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# **The Right to Health in Immigration Detention during the COVID-19 Pandemic: An Examination of Federal and International Law**

By: Alaina Dye

## ABSTRACT

This article examines the United States' response to the severe impact of the coronavirus (COVID-19) in immigration detention centers and considers the United States' obligations to the vulnerable population of immigrant detainees. This article argues that the COVID-19 pandemic further demonstrates the United States' lack of guaranteed health care for immigrant detainees and deportees despite international recognition of the human rights to health and life. The United States violates international law when immigrant detainees' human rights are disregarded by lack of appropriate access to health care during a global pandemic. This article recognizes that discrimination against immigrants under the Trump Administration and inconsistent treatment of detained populations further the vulnerability of immigrant detainees during the COVID-19 pandemic. Lastly, this article urges for reform in the United States immigration detention system, in regard to health care, to protect immigrant detainees and deportees during the harsh times of the COVID-19 pandemic.

**Keywords:** COVID-19, health, immigration, detention, detainee, international law, human rights

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## **INTRODUCTION**

Access to health care is a fundamental human right which must be heavily safeguarded at all times, especially during the tumultuous times of the coronavirus (COVID-19) pandemic. Under international law, the United States federal government is obligated to ensure humane living conditions, an abundance of hygienic resources, and access to medical care for all immigrants detained in Immigration and Customs Enforcement (ICE) detention facilities. Guaranteeing access to health care for immigrant detainees is necessary for the United States to abide by international law and uphold its ideals of equality and freedom.

The reality for immigrant detainees who are currently held in ICE detention facilities is harsh. Many detainees lack access to adequate health care while held in federal custody.<sup>1</sup> Even during the pandemic, individuals, children, and families are unable to properly quarantine, maintain social distance, or ensure access to preventative medical care.<sup>2</sup> Since the immigrant detainee population is often an afterthought when allocating resources, there must be an exploration into the ability of immigrant detainees to access necessary COVID-19 health care.<sup>3</sup>

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<sup>1</sup> Hum. Rts. Watch [HRW], *Systematic Indifference: Dangerous & Substandard Medical Care in US Immigration Detention*, (May 2017), [https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5a9da33f0d9297a1f84f60f2/1520280385430/HRW\\_Report.pdf](https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5a9da33f0d9297a1f84f60f2/1520280385430/HRW_Report.pdf).

<sup>2</sup> Eunice Cho, *DHS Watchdog Confirms: ICE is Failing to Protect Detained People From COVID*, AM. CIV. LIBERTIES UNION (June 29, 2020), <https://www.aclu.org/news/immigrants-rights/dhs-watchdog-confirms-ice-is-failing-to-protect-detained-people-from-covid/>.

<sup>3</sup> Hum. Rts. Watch [HRW], *supra* note 1.

Currently, the discussion around immigrant detainees and deportees during the COVID-19 pandemic primarily focuses on the unnerving reality of unsanitary conditions and close proximity within detention centers that inevitably lead to the spread of COVID-19.<sup>4</sup> This article will explore the United States federal government's international legal and ethical obligations to immigrant detainees in United States custody and deportees before removal to their home countries. Additionally, this article seeks to inform the public of the inconsistencies in the United States' laws, policies, and attitudes regarding access to health care among detained populations. Lastly, this article recognizes that humane detention conditions, access to health care, release of detained populations, and access to legal assistance are necessary to protect this vulnerable population.

The United States federal government is obligated to protect immigrant detainees and deportees during the COVID-19 pandemic as recognized by the international human right to health. Therefore, immigration detention centers must provide COVID-19 testing and treatment before ICE officials detain or deport immigrants. Testing and treatment are necessary to not only protect other countries from the spread of the coronavirus, but to ensure that immigrant detainees' human rights are protected. The United States' response to COVID-19 violates international law and discriminates against immigrant detainees by not

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<sup>4</sup> Cho, *supra* note 2.

guaranteeing access to health care despite increasingly dangerous conditions in detention facilities, the United States' inconsistent treatment of detained populations, and greater international recognition of the importance of health care.

#### A. Immigration Detention Centers

The United States Immigration and Customs Enforcement (ICE), under the supervision of the Department of Homeland Security (DHS), is responsible for around 200 immigration detention facilities that house immigrants to the United States.<sup>5</sup> Some detention facilities are also managed by private contractors or local governments.<sup>6</sup> The nation's civil immigration detention system is managed by ICE Enforcement and Removal Operations (ERO).<sup>7</sup> According to ICE, individuals placed in detention facilities are “non-U.S. citizens who are apprehended and determined to need custodial supervision.”<sup>8</sup> The purpose of detention is to “[further] removal proceedings or to effect [detainees’] removal from the U.S. after a final order of removal from a federal immigration judge.”<sup>9</sup> While at these facilities, immigrant detainees “wait to appear before an immigration judge to

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<sup>5</sup> OFFICE OF INSPECTOR GEN., OIG-20-42, EARLY EXPERIENCES WITH COVID-19 AT ICE DETENTION FACILITIES (2020), <https://www.oig.dhs.gov/sites/default/files/assets/2020-06/OIG-20-42-Jun20.pdf>.

<sup>6</sup> *Id.*

<sup>7</sup> *Detention Management: Detention Statistics*, U.S. IMMIGR. AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/detention-management> (last updated July 16, 2020).

<sup>8</sup> *Detention Management: Overview*, U.S. IMMIGR. AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/detention-management> (last updated July 16, 2020).

<sup>9</sup> *Detention Management: Detention Statistics*, *supra* note 7.

argue that they should be allowed to remain in the country.”<sup>10</sup> Detainees may be held in detention facilities ranging from less than a month to over 4 years.<sup>11</sup>

For years, the conditions within immigrant detention facilities have stirred up concern. Activist groups frequently accuse ICE of failing to provide immigrant detainees with suitable medical and mental health care.<sup>12</sup> Such groups claim that immigrant detainees are forced to suffer unsafe housing conditions and have little access to medical care while detained.<sup>13</sup> For instance, when given extra funds by Congress to address the medical and nourishment needs of immigrant detainees, ICE allocated a portion of the \$4.6 billion fund to “dirt bikes, dog food, leashes, boats, and other unrelated items.”<sup>14</sup> Activists argue that ICE violates the Fifth Amendment when ICE essentially punishes detainees for being immigrants by obstructing their access to health care and humane conditions.<sup>15</sup>

The little medical attention that detainees do receive often lacks in quality as well.<sup>16</sup> This is exemplified through: incomplete intake assessments, denial of long-term treatment, language access barriers, delays in medical care, denial of off-site

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<sup>10</sup> *How the Coronavirus Spread Through One Immigration Facility*, L.A. TIMES (July 19, 2020), <https://www.latimes.com/california/story/2020-07-19/coronavirus-spread-through-otay-mesa-immigration-facility>.

<sup>11</sup> *Detention by the Numbers*, FREEDOM FOR IMMIGRANTS, <https://www.freedomforimmigrants.org/detention-statistics>, (last visited July 22, 2020).

<sup>12</sup> Chris Mills Rodrigo, *Civil Rights Groups Sue ICE Over Medical Care in Detention Centers*, HILL (August 19, 2019), <https://thehill.com/latino/457959-civil-rights-group-sue-ice-over-detention-center-conditions>.

<sup>13</sup> *Id.*

<sup>14</sup> Cindy Carcamo, *Immigration Officials Bought Dirt Bikes and Boats Instead of Food and Medicine, Report Says*, L.A. TIMES (June 11, 2020), <https://www.latimes.com/california/story/2020-06-11/gao-report-cbp-misused-emergency-funds-meant-for-immigrant-care-on-dog-food-and-dirt-bikes>.

<sup>15</sup> Rodrigo, *supra* note 12..

