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Physicians for
Human Rights

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RE: Department of Homeland Security (DHS) Office of Inspector General (OIG) report, “Early Experiences with COVID-19 at ICE Detention Facilities,” June 18, 2020 OIG-20-42

Dear Inspector General Cuffari and Officer Quinn,

Physicians for Human Rights (PHR) is gravely concerned about findings in the recently published DHS OIG report, “[Early Experiences with COVID-19 at ICE Detention Facilities.](#)”

We are concerned about the methodology used in this review, which compromises the independence, validity, and accuracy of the findings:

- **Lack of independent data sources**
 - Findings presented in the report are derived from an email survey to Immigration and Customs Enforcement (ICE) employees, with no input from detainees or from contracted staff, although the majority of immigration detainees are held in facilities run by private prison contractors.
- **Lack of verification of the reliability and validity of survey responses**
 - OIG did not independently verify the accuracy of survey responses provided by the personnel at the detention facilities.
 - Apart from the ICE Health Service Corps Medical Director, it is not reported how many medical staff provided survey responses, although their perspectives as health professionals are critical for ensuring accurate information related to the pandemic response.
- **Lack of inclusion of open-ended responses provided by ICE employees**
- **Lack of data about COVID-19 cases among contracted employees**
 - The report presents the number of ICE detention facility employees with confirmed cases of COVID-19, while acknowledging that the majority of those in facilities are ICE contractors, not ICE employees, and are not represented in the data. (OIG Report, p.3, Footnote 3)



- **Lack of analysis regarding COVID-19 cases among detainees**
 - Although the rise in detainee cases was noted, there was no analysis regarding the extremely high positivity rate of detainees, which has been as high as [60 percent of those who are tested](#), indicating that many infected people are not being tested.
- **Families and children detained in ICE facilities are not mentioned in this report.**

We are concerned by the framing of the findings, which lack a public health basis and misleadingly represent shortcomings related to testing, personal protective equipment (PPE), and releases from detention:

- **Inadequate and insufficient testing to ensure a safe environment**
 - The report mentions that facilities have testing protocols in place for deciding whether to test a detainee for COVID-19, but testing protocols vary depending on who owns/operates facility. (p.7, Footnote 6)
 - Whereas 110 facilities (~59 percent) reported being able to do on-site testing of detainees, from the data presented, it appears that only ~30 percent of the 188 facilities that responded to the survey have tested detainees (24 dedicated facilities and 32 non-dedicated facilities). This data is even more alarming when we look at non-dedicated facilities, 80 percent of which have not tested immigrant detainees **at all**. (p.7-8)
 - 75 facilities have not tested staff, and 132 facilities have not tested any detainees. (Appendix C, Questions 1 & 10)
- **Insufficient steps taken to mitigate spread of COVID-19 include “increasing the cleaning and disinfecting of common areas” (p. 7)**
 - These measures may be causing more harm than good. A PHR review of the medical literature supports [reports by advocacy groups](#) that the misuse of disinfectant HDQ Neutral is causing health problems for people in detention.
- **Inadequate number of masks available for all detainees beyond those who exhibited COVID-19 symptoms or tested positive for COVID-19 (p. 8)**
 - All detainees should have masks, regardless of whether they are symptomatic, due to the high risk of spread of the virus by asymptomatic and pre-symptomatic cases.
- **Releases of 1,137 detainees (less than 5 percent of the total population detained by ICE) misleadingly touted as a successful measure taken by ICE (p. 8)**
 - PHR’s experience, in collaboration with legal partners, is that ICE did not begin releasing detainees until lawsuits were brought or planned, and that even people with underlying conditions, among them our clients with known medical vulnerabilities, have not yet been released.
 - ICE has the authority to ensure discretionary release for most detainees, who do not pose a public security or flight risk, and PHR, with other partners, has outlined [clear guidelines for safe release from immigration detention during the pandemic](#).
 - More than 80 percent of facilities have not released any detainees at all. (p.8)
- **Misleadingly frames continued repatriations as positive because it is decreasing number of detainees**
 - Since ICE staff are carrying out deportations, these actions [subject destination countries to an increased risk](#). More than [100 people](#) deported from the United States have tested positive for COVID-19. In Guatemala, U.S. deportation flights accounted for about [20 percent](#) of the country’s approximately 700 cases by the end of April. As of June 10, 2020, at least [186 Guatemalan deportees](#) had tested positive upon arrival.



The points outlined above show that DHS OIG failed to conduct an adequate investigation, as reports by numerous nonprofit organizations indicate that ICE's response has been even worse than reported in the survey. Furthermore, many of the findings are framed in a non-scientific manner, which completely understates ICE's failure to respond adequately to these risks.

Nevertheless, the findings which DHS OIG *does* report are extremely concerning:

- **ICE employees acknowledge the inability to socially distance in ICE detention**
 - Social distancing is nearly impossible, due to open dorm settings, the limited number of isolation cells, and the lack of negative pressure ventilation rooms in approximately 30 percent of facilities. (p.9)
- **ICE employees acknowledge lack of an adequate supply of PPE and sanitary supplies**
 - "Most" facilities report having enough PPE and disinfectant supplies for now, although approximately 20 percent of facilities do not even have an adequate supply of surgical masks, and 15 percent do not have hand sanitizer. However, even the facilities which currently have PPE and sanitary supplies are concerned about depletion of current stocks if an outbreak were to occur in the facility, as well as about being unable to secure enough PPE for the future (p.13).
- **Report mentions a 496 percent increase in number of detainees testing positive in five weeks (from 220 on April 20, 2020, to 1,312 on May 26, 2020) (p. 6)**
 - The actual number of cases is likely to be higher, given the limited volume of testing, restrictions on testing to those with symptoms, crowded conditions, frequent intakes and transfers, and insufficient PPE and sanitation supplies.

Considering that so far [three people have died after contracting coronavirus in immigration detention](#), three months into the U.S. pandemic, it is unacceptable that DHS OIG made no recommendations to ICE on the basis of its findings, when preventive measures are clearly available, instead stating that recommendations would be made after a more comprehensive review. While a more comprehensive review is certainly needed, the 24,000 people in U.S. immigration detention deserve urgent action by the government.

In light of these findings – and the many other published reports of unsafe conditions in immigration detention, exacerbated by the pandemic – and in the absence of DHS OIG recommendations, PHR medical and public health experts share the following recommendations for DHS:

- ICE must use its discretionary authority to release all people from immigration detention and allow them to safely shelter in place in non-custodial settings, unless there is a substantiated individualized determination that the person represents a public security risk, starting with those who are over the age of 60 or have underlying conditions, as per U.S. Centers for Disease Control and Prevention (CDC) guidance, which increase their vulnerability to severe illness and death from COVID-19.
- Families and children held in ICE detention centers must be immediately released in order to comply with *Flores* standards; under no circumstances should parents be forced to accept separation from their children in return for the children's release, the so-called "binary choice."
- In all cases of release, ICE should follow [best practices for safe medical release from detention](#).



- In the meantime, ICE must ensure that **all** staff and people in detention have access to masks, as well as gloves or hand sanitizer, and that disinfectants are not misused.
- ICE must test all staff and people in detention, including private contractors, and disclose all those numbers transparently, in order to identify asymptomatic and pre-symptomatic cases.
- ICE must cease arrests, transfers, and deportations, which accelerate the spread of the disease among immigrants, ICE staff and contractors, and local communities.

Sincerely,

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