

United States Senate

WASHINGTON, DC 20510

July 25, 2022

Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement
500 12th Street, SW
Washington, D.C. 20536

Dear Acting Director Johnson,

Significant progress has been made to mitigate the effects of the COVID-19 pandemic under President Biden's leadership, particularly through recent advances in therapeutics. As the Department of Homeland Security (DHS) Office of Inspector General (OIG) notes, individuals in congregate settings, like immigration detention, are widely recognized to be at higher risk of contracting COVID-19.¹ This disparity is driven by the nature of congregate care and population characteristics and by the difference in usage and availability of public health tools, including social distancing, masking, vaccines, testing, and therapeutic treatments. This discrepancy can only be addressed with affirmative, comprehensive changes from Immigration and Customs Enforcement (ICE) to improve the availability of vaccines, testing, and therapeutics. We write to urge you to make those changes.

Under the Fifth Amendment, ICE is responsible for ensuring adequate medical care for detained individuals. Laws protecting individuals with disabilities also require full access to therapeutics for individuals with many of the conditions that qualify as risk factors for complications from COVID-19.² Despite the third-party contractor administration of many ICE detention facilities, the responsibility for providing adequate medical treatment rests with ICE as a federal agency, in addition to the contractors who administer individual ICE facilities.

We appreciate ICE's response to Senate Democrats' January 2022 letter on COVID-19 booster shots and the agency's work to continue to update guidance and resolve issues around COVID-19. ICE's latest Enforcement and Removal Operations COVID-19 Pandemic Response Requirements (ERO PRR), published on June 13, 2022, lays out guidelines on vaccines, testing, therapeutics, and identifying individuals at increased risk for severe illness.³ However, DHS OIG reports continue to show discrepancies in adherence to COVID-19 protocols.

¹ Department of Homeland Security, Office of Inspector General, *ICE's Management of COVID-19 in Its Detention Facilities Provides Lessons Learned for Future Pandemic Responses*, September 7, 2021, <https://www.oig.dhs.gov/sites/default/files/assets/2021-09/OIG-21-58-Sep21.pdf>

² 29 U.S.C. § 794 (1973)

³ U.S. Immigration and Customs Enforcement, *Enforcement and Removal Operations, COVID-19 Pandemic Response Requirements*, June 13, 2022 <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>

For example, DHS OIG's September 7, 2021 report identified insufficient testing for detainees and staff and inconsistent implementation of COVID-19 guidance among facilities.⁴ Though ICE has worked to modify its procedures following OIG's report, additional discrepancies have been identified in following reports, including as recently as OIG's May 18, 2022 report illustrating ICE's failure to follow testing policies and recommendations before domestic flight transports.⁵ Due to these OIG reports and findings from ongoing litigation, we continue to have concerns around ICE's COVID-19 procedures.

In addition, currently, ICE can order COVID-19 therapeutics through the Department of Health and Human Services (HHS) Office of the Assistant Secretary for Preparedness & Response (ASPR). Under ASPR's State/Territory-Coordinated Distribution system, from, ICE was allocated at least 1,100 doses of different COVID-19 therapeutics.⁶ However, the distribution and use of these therapeutics remain unclear. According to correspondence from HHS on May 4, only three ICE Processing Centers (El Paso Service Processing Center, Montgomery Processing Center, and Northwest ICE Processing Centers) had ordered therapeutics from ASPR. Furthermore, while ICE has taken steps to identify high-risk individuals in custody due to the ruling in *Fruihat v. ICE*, limited guidelines are publicly available for how facilities should prescribe therapeutics to these or other high-risk individuals who contract COVID-19 while still in custody.

Given this context, we strongly urge ICE to continue to take steps to improve testing protocols across its facilities and to ensure access to the medically-appropriate therapies for those high-risk detainees that are COVID-19 positive. Specifically, it is essential that testing, notification of positive results, prescription for the therapeutic, and delivery of therapeutics be done within sufficient time to ensure effective therapeutic use. We also request, either in writing or through a briefing, your responses to a series of questions by September 9, 2022:

1. As of July 21, ICE reported that more than 45,855 detainees in ICE custody have tested positive, and 11 have died due to COVID-19.⁷ Does ICE include detainees who died after being transferred to hospitals or individuals who die shortly after being released from custody in its metrics?

