



March 27, 2020

VIA ELECTRONIC MAIL

Joseph Cuffari
Inspector General
U.S. Department of Homeland Security
254 Murray Lane SW
Washington, D.C. 20528

Re: South Texas ICE Processing Center: Failure to Adequately Respond to COVID-19 Pandemic

Dear Mr. Cuffari,

The American Civil Liberties Union of Texas (ACLU of Texas) and the Refugee and Immigrant Center for Education and Legal Services (RAICES) submit this administrative complaint to the Department of Homeland Security's Office of Inspector General (DHS OIG) regarding Immigration and Customs Enforcement's (ICE) failure to adequately respond to the public health emergency posed by the COVID-19 global pandemic at the South Texas Ice Processing Center (Pearsall). The ACLU of Texas and RAICES request that DHS OIG take immediate steps to investigate and issue a management alert with recommendations based on the information contained in this complaint. This complaint is based on information collected by RAICES in the course of its provision of legal services to individuals detained at Pearsall.

Such an investigation is urgently necessary. ICE has failed to take even the most basic actions to prevent an outbreak of COVID-19 or mitigate the risk of harm to detainees, particularly the most vulnerable, from such an outbreak at its Pearsall facility. ICE must act promptly to release all individuals detained in its custody at Pearsall. In addition, for as long as any individuals remain detained, ICE must take appropriate actions to provide for basic hygiene and safety at Pearsall in light of the danger that the COVID-19 pandemic presents to detained individuals' health and safety. Its failure to take these steps compels immediate action by OIG.

Specifically, notwithstanding the threat from COVID-19, Pearsall has:

- Failed to provide timely and adequate medical care for detained individuals exhibiting symptoms of COVID-19, such as coughing. It has taken 1-2 days for sick individuals to see a doctor or nurse. Sick individuals have not been tested for flu or COVID-19 and have not had their temperatures taken.
- Failed to provide hand sanitizer or facial tissues to detained individuals.

- Failed to communicate with detained individuals regarding the coronavirus pandemic, protective measures that the facility is taking, or best practices for protecting health while detained.
- Failed to screen incoming detained individuals for symptoms of COVID-19.
- Continued to hold detained individuals in close proximity, without providing for any way for individuals to socially distance or any instruction on the importance of social distancing. This includes failure to provide for the distancing of sick individuals from those who are healthy.
- Continued to require detained individuals to clean their own areas, without providing equipment or cleaning supplies appropriate for preventing the spread of COVID-19.
- Curtailed access to television news, the only way that those detained had previously been able to obtain information about the pandemic.

The COVID-19 public health emergency presents a particularly “grave risk of severe illness and death” to people in immigration detention facilities.¹ As the CDC has recognized, incarceration and detention conditions present “unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors.”² These facilities are “congregate environments”—that is, places where people live, eat, and sleep in close proximity.³ Such congregate environments present a heightened risk for COVID-19 transmission, as shown by the virus’s rapid spread on cruise ships and in nursing homes.⁴ The extremely high rate of transmission at the Rikers Island jail demonstrates the particular risk to people in detention facilities.⁵

This is especially true in ICE detention facilities, where substandard hygiene conditions are well documented.⁶ Moreover, there is essentially no way for detained individuals to engage in the social distancing necessary to slow the virus’s spread. In fact, detained individuals are unable to exercise the most basic of recommendations issued by the CDC, such as keeping a distance of 6 feet from others and regular handwashing, to protect themselves from catching and spreading the virus.⁷ By the time COVID-19 cases are detected, ICE’s poor track record in providing medical care, combined with the factors that

¹ *Dawson v. Asher*, 2:20-cv-00409 (W.D. Wash.), Declaration of Dr. Jonathan Louis Golob, ¶ 14, https://www.aclu.org/sites/default/files/field_document/5_declaration_of_dr_jonathan_louis_golob.pdf.

² Center for Disease Control and Prevention, “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,” March 23, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

³ *Dawson*, Declaration of Dr. Marc Stern, ¶ 7, available at https://www.aclu.org/sites/default/files/field_document/6_declaration_of_dr_marc_stern.pdf.

⁴ *Id.*; *Dawson*, Declaration of Dr. Robert B. Greifinger, ¶ 8, available at https://www.aclu.org/sites/default/files/field_document/4_declaration_of_robert_b_greifinger_1.pdf.

⁵ Nick Pinto, *If Coronavirus Deaths Start Piling Up in Rikers Island Jails, We’ll Know Who to Blame*, THE INTERCEPT, March 23, 2020, available at <https://theintercept.com/2020/03/23/coronavirus-rikers-jail-de-blasio-cuomo/>.

⁶ United States Department of Homeland Security, Office of Inspector General, *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities*, OIG-19-47 at 7 (June 3, 2019), <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>; Dara Lind, *ICE Detainee Says Migrants Are Going on a Hunger Strike for Soap*, PROPUBLICA, March 23, 2020, available at <https://www.propublica.org/article/ice-detainee-says-migrants-are-going-on-a-hunger-strike-for-soap>.

⁷ Center for Disease Control and Prevention, “How to Protect Yourself,” March 25, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>.

increase risk of transmission, threatens both rapid spread and severe harm.⁸ These conditions create what has been described as “a COVID-19 timebomb.”⁹

DHS’s own detention standards governing Pearsall, the Performance-Based National Detention Standards (“PBNDS”), require that ICE provide appropriate medical care to everyone in its custody. The PBNDS “ensure[] . . . access to appropriate and necessary medical . . . care, including emergency services.”¹⁰ Critically for the COVID-19 crisis, the standards mandate, “Centers for Disease Control and Prevention (CDC) guidelines for the prevention and control of infectious and communicable diseases shall be followed.”¹¹ Under the agency’s standards, Pearsall and other ICE detention centers must provide “access to a continuum of health care services, including screening, prevention, health education, diagnosis and treatment.”¹² Detained individuals must have daily access to health care and twenty-four-hour access to emergency health care, and they must “receive timely follow-up.”¹³ Those who require additional care must be “transferred in a timely manner to an appropriate facility.”¹⁴ In light of the “grave risk” posed by this global pandemic,¹⁵ these standards compel urgent action to ensure the health of those currently detained.

