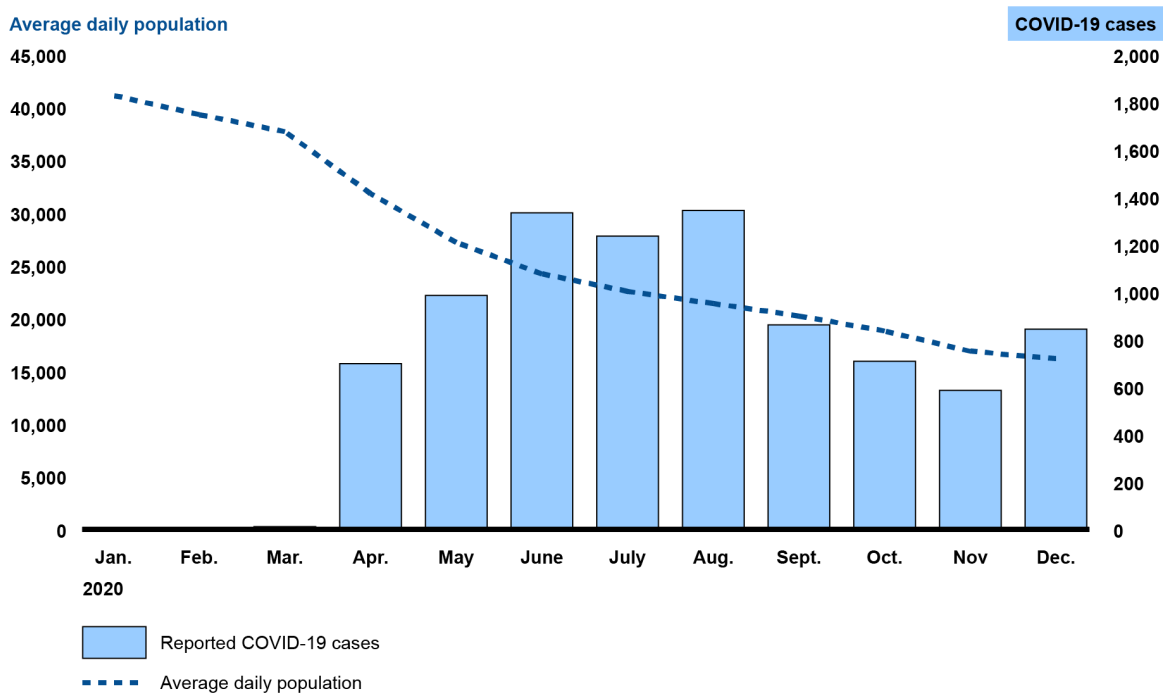
Within ICE, ERO has primary responsibility for overseeing the compliance of ICE detention facilities with applicable immigration detention standards. ICE has developed standards for immigration detention that specify how facilities should operate to ensure safe, secure, and humane confinement for immigration detainees.<sup>9</sup> Within ERO, the Custody Management Division oversees the routine monitoring and inspection of facilities; the Field Operations Division oversees 24 field offices that manage local detention operations; and IHSC serves as the medical authority for detainee health care issues and oversees administration and costs of medical care at all detention facilities. As of February 2021, IHSC provided direct medical care to adult detainees in 14 facilities and oversees medical care administered by non-IHSC providers in other facilities.

Detention facilities can present a challenging environment to manage the risk of transmission of infectious diseases, including COVID-19. For example, detained persons routinely live, work, eat, and recreate within shared environments, and detainees in a particular facility may arrive from a variety of different geographic areas. ICE's standards applicable to

<sup>9</sup>ICE detention facilities are generally required to adhere to one of four sets of detention standards, which vary depending on the contract or agreement.

all facilities housing ICE detainees require each facility to have written plans that address the management of infections and communicable diseases, including, but not limited to, testing, isolation, prevention, and education. These requirements include reporting to and collaborating with local or state health departments in accordance with state and local laws and recommendations.<sup>10</sup> See figure 1 for information on the number of reported COVID-19 cases and average daily populations within immigration detention facilities for 2020.

**Figure 1: Number of Reported COVID-19 Cases among Individuals Detained in Immigration Detention Facilities and Average Detainee Populations by Month, 2020**



Source: GAO analysis of ICE data. | GAO-21-414

Note: This figure represents average daily detainee populations at all over-72 hour immigration detention facilities. According to U.S. Immigration and Customs Enforcement (ICE), the average daily population is calculated by summing the total number of detainees at midnight each day in each facility and dividing by the number of days being measured. ICE reported 8,622 positive COVID-19 cases among detainees in ICE custody in calendar year 2020. ICE data did not identify the month for 19 of these 8,622 cases, so this information is omitted from the figure.

<sup>10</sup>For example, the Performance-Based National Detention Standards 2008 and 2011 both require facilities to “comply with current and future plans implemented by federal, state or local authorities addressing specific public health issues.”

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## ICE Issued Evolving Requirements to Guide COVID-19 Response Activities, and Selected Facilities Reported Implementing Key Health and Safety Measures

ICE's ERO issued a broad range of requirements and guidance materials to address pandemic response activities at detention facilities. Beginning in late January 2020, ERO began providing initial COVID-19 communications, including preliminary medical guidance from IHSC. By mid-March, ICE began issuing regular updates of applicable information from the CDC and implemented a broad range of specific policies and procedures to guide pandemic response activities and help reduce the risk of COVID-19 transmission within detention facilities. ERO issued the first version of its consolidated *COVID-19 Pandemic Response Requirements* in April 2020. This document, issued to all detention facilities, continues to serve as the primary guidance for all detention facilities housing ICE detainees to follow during the COVID-19 pandemic. The following represents additional details regarding the evolving guidance issued by ERO to support COVID-19 preparation and response efforts.

