



U.S. Immigration and Customs Enforcement

STATEMENT

OF

DR. STEWART D. SMITH
ASSISTANT DIRECTOR
ICE HEALTH SERVICE CORPS
ENFORCEMENT AND REMOVAL OPERATIONS
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

“REPORT ON THE IRWIN COUNTY DETENTION CENTER”

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Tuesday, November 15, 2022

2:30 PM

Senate Dirksen 342

Chairman Ossoff, Ranking Member Johnson, and distinguished members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the U.S. Immigration and Customs Enforcement (ICE) Health Service Corps' (IHSC) commitment to provide quality healthcare services in accordance with nationally recognized detention standards, and support the safe apprehension, enforcement, and removal of detained individuals throughout their immigration proceedings. Our mission is to deliver high quality healthcare to all noncitizens in ICE custody as well as to operate the best detention healthcare system possible.

Introduction

IHSC's workforce consists of approximately 1,700 federal civil servants, U.S. Public Health Service (PHS) Commissioned Corps officers, and contractors. These positions represent a wide array of healthcare professionals throughout the United States, including physicians, advanced practice providers, registered nurses, psychiatrists, psychologists, social workers, pharmacists, dentists, and healthcare administrators. In Fiscal Year (FY) 2022, IHSC provided direct care to over 118,000 detained noncitizens housed at 19 IHSC-staffed facilities throughout the nation, including medical, dental, mental healthcare, and public health services. In addition, IHSC oversaw compliance with detention standards for healthcare for over 120,500 detained noncitizens housed in 163 non-IHSC-staffed facilities. In FY 2022, IHSC's operating budget approached \$324 million on detained noncitizen health care.

ICE's detained population presents unique healthcare challenges. In many instances, the care detained noncitizens receive while in ICE custody is the first professional medical care they have ever received. Consequently, it is common for detained noncitizen health screenings to identify chronic and serious health conditions which were previously undiagnosed. To fulfill our mission of delivering high quality healthcare to all those in ICE custody, detained noncitizens within IHSC-staffed and non-IHSC-staffed facilities receive a comprehensive medical, dental, and mental health intake screening within 12 hours of arrival, and a comprehensive health assessment, including a physical examination and mental health screening by a qualified, licensed health care professional within 14 days. Detained noncitizens identified as high-risk during the intake process are triaged for a higher level of care immediately. In addition, each facility housing ICE detained noncitizens is staffed by medical care professionals 24 hours a day, seven days a week, for direct

patient access. IHSC staff work to improve health and resiliency through prevention and evidence-based disease treatment. While IHSC does not directly provide or direct the medical care provided in non-IHSC-staffed facilities, IHSC does oversee those facilities' compliance with national detention standards and coordination of offsite care through medical referrals, as needed, through the Field Medical Coordinator (FMC) program.

ICE embraces nationally recognized performance standards for detention and healthcare delivery, and ICE's integrated healthcare delivery program undergoes extraordinary scrutiny, including multiple levels of independent oversight. For example, to ensure compliance with ICE detention standards and the provision of high quality and comprehensive healthcare, ICE conducts regular reviews and on-site assessments and, when needed, implements corrective action plans.

Facility Oversight

ICE detention facilities comply with one of four sets of ICE's national detention standards and are also generally contractually required to maintain National Commission of Correctional Health Care and American Correctional Association standards. These standards are designed to ensure appropriate and consistent conditions of confinement exist throughout ICE's detention system. Various entities provide oversight of ICE detention operations based on national detention standards, and ICE detention facilities are subject to inspection by the Department of Homeland Security (DHS) Office of the Inspector General (OIG), the ICE Office of Detention Oversight, the DHS Office for Civil Rights and Civil Liberties, and most recently by a new and independent office within DHS, the Office of the Immigration Detention Ombudsman.

Moreover, IHSC conducts internal audits, referred to as the IHSC Health Systems Assessments at IHSC-staffed facilities annually, and the FMCs assigned to each ICE Field Office area of responsibility conduct site visits for non-IHSC staffed detention facilities. In addition, the ICE Enforcement and Removal Operations Custody Management Division's Detention Oversight Unit assigns dedicated onsite Detention Services Managers (DSMs) or Detention Standards Compliance Officers (DSCOs) to many of the larger detention facilities. DSMs and DSCOs review facility operations for compliance with applicable ICE detention standards and resolve issues and concerns of individuals detained in ICE custody "on the spot" when possible. A DSCO

and an FMC were both assigned to the Irwin County Detention Center (ICDC) during its operation as an ICE facility.

IHSC Response to the Coronavirus (COVID-19) Pandemic

In early 2020, IHSC responded to an emerging public health threat caused by a new coronavirus disease, or COVID-19, which rapidly spread within communities due to its highly transmissible nature. This public health threat quickly became a global pandemic. The nature of the illness, combined with its rapid spread around the globe, represented an unprecedented challenge to ICE operations and the IHSC health system. However, like other law enforcement agencies working with a detained population, ICE is experienced in optimizing operations to limit the spread of communicable infections amongst those in our custody. IHSC was able to quickly adapt procedures to control infections such as measles, mumps, and chicken pox during the onset of COVID-19, and to modify them as necessary as conditions changed.

