INSTITUTIONAL INJUSTICE

The Impact of the COVID-19 Pandemic on Immigration Detention

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Acknowledgements

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The Tahirih Justice Center is the largest multi-city direct service and policy advocacy organization focused on assisting immigrant survivors of gender-based violence in the United States. Over the last 20 years, Tahirih has provided free legal and case management assistance to more than 30,000 immigrant women, children, and other survivors fleeing human trafficking, domestic abuse, rape, and other gender-based violence.

In September 2020, The Tahirih Justice Center began looking into the effects of the COVID-19 pandemic on immigrants' paths to justice. The research and subsequent reports are divided to concentrate on non-detained and detained cases respectively as each of these circumstances have been uniquely affected by the pandemic. The following report focuses on immigration detention.

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Introduction

The COVID-19 pandemic has spread across the globe with 220 countries and territories reporting a total of 176,000,000 cases of the virus.[i] The ease and speed of transmission required governments to act swiftly in implementing policies to mitigate the harm caused to their populations. Special focus should have been given to populations particularly vulnerable to contracting the virus or facing complications, as well as those with limited healthcare options. In the United States, the country with the largest incarcerated population per 100,000, managing and limiting the spread among detained populations should have been a priority.[ii]

Immigration and Customs Enforcement (ICE), part of the federal Department of Homeland Security (DHS), detains hundreds of thousands of people every year. The agency has had a pandemic response plan in place since 2013.[iii] Despite this preparation, in March 2020, COVID-19 entered into ICE detention facilities and spread to every detention facility across the country, infecting thousands of detainees and ICE employees.[iv]

This report focuses on the impact of the COVID-19 pandemic on immigrants who have been held in ICE custody at any time since March 2020. Immigrants who are not detained have faced different challenges during the pandemic that are addressed in a separate Tahirih Justice Center report.[v] In particular, this report focuses on the unique dangers facing detained populations in the United States due to the privatization of immigration detention, lack of reasonable access to legal services, and health and safety concerns as a result of COVID-19.

This report drew predominantly from existing literature as well as interviews with direct service providers working with immigrants currently in detention. A total of 25 practitioners were interviewed with respondents from Louisiana, Georgia, Texas, New Mexico, Arizona, and New York.

Context

Immigration Detention

Though immigration detention is not new in the United States, the size and scale of the immigration detention system today is predominantly a product of the last 25 years. Since the introduction of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and the formation of ICE in 2003, detained populations have surged from under 10,000 people per day to over 50,000 people per day.[vi] In FY2019 alone, ICE jailed over 500,000 people.[vii] The overwhelming majority of these people are held in detention facilities owned or managed by private prison corporations, while a minority are detained in local jails or directly by ICE.[viii]

The vast majority of people jailed by ICE are held for civil immigration violations like overstaying their visas and not having the proper paperwork when reaching the border to claim asylum.[ix] Some are people without documentation, others are people with documentation that is expired or under review. Among these people jailed by ICE across the country are men, women, children, and families. Many of them are survivors of gender-based violence, often women, fleeing from their abusers and are jailed in a variety of facilities.[x] Survivors fleeing with their children may be held in family detention or separated from their children when jailed. Survivors that are women over the age of 16 without children are held in general facilities or female only detention centers. And survivors fleeing abuse who are under 16 are held in children's detention facilities.[xi]

Immigration detention centers are typically warehouses with large cement rooms and cots on the floor, no privacy, limited access to food and health care, and surrounded by barbed wire and maximum

security entrance and exit protocols.[xii] ICE claims that family detention centers are campus-like, but critics and independent observers note that the facilities – encircled by barbed or razor wire – are prison-like.[xiii]

For all people in detention, but especially survivors, these conditions can be detrimental to their mental health, as confinement mimics the powerlessness and helplessness that survivors of abuse are fleeing.[xiv] Survivors who were denied access to healthcare by their abusers continue to lack treatment for chronic physical and mental health issues while detained. Being undermined in parenting, another tactic of abuse, continues when jailors control when and how a mother parents her children. Re-traumatization and exacerbation of anxiety, depression, suicidality, and symptoms of post-traumatic stress disorder are likely.

