



THE PERMANENT MISSION  
OF THE  
UNITED STATES OF AMERICA  
TO THE  
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS  
IN GENEVA

September 21, 2020

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Special Rapporteur on the human rights of migrants

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right of peoples to self-determination

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inhuman or degrading treatment or punishment

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Special Rapporteur on the human rights to safe  
drinking water and sanitation

Dear Special Procedures Mandate Holders,

Thank you for your correspondence dated April 22, 2020. Please find enclosed the U.S.  
response to your letter.

Sincerely,

Daniel A. Kronenfeld  
Human Rights Counselor

**SUBJECT: U.S. Response to Joint Urgent Appeal Regarding COVID at NWPC**

Thank you for your letter of April 22, 2020 concerning the Tacoma ICE Processing Center, also known as the Northwest Detention Center (NWDC) in Tacoma, Washington. We are grateful for the work you do across the globe to promote respect for human rights, and for the opportunity to provide the below information concerning U.S. law, policy, and practice.

U.S. Immigration and Customs Enforcement's (ICE) Performance Based National Detention Standards (PBNDS) 2011 cover the NWDC. Those detention standards are available at <https://www.ice.gov/detention-standards/2011>. PBNDS 2011 covers a broad spectrum of operational standards based on ICE directives and sound detention practices. In addition to the robust PBNDS 2011 requirements, the service provider is required to obtain and maintain American Correctional Association (ACA) accreditation. ACA standards and accreditation provide for an independent review and determination of compliance with standards recognized by the courts and state and local governments. ICE and ACA standards define performance that is realistic and practical in a detention environment in the United States.

ICE's detention standards, which apply to ICE facilities as well as contract detention facilities, were developed in consultation with civil rights groups and incorporate many of the principles international organizations, such as the Office of the United Nations High Commissioner for Refugees, recommend. The detention standards ensure that detainees are treated humanely in a manner that upholds basic human dignity. They include guidelines for ensuring appropriate medical care, protection of vulnerable populations, availability of information in various languages, as well as access to legal materials, consular officials, and both internal and external inspection and monitoring organizations.

ICE is committed to providing comprehensive medical care for everyone in its custody, consistent with current law and policy, and stands behind the medical care that it provides, including initial health screenings, 24/7 access to emergency care, and treatment by specialists in cases where it is appropriate. This is the case for all detainees, and also applies during the current pandemic. With regard to COVID-19, if an ICE detainee is confirmed through laboratory testing to have the virus, has mild to moderate symptoms, and does not medically require a higher level of care, the detainee will be managed in a medical housing unit by on-site health care professionals. However, any detainee requiring a higher level of care is transferred to a hospital with advance coordination (calling in advance to discuss the detainee's condition and protocols for receiving the individual safely).

Like other law enforcement agencies across the federal government, ICE has taken and continues to take important steps to safeguard the health and safety of those detained in its custody and to detect and mitigate the spread of COVID-19. Since the onset of reports of the virus, ICE epidemiologists have been tracking the outbreak and Centers for Disease Control and Prevention (CDC) guidance, regularly updating the agency's infection prevention and control protocols, and issuing guidance to ICE Health Service Corps staff and ICE detention contractors regarding appropriate screening and management protocols for those with potential COVID-19 exposure.

ICE has been reviewing and incorporating CDC guidance daily, and on April 10, 2020, ICE Enforcement and Removal Operations (ERO) released the COVID-19 Pandemic Response Requirements (PRR), which builds upon previously issued guidance and sets forth specific mandatory requirements to be adopted by all detention facilities housing ICE detainees, as well as best practices for such facilities.

The ERO PRR was developed in consultation with the CDC and sets forth expectations and assists ICE detention facility operators with sustaining detention operations, while mitigating risk to the safety and well-being of detainees, staff, contractors, visitors, and stakeholders due to COVID-19. Additionally, it ensures that detainees are appropriately housed and that available mitigation measures are implemented during this unprecedented public health crisis.