Further, ICE guidance on COVID-19 states that “[t]he health, welfare and safety of . . . detainees is one of the agency’s highest priorities.”¹⁶ It also specifies that ICE is incorporating “CDC’s COVID-19 guidance, which is built upon the already established infectious disease monitoring and management protocols currently in use by the agency.”¹⁷ Pearsall’s response to the COVID-19 outbreak does not reflect this commitment. Additionally, ICE guidance specifically provides that detained individuals newly arriving at facilities must be screened and that those with symptoms of COVID-19 must be separated from the general population.¹⁸ Pearsall’s response is not in accord with this specific guidance.

Due to the threat posed by COVID-19, ICE must release all individuals detained in its custody at Pearsall. In addition, for as long as any individuals remain detained, ICE must significantly improve medical care, hygiene, and other efforts to mitigate the risk posed by

⁸ Human Rights Watch, ACLU, et al., *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention* (2018), available at

https://www.aclu.org/sites/default/files/field_document/coderedreportdeathsicedetention.pdf; Hamed Aleaziz, *A Child’s Forehead Partially Removed, Four Deaths, The Wrong Medicine—A Secret Report Exposes Health Care for Jailed Immigrants*, BUZZFEED, Dec. 12, 2019, available at <https://www.buzzfeednews.com/article/hamedaleaziz/ice-immigrant-surgeries-deaths-jails-whistleblower-secret>.

⁹ Judy Stone, *Immigrant Detainees Are Sitting On A COVID-19 Time Bomb - First Infection Reported*, FORBES, March 24, 2020, <https://www.forbes.com/sites/judystone/2020/03/24/immigrant-detainees-are-sitting-on-a-covid-19-time-bombfirst-infection-reported/#6878d1043af2>.

¹⁰ PBNDS 4.3.I, <https://www.ice.gov/detention-standards/2011>.

¹¹ PBNDS 4.3.II.10.

¹² PBNDS 4.3.II.1.

¹³ PBNDS 4.3.II.4, 4.3.II.9.

¹⁴ PBNDS 4.3.II.6.

¹⁵ *Dawson*, Declaration of Dr. Jonathan Louis Golob, *supra* n. 1.

¹⁶ ICE, “ICE Guidance on COVID-19,” March 18, 2020, available at <https://www.ice.gov/covid19>.

¹⁷ *Id.*

¹⁸ *Id.*

COVID-19.¹⁹ These actions, in compliance with the agency’s own detention standards, are necessary to protect detainees’ health and safety—and ultimately to save lives.

ICE has not taken such steps at Pearsall. This inexcusable lack of action is currently endangering the lives of all those detained at Pearsall and of the facility staff present. We ask that DHS OIG immediately investigate these conditions and issue recommendations to ensure that ICE takes the following actions, including the following actions to mitigate the risk of COVID-19 for as long as any individuals remain detained:

- Immediately release all individuals detained in ICE custody at Pearsall;
- Provide sufficient soap free of charge, in an amount that reflects the need to wash one’s hands pursuant to World Health Organization guidelines, and ensure that soap and clean, warm water are available at times and locations where they are especially needed, including before and after meals and at sinks near toilets. Provide sufficient hand sanitizer and sufficient facial tissues.
- Provide immediate medical evaluation and hospitalization, if needed, to any detained individual exhibiting symptoms of COVID-19—including fever, coughing, or shortness of breath. If hospitalization is not required, the person should be released to self-isolate outside a detention facility, with access to a hospital or other medical facility should they require additional medical care.
- Adequately screen any detained individuals entering the facility for symptoms of COVID-19.
- Immediately begin educating those who are detained on the existence of a global COVID-19 pandemic; the steps that the facility is taking to mitigate the spread of the disease; the ways in which detained individuals can communicate with attorneys and loved ones during this time of uncertainty and anxiety; and the steps that individuals can take while detained to attempt to mitigate COVID-19 spread and to access medical care. Information about the spread of the virus, the risks associated with it, and prevention and treatment measures must be based on the best available science.
- Make decisions about where and how to house individuals and the location of beds to ensure sufficient social distancing, as much as possible, for as long as individuals remain detained.
- Provide facility staff with the appropriate personal protective equipment, including gloves and masks, relevant to the contact they will have with confirmed or suspected COVID-19 cases. Facility staff must be provided with clear protocols and instructions on hygiene and other methods to reduce COVID-19 exposure, as well as on the requirements to screen, test and pursue medical transfer of individuals. Staff must be promptly trained on these protocols. Information about the spread of the virus, the risks associated with it, and prevention and treatment measures must be based on the best available science.

¹⁹ The CDC recognizes that “[c]onsistent application of specific preparation, prevention, and management measures can help reduce the risk of transmission and severe disease from COVID-19.” Center for Disease Control and Prevention, “How to Protect Yourself,” *supra* n. 7.

The conditions described above would be inadequate and inhumane under any normal circumstance, but during this global pandemic, they are inexcusable. Every day that these conditions persist increases the risk of a full-blown COVID-19 outbreak within Pearsall. Accordingly, we request that DHS OIG take immediate action to investigate these conditions and ensure that ICE acts to protect the health and safety of those currently detained, through release and through steps to mitigate risk while individuals remain detained, in order to prevent severe illness and death from a COVID-19 outbreak at Pearsall.

Sincerely,

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