- **Initial ERO communications.** IHSC disseminated the first of a series of COVID-19-related medical reference documents in late January 2020 to provide awareness of the unfolding outbreak in China and provide preliminary recommendations related to detainee intake medical screening, symptom monitoring, and reporting. On February 1, 2020, ERO issued a communication to all of its personnel with further information on the virus, such as known signs and symptoms, as well as initial recommendations for staff protective measures.
- **Interim guidance and policy documents.** Targeted guidance and policy documents to address the COVID-19 pandemic were distributed beginning in mid-March 2020. For example, during this time, ERO announced a suspension of social visitation for detainees within all facilities, reduced enforcement operations, disseminated applicable CDC guidance targeted to correctional and detention facilities, as well as an "Action Plan" consisting of a collection of COVID-related policies and procedures issued to all field offices to help ensure a unified response.<sup>11</sup> Among other elements, the Action Plan included requirements for maintaining detainee access to legal representation and communications with facility staff and ERO field office staff, as well as suggested screening practices for facility staff and detainees.

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<sup>11</sup>Centers for Disease Control and Prevention (CDC), *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional/Detention Facilities*, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-corr-ectioal-detention.html>.

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- **COVID-19 Pandemic Response Requirements.** Originally issued April 10, 2020, the Pandemic Response Requirements document built upon previously issued guidance and established specific mandatory requirements for all detention facilities, as well as recommended best practices. Specific requirements included are detainee screening and quarantine procedures; identification of detainees who may be at higher risk for severe illness due to COVID-19; facility cleaning and disinfection; and use of personal protective equipment, among others. This document is subject to ongoing revisions and is currently on version 6, issued March 16, 2021.<sup>12</sup>

ICE officials and representatives we spoke with from six facilities generally stated that the guidance and information provided by ICE were sufficient, and several reported that additional opportunities to clarify new requirements or discuss specific facility conditions were available through regular conference calls and communication with ERO headquarters. Two officials also noted that the volume and frequency of the updates to these materials presented some challenges to review and implement under short time frames. All five of the private facility operators we spoke with reported that they also independently monitored CDC guidance as the pandemic unfolded, and they each developed their own policies to help direct pandemic response activities.

The Pandemic Response Requirements address a broad range of COVID-19 health and safety measures. Specifically, it calls for measures in the areas of detainee intake screening and testing, identification of “high-risk” detainees, quarantine and isolation, hygiene and personal protective equipment (PPE) supplies, cleaning and disinfection, social distancing and education efforts, and visitation procedures.

- **Detainee intake screening and testing.** The Pandemic Response Requirements calls for pre-intake COVID-19 screening for all staff and new entrants at all facilities. For new admissions, the screening should occur before beginning intake procedures and consists of a temperature screening as well as a verbal screening for symptoms

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<sup>12</sup>In January 2021, IHSC also began disseminating protocols related to administering the COVID-19 vaccine to detainees within IHSC-staffed facilities, including establishing a vaccine priority schedule based on detainee age and identified health conditions. According to ICE officials, as of March 2021, individual facilities were generally responsible for working with state and local health authorities to obtain and administer a COVID-19 vaccine based on the specific eligibility requirements in their states.

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and known contacts with infected persons.<sup>13</sup> Beginning in September 2020, the Pandemic Response Requirements also requires testing for all new intakes within 12 hours of arrival.<sup>14</sup> Consistent with CDC guidelines, prior versions generally recommended limiting testing to symptomatic individuals or those with recent or known exposure to persons with COVID-19 infection.

According to officials we spoke with at six immigration detention facilities, medical staff routinely conduct COVID-19 screening for detainees during intake using a standard symptom questionnaire.<sup>15</sup> Officials at each of the six facilities reported testing symptomatic individuals since spring 2020 and three of the six facilities had begun implementing testing of all detainees during intake by July 2020.<sup>16</sup> At IHSC-staffed detention facilities, medical staff enter any reported symptoms and associated COVID-19 testing results into IHSC's Lower Respiratory Illness Tracker (COVID-19 Tracker).<sup>17</sup> According to officials, ICE utilizes the COVID-19 Tracker to monitor cases across ICE detention facilities, inform medical decisions, and update ICE's public website listing COVID-19 cases across immigration detention facilities.<sup>18</sup> At contracted and IGSA detention facilities, medical providers track symptom and test result information locally and send

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<sup>13</sup>This screening is to take place before entrance to the facility or just inside the facility, where practical, and should include questions based on the CDC *Interim Guidance for Management of Coronavirus Disease (COVID-19) in Correctional and Detention Facilities*. As an additional resource to medical providers, IHSC has developed a document identifying key steps in the intake process.

<sup>14</sup>Collection timeframe may extend to 24 hours if facility collection logistics require additional time. Any confirmed or suspected COVID-19 cases are to be reported to applicable ICE offices and the local health department.

<sup>15</sup>Officials at five of the six facilities told us their facility was accepting new detainees during our interviews in fall 2020. Among these five facilities, most reported receiving transfers or new entrants in singles or small groups but one facility reported sometimes receiving up to 10 new intakes on a single day. The sixth facility we interviewed experienced an outbreak of COVID-19 in mid-2020, and as a result was placed under a court injunction restricting the intake of new detainees to the facility.

<sup>16</sup>Facility operators generally reported sending tests to an off-site laboratory for analysis and results. According to these officials, medical staff generally receive test results within 2 to 3 days, but noted that delays of 5 to 7 days were common early in the pandemic.

<sup>17</sup>IHSC's Lower Respiratory Illness Tracker is a spreadsheet available to authorized ICE staff. According to officials, ICE uses the spreadsheet to record and track positive COVID-19 cases, symptomatic cases, and test results, among other data.

<sup>18</sup>ICE maintains a cumulative total of COVID-19 cases by facility, among other information, at [ice.gov/coronavirus](https://ice.gov/coronavirus).

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these data to IHSC officials via email. IHSC officials then enter the data provided into the COVID-19 Tracker.

- **Identification of “high-risk” detainees.** According to the Pandemic Response Requirements, all facilities are to evaluate new admissions within 5 days of entering ICE custody to identify the presence of factors that may place a detainee at higher risk for severe illness due to COVID-19.<sup>19</sup> Select factors include those aged 55 or older, pregnancy status, chronic health conditions, physical or mental impairments, and severe psychiatric illness.<sup>20</sup> Applicable notifications of detainees that fall into these categories should be made to the local ERO Field Office Director (or designee) and the Field Medical Coordinator within twelve hours of determining whether the detainee meets the criteria, according to ICE policy. The October 2020 version of the Pandemic Response Requirements also introduced some additional procedures applicable for detainees identified as “high-risk”, such as twice-daily temperature and verbal screening, enhanced monitoring or care if infected with COVID-19, and “significant weight” given to risk factors when making a custody determination.