<sup>16</sup> *Detained and Denied: Healthcare Access in Immigration Detention*, N.Y. LAW. FOR PUB. INT. (2017), [https://www.immigrationresearch.org/system/files/HJ-Health-in-Immigration-Detention-Report\\_2017.pdf](https://www.immigrationresearch.org/system/files/HJ-Health-in-Immigration-Detention-Report_2017.pdf).

care, failure to manage chronic conditions, failure to manage mental health problems, ignorance of acute pain, and release without discharge planning.<sup>17</sup> While legal representation can help detainees receive medical care, whether through direct requests to ICE or a bond release into the community, those without representation are often powerless.<sup>18</sup> This oversight of care for immigrant detainees is only exacerbated by the COVID-19 outbreak and must be addressed to alleviate the plight of immigrant detainees.

### B. Coronavirus in Detention Facilities

The coronavirus (COVID-19) is an infectious disease that continues to threaten the lives of people throughout the world.<sup>19</sup> The coronavirus is highly contagious as infected persons can spread the disease through saliva droplets that originate from coughs or sneezes, aerosols suspended in the air, or contaminated surfaces.<sup>20</sup> Due to the highly contagious nature of the coronavirus, “even the most advanced [healthcare] systems may be overwhelmed by the large number of people who will need to be hospitalized.”<sup>21</sup> Furthermore, the risk of contracting the

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Coronavirus*, WORLD HEALTH ORGANIZATION [WHO], [https://www.who.int/health-topics/coronavirus#tab=tab\\_1](https://www.who.int/health-topics/coronavirus#tab=tab_1) (last visited July 16, 2020).

<sup>20</sup> *Transmission of SARS-CoV-2: Implications for Infection Prevention Precautions*, WORLD HEALTH ORGANIZATION [WHO] (July 9, 2020), <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

<sup>21</sup> Doctors Without Borders, *Facts and Figures About the Coronavirus Disease Outbreak: COVID-19*, [https://www.doctorswithoutborders.org/covid19?source=ADD200U0U01&utm\\_source=google&utm\\_medium=cpc&utm\\_campaign=googlepaid&utm\\_content=nonbrand&utm\\_term=coronavirus-pandemic-updates&gclid=EAiaIQobChMI\\_42Its3T6gIVUxh9Ch3Ptgq1EAAYASAAEgIJjvD\\_BwE#How%20dangerous%20is%20coronavirus](https://www.doctorswithoutborders.org/covid19?source=ADD200U0U01&utm_source=google&utm_medium=cpc&utm_campaign=googlepaid&utm_content=nonbrand&utm_term=coronavirus-pandemic-updates&gclid=EAiaIQobChMI_42Its3T6gIVUxh9Ch3Ptgq1EAAYASAAEgIJjvD_BwE#How%20dangerous%20is%20coronavirus) (last visited August 7, 2020).

coronavirus escalates for immigrant detainees who are trapped in the congregate and resource-limited setting of an immigration detention center.<sup>22</sup>

Currently, immigrant detainees are held in congested detention facilities without adequate screening for COVID-19.<sup>23</sup> At these detention facilities, “misinformation is common, physical distancing impossible, hygiene and sanitation inadequate, and human resources stretched.”<sup>24</sup> Fearful for their lives, detainees have resorted to hunger strikes in order to protest the unsanitary conditions as well as demand their release from immigration detention centers.<sup>25</sup> The detainees who participated in the hunger strikes also sought more information, testing, and safer conditions for social distancing.<sup>26</sup>

As awareness of the coronavirus increased, ICE detention facilities claimed that “they were prepared to address COVID-19.”<sup>27</sup> For example, ICE attempted to mitigate the spread of COVID-19 in immigration detention centers by releasing *some* elderly and medically vulnerable detainees.<sup>28</sup> The justification for these

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<sup>22</sup> Katherine McKenzie & Ranit Mishori, *Releasing Migrants from Detention During the COVID-19 Pandemic*, J. GEN. INTERNAL MED. (June 15, 2020), <https://link.springer.com/content/pdf/10.1007/s11606-020-05954-4.pdf>.

<sup>23</sup> Wash. Office on Latin America [WOLA], *U.S. Deportations During Global Pandemic Risk Spreading COVID-19*, (Apr. 9, 2020), <https://www.wola.org/2020/04/deportations-during-global-pandemic-risk-spreading-covid-19/>.

<sup>24</sup> *COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do*, U.N. NETWORK ON MIGRATION (Apr. 29, 2020), [https://migrationnetwork.un.org/sites/default/files/docs/un\\_network\\_on\\_migration\\_wg\\_atd\\_policy\\_brief\\_covid-19\\_and\\_immigration\\_detention\\_0.pdf](https://migrationnetwork.un.org/sites/default/files/docs/un_network_on_migration_wg_atd_policy_brief_covid-19_and_immigration_detention_0.pdf).

<sup>25</sup> Perla Trevizo, *COVID-19 Cases at One Texas Immigration Detention Center Soared in a Matter of Days: Now, Town Leaders Want Answers*, PROPUBLICA (May 11, 2020), <https://www.propublica.org/article/covid-19-cases-at-one-texas-immigration-detention-center-soared-in-a-matter-of-days-now-town-leaders-want-answers/amp>.

<sup>26</sup> *Id.*

<sup>27</sup> OFFICE OF INSPECTOR GEN., *supra* note 5.

<sup>28</sup> *How the Coronavirus Spread Through One Immigration Facility*, *supra* note 10.

releases was to cut the population in order to provide more room for social distancing and more resources for detainees.<sup>29</sup> Further, ICE announced that it improved the conditions of detention facilities to protect detainees by increasing testing and isolating detainees.<sup>30</sup>

However, according to ICE employees, the rapid spread of COVID-19 within immigration detention facilities was caused by “an early absence of facial coverings[,] a lack of cleaning supplies, and symptomatic detainees were mixed with others.”<sup>31</sup> These ICE employees further explained that “gloves were hard to find,” “dispensers of hand sanitizer were often empty,” and “many people were allowed to meet closely together in one room.”<sup>32</sup> ICE employees also expressed concern over an “inability to practice social distancing among detainees, and to isolate or quarantine individuals who may be infected with COVID-19.”<sup>33</sup> Lastly, ICE employees remain uneasy about the availability of staff and protective gear during an outbreak of COVID-19 at the detention centers.<sup>34</sup> ICE’s initial failure to heed coronavirus warnings and its subsequent sluggish improvement in protecting detainees directly contributed to the deteriorating health of many.

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> OFFICE OF INSPECTOR GEN., *supra* note 5.

<sup>34</sup> *Id.*

On May 30, 2020, there was an appalling lack of testing with only “10% of the detained population” tested.<sup>35</sup> By June 2, 2020, ICE only provided voluntary COVID-19 testing for detainees at 2 out of the nearly 200 immigration detention facilities.<sup>36</sup> The Denver, Colorado detention center was one of the first ICE facilities to provide detainees with an option to voluntarily test for COVID-19.<sup>37</sup> Such voluntary testing of 432 detainees resulted in only 4 positive tests.<sup>38</sup> Yet just two days later, in El Paso, Texas, 119 of the 751 detainees tested positive for COVID-19 with 73 detainees in isolation.<sup>39</sup> This trend is confirmed in a report conducted by the Inspector General that indicated a 496% increase in positive COVID-19 tests among the detainee population in just 4 weeks.<sup>40</sup> While ICE claims that testing will become more available in other facilities over the upcoming months,<sup>41</sup> the coronavirus continues to devastate and risk the lives of immigrant detainees.

Another ICE detention center in Farmville, Virginia, announced that 80% of the detainee population tested positive for COVID-19 after the facility received 72

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<sup>35</sup> Thomas J. Rachko, Jr., *Second Covid-19 Death in US Immigration Detention*, HUM. RTS. WATCH [HRW] (June 4, 2020), <https://www.hrw.org/news/2020/06/04/second-covid-19-death-us-immigration-detention#>.

<sup>36</sup> *ICE Offers Voluntary COVID-19 Testing to All Detainees at 2 Facilities*, U.S. IMMIGR. AND CUSTOMS ENFORCEMENT (June 9, 2020), <https://www.ice.gov/news/releases/ice-offers-voluntary-covid-19-testing-all-detainees-2-facilities#wcm-survey-target-id>.