This is particularly concerning since incarceration by ICE is not always legally mandatory. In fact, in most cases ICE is authorized to avoid detention altogether or to release those detained using parole or alternatives to detention that are both significantly more humane and cost effective.[xv] Current estimates suggest that over 80% of people detained are eligible for parole.[xvi]

In fact, in most cases ICE is authorized to avoid detention

Additionally, community-based solutions, like using existing refugee resettlement networks to provide social support and legal assistance, boast low costs and high court appearance rates.[xvii] However, ICE continues to favor the most expensive, inhumane, and unsafe option: immigration detention.

Despite the significant $3.1 billion budget allocated by Congress to ICE for Custody Operations for just 2020, oversight procedures for their facilities are limited and ineffective.[xviii] Inspections are based on two sets of detention standards developed by ICE itself: the National Detention Standards (NDS), and the Performance-Based National Detention Standards (PBNDS), neither of which have been codified into law.[xix]

Additionally, there are no meaningful consequences for facilities that fail inspections. ICE is required to end contracts with facilities that fail two inspections in a row, however, no facility has ever been closed as a result of failed inspections.[xx] As recently as 2018, the DHS Office of the Inspector General (OIG) has criticized ICE inspections as unclear and inconsistent, stating that "ICE does not adequately follow up on identified deficiencies or systematically hold facilities accountable for correcting deficiencies."[xxi]

ICE's failure to regulate conditions at their facilities is clear in its long history of reported abuses. As early as 2006, there are reports from OIG outlining inadequate access to medical care for detainees, limited availability of soap, inedible food, and unsafe housing conditions.[xxii] These same allegations have been made in a multitude of reports from a wide range of organizations spanning 2006 to 2020.[xxiii] There have also been reports of inhumane use of solitary confinement, threats and intimidation, physical abuse, sexual abuse, and medical abuse.[xxiv] Recent reports of forced sterilization of women held at the Irwin County Detention Center in Georgia led to heavy media reporting and public outrage.[xxv]

This rampant misconduct is concerning not just because of its imminent threat to the physical health of people in detention, but also because of its impact on their mental health. Many detainees are survivors of violence and abuse, and the conditions of detention replicate the dynamics of their past trauma.[xxvi] Forcing

survivors into these conditions exacerbates the symptoms of existing trauma while also exposing them to a significant risk of new trauma, all without proper mental health or medical care.[xxvii] Though the re-traumatization of survivors is of great concern, it is important to note that even without past trauma the conditions of detention themselves are brutal and traumatizing. Over two years, 25% of deaths in ICE custody were by suicide.[xxvii]

The Pandemic

On March 24, 2020, ICE reported its first COVID-19 case at Bergen County Jail in Hackensack, NJ.[xxix] In the following months, doctors, lawyers, advocates, judges, lawmakers, and former ICE employees all called for the mass release of nonviolent ICE detainees both for their own safety and to limit the spread of the virus.[xxx] However, there was no large-scale release, and the virus continued to spread through detention centers across the country.

> Since March 2020, there have been 17,519 reported cases of COVID-19 among people in ICE custody

Since March 2020, there have been 17,519 reported cases of COVID-19 among people in ICE custody.[xxxi] Due to under-testing, under-reporting, and asymptomatic cases, this number is likely a gross underestimate. Even with this large underestimate, people in ICE detention were 13 times more likely to contract COVID-19 from April 2020 to August 2020 than the average U.S. resident.[xxxii]

Among those detained is a significant portion of people with pre-existing conditions that put them at greater risk of severe illness or death if they contract the virus. A 2021 study in the Journal of Immigrant and Minority Health suggests that in some facilities as many as 42 percent of people in detention have at least one chronic medical condition, 20 percent of whom reported interruption in their

medical care while detained.[xxxiii] In that same population, 96 percent of all detainees had access to stable housing if they were to be released.[xxxiv]

With both a higher risk of contracting the virus and significant risks of complications from severe disease, many attorneys immediately attempted to get their clients released through humanitarian parole requests, habeas petitions, and class action suits. On April 20, 2020, the judge in the *Fraihat v. ICE* case ordered ICE to establish a process to:

1. screen all people detained in ICE custody for established risk factors within five days of their detention;
2. review whether people with risk factors can be protected from COVID-19 infection within ICE custody and release them if they cannot;
3. update their protocols to better protect detainees from COVID-19 infections;

   and
4. implement the requirements of this order at every detention facility across the country regardless of its management.[xxxv]