⁴ Department of Homeland Security, Office of Inspector General, *ICE's Management of COVID-19 in Its Detention Facilities Provides Lessons Learned for Future Pandemic Responses*, September 7, 2021, <https://www.oig.dhs.gov/sites/default/files/assets/2021-09/OIG-21-58-Sep21.pdf>

⁵ Department of Homeland Security, Office of Inspector General, *ICE Did Not Follow Policies, Guidance, or Recommendations to Ensure Migrants Were Tested for COVID-19 before Transport on Domestic Commercial Flights*, May 18, 2022, <https://www.oig.dhs.gov/sites/default/files/assets/2022-05/OIG-22-44-May22.pdf>

⁶ Office of the Assistant Secretary for Preparedness & Response, *State/Territory-Coordinated Distribution of COVID-19 Therapeutics*, <https://aspr.hhs.gov/COVID-19/Therapeutics/Distribution/Pages/default.aspx>

⁷ U.S. Immigration and Customs Enforcement, *ICE Guidance on COVID-19*, <https://www.ice.gov/coronavirus#citations>

2. ICE's June 2022 PRR requires that a detainee's vaccination status be identified during intake and, if eligible, vaccines and boosters be offered within 14 days of arrival, subject to vaccine availability.⁸
 - a. Does ICE periodically review the vaccination status of detainees and educate detainees about opportunities to get vaccinated and boosted?
 - b. How many ICE detention facilities offer mRNA COVID-19 vaccines instead of, or in addition to, Johnson & Johnson's COVID-19 vaccine?
3. Please produce any guidance ICE has issued regarding COVID-19 testing beyond its PRR.
 - a. What is the guidance for determining whether to administer an antigen test instead of a polymerase chain reaction (PCR) COVID test in ICE facilities?
 - b. From December 2021 to June 2022, for people who requested a COVID-19 test, what was the average time that elapsed between the request for the test, performance of the test, the facility receiving results, and the facility notifying the detainee? How does this timeline differ for people who requested a test after reporting symptoms and/or a potential exposure?
4. How does ICE guidance ensure that detention facilities test and receive results for COVID-19 to ensure detection timely enough for therapeutic treatment?
5. What is ICE's guidance to staff to determine whether a COVID-19 positive patient receives a therapeutic? What is ICE's guidance to staff to determine whether an ICE detainee receives pre-exposure prophylaxis, like Evusheld?
6. What process or procedures do individual detention facilities follow with regard to requesting therapeutics or pre-exposure prophylaxis, like Evusheld, from HHS ASPR? How has ICE provided such instruction to individual detention facilities regarding the provision of therapeutic drugs or pre-exposure prophylaxis, if at all?
7. How many doses of different therapeutics and doses of pre-exposure monoclonal antibody COVID-19 treatments has ICE ordered from HHS, how many has it received, how have they been distributed to facilities, and how many have been prescribed to individuals?
8. ICE's June 2022 PRR states that individuals should be evaluated to see if they are at high risk of COVID-19 within 5 days of entering custody.⁹ How many total detainees in ICE facilities were identified to be at risk for severe illness if they contracted COVID-19 from December 2021 to June 2022?
 - a. How many of these detainees were administered a pre-exposure monoclonal antibody COVID-19 treatment who were eligible to receive it?
 - b. How many of these detainees contracted COVID-19? After contracting COVID-19, how many detainees were administered a COVID-19 treatment who were eligible to receive it?

⁸ U.S. Immigration and Customs Enforcement, *Enforcement and Removal Operations, COVID-19 Pandemic Response Requirements*, June 13, 2022 <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>

⁹ *Id.*

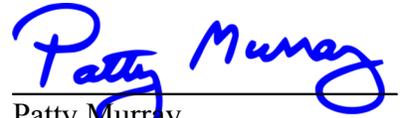
9. How many and which ICE facilities have been given written notice for deficiencies of COVID-19 ERO PPR guidance? How many and which dedicated ICE detention facilities have been issued a Contract Discrepancy Report following violations? How many and which non-dedicated ICE detention facilities have been issued a Notice of Intent indicating that the intergovernmental service agreement is in jeopardy due to non-compliance with the ERO PPR?

Thank you for your attention to this matter, and we look forward to your response.

Sincerely,



Benjamin L. Cardin
United States Senator



Patty Murray
United States Senator



Cory A. Booker
United States Senator



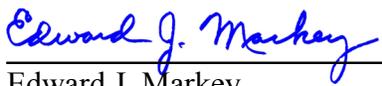
Sherrod Brown
United States Senator



Tammy Duckworth
United States Senator



Dianne Feinstein
United States Senator



Edward J. Markey
United States Senator



Robert Menendez
United States Senator



Jon Ossoff
United States Senator



Alex Padilla
United States Senator



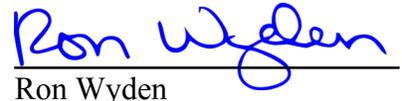
Bernard Sanders
United States Senator



Chris Van Hollen
United States Senator



Elizabeth Warren
United States Senator



Ron Wyden
United States Senator

CC: Secretary Alejandro Mayorkas, Department of Homeland Security; Inspector General Dr. Joseph V. Cuffari, Department of Homeland Security