

National COVID-19 Related Detention Guidance

Measures to Ensure Safety of Immigrant Detainees and Detention Staff

Introduction

In the midst of the rapid expansion of COVID-19 cases in Bergen County, New Jersey¹, the Department of Homeland Security (DHS) reports that staff and a detainee at Bergen County Jail have contracted COVID-19.² The New Jersey facility is among over 100 detention centers nationwide³ that detain people going through their civil immigration proceedings.

To halt the spread and mitigate the deadly impact of COVID-19 throughout the immigration detention system, we urgently recommend that DHS, in consultation with CDC, issue uniform guidance and protocols to address standards of care and best operational practices to be followed in the full range of facilities that detain immigrants, including detention centers run by Department of Homeland Security/Immigration Customs Enforcement, Federal Bureau of Prisons, US Marshals, private prison companies, and jails run by states and counties. To safeguard the health and well-being of everyone involved, these guidelines should follow the Center for Disease Control (CDC) guidelines.⁴

The following elements should be in any national guidance issued by ICE:

Parole Vulnerable Populations from Detention

Vulnerable individuals, such as those with physical or mental health ailments, people 60 and over, and people with chronic illnesses, compromised immune systems, or disabilities, and people whose housing placements restrict their access to medical care and limit the staff's ability to observe them, should be humanely paroled from detention facilities. Efforts must be made to ensure that these individuals upon parole: (1) have family or friends to stay with or some other form of community support and (2) are willing and able to self-quarantine for the expected time period necessary to ensure that they are free from infection. If this category of individuals is to remain detained, each facility should take additional precautions with respect to these individuals to decrease the likelihood that they are infected with COVID-19 and, if they are infected, to ensure proper treatment and care.

Enroll Individuals into Alternatives to Detention if their Detention is not Required Under the INA

In the current immigrant detention population, there are certain individuals, such as asylum seekers who have passed credible fear interviews and whose detention is not required under the Immigration and National Act (INA). ICE should strongly consider utilizing alternatives to detention for these and other populations who may not qualify as "vulnerable populations to COVID-19" but are individuals who under law do not have to be detained. We believe this will help prevent the possibility of exposure to COVID-19 in immigrant detention facilities and jails. ICE could use its discretion to immediately enroll such individuals on a variety of existing alternatives to detention including electronic monitoring and case management.

Introduce Guidelines on Screening and Testing of the Detained

There should be guidance, based on the CDC guidelines, on how and when to screen and test people in government custody for the virus.

¹"Bergen County: 857 Covid-19 Cases," *Insider NJ*, 3/25/2020, <https://www.insidernj.com/bergen-county-857-covid-19-cases-15-deaths-impacting-67-municipalities-wednesday/>

²"Detention Facility Locator," ICE, available at <https://www.ice.gov/covid19>

³ Id.

⁴ Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19), People at Higher Risk and Special Populations*, Mar. 7, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/index.html>.

Provide Robust Public Education for Those Detained

People housed in detention centers need to be informed about COVID-19 and the measures they can take to minimize their risk of contracting or spreading the virus. They must be educated on the importance of proper handwashing, coughing into their elbows, and social distancing to the extent possible. Information about the spread of the virus, the risks associated with it, and prevention and treatment measures must be available in multiple languages and infographics for those who are illiterate. Staff should be provided with proper and sufficient medical supplies and materials to respond to COVID-19 in a manner consistent with CDC guidance.

Provide Robust Public Education for Those Working in ICE Detention Facilities or Other Facilities

Correctional, administrative, transportation, support, pastoral, and medical and mental health staff all must be educated about COVID-19 to protect themselves and their families, as well as the people in their custody and care. Staff should be properly trained and equipped and also should be given protocols for how to proceed with self-quarantine, screening, testing, etc. if a family member or they themselves start to exhibit symptoms.

Maintain Consistent Access to Legal Services

ICE and their contractors who manage detention facilities and jails throughout the country must work together with the legal service community to ensure that access to attorneys and to know your rights and other legal orientation services is maintained through free phone access and video technology. Attorney/client calls should be free and available to be made in a quiet and private space, and attorneys should be permitted to set up time-certain appointments to speak with their clients. Legal service providers should be granted flexibility to provide know your rights and legal orientation programming via video.

Maintain Consistent Access to Pastoral Care

A global pandemic is a stressful time for everyone, particularly people who are separated from family, friends, and personal support systems. Pastoral care in detention is more important than ever. Creative means should be employed using telephone and video technology for such things as group religious practices and individual appointments.

Communication with Relatives Must Be Allowed and Facilitated

Individuals who remain in custody should have free telephone access to check on their relatives' health and safety. The use of expensive private phone calls, paired with the current suspension of social visitation, should not further isolate individuals who cannot be released. Those detained should be able to maintain contact with their loved ones.