Operators from each of the facilities we interviewed reported implementing procedures for identifying detainees that fall into specified categories associated with potentially higher-risk from COVID-19. At IHSC-staffed facilities, medical staff routinely collect detainee medical information during intake and enter data directly into ICE’s Electronic Health Record System—ICE’s system of record for all detainee health information—including existing health conditions that may put them at high-risk for severe illness due to COVID-19. If medical staff at a facility not staffed by IHSC determine that a detainee falls into one or more high-risk category, medical staff track

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<sup>19</sup>This requirement is due, in part, to a court order that ICE identify and track detainees falling into two designated subclasses associated with COVID-19-related risk factors and disabilities, *Fraihat v. ICE*, 445 F. Supp. 3d 709, 750-1 2020 WL 1932570 (C.D. Cal. Apr. 20, 2020) (Order granting Plaintiffs’ Emergency Motion to Certify Subclass and Motion for Preliminary Injunction, *inter alia*); *Fraihat v. ICE*, 220 WL 1932393 (C.D. Cal. Apr. 20, 2020) (Order on Plaintiffs’ Emergency Motion for Provisional Class Certification). See also *Fraihat v. ICE*, 2020 WL 6541994 (C.D. Cal. Oct. 7, 2020) (Order granting in part and denying in part Plaintiffs’ Motion to Enforce Apr. 20, 2020 Preliminary Injunction).

<sup>20</sup>Based on the *Fraihat* ruling and related CDC guidance, the Pandemic Response Requirements identifies the following chronic health conditions: cancer, chronic kidney disease, chronic obstructive pulmonary disease, Down syndrome, weakened immune system, overweight and obesity, serious heart conditions, including heart failure, coronary artery disease and cardiomyopathies, sickle cell disease, type one and type two diabetes mellitus, asthma, cerebrovascular disease, cystic fibrosis, hypertension or high blood pressure, neurologic conditions, including dementia, liver disease, pulmonary fibrosis, smoking, and thalassemia.

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this information locally using a variety of tools and inform IHSC staff via email. When IHSC is notified that a detainee at such a facility falls into one or more high-risk categories, staff enter this information in ICE's Electronic Health Record System and use this information to inform medical and release decisions. According to ICE field office officials we spoke with, custody determinations are conducted on a case-by-case basis generally incorporating a wide range of factors, including potential risks to community safety or failure to attend required hearings, as well as associated COVID-19 risk factors.

- **Quarantine and isolation.** The Pandemic Response Requirements state that detainees awaiting test results who are asymptomatic are to be placed in an intake quarantine for 14 days prior to release to the general detainee population. The requirements suggest that facilities should consider grouping these detainees into "cohorts" (arriving on the same day or within a few days) in designated areas based on the specific capabilities and most effective methods available for each individual facility. Any suspected or confirmed COVID-19 cases are to be isolated separately from other individuals. If single isolation rooms are unavailable, individuals with laboratory-confirmed COVID-19 should be isolated together as a cohort separate from other detainees, including those with pending tests.<sup>21</sup> During these quarantine and isolation periods, medical providers are to conduct periodic screening and symptom monitoring, as well as supplemental procedures for detainees identified as high-risk or testing positive for COVID-19.<sup>22</sup>

ICE officials and facility operators from each of the six facilities we interviewed reported that all new admissions completed the minimum 14-day quarantine before being introduced to the general population.<sup>23</sup> Consistent with the Pandemic Response Requirements, officials reported that they group symptom-free detainees into cohorts of individuals with similar risk classifications where necessary. Two

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<sup>21</sup>COVID-19 positive detainees generally complete a 10-day isolation period, but may require up to 20 days due to severe illness or other health conditions. The Pandemic Response Requirements includes additional references to applicable CDC guidance for medically isolating COVID-19 cases and specify an order of preference for types of isolation housing based on facility capabilities.

<sup>22</sup>Examples of supplemental procedures include twice-daily temperature and verbal symptom screening for high-risk individuals and regular monitoring of vitals and medical assessment of COVID-19 positive detainees.

<sup>23</sup>Officials we spoke with from one facility chose to independently implement a 21-day quarantine for new entrants to the facility after the contracted facility operators observed detainees developing symptoms after the 14-day quarantine period.



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facility operators cited that limited infrastructure made quarantine of cohorts difficult at times, whereas three facilities reported there was generally sufficient space for quarantine due to reduced detainee populations. Symptomatic or positive COVID-19 cases are routinely placed in isolation units where available, or in some cases, may be housed as a small group.<sup>24</sup>

- **Hygiene and PPE supplies.** According to the Pandemic Response Requirements, all facilities are required to maintain sufficient stocks of hygiene supplies (soap, hand sanitizer, tissues) and personal protective equipment including facemasks, N95 respirators, eye protection, disposable medical gloves, and disposable gowns/one-piece coveralls.<sup>25</sup> Staff and detainees are to be trained on proper use and disposal of soiled items.

Officials at each of the six facilities we interviewed reported they were able to maintain sufficient supply of PPE for detainees or staff during the course of the COVID-19 pandemic. Four of the facilities reported stock of PPE running low at times, but none reported running out at any point. Officials at the other two facilities we spoke with reported having ample supplies throughout the pandemic. The sudden increase in usage among facilities required some detention facility officials to identify alternative sources to procure PPE, such as coordination with other facilities or local public health departments to share supplies. In addition, officials reported maintaining detainee access to personal hygiene supplies such as hand sanitizer and soap.

- **Cleaning and disinfection.** The Pandemic Response Requirements note that facilities are to adhere to CDC recommendations for cleaning and disinfection during the COVID-19 response.<sup>26</sup> Among other requirements, surfaces and objects that are frequently touched

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<sup>24</sup>Officials we interviewed reported that any detainees that are cohorted with a detainee who subsequently tests positive for COVID-19 will restart their 14-day quarantine and will continue to be monitored for symptoms.