<sup>37</sup> *Id.*

<sup>38</sup> *ICE Announces Voluntary COVID-19 Testing Results from Aurora Contract Detention Facility*, U.S. IMMIGR. AND CUSTOMS ENFORCEMENT (June 24, 2020), <https://www.ice.gov/news/releases/ice-announces-voluntary-covid-19-testing-results-aurora-contract-detention-facility>.

<sup>39</sup> Erika Esquivel, *Total of 119 Detainees Have Tested Positive at El Paso ICE Facility*, KFOX14 (June 26, 2020), <https://kfoxtv.com/news/local/total-of-119-detainees-have-tested-positive-at-el-paso-ice-facility>.

<sup>40</sup> OFFICE OF INSPECTOR GEN., *supra* note 5.

<sup>41</sup> *ICE Offers Voluntary COVID-19 Testing to All Detainees at 2 Facilities*, *supra* note 36.

transfers from other detention facilities.<sup>42</sup> Furthermore, there were 268 transfers of detainees from April to June even though detainees in various ICE facilities already tested positive for COVID-19.<sup>43</sup> As of July 19, 2020, the total number of detainees who tested positive for COVID-19 was over 3,500 detainees.<sup>44</sup> Out of this total, “967 are currently in custody; the rest were released, deported or have recovered.”<sup>45</sup>

Despite the high number of infected detainees, ICE’s loose policies make it impossible for immigrant detainees to avoid contact with the coronavirus. For example, ICE admits to grouping together, rather than separating, *confirmed* COVID-19 detainees with *suspected* COVID-19 detainees.<sup>46</sup> Further, ICE’s failure to protect its own employees with preventative COVID-19 resources leads to a greater likelihood that employees will spread the coronavirus to the vulnerable population of immigrant detainees. By July 13, 2020, over 920 employees at these immigration detention centers tested positive for COVID-19.<sup>47</sup> These conditions

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<sup>42</sup> Keyris Manzanares, *Nearly 90 Percent of ICE Detainees in Farmville Tested Positive for COVID-19 After Transfers from Florida, Arizona*, ABC 8 NEWS (July 16, 2020), <https://www.wric.com/news/taking-action/covid-19-cases-spike-at-farmville-ice-detention-center-after-transfers-from-florida-arizona/>.

<sup>43</sup> Mica Rosenberg et al., *U.S. Immigration Officials Spread Coronavirus with Detainee Transfers*, REUTERS, July 17, 2020, <https://www.reuters.com/article/us-health-coronavirus-immigration-detent/u-s-immigration-officials-spread-coronavirus-with-detainee-transfers-idUSKCN24I1G0>.

<sup>44</sup> *How the Coronavirus Spread Through One Immigration Facility*, *supra* note 10.

<sup>45</sup> *Id.*

<sup>46</sup> Parsa Erfani et al., *A Systematic Approach to Mitigate the Spread of COVID-19 in Immigration Detention Facilities*, HEALTH AFF. (June 17, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200616.357449/full/>.

<sup>47</sup> Rosenberg et al., *supra* note 43.

create a challenging environment for immigrant detainees to avoid contact with the coronavirus.

The presence of COVID-19 throughout immigration detention centers is further evident as multiple members of Congress contracted COVID-19 while visiting an immigration detention facility in Texas.<sup>48</sup> Additionally, the COVID-19 outbreak in detention facilities led to the deaths of multiple immigrant detainees.<sup>49</sup> The first medically vulnerable detainee died while hospitalized just two weeks after an immigration judge refused to release him despite his medical issues.<sup>50</sup> The most recent detainee died while hospitalized in Florida just shortly after he transferred from federal prison.<sup>51</sup> Still, on May 29, 2020, a federal judge declined to require ICE officials to release medically vulnerable detainees who are more likely to develop life-threatening complications if infected with COVID-19.<sup>52</sup> The ruling claimed that improved conditions at the Otay Mesa Detention Center lowered the likelihood that medically vulnerable detainees would contract the

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<sup>48</sup> Abby Livingston, *Three Texans in Congress Exposed to COVID-19 while at Detention Center*, TEXAS TRIBUNE (June 27, 2020), <https://www.texastribune.org/2020/06/27/texans-congress-exposed-coronavirus-border/>.

<sup>49</sup> *Mexican Man in ICE Custody Passes Away in Florida*, U.S. IMMIGR. AND CUSTOMS ENFORCEMENT (July 13, 2020), <https://www.ice.gov/news/releases/mexican-man-ice-custody-passes-away-florida>; Kate Morrissey, *First ICE Detainee Dies From COVID-19 After Being Hospitalized from Otay Mesa Detention Center*, SAN DIEGO UNION TRIBUNE (May 6, 2020), <https://www.sandiegouniontribune.com/news/immigration/story/2020-05-06/first-ice-detainee-dies-from-covid-19-after-being-hospitalized-from-otay-mesa-detention-center>.

<sup>50</sup> Kate Morrissey, *First ICE Detainee Dies From COVID-19 After Being Hospitalized from Otay Mesa Detention Center*, SAN DIEGO UNION TRIBUNE (May 6, 2020), <https://www.sandiegouniontribune.com/news/immigration/story/2020-05-06/first-ice-detainee-dies-from-covid-19-after-being-hospitalized-from-otay-mesa-detention-center>.

<sup>51</sup> *Mexican Man in ICE Custody Passes Away in Florida*, *supra* note 49.

<sup>52</sup> Kristina Davis, *Judge Declines to Order Release of More Medically Vulnerable ICE Detainees*, L.A. TIMES (May 29, 2020), <https://www.latimes.com/california/story/2020-05-29/preliminary-injunction-ice-detainees>.

disease; despite multiple detainee deaths and numerous COVID-19 positive cases.<sup>53</sup> This shocking lack of care for immigrant detainees and deportees during a deadly pandemic must be addressed in order to ensure the safety of all human beings and the protection of human rights.

Fortunately, one federal judge recognized the severity of the COVID-19 pandemic through a ruling that ordered the release of youth detainees in immigration detention centers by July 17, 2020.<sup>54</sup> This ruling arose from concerns of spreading the coronavirus within the vulnerable population of juvenile detainees.<sup>55</sup> The growing number of positive COVID-19 cases among family immigration detention center employees and detainees guided the ruling.<sup>56</sup> While this ruling is a start to addressing the needs of detainees, many detained immigrant parents stressed concern over being separated from their children during the pandemic.

Notwithstanding the blatant existence of COVID-19 in immigration detention centers, the United States continues to deport immigrants who were previously held in such facilities. For example, President Trump deported multiple immigrant deportees to Guatemala where the deportees tested positive for COVID-

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<sup>53</sup> *Id.*

<sup>54</sup> Dennis Romero, *Government Must Release Migrant Children in Detention Centers Because of Coronavirus Judge Orders*, NBC NEWS (June 26, 2020), <https://www.nbcnews.com/news/us-news/government-must-release-migrant-children-detention-centers-because-coronavirus-judge-n1232328>.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

19 upon their arrival.<sup>57</sup> In a letter addressed to President Trump, multiple United States Senators expressed concern over the public health issues involved in deporting immigrant detainees without first being tested for COVID-19.<sup>58</sup> In fact, 11 countries verified that deportees from the United States returned with COVID-19.<sup>59</sup> Essentially, President Trump has sanctioned ICE to spread COVID-19 throughout the United States as well as to other countries through transfers and deportations.<sup>60</sup>

### C. Coronavirus in Prisons

Prison conditions amid the COVID-19 pandemic mimic the shortcomings of immigration detention centers. For example, as of August 6, 2020, “there have been at least 78,476 cases of coronavirus reported among prisoners.”<sup>61</sup> Of these, 764 prisoners have died, while 58,513 have recovered.<sup>62</sup> Even though the number of inmates infected with COVID-19 continues to increase, prisons are still overlooked when COVID-19 resources are allocated.<sup>63</sup> This leaves inmates and

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<sup>57</sup> Caitlin Dickerson & Kirk Semple, *U.S. Deported Thousands Amid Covid-19 Outbreak: Some Proved to be Sick*, N.Y. TIMES (Apr. 18, 2020), <https://www.nytimes.com/2020/04/18/us/deportations-coronavirus-guatemala.html>.