Due to this case, attorneys that had already submitted requests for humanitarian parole or habeas petitions could submit a separate request for a *Fraihat* custody redetermination for clients with pre-existing conditions.[xxxvi] The results of these attempts have been inconsistent. Some attorneys report positive outcomes from filing for the release of their clients that fall into protected classes, but the timeline of release for those clients has been erratic.[xxxvii]

Despite strong efforts from practitioners across the country and successful litigation, approximately 15,000 people remain detained in ICE custody every day, subjected to unsanitary health conditions during a global health crisis.[xxxviii]

Challenges

Private Detention Facilities

In 2016, the House Committee on Homeland Security requested a review of DHS's over-reliance on private prisons for immigration detention.[xxxix] In response, the Homeland Security Advisory Council (HSAC) released a report detailing ICE's coordination with private prison corporations and recommendations for improving conditions at those facilities. The original draft held that DHS should continue use of private prisons. However, 17 out of 23 members of the council voted against this primary recommendation suggesting that DHS should enact a "measured but deliberate shift away from the private prison model." Despite this recommendation, since 2016, the percentage of immigration detention capacity managed by private prison corporations has increased from 73 to 81.[xli]

The overwhelming majority of immigration capacity is managed by one of three companies: the GEO Group, Inc. (GEO); CoreCivic, formerly the Corrections Corporation of America (CCA); and Management & Training Corporation (MTC).[xlii] GEO and CoreCivic control over half of all immigration detention capacity costing U.S. taxpayers $708 million and $574 million respectively in 2019. This averages out to approximately $208 paid to private prisons by the U.S. government per person in immigration detention per day.[xliii] By contrast, a Community Support Initiative run by the Lutheran Immigration and Refugee Service (LIRS) found that alternatives to detention like release and reporting, community-based solutions, and others would only cost taxpayers an average of $24 per day.[vliv] Additionally, the program reported a 97 percent court appearance rate for participating clients.[xlv]

While steadily increasing their dominance over immigration detention, private prison corporations have also negotiated guaranteed minimums into many of their contracts. These terms

guarantee that ICE will pay for a predetermined number of beds in detention facilities whether or not they are utilized, incentivizing ICE to keep them filled rather than waste more taxpayer dollars.[xlvi] Currently, ICE pays for 29,000 guaranteed beds, costing taxpayers around $1.34 million per day.[xlvii] As of March 2020, ICE was paying for at least 12,000 empty beds, costing taxpayers $20 million per month. This is not only a monumental waste of the American tax dollar, but it also incentivizes ICE to jail people in order to meet those minimums, even when there is no meaningful public safety(?) interest met by this inhumane practice and alternatives like parole exist.

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Between 2011 and 2013, due to a 2009 agency directive, ICE field offices paroled 92 percent of people seeking asylum rather than holding them in detention.[xlviii] Starting in 2017, ICE seemingly reversed this directive, choosing to jail the majority of people seeking asylum.[xlix] Additionally, many detainees do not even know that they can request parole as they have limited access to legal services and ICE officers have reportedly obfuscated these options. Multiple reports from La Palms Correctional Center, Winn Correctional Center, and Richwood Correction Center all show ICE officers telling detainees that parole is "not available" or "only for people who were dying or pregnant".[l] These statements are objectively incorrect as all people seeking asylum who have been found to have a credible fear of persecution are eligible for parole as long as they are not a flight risk and do not present a danger to society.[li] As the entity in charge of immigration detention, ICE has a responsibility to provide for the health, well-being, and rights of the people it jails. By routinely misrepresenting or not providing information to people in immigration detention about their legal rights, ICE is failing to uphold its responsibility and becoming complicit in the violation of human rights.

The greatest risk to people in immigration detention, as reported by DHS's own Office of the Inspector General, is inability to social distance because of overcrowding.[lii] Privatized detention contributes to this overcrowding by actively promoting increased incarceration. On March 31, 2020, seven days after the first reported case of COVID-19 in ICE detention facilities, MTC – which operates the Otero detention facility in New Mexico – sent a letter to the Otero County Manager. The letter expressed that "MTC would be happy to explore … the possibility of partnering with other state or federal agencies to co-locate detainees or inmates at the OCPC in order to increase the overall population at the facility and make MTC's continued operation of the facility financially viable".[liii] During the COVID-19 pandemic, the MTC sought to not only increase the number of people within their Otero facility, but to also unnecessarily transfer people between facilities in order to make the operation "financially viable".