<sup>25</sup>The Pandemic Response Requirements permits the use of cloth face masks for detainees and staff and notes that some PPE, such as N95 respirators may face shortages during the pandemic.

<sup>26</sup>Centers for Disease Control and Prevention, *Cleaning and Disinfection for Community Facilities*, <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>.

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should be cleaned and disinfected several times per day, and shared equipment is to be cleaned after each use.<sup>27</sup>

Each of the facility operators that we interviewed generally reported having a sufficient supply of cleaning supplies in the facility. Officials from four of the six facilities specifically noted that “high-touch” items, such as doorknobs and telephones, are sanitized frequently throughout the day in addition to regular facility cleaning by janitorial staff. Officials at four facilities also reported that detainees maintain regular access to cleaning supplies to sanitize their personal living spaces and items. Supplemental cleaning identified at one facility included removal of detainees from the housing units on a weekly basis to spray the areas with a bleach solution.

- **Social distancing and education efforts.** To facilitate social distancing among detainees, the Pandemic Response Requirements state that facilities are to make efforts to reduce the detainee population to 75 percent of capacity. Other recommendations include taking steps to limit the number of interactions between detainees from other housing units, such as staggering access to shared spaces and extending recreation and meal hours. To encourage social distancing and effective hygiene for detainees, facilities are to post educational signage and reinforce recommended practices.<sup>28</sup>

Officials we interviewed at each of the six facilities told us they reduced detainee populations below 75 percent capacity, with four facilities reporting the number of detainees at or below 25 percent total capacity.<sup>29</sup> Three of the six facilities reported serving detainees meals within their housing units and three of the six reported staggering recreation time outside of housing units to prevent contamination between cohorts. Officials at each facility also reported widespread use of signage throughout the facility in multiple languages addressing items such as hygiene practices, COVID-19-related symptoms, use of PPE, and recommended social distancing practices. Officials at three of the facilities we spoke with also reported placing tape or stickers on the floor to mark the appropriate space, 6

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<sup>27</sup>Facilities are also required to ensure there is adequate oversight and supervision of all individuals responsible for cleaning and disinfection, and to report any confirmed or suspected cases of detainees suffering adverse reactions to cleaning supplies or chemicals to designated ICE officials for further investigation.

<sup>28</sup>Signage must be in English and Spanish, as well as any other common languages for detainees at the facility.

<sup>29</sup>ICE field officials identified that these reductions were largely due to reduced enforcement activities in their area of responsibility.

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feet apart, to reduce possible exposure to COVID-19 among detainees and staff. Officials from two of the facilities also identified additional education efforts, such as presentation of COVID-19 educational videos and holding regular 'town hall' meetings to allow communication between detainees and staff for any concerns, questions, and discussion of COVID-19 policies.

Officials we spoke with from three of the facilities stated that detainee compliance with mask wearing and social distancing was an ongoing challenge, but noted that enforcement options must be balanced with the need to reduce the overall tension level within the facility during a stressful time.

- **Visitation procedures.** Facilities are to provide access to virtual visitation programs to address COVID-19 related impacts on social and legal visitation, according to the Pandemic Response Requirements. These may include revised processes for detainee-attorney calls or meetings, leveraging available technologies, and providing detainees with some number of free calls per week.

During suspended social visitation, officials we interviewed from three of the facilities provided detainees with tablets to conduct virtual face-to-face visits. Officials at some facilities also reported providing detainees with additional free phone call minutes to communicate with friends and family. Three of the facilities we spoke with suspended in-person legal visitation in favor of remote access options, such as tablet, video, or telephone legal visitation for a period of several months during 2020. At the time of our interviews with these facilities, all six were allowing in-person legal visitation and each of them reported providing detainee access to legal counsel through telephone or virtual meetings. These facilities also reported that attorneys are subject to routine screening and required to wear PPE during any in-person visits.

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## ICE Oversees COVID-19-Related Measures through Facility Surveys and Renewed On-Site Monitoring

### ICE Conducts Oversight of COVID-19 Measures through Recurring Surveys

ICE conducts oversight of detention facilities' efforts to implement COVID-19 health and safety measures primarily through recurring surveys. In April 2020, ICE began administering its first version of a recurring survey to assess facility compliance with COVID-related measures outlined in the Pandemic Response Requirements. These initial surveys were a 74-item checklist-style questionnaire, administered to all detention facilities on a biweekly basis.<sup>30</sup> The surveys consist of primarily yes or no responses and asks facility staff to respond to questions such as the availability of PPE and hygiene supplies, implementation of social distancing guidelines, and reporting protocols for suspected and positive COVID-19 cases. Custody Management officials stated that the survey was purposefully developed in a binary format to help elicit clear-cut responses regarding implementation of specified health and safety measures. According to ICE officials, the surveys were originally administered strictly to facilities with an assigned Detention Service Manager and were expanded to include facilities that did not have one beginning in June 2020. These survey responses were to be completed by facility representatives and then reviewed and signed off by the facility's assigned Detention Service Manager for accuracy. For those facilities without assigned Detention Service Managers, surveys were validated by another representative of the Detention Management Unit that may not be on-site at individual facilities on a regular basis.

Our review of survey responses from the six facilities we interviewed indicated that the Pandemic Response Requirements were generally being met, but each contained several 'no' responses.<sup>31</sup> Of the surveys

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<sup>30</sup>The survey is administered to over-72-hour facilities, meaning all facilities that house detainees for over 72 hours are required to complete the survey. Those that house detainees for less than 72 hours are not required to complete the survey.

<sup>31</sup>We reviewed two surveys for each of the six facilities in our review. Most of the surveys we reviewed were completed in April and November 2020.

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we reviewed, facility responses ranged from one to six ‘no’ responses out of the 74 survey questions.<sup>32</sup> Examples of ‘no’ responses we observed varied from issues such as not sanitizing detainee personal mail to not coordinating with state and local health authorities upon the release of a symptomatic or COVID-positive detainee. One facility’s survey also reported having no policies or procedures to accommodate religious practices with social distancing or appropriate PPE through November 2020.