<sup>58</sup> *Menendez, Durbin Press Trump Administration on Deportation of COVID-19 Positive Migrants*, U.S. SENATE COMM. ON FOREIGN RELS. (May 2, 2020), <https://www.foreign.senate.gov/press/ranking/release/menendez-durbin-press-trump-administration-on-deportation-of-covid-19-positive-migrants>.

<sup>59</sup> Emily Kassie & Barbara Marcolini, *It Was Like a Time Bomb: How ICE Helped Spread the Coronavirus*, N.Y. TIMES (July 10, 2020), <https://www.nytimes.com/2020/07/10/us/ice-coronavirus-deportation.html>.

<sup>60</sup> *Id.*

<sup>61</sup> *A State-by-State Look at Coronavirus in Prisons*, MARSHALL PROJECT, <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons> (last updated Aug. 6, 2020).

<sup>62</sup> *Id.*

<sup>63</sup> Peter Eisler et al., *Special Report: ‘Death Sentence’ – The Hidden Coronavirus Toll in U.S. Jails and Prisons*, REUTERS, May 18, 2020, <https://www.reuters.com/article/us-health-coronavirus-usa-jails-specailr/special-report-death-sentence-the-hidden-coronavirus-toll-in-us-jails-and-prisons-idUSKBN22U1V2>.

prison employees at risk of contracting the coronavirus and then spreading it to the surrounding community or local hospitals.<sup>64</sup> With prisons employing about 151,000 correctional officers, there is a real risk that prison employees will “bring infections into facilities or take them home.”<sup>65</sup>

However, despite the similarities between prisons and immigration detention centers during COVID-19, the latter is held to harsher standards. Unlike immigration detention centers, prisons across the United States have authorized early release for nonviolent inmates. For example, California released 8,000 inmates from state prison who had a year or less to serve excluding violent or sex offenders.<sup>66</sup> Furthermore, inmate populations have decreased as prisons refuse to accept new inmates.<sup>67</sup> Court closures also slowed down the number of people sentenced to prison which significantly decreased the inmate population.<sup>68</sup>

Distribution of adequate resources to highly populated areas such as prisons and detention centers is extremely important. However, the release of inmates who have committed crimes from prisons exemplifies the United States’ discrimination

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<sup>64</sup> Beatrix Lockwood, *Experts Discuss How COVID-19 Spreads through Prisons to Nearby Communities*, REUTERS, July 29, 2020, <https://www.reuters.com/article/us-health-coronavirus-prisons/experts-discuss-how-covid-19-spreads-through-prisons-to-nearby-communities-idUSKCN24U39A>.

<sup>65</sup> Michael Ollove, *How COVID-19 in Jails and Prisons Threatens Nearby Communities*, PEW TR. (July 1, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/07/01/how-covid-19-in-jails-and-prisons-threatens-nearby-communities>.

<sup>66</sup> *California to Release 8,000 Prisoners to Slow Pandemic*, REUTERS, July 10, 2020, <https://www.reuters.com/article/us-health-coronavirus-california-prisons/california-to-release-8000-prisoners-to-slow-pandemic-idUSKBN24B34X>.

<sup>67</sup> *US Prison Population Falls Sharply as Pandemic Disrupts Justice System*, GUARDIAN (July 27, 2020), <https://www.theguardian.com/us-news/2020/jul/27/us-prison-population-falls-sharply-coronavirus>.

<sup>68</sup> *Id.*

against immigrants when detainees continue to be held in detention centers. Many immigrant detainees have not committed any crimes but are detained for tracking purposes and immigration matters. Instead, these non-criminal, non-violent detainees are not being released into the community simply based on their status as an immigrant. Such inconsistencies and discrimination in access to health care and alternative methods of detention for detained populations during the COVID-19 pandemic are unacceptable.

#### D. Health as an International Human Right

Health is a fundamental human right that is recognized by various nations throughout the world, including the United States.<sup>69</sup> This right to health is often associated with the human right to life.<sup>70</sup> Human rights are universal to all human beings without discrimination.<sup>71</sup> The World Health Organization defines the right to health as requiring open access to necessary health services for all individuals without the burden of financial hardship.<sup>72</sup> Such access to health allows people to become active participants in their own care which helps to improve outcomes for individuals and create more efficient health systems.<sup>73</sup> Upholding the human right

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<sup>69</sup> U.N. Comm. on Econ., Soc. & Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter General Comment 14].

<sup>70</sup> *Id.*

<sup>71</sup> *What Are Human Rights?*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx> (last visited July 23, 2020).

<sup>72</sup> Tedros Adhanom Ghebreyesus, *Health is a Fundamental Human Right*, WORLD HEALTH ORGANIZATION [WHO] (Dec. 10, 2017), <https://www.who.int/mediacentre/news/statements/fundamental-human-right/en/>.

<sup>73</sup> *Id.*

to health also requires that States “ensure access to timely, acceptable, and affordable health care of appropriate quality.”<sup>74</sup> This includes providing “for the underlying determinants of health, such as safe and potable water, sanitation, food, housing, health-related information and education, and gender equality.”<sup>75</sup>

To respect the human right to health, immigration detention centers must take appropriate measures to provide detainees with prevention, early detection, and early treatment of COVID-19.<sup>76</sup> ICE facilities must allow detainees to receive the health services that a United States citizen would have access to.<sup>77</sup> This means that immigrant detainees’ status as immigrants to the United States should not prevent them from access to testing, diagnostics, treatment, and the COVID-19 vaccination once available.<sup>78</sup> Any national strategic responses to COVID-19 should also include or incorporate ways to help immigrant detainees.<sup>79</sup> Specifically, United States national strategic responses must include the welfare of immigrant detainees in “public health planning, responses, and communications, at all stages of the migration cycle (departure, transit, destination, and return).”<sup>80</sup> Lastly, to

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<sup>74</sup> *Id.*

<sup>75</sup> *Human Rights and Health*, WORLD HEALTH ORGANIZATION [WHO] (Dec. 29, 2017), <https://www.who.int/en/news-room/fact-sheets/detail/human-rights-and-health>.

<sup>76</sup> *COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do*, *supra* note 24.

<sup>77</sup> *Enhancing Access to Service for Migrants in the Context of COVID-19 Preparedness, Prevention, and Response and Beyond*, U.N. NETWORK ON MIGRATION (June 11, 2020), [https://migrationnetwork.un.org/sites/default/files/docs/final\\_network\\_wg\\_policy\\_brief\\_covid-19\\_and\\_access\\_to\\_services\\_1.pdf](https://migrationnetwork.un.org/sites/default/files/docs/final_network_wg_policy_brief_covid-19_and_access_to_services_1.pdf).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

uphold the ideal of the human right to health, immigrant detainees must “not be scapegoated, stigmatized, [discriminated against,] or otherwise targeted for accessing health care.”<sup>81</sup>

## **APPLICABLE LAW**

### **A. International Law**

In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR).<sup>82</sup> The UDHR represents an agreement between countries on the types of human rights that deserve universal protection.<sup>83</sup> Therefore, the UDHR acts as the foundation for initial understanding and respect of fundamental human rights.<sup>84</sup> Under Article 25, section 1 of the UDHR, “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including...medical care and necessary social services, and the right to security in the event of...sickness.”<sup>85</sup> This universal right to adequate health care must be safeguarded by the States who are members of the United Nations. However, the United States violates this agreement to provide the right to adequate health when immigrant detainees are deprived of COVID-19 testing, treatment, and preventative health care.

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<sup>81</sup> *Id.*

<sup>82</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR].