> Over the course of the pandemic, ICE detention facilities have continued to transfer detainees across the country

The Otero County Processing Center is not unique. Over the course of the pandemic, ICE detention facilities have continued to transfer detainees across the country.[liv] Additionally, direct service providers interviewed for this report expressed concern at the inconsistency with which their clients with pre-existing conditions were being released.[lv] Specifically, it seemed as if clients were being released at random despite requirements under the *Fraihat* order that all detainees be evaluated within five days of detention. Attorneys would file *Fraihat* requests and some clients would be released immediately. For other clients, attorneys would not hear back from ICE for weeks until their client would suddenly be released with no notice or information as to why there was a

delay.[lvi] One possible answer is that private detention facilities, like Otero, are looking for ways during the pandemic to increase the number of people they are jailing despite Center for Disease Control (CDC) guidelines.

Ultimately, the use of private prison corporations to manage immigration detention incentivizes mass incarceration, an issue only exacerbated by the pandemic as overcrowding facilitates greater spread of COVID-19.

Beginning in 2017, there is now approximately one attorney per 54 people in detention

Access to Legal Services

Access to legal services has always been a major concern for people in detention. Approximately 86 percent of immigrants in detention do not have legal representation even though having legal representation increases the chances of a positive case outcome by ten times.[lvii] This is, in part, due to the location of the detention centers themselves. Since 2017, DHS has opened a series of large detention facilities in increasingly remote locations. Prior to 2017 there was on average one attorney per 13 people in detention at a given facility. Beginning in 2017, there is now approximately one attorney per 54 people in detention.[lviii] The numbers are even more startling at specific larger facilities. The Winn Correctional Facility in Louisiana houses around 1400 immigration detainees per day and has 1 attorney within a 100-mile radius per 234 people detained at the facility.[lix]

Compounding low availability of immigration attorneys is also travel time to and from the detention center. Prior to the pandemic, most people in detention had no access to internet or email and had

> When the pandemic began, this lack of infrastructure for remote contact had a devastating effect on detained migrants seeking legal counsel

limited access to phone calls, so the only way for attorneys to regularly communicate with clients was to meet with them in person.[lx] This often required 8-hour round trip drives for days spent meeting with dozens of clients.[lxi]

When the pandemic began, this lack of infrastructure for remote contact had a devastating effect on detained migrants seeking legal counsel.[lxii] The need for legal advocates to access clients in a world adapting to remote communication could have opened new avenues to serve clients better and facilitate communication with people jailed by ICE. Unfortunately, this did not happen. The ability and frequency with which attorneys can contact clients is entirely dependent on the detention facility and what technology access they already have in place. Some allow phone calls only, and a rare few have video call capabilities. Some facilities allow attorneys to make appointments, but many have found the system so unreliable that they find it easier to instead ask their clients to call them rather than attempt to schedule an appointment through ICE.[lxiii]

There are also privacy concerns. Privacy with phone call access has always been a concern, however with the advent of the pandemic this concern is amplified as the only access many attorneys have to clients is over the phone.[lxiv] Additionally, the inability to see clients when talking about sensitive information makes it more difficult for attorneys to build trust with their clients.[lxv] It also adds another layer of difficulty for survivors held in detention who are being asked to share their stories of violence and trauma over the phone to an

attorney that they likely have not met in person. At times its even unclear if survivors have access to phone calls without fellow detainees or ICE officers listening in. Sharing a story of trauma, specifically an often-stigmatized story of surviving gender-based violence, is already difficult enough; adding the layers of reduced privacy and remote access it becomes almost impossible for attorneys and clients to build trust and ensure effective representation.