During the pandemic, ICE implemented several steps to reduce the spread of COVID-19 throughout ICE's detention network. These steps were guided primarily by the Centers for Disease Control and Prevention's (CDC) recommendations, particularly for congregate settings, and by our own internal public health resources. As the understanding of the nature of the pandemic changed, so too did the CDC guidance. IHSC likewise continued to evaluate, align, and revise our policies and guidance as the pandemic evolved.

ICE ensures all those in its custody receive timely access to medical services and treatment, including an initial health intake screening and follow-up for any existing or emergent health conditions. IHSC continued to provide these services throughout the pandemic. Additionally, ICE performs rigorous testing to limit the spread of COVID-19. The ICE COVID-19 policy is described primarily in the Pandemic Response Requirement (PRR), of which there have been 10 versions. The PRR informs all internal guidance on COVID-19 for IHSC. ICE updates the PRR as needed, based on changes to CDC COVID-19 guidelines or other significant DHS or the U.S. government policy changes.

ICE currently evaluates several factors to assign a facility operating status to all IHSC facilities. These levels are green, yellow, and red; they mirror the CDC's risk assessment levels for COVID-19. The status levels take into consideration the presence of COVID-19 cases within a facility; the level of COVID-19 in the county surrounding the facility; and other risk factors. Depending on the risk level of the facility, ICE manages COVID-19 cases through several approaches.

Currently, ICE tests all new noncitizens who arrive at ICE-owned facilities for COVID-19 during the intake screening process. Depending on the facility operating status (thus the COVID-19 risk at the facility), detainees may be isolated or processed into the general population. IHSC uses the facility operational status level to inform other factors, such as testing upon transfer or release, and quarantine periods.

IHSC isolates detained noncitizens who develop fever, respiratory, or other COVID-related symptoms. On-site medical professionals manage and observe patients with mild symptoms for a specified period, in accordance with CDC guidance. ICE transports individuals with moderate to severe symptoms – or those who require higher levels of care or monitoring – to the appropriate medical centers or hospitals. IHSC places detained noncitizens, who return to a detention facility while still within the contagious period, in isolation; a medical provider manages their health care.

From the onset of reports of COVID-19, IHSC has tracked CDC and public health agencies' guidance on the virus, regularly updated the agency's infection prevention and control protocols, collaborated with state and local health partners, and issued timely guidance to staff and detention contractors regarding appropriate screening and management protocols for those with potential COVID-19 exposure or infection. In addition, ICE took several proactive measures to prevent the spread of COVID-19, including:

- IHSC coordinated with partner agencies, including the CDC, U.S. Marshals Service, and the Bureau of Prisons. IHSC collaborated with medical professionals, disease control specialists, detention experts, and field operators to identify enhanced steps to minimize the spread of the virus.

- ICE implemented measures to allow for greater social distancing in ICE detention facilities and directed all facilities to reduce the total population at detention facilities to 75 percent of capacity or less. ICE also set a target of 70 percent capacity for ICE-owned and ICE-dedicated facilities.
- Throughout the pandemic, ICE maintained regular communication and provided guidance to our facility staff and partners. We highlighted applicable CDC guidance that applies to dedicated ICE detention facilities and encouraged non-dedicated facilities to adopt these best practices.
- ICE created and continually updated a COVID-19-specific plan outlining response requirements for the pandemic. The PRR includes requirements on intake screening, testing, management, prevention, transportation, and visitation. As the pandemic evolved, ICE updated this guidance as needed to include testing and vaccination.
- ICE uses an infection prevention strategy known as cohorting, which involves housing together detained noncitizens who are believed to have been exposed to a person with an infectious agent but are asymptomatic. Cohorting lasts for the duration of the incubation period, so in the case of COVID-19, the duration is 10 days. Since individuals afflicted with these and other communicable diseases may be contagious *prior* to developing symptoms, such protocols are important to maintain the health and safety of the overall detained population and staff. Cohorted noncitizens who subsequently develop fever and/or other symptoms are referred to a medical provider, evaluated, and, if suspected of having COVID-19, are housed in isolation and considered for testing at the discretion of the treating medical provider.
- Following the recommendations of the CDC Advisory Committee on Immunization Practices and other relevant federal government guidance regarding vaccine prioritization to ensure detainees receive their vaccinations as quickly as possible, IHSC developed and implemented an operations memorandum that authorized COVID-19 vaccine administration to ICE-detained noncitizens and established vaccination plans and priorities. As with all medical procedures, ICE ensures informed consent of detained noncitizens regarding the receipt of the COVID-19 vaccine and, following CDC and other clinical guidance, administers the vaccine in accordance with any restrictions based on the detained noncitizen's medical history. At IHSC-staffed-

- facilities, all detained noncitizens are offered a vaccine unless it is medically contraindicated, or the detained noncitizen has documentation of a previous COVID-19 vaccine. All non-IHSC-staffed facilities are instructed to follow the same guidelines. As of September 30, 2022, 66,580 non-citizens in ICE custody received COVID-19 vaccinations at IHSC-staffed and non-IHSC-staffed facilities nationwide since detainee vaccinations began. A total of 76,553 non-citizen migrants have refused vaccination.
- IHSC supports several special missions to prevent COVID’s spread. Medical personnel staffed sites along the southwest border to test noncitizens for COVID, in support of U.S. Customs and Border Protection during the migrant surge. In total, IHSC tested 41,659 noncitizen migrants at these sites through September 15, 2022. IHSC managed all logistical support to ensure adequate supplies and equipment to sustain these operations. In Puerto Rico, IHSC staff tested and cared for 363 migrants, saving over \$300,000.00 in emergency visits and staffing costs.