<sup>83</sup> Amnesty Int’l, *Universal Declaration of Human Rights*, <https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/> (last visited July 24, 2020).

<sup>84</sup> *Id.*

<sup>85</sup> UDHR, *supra* note 82.

In 1992, the United States ratified the International Covenant on Civil and Political Rights (ICCPR) which sets forth various human rights inherent to every human being in accordance with the UDHR.<sup>86</sup> This international treaty also established the United Nations Human Rights Committee which ensures adherence to the treaty's standards.<sup>87</sup> Under Article 6 of the ICCPR, "Every human being has the inherent right to life ... [which] shall be protected by law."<sup>88</sup> This right to life is furthered by the Human Rights Committee's General Comment 36 which states that "the duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriately regular monitoring of their health."<sup>89</sup> However, the United States' reservation that the ICCPR is "not self-executing" prevents United States citizens from suing for direct enforcement of the ICCPR.<sup>90</sup> Therefore, the United States is free to violate the ICCPR's right to life without rebuke from its citizens.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is an international treaty designed to promote respect for universal human rights.<sup>91</sup> Adopted in 1966, Article 12 of the ICESCR "recognize[s] the right

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<sup>86</sup> International Covenant on Civil and Political Rights, Mar. 29, 1967, 999 U.N.T.S. 14668 [hereinafter ICCPR].

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> U.N. Hum. Rts. Comm., *General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights on the Right to Life*, U.N. Doc CCPR/C/GC/36 (Oct. 30, 2018) [hereinafter General Comment 36].

<sup>90</sup> *FAQ: The Covenant on Civil & Political Rights (ICCPR)*, AM. CIV. LIBERTIES UNION (last visited Aug. 11, 2020), <https://www.aclu.org/other/faq-covenant-civil-political-rights-iccpr>.

<sup>91</sup> International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

of everyone to the enjoyment of the highest attainable standard of physical and mental health.”<sup>92</sup> Therefore, the States that are party to the ICESCR are expected to take steps to “prevent, treat, and control epidemics, endemics, occupational and other diseases.”<sup>93</sup> Specifically, this includes forming conditions for all human beings that enable access to medical services and attention when suffering from an illness.<sup>94</sup> However, despite signing the ICESCR in 1977, the United States has yet to join the 171 countries that ratified this treaty.<sup>95</sup>

In 2000, the United Nations General Assembly expanded on the right to health as defined in the ICESCR.<sup>96</sup> General Comment 14 explains that the right to health is “closely related to and dependent upon the realization of other human rights...including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement.”<sup>97</sup> Furthermore, the right to health means human beings must be free to control their health and body, which includes being free from non-consensual medical treatment.<sup>98</sup> Meanwhile, human beings are also entitled to “a system of health

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<sup>92</sup> International Covenant on Economic, Social, and Cultural Rights art. 12, Dec. 16, 1966, 993 U.N.T.S 3.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Status of Ratification Interactive Dashboard*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://indicators.ohchr.org> (last visited Aug. 11, 2020).

<sup>96</sup> General Comment 14, *supra* note 69.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

protection which provides equality of opportunity for people to enjoy the highest attainable level of health.”<sup>99</sup>

When a State ratifies an international treaty, the State becomes obligated to fulfill the goals of the treaty.<sup>100</sup> If these States violate the international treaty through human rights violations, there are various punishments that are available.<sup>101</sup> For example, individuals may submit a complaint to the United Nations regarding a State’s human rights violations which then initiates an investigation at the consent of the State.<sup>102</sup> However, it is unlikely that States would consent to such an investigation, in which case the United Nations may pass a resolution to condemn the State’s human rights violations.<sup>103</sup> Countries, like the United States, that formally recognize the human right to life but fail to align its laws, policies, and regulations to protect the human right to health violate international law by denying fundamental human rights.

### 1. Portuguese Law

The Portuguese Constitution incorporates the international human rights to health and life by aligning its fundamental rights with the Universal Declaration of Human Rights.<sup>104</sup> For example, under Article 64 of the Portuguese Constitution,

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<sup>99</sup> *Id.*

<sup>100</sup> Louise Smith, *When a Country Breaches International Human Rights Law*, ABOUT HUM. RTS. (Mar. 26, 2019), <http://www.abouthumanrights.co.uk/when-country-breaches-international-human-rights-law.html>.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> Constituição da República Portuguesa [C.R.P.], English translation available at <https://dre.pt/part-i>.

“Everyone has the right to the protection of health and the duty to protect[,] defend[,] and promote health.”<sup>105</sup> In order to uphold these human rights to health and life, Portugal also guarantees health care access for “every citizen, regardless of his economic situation, to preventive, curative and rehabilitative medical care.”<sup>106</sup> Portugal also prevents public health services from discriminatorily withholding medical assistance based on an individual’s nationality, economic means, or legal status.<sup>107</sup>

In detention centers, immigrant detainees have the right to obtain emergency health care and treatment of illness.<sup>108</sup> Further, vulnerable populations are given special attention to help with any medical needs.<sup>109</sup> Within 48 hours of detention, immigrant detainees must be brought in front of a judge to order release, detention, or removal.<sup>110</sup> Detention must not last more than 60 days after receiving a removal order.<sup>111</sup> Immigrant detainees also have the right to communicate with legal counsel in private.<sup>112</sup> Mandatory human rights training further improves the conditions of immigration detention centers by helping to stop abuse of authority

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<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Portugal: Assessing Health-System Capacity to Manage Sudden Large Influxes of Migrants*, WORLD HEALTH ORGANIZATION [WHO], at 3 (2014), [https://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0016/265012/Portugal-assessing-health-system-capacity-to-manage-sudden-large-influxes-of-migrants.pdf?ua=1](https://www.euro.who.int/__data/assets/pdf_file/0016/265012/Portugal-assessing-health-system-capacity-to-manage-sudden-large-influxes-of-migrants.pdf?ua=1).

<sup>108</sup> Lei n.º 29/2012 de 9 de Agosto [Act no. 19/2012 of 9 August], [https://www.sef.pt/en/Documents/LeideImig\(Lei29\\_2012\)EN.pdf](https://www.sef.pt/en/Documents/LeideImig(Lei29_2012)EN.pdf) (Port.).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

by Portuguese officials.<sup>113</sup> This training helps to address racial discrimination, diversity, and intercultural dialogue among officials working with immigrants.<sup>114</sup>

## 2. Canadian Law

The Immigration and Refugee Protection Act dictates the procedure and conditions for immigrant detainees held in Canadian detention centers.<sup>115</sup> According to the Immigration and Refugee Protection Act, “foreign nationals must be detained until a final determination is made” regarding their claim for refugee protection or there is a judicial order for their release.<sup>116</sup> Furthermore, there is a mandatory review of detention for immigrant detainees within 48 hours after being taken into detention.<sup>117</sup> Another review must occur at least once during the 7 days following the initial review, after which there will be a review every 30 days.<sup>118</sup> These reviews require consideration of the reasons for an individual’s continued detention.<sup>119</sup>

Undocumented immigrants do not have guaranteed access to health care, but refugees are eligible to receive temporary insurance.<sup>120</sup> Meanwhile, within

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<sup>113</sup> *In Dialogue with Portugal: Human Rights Committee Discusses Racial Discrimination, Police Abuse, and Detention of Asylum-Seekers*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R [OHCHR] (Mar. 6, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25677&LangID=E>.

<sup>114</sup> *Id.*

<sup>115</sup> Immigration and Refugee Protection Act, S.C. 2001, c 27 (Can.).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> Roosa Tikkanen et al., *International Health Care System Profiles*, COMMONWEALTH FUND (June 5, 2020), <https://www.commonwealthfund.org/international-health-policy-center/countries/canada>.