Some of these concerns carried into the courtroom as well. Hearings conducted over the phone with no video capabilities make it impossible for attorneys to see their clients' nonverbal reactions to questioning in order to assist in identification of traumatic responses. When attorneys can see their clients as they are addressing difficult topics like the persecution and torture they have experienced, they can request pauses or otherwise adapt when a client is being pushed beyond their limits.[lxvi]

Again, this is particularly relevant for survivors of gender-based violence as they are often asked to recount the most traumatizing moments of their lives on the stand. In these situations, signs of trauma, like dissociation, are often impossible to notice without being able to see a client. Attorneys might, in such instances, be able to recognize the ongoing harm and advocate on behalf of their clients. However, without visual access to their clients, attorneys are unable to effectively support their clients, which can lead not only to further harm but also clients' inability to relate facts and testimony in the coherent manner often needed to succeed in a hearing. Additionally, there are privacy concerns with over the phone hearings as well. One attorney expressed concern over a situation in which she asked for a moment to speak to her client privately at the end of the hearing, but realized that she had no way of telling if anyone else remained on the call.[lxvii]

Lastly, the inability to safely visit clients in detention combined with lack of internet access at detention facilities has resulted in a reliance on traditional mail to get client signatures and documents. Whereas in the past attorneys could get signatures from all of their clients in one day, the pandemic is now extending that process to weeks at a time.[lxviii] Overall, the pandemic has only worsened access to legal services for people held in ICE detention facilities.

Health and Safety

ICE issued a statement in September of 2020 emphasizing their ability to "learn and adapt to this environment" due to "lessons learned" at the beginning of the pandemic.[lxix] However, ICE has a long and consistent history of unaddressed health and safety abuses within its detention facilities since its formation in 2003, and has not adapted nearly enough during the pandemic.[lxx] The history of disease outbreaks in ICE contracted and run facilities demonstrates just this. As recently as 2019, there was an outbreak of mumps, a nearly irradiated disease in the modern world, that affected nearly 900 people in detention centers across the state of Texas.[lxxi] Dr. Jody Rich, an epidemiologist from Brown University who studied the outbreak, warned in September of 2019 that this was likely a preview of more serious disease outbreaks to come. [lxxii]

> Deaths due to inadequate medical care are on the rise in immigration detention

From January 2017 to March 2020, there were 41 influenza outbreaks across 13 detention centers, 26 Varicella outbreaks across nine detention centers, and 12 mumps outbreaks across eight detention centers. [lxxiii] Disease outbreaks in ICE detention centers are not unprecedented. In addition to a history of infectious disease, deaths due to inadequate medical care are

on the rise in immigration detention. In 2017, more people died in ICE custody than any year since 2009, the majority of which had ties to poor medical care. [lxxiv]

These trends of poor medical care and lack of health and safety practices carried into the pandemic. Due to supply shortages at the beginning of the pandemic, adequate personal protective equipment (PPE) was not immediately available to detained populations. Despite the increased production of PPE and reports from ICE facilities that they have enough, there are continued reports from people in detention that there is a lack of access to soap, disinfectants, and replacement masks.[lxxv] The DHS's Office of the Inspector General has also reported that the lack of social distancing is concerning, and it is unclear what if any efforts are being made to combat this issue.[lxxvi]

Along with poor social distancing practices, ICE has also practiced a form of quarantining referred to as "cohorting," where they isolate groups of potentially infected individuals together. The CDC recommends that all possible efforts be made to quarantine individually and avoid cohorting due to the high risk of transfer from infected individuals to non-infected individuals. However, ICE has relied primarily on cohorting, at times "isolating" upwards of 50 people together at once.[lxxvii]

There are also issues with ICE's methodology for isolating transfers. ICE's policy is that all new detainees are held together and quarantined for 14 days upon their arrival. However, there are reports that at some facilities there is overlap of new arrivals and the quarantine times do not account for it.[lxxviii] For example, a group of detainees arrive and begins their quarantine. On the 10th day, a new group of detainees arrive and are held with the detainees that arrived 10 days earlier. After 4 more days, the first group of detainees are released into the larger detention population. However, this now exposes the rest of the detention center

because coming into contact with new arrivals on day 10 should have restarted their quarantine. On top of that, not only has ICE continued transfers during the pandemic, but they have transferred detainees who were exposed to COVID-19. In fact, in an email exchange between the Assistant Field Office Director for Bakersfield, and the Facility Administrator at the Mesa Verde Ice Processing Center, describes the detention center having "dodged a bullet" by sending potentially infected detainees to a new facility before their quarantine is completed.[lxxix]

Compounding issues of overcrowding and transfers are reports that guards at facilities are consistently not wearing PPE while coming into close contact with people in detention.[lxxx] The table below shows the results of a report done by the Office of the Inspector General outlining the spread of COVID-19 among staff at detention facilities:

Table 1: Facilities with Staff Affected by COVID-19, Dedicated versus Non-Dedicated Facilities, April 8–20, 2020

	Dedicated Faciliies	Non-Dedicated Faciliies
Staff members have tested postive for COVID-19	38.7% (12 of 31)	19.7% (31 of 157)
Staff memeber are in precautionary self-quarantine	67.7% (21 of 31)	48.4% (76 of 157)[xli]
Staff members are unavailable to work	32.3% (10 of 31)	33.1% (52 of 157)

Source: OIG analysis of survey responses

Figure 2: This table from the OIG's report *Early Experiences with COVID-19 at ICE Detention Facilities,* outlines the percentages of staff at ICE detention facilities that have tested positive for COVID-19, are in precautionary self-quarantine, and are unavailable to work due to community mitigation efforts.[lxxxi]

These numbers combned with reports of guards not properly wearing PPE paint a picture of an environment conducive to the overwhelming spread of COVID-19.

Regarding the people in detention, as of June 17 2021, ICE has reported 17,519 confirmed cases of COVID-19. Based on a multitude of reports and in person experience of direct service providers, these numbers are likely large underestimates. Many attorneys reported that clients were more often than not diagnosed based on symptoms not tests, so it is unclear if those cases were reported as positive COVID-19 cases.[lxxxii] Additionally, emails that were published in a case out of the Northern District of California showed the Field Office Director for San Francisco pushing back against becoming "a test place" because they have nowhere to quarantine positive cases.[lxxxiii] This suggests both that they know there are positive cases but would rather leave them untested than develop methods to prevent further spread of the virus, and that the number of reported cases coming out of this facility are underestimates. There are other indications of inaccuracies in reporting across the country. For example, from August 19th to August 20th, the cases at Immigration Centers of American Farmville (VA) dropped from 247 to 2 with no explanation.[lxxxiv] All of this combines to indicate that the already high infection rates in ICE detention facilities are likely even higher.

Lastly, as of the publication date of this report there is no comprehensive plan to vaccinate people in detention. Vaccinating detained immigrant populations would reduce the risk of large outbreaks at facilities, reduce the risk of negative health outcomes for those that do contract COVID-19, reduce the risk of spreading the virus to local communities, and reduce the risk of spreading the disease to other countries through deportations.[lxxxv] And yet, even though vaccines are now available to all residents in the United

States over the age of 12, there is still no plan to offer the vaccine to people in immigration detention. A few detention facilities have managed to administer vaccines, including the Houston Processing Center. However, ICE has stated that it is up to state and local governments to organize the vaccination of ICE detainees.[lxxxvi]

Conclusions

ICE's over-reliance on private prisons, resistance to the development of reasonable pathways to legal services for detainees, and long-standing history of disregard for the health and safety practices at its facilities have culminated in tremendous harm done to the individuals under their purview. The lives of thousands of people in detention have been needlessly risked because of profit margins and poor management.

The damage that the COVID-19 pandemic caused within detention centers could have been avoided. The systematic detention of immigrants is amoral on its own, but during a pandemic, it's a death sentence. Forcing people to live in close quarters, without access to adequate disinfectants, separated from their families, with limited contact to anyone who can help them, during a global health crisis is inhumane.

The experience of detention itself is traumatizing, and for survivors and others dealing with the effects of past traumas, the lack access to mental and physical healthcare and prevalence of abuse perpetuates re-traumatization and the introduction of new harm. All of this leads to an environment that punishes and wounds rather than supports those fleeing dangers in their home countries.

Jailing individuals for violating immigration law is pointless, arbitrary, and inhumane. On top of that, ICE has proven that it cannot self-regulate and adhere to even its own minimal standards. Detention is exceedingly expensive, costing taxpayers billions of dollars each year compared to low-cost alternatives like parole and community support programs. These programs are not only less expensive, but they are also likely to achieve better outcomes for immigrants while ensuring their engagement with the legal system

– one of the few stated objectives of immigration detention. Even outside of a pandemic, the mental and physical toll of detention traumatizes and re-traumatizes people in immigration detention, including women, children, and survivors of abuse, subjecting them to violence, intimidation, medical negligence, and isolation.