The health and safety of ICE detained noncitizens and personnel is one of the agency’s highest priorities. Addressing the healthcare needs of those in ICE custody, even absent a pandemic, requires detailed planning and remarkable execution. However, in the face of this pandemic, our staff consistently demonstrates exceptional professionalism, adaptability, resilience, and continued commitment to the health and welfare of detained noncitizens.

Irwin County Detention Center

ICE established an Inter-Governmental Service Agreement (IGSA) for the provision of the necessary physical structure, equipment, facilities, personnel, and services at ICDC to provide a program of care in a properly staffed and secure environment under the authority of the Immigration and Nationality Act, as amended. All persons in the custody of the ICE are “Administrative Detainees.” This term recognizes ICE detainees are not charged with criminal violations and are only held in custody to ensure their presence throughout the administrative hearing process, to ensure their presence throughout the administrative process, and to ensure their presence for removal from the United States pursuant a lawful final order by Immigration Court, the Board of Immigration Appeals or other Federal judicial body. The IGSA set forth the

responsibilities of ICE and the service provider. The agreement required the service provider to provide all personnel, management, equipment, supplies and services necessary for performance of all aspects of the agreement. The agreement also required the service provider to ensure the safekeeping, housing, subsistence, medical and other program services provided to ICE detainees housed in the facility is consistent with ICE's civil detention authority, the performance work statement, IGSA requirements, and the ICE standards referenced in the agreement.

In September 2020, ICE was informed of allegations of forced medical procedures performed by an offsite provider serving the ICDC detained population through a whistleblower complaint. While offsite, community-based providers are not contracted to provide services with ICE or the detention facility, they are licensed medical professionals vetted by state and county licensing boards. Following the whistleblower complaint, IHSC conducted a review of ICDC healthcare procedures in October 2020—to include the most recent FMC site visit, the offsite referral process related to OB/GYN surgeries, and the whistleblower allegations. Although ICE's own review did not find evidence of any forced medical procedures, out of an abundance of caution and due to the seriousness of the allegations, ICE took immediate steps to discontinue sending patients in our custody to this offsite provider and to pursue alternate providers to serve ICDC's female population. On November 25, 2020, ICE ceased intake of female detained noncitizens at ICDC and on September 17, 2021, ICE ceased operations at ICDC altogether.

On May 20, 2021, DHS Secretary Mayorkas directed ICE to prepare to discontinue use of ICDC as soon as possible and consistent with any legal obligations, to include the preservation of evidence for ongoing investigations. ICE is firmly committed to ensuring all those in its custody receive appropriate medical care and are treated with respect and dignity. ICE is also committed to fully cooperating and complying with all requests for information about these allegations from oversight bodies, including Congress.

Additionally, in September 2020, the DHS OIG received complaints concerning medical care and response to COVID-19 protocols at ICDC. On January 3, 2022, DHS OIG issued a report entitled, "Medical Processes and Communication Protocols Need Improvement at Irwin County Detention Center." In its report, the DHS OIG acknowledged ICE detention standards and overarching efforts to mitigate risks to the safety and well-being of detained noncitizens and staff

because of the COVID-19 pandemic were largely in compliance at ICDC. For example, the DHS OIG report noted ICE detention standards require all facilities provide detained noncitizens with access to appropriate and necessary medical, dental, and mental healthcare services, and that these services were provided at ICDC.

Furthermore, the report acknowledged ICE issued its initial ICE COVID-19 PRR in early April 2020, which has been updated throughout the pandemic to establish clear expectations and assist facility operators in mitigating risks to the safety and well-being of detainees, staff, contractors, as well as visitors and stakeholders due to COVID-19. The DHS OIG report also noted ICE dramatically reduced the ICDC population by releasing noncitizens who might be at higher risk of severe illness due to COVID-19 and that the facility complied with CDC and ICE COVID-19 guidance.

The DHS OIG report included five recommendations to improve ICE's oversight of medical care and facility operations at ICDC. However, in May 2021 – approximately five months before receiving the DHS OIG report – ICE gave notice of its intent to terminate its contract with ICDC. By September 17, 2021, ICE ceased operations at ICDC, and on October 7, 2021, ICE terminated its contract with ICDC. Since ICE no longer uses the facility, the recommendations provided in the DHS OIG report could not be fully implemented.

I look forward to your questions.