Canadian detention centers, “detained individuals have [the right] to receive medical attention.”<sup>121</sup> Additionally, under the National Immigration Detention Framework, the Canadian Border Services Agency is required to develop more humane detention conditions for detainees by improving access to necessary medical and mental health services.<sup>122</sup>

In fact, detention is to be avoided for vulnerable groups such as pregnant women, disabled persons, human trafficking victims, and persons suffering from a mental illness.<sup>123</sup> This is especially true when public safety and security are not threatened by an undocumented immigrant’s release.<sup>124</sup> Instead, Canadian officials focus on expanding the availability and use of alternatives to detention.<sup>125</sup> When undocumented immigrants must be detained, then detention should last for the shortest time possible.<sup>126</sup>

### 3. Australian Law

The Migration Act of 1958 establishes the standards and procedures for Australia’s detention centers. Under this act, immigrant detainees “may be kept in immigration detention [until] the making of a decision whether to prosecute the

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<sup>121</sup> *Detentions*, CAN. BORDER SERVICES AGENCY, <https://www.cbsa-asfc.gc.ca/security-securite/detent/menu-eng.html> (last updated Mar. 9, 2020).

<sup>122</sup> *National Immigration Detention Framework*, CAN. BORDER SERVICES AGENCY, <https://www.cbsa-asfc.gc.ca/security-securite/detent/nidf-cndi-eng.html> (last updated Mar. 9, 2020).

<sup>123</sup> *Detentions*, *supra* note 121.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

suspect in connection with the offence concerned or instituting such a prosecution...and if such a prosecution is instituted within that period—such further period as is required for the purposes of the prosecution.”<sup>127</sup> However, the court cannot order the release of unlawful non-citizens from detention.<sup>128</sup> Instead, only the Minister can grant a visa for detainees that would allow their release.<sup>129</sup>

The Migration Act of 1985 does not include the right to health care or establish minimum health standards for immigrant detainees.<sup>130</sup> Instead, the Australian government contracts with International Health and Medical Services (IHMS) to provide immigrant detainees with health care.<sup>131</sup> However, the contract with IHMS does little to ensure the quality of medical care for immigrant detainees.<sup>132</sup> Specifically, IHMS is only required to “provide primary and mental health care services within the Australian detention network, to a standard of care *broadly comparable* to that available to the general Australian community under the public health system.”<sup>133</sup> This standard of “broadly comparable” health care does not guarantee access to all health care available outside of detention

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<sup>127</sup> *Migration Act 1958* (Cth) s 250 (Austl.).

<sup>128</sup> *Migration Act 1958* (Cth) s 196 (Austl.).

<sup>129</sup> *Migration Act 1958* (Cth) s 195 (Austl.).

<sup>130</sup> *Migration Act 1958* (Cth) (Austl.).

<sup>131</sup> *Sites: Onshore*, INTERNATIONAL HEALTH AND MEDICAL SERVICES, <http://www.ihms.com.au/onshore.php> (last visited Aug. 12, 2020).

<sup>132</sup> PUB. INTEREST ADVOCACY CTR., IN POOR HEALTH: HEALTH CARE IN AUSTRALIAN IMMIGRATION DETENTION (2018), <https://www.piac.asn.au/wp-content/uploads/2018/06/18.06.14-Asylum-Seeker-Health-Rights-Report.pdf>.

<sup>133</sup> *Sites: Onshore*, *supra* note 131.

facilities.<sup>134</sup> Therefore, immigrant detainees in Australian detention facilities do not have health rights that guarantee their access to appropriate health care.

## B. United States Law

The United States has not codified the right to health.<sup>135</sup> Therefore, in the United States, there is not universal access to medical services for all human beings, let alone immigrant detainees.<sup>136</sup> Instead, the United States provides medical care through health insurance for citizens or immigration law for immigrants in federal custody.<sup>137</sup> Specifically, the Immigration and Nationality Act (INA) and the Public Health Service Act (PHSA) authorize the Secretary of Health and Human Services to create rules and requirements that dictate medical examinations, services, and care for undocumented immigrants detained by ICE.<sup>138</sup>

Enacted in 1952, the Immigration and Nationality Act (INA) explains much of United States immigration law as codified in Title 8 of the United States Code.<sup>139</sup> In section 1231 of the INA, the Attorney General is responsible for removing undocumented immigrants from the United States within 90 days of an

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<sup>134</sup> *Id.*

<sup>135</sup> Mary Gerisch, *Health Care as a Human Right*, 43 A.B.A. HUM. RTS. 2, 3 (2018), [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/the-state-of-healthcare-in-the-united-states/health-care-as-a-human-right/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-state-of-healthcare-in-the-united-states/health-care-as-a-human-right/).

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Medical Examination of Immigrants and Refugees: Background*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/immigrantrefugeehealth/exams/medical-examination.html> (last visited July 19, 2020).

<sup>139</sup> *Immigration and Nationality Act*, U.S. CITIZENSHIP AND IMMIGR. SERVS., <https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act> (last updated July 10, 2019.)

immigration judge’s order for removal.<sup>140</sup> The Attorney General also has the authority to issue arrest warrants to detain undocumented immigrants already in the country while they await the end of removal proceedings.<sup>141</sup>

To further detention, the Attorney General is required to arrange for “appropriate” detention facilities for undocumented immigrants while awaiting removal proceedings.<sup>142</sup> Under section 1222 of the INA, undocumented immigrants may “be detained by the Attorney General for a sufficient time to enable the immigration officers and medical officers to subject such [undocumented immigrants] to observation and an examination sufficient to determine whether or not they belong to inadmissible classes.”<sup>143</sup> Furthermore, the Attorney General is authorized to allocate immigration funds in “amounts necessary to acquire land and to acquire, build, remodel, repair, and operate facilities ... necessary for detention.”<sup>144</sup> Therefore, the Attorney General’s broad authority over detention facilities enables the allocation of necessary COVID-19 resources to detainees.

The Public Health Service Act (PHSA) section 249 then provides that immigrant detainees held in detention “may be treated and cared for by the Public Health Service.”<sup>145</sup> Detainees who are authorized to receive health treatment and

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<sup>140</sup> 8 U.S.C. §1231 (2018).

<sup>141</sup> *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018).

<sup>142</sup> 8 U.S.C. §1231 (2018).

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> 42 U.S.C. § 249 (2018).

care may obtain health services “at the expense of the [Immigration and Naturalization] Service.”<sup>146</sup> Additionally, immigrant detainees may apply to receive health care at public or private medical facilities outside of detention centers if authorized by an appropriate detention officer.<sup>147</sup> Even if denied outside treatment, immigrant detainees “may...be admitted...for treatment and care in case of emergency.”<sup>148</sup> The PHSA’s use of mostly permissive language, rather than mandatory, severely limits access to health care for immigrant detainees.

### 1. Proposed Legislation

On April 3, 2020, Congresswoman Chu introduced the Coronavirus Immigrant Families Protection Act (CIFP Act).<sup>149</sup> The CIFP Act is an attempt to provide universal access to COVID-19 testing, treatment, public health information, and relief benefits.<sup>150</sup> This act would suspend both detentions and deportations of immigrant detainees once a public health emergency is established and up to 60 days after its expiration.<sup>151</sup> The supervision of immigrant detainees and potential bond hearings would adapt to COVID-19 social distancing which promotes telephonic administration.<sup>152</sup> Lastly, the act would forbid discrimination

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<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> Coronavirus Immigrant Families Protection Act, H.R. 6437, 116th Cong. (2020).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

against immigrant detainees for benefits provided in coronavirus response laws.<sup>153</sup>

Since April 6, 2020, the CIFP Act has remained in the Subcommittee on Economic Development, Public Buildings, and Emergency Management.<sup>154</sup>

Introduced on April 17, 2020 by Senator Booker and Congresswoman Jayapal, the Federal Immigrant Release for Safety and Security Together Act (FIRST Act) seeks to limit the number of immigrant detainees held in detention facilities during the coronavirus pandemic.<sup>155</sup> If enacted, the FIRST Act would release “covered individuals” from ICE detention facilities without requiring a bond to be posted.<sup>156</sup> Covered individuals would include detainees who are pregnant, have a weakened immune system, or have any condition that increases serious illness according to the Centers for Disease Control.<sup>157</sup> Essentially, the FIRST Act would prevent ICE from detaining undocumented immigrants who are not deemed a significant public safety risk during the coronavirus pandemic.<sup>158</sup> The FIRST Act has failed to move from the House Committee on the Judiciary since its introduction.<sup>159</sup>

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<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> Federal Immigrant Release for Safety and Security Together Act, H.R. 6537, 116th Cong. (2020).