Without immediate actions to ensure the safety of people currently in detention, more people will get sick and suffer from long-term health complications as a result of contracting the virus. In order to truly reach the end of this pandemic, the United States needs to prioritize protecting communities that are more susceptible to the spread of COVID-19, including those in immigration detention. Allowing the rampant spread of the disease that has gone on so far not only harms the communities in detention, but it also facilitates the spread and potential mutation of the virus, perpetuating the pandemic.

Recommendations

Pandemic Response

- ICE must:
  - Release any detainees who can be paroled or released from detention on other grounds
  - Provide improved access to physical and mental health services that are trauma-informed, culturally-specific, voluntary, and responsive to the needs of each detaine
  - Mandate adherence to COVID-19 protocols and institute a robust system of oversight to ensure accountability and safety. Current systems of inspections have been deemed inadequate for years, so new procedures for ensuring oversight will be necessary
  - Establish independent observers in every detention center across the country to track the detention centers' adherence to COVID-19 guidelines.
  - Immediately acquire and distribute adequate PPE, cleaning supplies, and hygiene products to all detainees. Assessments of what constitutes "adequate" PPE should be conducted by independent healthcare consultants. Auditing of current supplies and how long they will last should also be conducted by independent parties.
  - Develop a plan for vaccine access to detainees, especially detainees scheduled to be released. The detainees are in ICE custody, not state custody, so ICE must take responsibility for vaccine distribution.

- Develop and implement policies requiring regular, reasonable, and reliable access for attorneys to clients both in person and remotely. This access must be secure, private, and safe for both the attorneys and the clients.

- Stop all transfers between facilities. Transferring detainees, especially detainees exposed to COVID-19 is unnecessary and risks continued spread of the disease.

- The Executive Office of Immigration Review (EOIR) must develop capacity and protocols for all facilities to have video capable, remote hearings to ensure due process as well as the safety of all parties involved.

Systemic Change

- ICE must make all existing contracts with private detention facilities publicly available, and eliminate any and all policies within private detention contracts that contain guaranteed minimum bed requirements or other terms that could incentivize increased detention.

- ICE should not sign any new contracts with private detention facilities or renew any existing contracts when their terms expire.

- The Biden Administration must include ICE detention facilities in their plan to end private prison usage in the United States.

- Congress must stop funding immigration detention at its current volume and mandate an end to contracts with private facilities.

i. "WHO Coronavirus Disease (COVID-19) Dashboard," map, World Health Organization, February 6, 2021, accessed February 6, 2021, https://covid19.who int/?gclid=Cj0KCQiAmfmABhCHARIsACwPRAAXazLjbcYzz4MCzqGJklC3AMDiL_2ntVlpaU1gwlxHJPfMIe4UL_QaAs5AEALw_wcB.

ii. Roy Walmsley, *World Prison Population List* (London, UK: Institute for Criminal Policy Research, 2018).

iii. Department of Homeland Security, Report of the Subcommittee on Privatized Immigration Detention Facilities, H.R. Rep. (Dec. 1, 2016).

iv. Noelle Smart and Adam Garcia, *Tracking COVID-19 in Immigration Detention*, November 18, 2020, https://www.vera.org/tracking-covid-19-in-immigration-detention.

v. *A System under Stress: The Impact of the COVID-19 Pandemic on Non-Detained Cases in Immigration Courts* (n.p.: Tahirih Justice Center, 2021).

vi. Eunice Hyunhye Cho, Tara Tidewell Cullen, and Clara Long, *Justice-Free Zones: U.S. Immigration Detention under the Trump Administration* (n.p.: American Civil Liberties Union, 2020); It's also important to note that when accounting for CBP facilities the number of people jailed by ICE per day has increased to 80,000 since 2003.

vii. "Immigration Detention 101," Detention Watch Network, accessed June 17, 2021, https://www.detentionwatchnetwork.org/issues/detention-101.

viii. Jesse Franzblau, "Phase out of Private Prisons Must Extent to the Immigration System," National Immigrant Justice Center, last modified January 28, 2021, https://immigrantjustice.org/staff/blog/phase-out-private-prisons-must-extend-immigration-detention-system; U.S. Government Accountability Office, *Immigration Detention: Actions Needed to Improve Planning, Documentation, and Oversight of Detention Facility Contracts*, January 13, 2021, https://www.gao.gov/products/gao-21-149.

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