As previously noted, detention management staff were to review all survey responses, and in cases of ‘no’ responses, these staff were responsible for collecting any additional information necessary to determine if there was a potential deficiency in the areas covered by the survey questions, according to Custody Management officials. According to the Pandemic Response Requirements, ERO is to communicate any verified cases of non-compliance to facilities—referred to as deficiencies—through a formal notification.<sup>33</sup> Custody Management officials reported that the facility responses obtained from the initial surveys did not result in any formal notifications to facilities of non-compliance with the Pandemic Response Requirements. Custody Management officials also told us that throughout 2020, ICE headquarters staff collected some additional data from facilities to help assess facility implementation in several specific areas covered in the survey, such as intake testing, saturation testing, and PPE availability. According to Detention Service Managers we spoke with, any issues identified with the survey responses were generally addressed informally through phone calls and other communications; however, we observed that several of the ‘no’ responses in the surveys we reviewed remained consistent over the course of several months. ERO officials noted that there was a general expectation that repeat “no” responses for survey questions would be addressed in some manner between April and November 2020—the time periods in which we reviewed survey responses—and

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<sup>32</sup>Not all of the ‘no’ responses would be associated with a potential deficiency. For example, we observed ‘no’ responses for each of the facilities regarding the allowance of contact visitation.

<sup>33</sup>These notifications are termed a Contract Deficiency Report for dedicated facilities and a Notice of Intent for non-dedicated facilities. Upon notification, a facility is required to develop a corrective action plan to remedy the deficiency and submit it to ICE for approval within 7 business days.

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lack of corrective action could be grounds for a potential deficiency.<sup>34</sup> However, as discussed below, these specific oversight efforts were revised in December 2020, when a new version of the survey—and monthly on-site compliance checks—were introduced.

Further, while some facility operators and ICE field officials we spoke with considered the survey an effective tool in managing compliance with the Pandemic Response Requirements among facilities, others stated that the tool was somewhat burdensome and the results did not change much over time. For example, officials at one facility considered the checklist effective in identifying potential shortfalls in the facility’s implementation of COVID-19 health and safety measures early on and assessing where additional efforts may be needed. However, officials from one ERO field office considered the survey to be redundant, due to its biweekly administration and the policies already implemented within the facilities. Despite these limitations, these officials noted that some form of oversight remained necessary. Detention Service Managers from the facilities we spoke with also generally noted that the responses to the survey questions showed little variation over time.<sup>35</sup>

In addition, limited on-site presence of Detention Service Managers posed a key challenge for validating initial survey responses. Although these managers are responsible for conducting the primary review and validation of the facility surveys, they were generally not on-site at their

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<sup>34</sup>ERO reported that Detention Service Managers and Detention Standard Compliance Officers are to bring any issues needing attention, or deficiencies, to the Field Office Director (or designee), as well as the Contracting Officer and the Contracting Officer’s Representative. It is up to these entities to follow up and ensure that the deficiency or area of non-compliance is corrected. For more information on this process and our related recommendations, see GAO, *Immigration Detention: Actions Needed to Improve Planning, Documentation, and Oversight of Detention Facility Contracts*, [GAO-21-149](#) (Washington D.C., Jan. 13, 2021).

<sup>35</sup>Out of the six facilities in our review, the four with Detention Service Managers onsite reported little to no variation in survey responses. At the other two facilities without Detention Service Managers onsite, facility operators also stated that their survey responses had little to no variation over time. Examples of some survey responses that did change among those we reviewed include (1) suspending or reinstating in-person legal visitation depending on the local severity of COVID-19 cases and (2) implementation of sanitizing processes of detainee personal items. According to ERO officials, little to no variation in findings is expected in facilities that are complying with the requirements of the Pandemic Response Requirements.

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assigned facilities after March 2020.<sup>36</sup> As a result, ICE officials reported that Detention Service Managers were not available to conduct physical observations or to validate survey responses from their initial implementation in April 2020 through late summer 2020, when some Detention Service Managers were able to return to their facilities. However, Custody Management officials noted that Detention Service Managers may request supporting documentation or photographic evidence to help validate implementation of facility measures as necessary.<sup>37</sup> Overall, Custody Management officials stated that they have reasonable confidence in the Detention Service Manager's ability to validate survey responses and produce accurate results despite their lack of on-site access in the early months of the pandemic due to the Detention Service Manager's extensive knowledge of their assigned facilities. However, they acknowledged that they have less confidence in the accuracy of survey responses in facilities without an assigned Detention Service Manager. As discussed below, ICE updated its oversight mechanisms in late 2020 to address challenges associated with the limited on-site presence of Detention Service Managers.

ICE officials from the six facilities we interviewed also identified additional coordination efforts to help address COVID-19-related impacts that may help mitigate the effects of limited on-site presence. For example, some facilities continued to have other ICE officials and medical providers on-site throughout the pandemic who could help provide ongoing oversight of pandemic-related health and safety measures. Specifically, IHSC medical staff and ICE field office officials, including facility officers-in-charge and assistant officers-in-charge, reported they were on-site regularly at some facilities after the declaration of the pandemic in March 2020.<sup>38</sup> In one facility we spoke with, two officers-in-charge split their staff between them and implemented a rotating 2-week telework and onsite procedure.<sup>39</sup> In some cases, Detention Service Managers told us they were able to

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<sup>36</sup>On March 21, 2020, ERO issued guidance recommending that staff who were able to work from home should begin telework to reduce the risk of COVID-19 transmission.

<sup>37</sup>Two of the three Detention Service Managers we spoke with reported requesting and reviewing additional photographic evidence to help assess facility compliance as part of their review of the survey responses.

<sup>38</sup>Officials we spoke to at ICE-operated Service Processing Centers and Contract Detention facilities reported a variety of ICE staff with regular on-site presence, including ICE medical providers and detention officers, among others.

<sup>39</sup>The 14-day length corresponds to COVID-19's incubation period, allowing staff to quarantine and telework for 2 weeks after their last day onsite at the facility before returning to work again without leaving the facility understaffed.

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leverage existing relationships with these individuals if additional information was needed regarding facility checklist responses. In addition, several IHSC officials and facility operators with whom we spoke also identified a regular series of virtual meetings and teleconferences from March 2020 through the summer of 2020 to discuss COVID-19-related measures and facility implementation efforts. According to these individuals, the meetings were open to facility and medical staff, ERO representatives, and applicable contracted facility staff; and offered an opportunity to discuss any guidance and requirements issued and identify related questions or challenges.