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Sen. Booker & Rep. Jayapal Unveil Bold Legislation to Move Immigrants Out of Detention and Halt Immigration Enforcement During Coronavirus Emergency*, CORY BOOKER (Apr. 13, 2020), <https://www.booker.senate.gov/news/press/sen-booker-and-rep-jayapal-unveil-bold-legislation-to-move-immigrants-out-of-detention-and-halt-immigration-enforcement-during-coronavirus-emergency>.

<sup>159</sup> Federal Immigrant Release for Safety and Security Together Act, H.R. 6537, 116th Cong. (2020).

On May 5, 2020, Florida Republican Representative Matt Gaetz introduced the Protect American Nationals During Emergencies by Mitigating the Immigration Crisis Act (PANDEMIC Act) which would “require the removal of [immigrant detainees] in detention during a national emergency related to a communicable disease.”<sup>160</sup> However, the PANDEMIC Act focuses on removing detainees from detention centers through expedited deportations.<sup>161</sup> The only immigrant detainees that would remain under United States custody would be those charged with a crime of violence.<sup>162</sup> Since its introduction on May 5, 2020, the PANDEMIC Act has remained in the House Committee on the Judiciary.<sup>163</sup>

On May 7, 2020, the Senate introduced the COVID-19 International Response and Recovery Act of 2020 (CIRR Act) for the stated purpose of responding to the global COVID-19 pandemic.<sup>164</sup> The CIRR Act would require testing of “all foreign nationals for COVID-19 before deporting them to their respective countries of origin.”<sup>165</sup> Additionally, the act would limit the removals of immigrants from the United States until a “developed and implemented protocol [exists] to ensure that all foreign nationals with an order of removal from the United States will be tested for COVID-19 before being removed from the United

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<sup>160</sup> Protect American Nationals During Emergencies by Mitigating the Immigration Crisis Act, H.R. 6715, 116th Cong. (2020).

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> COVID-19 International Response and Recovery Act of 2020, S. 3669, 116th Cong. (2020).

<sup>165</sup> *Id.*

States.” Furthermore, such protocols must “provide appropriate foreign governments with the information about the COVID-19 testing protocol.”<sup>166</sup> This is justified by the documented incapacity of certain foreign public health systems to handle serious cases of COVID-19.<sup>167</sup> The CIRR Act has been read twice and referred to the Committee on Foreign Relations in the Senate.<sup>168</sup>

## 2. CDC Guidelines

The Center for Disease and Control Prevention (CDC) is responsible for protecting people in the United States from public health threats.<sup>169</sup> In response to the COVID-19 pandemic, the CDC issued guidance for immigration detention facilities.<sup>170</sup> The CDC recommends that immigration detention centers implement social distancing strategies but recognizes that feasibility will dictate the exact suitable strategy for each facility.<sup>171</sup> The CDC advises that testing all detainees (both symptomatic and asymptomatic), isolating suspected and confirmed cases, and quarantining can help lower the spread of COVID-19 in detention facilities.<sup>172</sup> However, the CDC states that immigration detention centers may choose to use

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<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *CDC Organization*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/about/organization/cio.htm> (last visited July 24, 2020).

<sup>170</sup> *Coronavirus Disease 2019 (COVID-19): Guidance for Correctional & Detention Facilities*, CTRS. FOR DISEASE CONTROL AND PREVENTION (July 14, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

symptom screening to identify individuals with COVID-19 signs.<sup>173</sup> Importantly, the CDC notes that “symptom screening [does] not prevent all individuals with COVID-19 from entering the facility.”<sup>174</sup> Unfortunately, CDC guidance does not require ICE to adopt CDC policies which means immigrant detainees are not guaranteed protection against COVID-19 through CDC guidance.

### 3. Trump Administration

Since the beginning of Trump’s presidency in 2017, the Trump Administration has supported, directed, and promised to further ICE’s operations.<sup>175</sup> As a federal agency, ICE is influenced by the Trump Administration’s anti-immigrant agenda.<sup>176</sup> In January 2020, ICE implemented new National Detention Standards that “removed even basic, minimal safeguards necessary for adequate medical care.”<sup>177</sup> ICE eliminated the requirement that National Detention Standard facilities “maintain current accreditation with the National Commission on Correctional Health Care (NCCHC).”<sup>178</sup> ICE also no

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<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> Sarah Pierce & Randy Capps, *As Trump Takes Office, Immigration Enforcement and Policy Poised to Undergo Major Changes*, MIGRATION POL’Y INST. (Dec. 19, 2016), <https://www.migrationpolicy.org/article/trump-takes-office-immigration-enforcement-and-policy-poised-undergo-major-changes>.

<sup>176</sup> *Who We Are*, U.S. IMMIGR. AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/about> (last updated May 13, 2020).

<sup>177</sup> Eunice Cho, *The Trump Administration Weakens Standards for ICE Detention Facilities*, AM. CIV. LIBERTIES UNION (Jan. 14, 2020), <https://www.aclu.org/news/immigrants-rights/the-trump-administration-weakens-standards-for-ice-detention-facilities/>.

<sup>178</sup> *Id.*

longer requires that health assessments of immigrant detainees abide by national correctional standards.<sup>179</sup>

Furthermore, under the Trump Administration, there are 40 new immigration detention centers that hold over 50,000 detainees.<sup>180</sup> The Trump Administration reopened immigration detention facilities that were previously closed due to poor conditions.<sup>181</sup> This is paid through the \$4.1 billion fund that the Trump Administration requires in taxes.<sup>182</sup> Additionally, these new detention facilities are located farther away from medical facilities and legal services.<sup>183</sup> This makes it more difficult for immigrant detainees to receive adequate medical care and legal assistance. Release of detainees is unlikely at new immigration detention centers as “judges denied bond in custody hearings at higher than national average [rates].”<sup>184</sup>

The Trump Administration’s continued focus on limiting immigration despite the COVID-19 pandemic is exemplified through various presidential proclamations. For example, in November 2018, President Trump issued a proclamation that suspended entry of immigrants crossing between the United States and Mexico.<sup>185</sup> Similarly, President Trump recently issued a proclamation

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<sup>179</sup> *Id.*

<sup>180</sup> Eunice Hyunhye Cho et al., *Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration*, AM. CIV. LIBERTIES UNION (Apr. 30, 2020), [https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2020-04/Justice-Free%20Zones\\_Immigrant\\_Detention\\_Report\\_ACLU-HRW-NIJC\\_April-2020.pdf](https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2020-04/Justice-Free%20Zones_Immigrant_Detention_Report_ACLU-HRW-NIJC_April-2020.pdf).

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> Proclamation No. 25117, 83 Fed. Reg. 57,661 (Nov. 15, 2018).

that suspends all immigrants from entering the United States.<sup>186</sup> The proclamation became effective on April 23, 2020 and is justified by opening up jobs for American citizens.<sup>187</sup> However, immigrants with beneficial health care skills or whose entry is in the “national interest” are exempt from this proclamation.<sup>188</sup> President Trump later expanded this proclamation to ban green cards and suspend visas for certain employees.<sup>189</sup>

#### 4. Case Law

Despite the Trump Administration’s anti-immigration efforts, immigrant detainees have gained some protections through case law. In *Garza v. Hargan*, a juvenile immigrant sought an abortion in the United States while in federal custody.<sup>190</sup> The federal court held that the juvenile deportee must be allowed to obtain the elective medical procedure of an abortion before being deported back to her country of origin.<sup>191</sup> Specifically, the court found that regardless of her immigration status, the juvenile deportee had a right to immediate medical services.<sup>192</sup> Although this case involves controversy over the rights of juvenile immigrants in federal custody, it can be paralleled to the current situation in all

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<sup>186</sup> Proclamation No. 10014, 85 Fed. Reg. 23,441 (Apr. 22, 2020).