To ensure the health, safety, and welfare of those already detained in ICE custody, ICE continues to evaluate the medical welfare and health and safety needs of detainees. ICE makes custody determinations on a case-by-case basis, pursuant to the applicable legal standards, weighing both mitigating and aggravating factors, with due consideration of public health considerations. A higher risk for serious illness from COVID-19, based upon factors set forth by the CDC, is a relevant factor in determining whether to continue the detention of an alien subject to discretionary detention (i.e., not subject to mandatory detention under U.S. immigration laws) and may justify release when the totality of the circumstances are considered. In such situations, ICE may utilize any number of release conditions to mitigate the risk of flight, including enrollment in the alternatives to detention (ATD) program, based on the individual circumstances. However, ICE notes that certain aliens are subject to mandatory detention pursuant to the Immigration and Nationality Act, which in some circumstances precludes release, even during the current pandemic.

The DHS Office for Civil Rights and Civil Liberties (CRCL) conducts onsite investigations at ICE and ICE-contracted detention facilities to examine alleged violations of civil rights and civil liberties related to the care and custody of individuals in custody. In fiscal year (FY) 2018, the latest year for published data, CRCL conducted ten onsite investigations at facilities where ICE held immigration detainees. For these reviews, CRCL utilized the assistance of competitively-awarded contract subject matter experts in the areas of medical care, mental health care, correctional security and operations, suicide prevention, use of force, and environmental health and safety. As your 2014 letter indicated, the CRCL conducted an onsite investigation at the NWDC to investigate a number of complaints. CRCL made recommendations to ICE regarding medical care, suicide prevention, provision of religious meals, and prevention of sexual abuse, among other things. ICE responded adequately to the recommendations and the underlying complaints were closed in September 2015. CRCL has continued to monitor allegations it receives about NWDC and investigated 10 complaints about the facility in FY 2018, six in FY 2019, and 10 so far in FY 2020.

Regarding your concerns about our oversight of contractors, ICE's inspection process provides firm assurance that detainees in ICE custody are housed in the least restrictive environment consistent with the safety and security of the detained population and orderly facility operations. Annual inspections, conducted by an independent third-party contractor, ensure that

facilities comply with ICE detention standards and that any deficiencies noted are quickly and efficiently addressed by facility management.

Under ICE's inspection program, the NWDC is inspected annually to ensure facility operations meet ICE's most rigorous set of detention standards, the PBNDS 2011 (revised 2016). The detention center was last inspected on May 16, 2019, and was found to be compliant with ICE standards. A review of previous inspection findings shows that the NWDC has consistently passed its annual inspections. As an additional layer of oversight, an on-site federal Detention Services Manager is assigned to the facility to monitor detention conditions on a daily basis and ensure that facility issues and detainees concerns are identified and resolved. Finally, local field office staff are assigned to the facility and are able to assess, firsthand, conditions at the facility, in addition to conducting weekly visits with ICE detainees to hear and address any concerns they may have.

ICE contracts, such as the one for the NWDC, are issued in accordance with the Federal Acquisition Regulation and contain a Quality Assurance Surveillance Plan (QASP). The U.S. government uses a QASP to assess the contractor performance relative to the requirements and performance standards listed in the agreement. These performance standards address all facets of detainee care, including safety, health, legal rights, detainee services, and records management. The QASP ensures that required performance levels and contract requirements are measurable and fully defined. When unacceptable contractor performance occurs, the Contracting Officer's Representative for the NWDC is authorized to issue a Contract Discrepancy Report, which may become a part of the supporting documentation for contract payment deductions, fixed fee deductions, award fee nonpayment, or other contractual actions deemed necessary by the Contracting Officer to bring the facility back into compliance with the ICE detention standards.

With respect to your questions about "adequate facilities for handwashing, sanitation and other hygiene needs," know that in addition to providing detainees with soap for the shower and hand soap for sink handwashing, ICE provides alcohol-based sanitizer in visitor entrances, exits, waiting areas and to staff and detainees in the secure setting whenever possible. ICE also provides soap and paper towels in bathrooms and work areas within the facilities. Everyday cleaning supplies, such as soap dispensers and paper towels, are routinely checked and are available for use. Detainees are encouraged to communicate with local staff when additional hygiene supplies or products are needed. Additionally, comprehensive protocols are in place for the protection of staff and patients, including the appropriate use of personal protective equipment (PPE), in accordance with CDC guidance.

PBNDS 2008 and PBNDS 2011 require that facilities operating under these respective standards have written plans that address the management of communicable diseases, which should include isolation and management of detainees exposed to communicable diseases. The CDC remains the definitive source for information about how to protect individuals and reduce exposure to the virus, so ICE continues to encourage facilities to follow CDC guidelines as well as those of their state and local health departments.