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### ICE Updated Its Facility Survey and Revised Its Requirements for On-site Monitoring

Beginning in late 2020, ICE revised and updated its oversight mechanisms, including its facility surveys and onsite monitoring. According to ICE officials, these revisions helped address challenges, such as the limited onsite presence of Detention Service Managers. Because these revisions were still being implemented during our review, it is too soon to assess their effect on ICE's oversight of detention facilities' compliance with the Pandemic Response Requirements.

More specifically, beginning in December 2020, ERO introduced a revised survey that replaced the prior facility checklist. The new facility checklist is to be completed monthly—rather than bi-weekly—and includes multi-part questions that require narrative responses as opposed to the previous version's yes or no questions. Comprised of 134 questions, the revised checklist is almost twice as long as the original version. According to Custody Management officials, many different entities took part in a 2-week working group to develop the new survey in accordance with CDC recommendations and the Pandemic Response Requirements, as well as the *Fraihat v. ICE* court ruling.<sup>40</sup>

A Detention Service Manager from one of the facilities we spoke with stated that the new survey tool is designed to obtain more specific information regarding the implementation of the Pandemic Response Requirements measures in each individual facility. Among the revisions, the new survey specifically addresses procedures related to the identification and management of detainees that are considered at higher

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<sup>40</sup>Entities identified that took part in the working group included ICE Domestic Operations, ICE Office of the Principal Legal Advisor, IHSC, Detention Management officials, and the Department of Justice, among others. The new survey tool was created in response to an updated court order issued October 7, 2020 on the *Fraihat v. ICE* determination, which referred to the existing facility surveys as 'deeply flawed' and 'exceedingly vague'.



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risk of developing severe illness from COVID-19 due to existing health factors.<sup>41</sup> In addition, the new survey has a section to monitor procedures for staff exposure to COVID-19, such as sick leave policy, positive COVID-19 test notifications, exposed but asymptomatic staff, and identifying non-essential staff for telework. The new survey also has additional questions addressing the implementation of testing and quarantine measures and the availability and use of hygiene and cleaning supplies.

In conjunction with the rollout of the revised survey tool, the October 2020 update of the Pandemic Response Requirements calls for renewed onsite monitoring by Detention Management staff. Specifically, a Detention Service Manager or Detention Service Compliance Officer is to conduct an on-site, in-person “spot check” at all facilities to assess if the facility is in compliance with the requirements. According to the Pandemic Response Requirements, as part of these compliance checks, officials are to review policies, logs and records; observe facility operations; speak with facility staff and detainees; and complete a standardized form to note observations and findings. This new monitoring mechanism provides an opportunity to validate facility survey responses and may help remedy some of the oversight challenges identified by Detention Service Managers and field medical coordinators we spoke with regarding lack of on-site presence. According to Custody Management officials, the addition of the on-site component is intended to enhance ICE oversight and help ensure that facilities remain in compliance with COVID-19-related measures.

According to Custody Management officials, the new survey was disseminated to facilities beginning in December 2020. As of March 2021, these officials reported that three monthly surveys were completed and plans for corrective actions were initiated as a result of the new checklist and on-site compliance spot checks. For example, the January 2021 monthly spot check identified 43 instances of non-compliance that resulted in ERO issuing notifications and requests for corrective action to 11 facilities. Among the specific issues identified, five facilities did not adequately test or evaluate high-risk detainees, and three facilities did not follow required protocols related to provision of masks or proper disposal of PPE. Custody management officials at headquarters also stated that

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<sup>41</sup>The criteria to determine if a detainee is considered ‘high-risk’ in the facility survey is pursuant to a court order issued April 20<sup>th</sup>, 2020, *Fraihat v. ICE*, and the *CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*.

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they plan to begin collecting and reviewing the survey data more systematically for trends and recurring issues. Such analysis will be important in helping ICE monitor and assess the impacts of its revised survey and additional on-site facility checks.

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## ICE Data Identifies Thousands of COVID-19 Cases and High-Risk Health Conditions among Detainees

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### ICE Data Identifies Positive COVID-19 Cases at Over 100 ICE Detention Facilities Nationwide

As described earlier in this report, ICE screens detainees for COVID-19 during intake and collects data on positive cases. Specifically, according to officials we spoke with at six immigration detention facilities, facility medical staff screen detainees using a standard symptom questionnaire and generally administer a COVID-19 test. After intake screening, IHSC personnel obtain and enter data on positive detainees into the Lower Respiratory Illness Tracker, which ICE uses to track COVID-19 cases across ICE detention facilities, among other things.

In calendar year 2020, ICE processed 137,749 intakes at immigration detention facilities, tested 80,200 detainees for COVID-19, and recorded 8,622 positive cases at over 100 immigration detention facilities nationwide. Among detainees who tested positive for COVID-19, ICE determined that approximately 89 percent (7,687) were exposed to the virus while in ICE custody, whereas 5 percent (435) were exposed prior to entering into ICE custody, according to ICE data. ICE data did not identify the point of exposure for approximately 6 percent of detainees (500) who tested positive for COVID-19.<sup>42</sup> Further, according to ICE data, approximately 35 percent (3,009) of detainees who tested positive for COVID-19 exhibited symptoms generally associated with COVID-19.<sup>43</sup> Among these, 209 required hospitalization, whereas the remaining 2,800

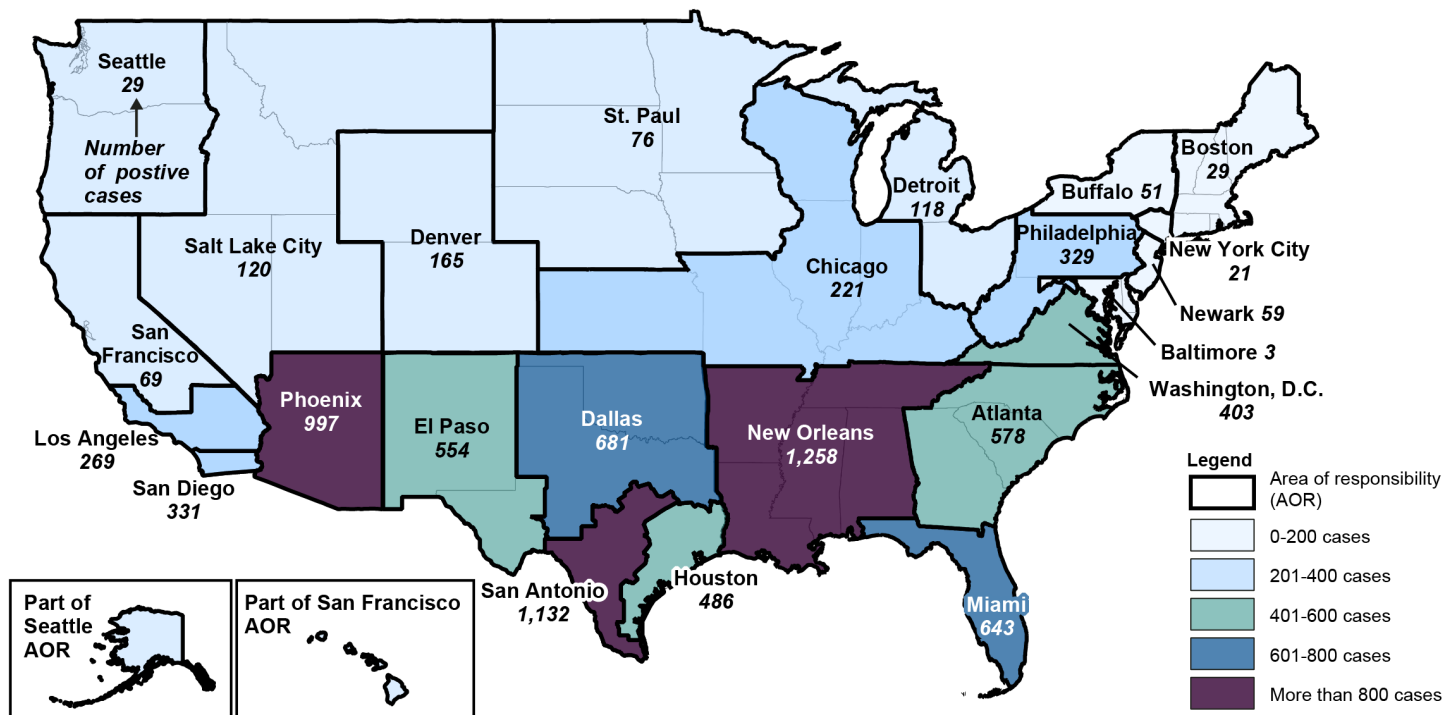
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<sup>42</sup>For the purposes of this report, ICE custody refers to detainees in facilities operated by ICE personnel as well as those in facilities operated by the U.S. Marshals Service, local jails, or privately owned/operated facilities under contract or agreement with ICE.

<sup>43</sup>According to the CDC, symptoms of COVID-19 include fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and diarrhea.

received care by medical staff at the immigration detention facility. According to ICE officials, eight detainees died while in ICE custody as a result of COVID-19—a case fatality rate of approximately 0.09 percent. According to ICE data, approximately 73 percent (6,329) of COVID-19 cases among detainees occurred at immigration detention facilities within eight ICE field offices in the southern United States. Figure 2 identifies the number of COVID-19 cases identified at ICE detention facilities in 2020, by field office.

**Figure 2: Positive COVID-19 Cases at Immigration Detention Facilities in 2020, by U.S. Immigration and Customs Enforcement (ICE) Field Office**



Source: GAO analysis of ICE data. | GAO-21-414

Note: The number of immigration detention facilities and size of detainee populations may vary considerably between individual field offices. For example, some field offices, such as New Orleans, oversee more than 15 individual facilities whereas the Seattle field office housed nearly all of the detainees within its area of responsibility in a single facility.

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According to ICE data, approximately 30 percent (2,566) of positive COVID-19 cases occurred at IHSC-staffed immigration detention facilities, whereas the remaining 70 percent (6,056) of cases occurred at facilities operated by contract medical staff or local health authorities.<sup>44</sup>

According to officials, 139 medical staff at immigration detention facilities contracted COVID-19. Among these, 31 were ICE medical personnel whereas the remaining 108 were contract medical staff.

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### ICE Data Identifies Detainees with Medical Conditions that Place Them at Higher Risk of Severe Illness Due to COVID-19

As described earlier in this report, facility medical staff identify the presence of factors that may place a detainee at high-risk of severe illness due to COVID-19 within 5 days of intake. IHSC then obtains these data from facilities and enters it into ICE's Electronic Health Record System.

According to ICE data, facility medical staff determined that 14,728 detainees at ICE immigration detention facilities in calendar year 2020 had one or more conditions that placed them at high risk for severe illness due to COVID-19. Among these high risk conditions, detainees visited facility medical units for mental health, hypertension, diabetes, asthma, and seizure disorder most frequently in calendar year 2020, according to ICE data. Further, approximately 2,830 detainees in ICE custody in calendar year 2020 were age 55 or over.

In calendar year 2020, ICE released 5,801 detainees from custody that it identified as having one or more high-risk conditions, according to ICE data.<sup>45</sup> ICE removed 5,432 high-risk detainees from the United States whereas 3,487 remained in ICE custody as of the end of calendar year 2020.<sup>46</sup> According to ICE officials, 528 high-risk detainees tested positive for COVID-19 as of March 30, 2021.

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<sup>44</sup>As of February 2021, IHSC provided medical care, including COVID-19 screening during intake, at 14 adult detention facilities nationwide. At non-IHSC-staffed facilities, contract medical staff or local health authorities are responsible for providing medical care and screening detainees for COVID-19 during intake.

<sup>45</sup>ICE's Field Operations Division is responsible for making release decisions. In general, ICE release decisions are informed by a variety of considerations, including the presence of one or more high-risk factors, according to officials.

<sup>46</sup>ICE data did not identify the status of eight high-risk detainees in ICE custody in calendar year 2020.

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## Agency Comments

We provided a draft of this report to DHS for review and comment. DHS provided written comments, which are reproduced in appendix I. DHS also provided technical comments, which we incorporated as appropriate.