To avoid any potential overcrowding and ensure that social distancing can be maintained, ICE ERO is asking local jails that hold immigration detainees to reduce populations to 75 percent of

capacity while temporarily reducing the population of all detention facilities to 75 percent or less of its dedicated facilities to increase social distancing. While CDC guidance recommends facilities not exceed 75 percent of population capacity, and ICE ERO has asked local jails that hold immigration detainees to meet this target as quickly as possible, it has set an even lower target of 70 percent for dedicated ICE facilities and has made significant progress toward achieving these metrics.

On April 4, 2020, ICE issued guidance to its field components to review the approximately 34,000 detained cases nationwide for those that fell within CDC guidelines for higher risk of severe illness as a result of COVID-19 and who were not subject to mandatory detention. As of April 25, ICE's review of this group resulted in the release of more than 900 aliens after evaluating medical issues, immigration histories, criminal records, potential threat posed to the public, flight risk, and national security concerns.

To ensure the health, safety, and welfare of those already detained in ICE custody, ICE continues to evaluate aliens who are initially brought into custody based on medical issues, immigration histories, criminal records, potential threat posed to the public, flight risk, and national security concerns. After a full assessment, ICE will then make a custody determination.

In regard to a program such as ICE's ATD, ICE notes the ATD program is not a substitute for detention, and unlike detention, it is not effective in ensuring those ordered removed by an Immigration Judge are actually removed. The ATD program uses case management technology to monitor a very small segment of individuals assigned to ICE's non-detained docket.

While the ATD program is designed to help mitigate some of this risk of flight by providing ICE officers with up-to-date case status and collection of information to assist ICE officers, a high percentage of the ATD participant population does abscond. In FY 2019, the absconder rate for family units was 26.9 percent and 12.3 percent for non-family unit participants, demonstrating the growing challenges such enrollments create for immigration enforcement.

Detainees who meet CDC criteria for epidemiologic risk of exposure to COVID-19 are housed separately from the general population. ICE places detainees with fever and/or respiratory symptoms in a single medical housing room, or in a medical airborne infection isolation room specifically designed to contain biological agents, such as COVID-19. This prevents the spread of the agent to other individuals and the general public. ICE transports individuals with moderate to severe symptoms, or those who require higher levels of care or monitoring, to appropriate hospitals with expertise in high-risk care. Detainees who do not have fever or symptoms, but meet CDC criteria for epidemiologic risk, are housed separately in a single cell or as a group, depending on available space. ICE reviews CDC guidance daily and continues to update protocols to remain consistent with CDC guidance.

Detainee access to legal representatives remains a paramount requirement and should be accommodated to the maximum extent practicable. Legal visitation must continue unless determined to pose a risk to the safety and security of the facility.

Non-contact legal visitation (e.g., Skype or teleconference) should be offered first to limit exposure to ICE detainees, but in-person contact should be permitted if determined essential by the legal representative. Prior to the in-person visit, the legal representative must undergo the same screening required for staff entry into the facility. The ultimate legal visit approving authority lies with the Warden or Facility Administrator; however, the facility should notify its local Field Office Director as soon as possible of any denied legal visits.

ICE recognizes the substantial impact of curtailing personal visitation and limiting in-person legal visitation during the pandemic, and continues to facilitate communication with families and attorneys through extended access to telephones, video visitation and with extended hours where possible. ICE began providing 520 minutes of free domestic or international phone or video calls per month to detainees on April 22, 2020 at all facilities covered under ICE's Detainee Telephone System, operated by Talton Communications, which serves approximately 57 percent of the ICE detention population. ICE has been negotiating with its other facilities to provide free monthly minutes to detainees at its other detention locations.

All detainees are afforded telephone access and can make calls to the ICE-provided list of free legal service providers or their consulates at no charge to the detainee or the receiving party. Additionally, detainees who cannot afford to call family members may request a call to immediate family or others in personal or family emergencies or on an as-needed basis to maintain community ties.

In addition to the toll-free Detention Reporting and Information Line, which provides a direct channel for detainees and agency stakeholders to communicate with ICE for questions and concerns, all detainees are able to make free calls to legal service providers on the ICE pro bono network to contact legal representatives, consular officials, the Department of Homeland Security Office of Inspector General, the ICE Office of Professional Responsibility Joint Intake Center, as well as other authorized government agencies and nongovernment organizations.