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We are sending copies of this report to the appropriate congressional committees and the Secretary of Homeland Security, as well as other interested parties. In addition, the report will be available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions, please contact me at (202) 512-8777 or [gablerr@gao.gov](mailto:gablerr@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made significant contributions to this report are listed in appendix II.

Sincerely yours,

A handwritten signature in black ink that reads "Rebecca Gambler". The signature is written in a cursive, flowing style.

Rebecca Gambler  
Director, Homeland Security and Justice

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*List of Committees*

The Honorable Patrick Leahy  
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House of Representatives

# Appendix I: Comments from Department of Homeland Security

U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

June 14, 2021

Rebecca Gambler  
Director, Homeland Security and Justice  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Re: Management Response to Draft Report GAO-21-414, "IMMIGRATION  
DETENTION: ICE Efforts to Address COVID-19 in Detention Facilities"

Dear Ms. Gambler:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

The Department is pleased to note GAO's positive recognition of the U.S. Immigration and Customs Enforcement (ICE) dissemination of Coronavirus Disease 2019 (COVID-19) guidance prior to, and during, the pandemic to provide awareness of the unfolding outbreak, including requirements related to detainee intake medical screening, symptom monitoring, reporting, and staff protective measures. ICE Enforcement and Removal Operations (ERO) oversees the civil immigration detention of one of the most highly transient and diverse populations of any detention or correctional system in the world. Consequently, ICE implemented several prevention and mitigation strategies to reduce exposure to COVID-19 in its detention facilities.

Given the interest of Congress and the American people regarding the federal government's efforts to prevent the spread of COVID-19, DHS believes it is important to provide further information and context about ICE's efforts to promote a safe and secure environment for detainees and staff and prevent disease transmission. In March 2020, for example, ICE convened a working group of medical professionals, disease control specialists, detention experts, and field operators to identify enhanced steps to mitigate the spread of COVID-19. As a result of the working group's efforts, ICE directed all facilities to reduce the total population at detention facilities to 75 percent of capacity or



less, in accordance with Centers for Disease Control and Prevention (CDC) guidance for congregate settings. In fact, ICE exceeded the CDC recommendations by setting an internal target of 70 percent population capacity for ICE-owned and ICE-dedicated facilities.

Additionally, ICE implemented enhanced health screening for COVID-19 exposure or infection in detainees, staff, visitors, and contractors, and sanitation in facilities in accordance with CDC guidance. ICE ERO performs detailed medical screening when a noncitizen is booked into custody, and instituted screening guidance for new detainees who arrive at facilities to assess symptoms and identify those who meet the CDC criteria for epidemiologic risk of exposure to COVID-19. The initial screening guidance was issued via an “Interim Reference Sheet on Novel Coronavirus” dated January 22, 2020. ICE ERO immediately isolates detainees with fever and/or respiratory symptoms in appropriate medical housing. Isolation protocols include housing the detainee in a private medical housing room, which may be an airborne infection isolation room equipped with negative pressure and implementation of transmission-based precautions. Moreover, ICE ERO also uses the infection prevention strategy of “cohorting,” which involves housing together detainees who are asymptomatic but who have been exposed to a person with an infectious organism. Cohorting lasts for the duration of the incubation period; with the duration of 14 days from the most recent exposure for COVID-19.

Testing is another prevention and mitigation strategy that ICE has taken to address the COVID-19 pandemic. In accordance with ICE’s “COVID-19 Pandemic Response Requirements,” all new admissions to ICE detention facilities require COVID-19 testing within 12 hours of arrival (24 hours if facility collection logistics require additional time); testing of all new admissions before they join the rest of the population in the facility; and individual housing or in cohorts while COVID-19 test results are pending to help prevent potential transmission. ICE ERO also re-tests detained individuals quarantined as close contacts with a COVID-19 positive individual at the end of the quarantine period before they are released from quarantine. ICE requires that all of the individuals who come into ICE custody be tested for COVID-19.

Furthermore, ICE detainees have begun to voluntarily receive the COVID-19 vaccine based on availability and priorities for vaccinating individuals in the state where they are currently detained. Currently, COVID-19 vaccines for ICE detainees are being allocated by state and local health departments and incorporated into the total COVID-19 vaccine amount distributed by the federal government to each state. ICE has significant experience in administering vaccines to detainee populations, and ICE Health Service Corps (IHSC)-staffed facilities can administer vaccines to detainees if a vaccine supply is provided. Vaccines are administered to ICE detainees in IHSC-staffed facilities when offered or requested. Non-IHSC-staffed facilities are responsible for obtaining vaccines for their detainee population through their state based on the state vaccine prioritization schedule. ICE continues to follow the recommendations of the CDC’s Advisory

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**Appendix I: Comments from Department of  
Homeland Security**

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Committee on Immunization Practices and other relevant federal government guidance regarding vaccine prioritization to ensure detainees receive their vaccinations as quickly as possible. As with all medical procedures, ICE will ensure that detainees have informed consent regarding receipt of the COVID-19 vaccine and, following CDC and other clinical guidance, will administer the vaccine in accordance with any restrictions based on the detainee's medical history.

Senior DHS and ICE leadership remain committed to effectively managing the risk of transmission of infectious diseases and providing safe, secure, and humane confinement for detained individuals.

The draft report does not contain any recommendations. DHS previously submitted technical comments addressing several accuracy, contextual, and other issues under a separate cover for GAO's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

JIM H  
CRUMPACKER

Digitally signed by JIM H  
CRUMPACKER  
Date: 2021.06.14 17:42:23 -04'00'

JIM H. CRUMPACKER, CIA, CFE  
Director  
Departmental GAO-OIG Liaison Office

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# Appendix II: GAO Contact and Staff Acknowledgments

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## GAO Contact

Rebecca Gambler, at (202) 512-8777 or [gablerr@gao.gov](mailto:gablerr@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Kirk Kiester (Assistant Director), Ryan Lambert (Analyst-in-Charge), Breanne Cave, Bruce Crise, Eric Hauswirth, Bridget Jackson, Sasan J. "Jon" Najmi, and Kevin Reeves made key contributions to this report.

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## Public Affairs

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