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> Lila Seidman, *How Trump’s Coronavirus Immigration Orders Affect Visas and Green Cards*, L.A. TIMES (July 23, 2020), <https://www.latimes.com/politics/story/2020-07-23/trump-covid-immigration-orders-h1b-visas-green-cards>.

<sup>190</sup> *Garza v. Hargan*, 874 F. 3d 735 (D.C. Cir. 2017).

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

immigration detention facilities where detainees lack access to immediate COVID-19 health services.

While COVID-19 isolates many immigrant detainees from the outside world, the recent holding in *Miranda v. Barr* helps immigrant detainees advocate for their release. In *Miranda v. Barr*, an immigrant detainee alleged Fifth Amendment violations when immigration proceedings occurred without legal representation, translators, or reasoning for detention.<sup>193</sup> The court held that immigrant detainees must receive fair bond hearings.<sup>194</sup> The court also placed the burden of justifying detention on the government.<sup>195</sup> To ensure fair hearings, immigration judges must align bond amounts and forms of release with detainees' financial situation.<sup>196</sup> This ruling represents a step toward protecting immigrant detainees against unjustified or unnecessary detention during the COVID-19 pandemic.

Currently, in *Gayle v. Meade*, a class-action lawsuit of 1,400 detainees claim that ICE unconstitutionally risks the lives of detainees by failing to address COVID-19 concerns or practice safe detention standards.<sup>197</sup> Specifically, the

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<sup>193</sup> *Federal Court Rules Trump Administration Must Provide Fair Hearings for Immigrants*, AM. CIV. LIBERTIES UNION (May 29, 2020), <https://www.aclu.org/press-releases/federal-court-rules-trump-administration-must-provide-fair-hearings-immigrants>.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> Porter Wells, *ICE Detainees Win Class Status for Covid-19 Confinement Suit*, AM. FOR IMMIGRANT JUST., <https://aijustice.org/2020/06/08/ice-detainees-win-class-status-for-covid-19-confinement-suit/> (last visited July 24, 2020).

detainees assert that “despite the court’s previous orders, they’re being housed in ‘pods’ of 20 to 60 individuals and...[are not]... separated based on positive Covid-19 test results or if they appear symptomatic.”<sup>198</sup> Upon finding that ICE failed to maintain humane detention conditions in light of COVID-19, the federal court granted a preliminary injunction to force ICE to abide by CDC guidelines by disinfecting spaces, allowing unlimited access to soaps, and providing all persons with masks.<sup>199</sup> The federal judge also ordered ICE to submit weekly reports and appointed an investigation of ICE’s detention conditions.<sup>200</sup>

## **LEGAL ANALYSIS**

### **A. United States Compared Internationally**

The United States’ response to COVID-19 in immigration detention centers demonstrates deficient immigration laws that disregard the international human right to health. Similar to Australia, the United States’ immigration laws do not guarantee COVID-19 health care access for immigrant detainees and deportees. This creates an unsafe environment for immigrant detainees whose freedoms are already limited in detention centers. Additionally, the United States’ deportations of detainees without first providing COVID-19 health care is a violation of human rights law. The Commissioner for Human Rights explains that “returns can only be

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<sup>198</sup> *Id.*

<sup>199</sup> *Gayle v. Meade*, No. 20-21553-CIV (S.D. Fla. June 6, 2020).

<sup>200</sup> *Id.*

lawful as long as it is feasible that returns can indeed take place.”<sup>201</sup> Yet, the United States continues to deport immigrants even though deportees may not be retained by the receiving country.

Restrictions on the availability of health care harm not only immigrant detainees and deportees, but all human beings. An individual’s quality of life deteriorates when their physical wellbeing and mental health are neglected.<sup>202</sup> Health care is necessary to prevent disease, maintain health, and prevent unnecessary death.<sup>203</sup> Without health care access, immigrant detainees are unable to protect themselves from the various diseases and illnesses that may present themselves in congregate settings. Therefore, countries that fail to provide health care access to immigrant detainees contribute to their lesser quality of life during and after detention.

The United States normalizes lesser treatment of a vulnerable population when immigrant detainees are denied health care. This creates a divisive society where citizens are encouraged to discriminate against immigrants. However, most detainees are not responsible for violent crimes but are instead fleeing tragic conditions in their country of origin. It is inhumane to force immigrant detainees

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<sup>201</sup> Comm’r for Hum. Rts., *Commissioner Calls for Release of Immigration Detainees while Covid-19 Crisis Continues*, COUNCIL OF EUR. (Mar. 26, 2020), <https://www.coe.int/en/web/commissioner/-/commissioner-calls-for-release-of-immigration-detainees-while-covid-19-crisis-continues>.

<sup>202</sup> *Access to Health Services*, OFF. OF DISEASE PREVENTION AND HEALTH PROMOTION, <https://www.healthypeople.gov/2020/topics-objectives/topic/Access-to-Health-Services> (last visited Aug. 2, 2020).

<sup>203</sup> *Id.*

into congregate settings where COVID-19 is likely to spread, especially when their release would not pose a public safety risk. The needless detention of immigrants and limitations on access to COVID-19 preventative resources are direct violations of the international human right to health as encompassed in the human right to life.

Countries throughout the world, like Portugal and Canada, support the international recognition of the right to life and health. For example, in Canada, federal courts recognize that the fundamental right to health care means that immigrants cannot be deported during the COVID-19 pandemic.<sup>204</sup> Meanwhile, other countries have released immigrant detainees due to coronavirus concerns.<sup>205</sup> When immigrant detainees and deportees are forced to endure congested living conditions that lack adequate accessibility to health services, they become particularly vulnerable to contracting COVID-19 which deprives them of the right to life and health. The United States should join Portugal's and Canada's movement toward protecting immigrant detainees' right to health and life, thereby forming a society that respects all human beings' health choices.

### 1. Portuguese Law

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<sup>204</sup> Canadian Council for Refugees, *Federal Court of Canada Decision Confirms that Sending Refugee Claimants Back to the U.S. Breaks Canadian Law*, YUBANET (July 22, 2020), <https://yubanet.com/world/federal-court-of-canada-decision-confirms-that-sending-refugee-claimants-back-to-the-u-s-breaks-canadian-law/>.

<sup>205</sup> Comm'r for Hum. Rts., *supra* note 201.

Unlike the United States, Portugal’s immigration laws guarantee immigrant detainees the right to health by incorporating it into the Portuguese Constitution.<sup>206</sup> Portugal’s laws emphasize the importance of access to health care in safeguarding all human beings’ lives. This is exemplified by the inability of healthcare providers to discriminate against immigrants. By affirming access to health care for every individual, Portugal preserves immigrants’ control over their health. This means immigrant detainees, who often lack financial resources, are permitted to receive medical services to combat the COVID-19 pandemic.

In response to COVID-19, Portugal reaffirmed its established right to health care by allowing all immigrants to obtain health care access. Immigrants detained in Portugal only need to prove they have an ongoing request to legally enter Portugal.<sup>207</sup> Once this proof is provided, immigrant detainees “will be treated as permanent residents...until at least July 1.”<sup>208</sup> This provides immigrants with “public services such as national health service, welfare benefits, bank accounts, and work and rental contracts” during the COVID-19 pandemic. These health care benefits ensure the respect of immigrant lives and reinforce the humane treatment of detainees in Portugal. Therefore, immigrant detainees receive the vital health

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<sup>206</sup> Constituição da República Portuguesa [C.R.P.], English translation available at <https://dre.pt/part-i>.

<sup>207</sup> *Portugal to Treat Migrants as Residents during Coronavirus Crisis*, REUTERS, Mar. 28, 2020, <https://www.reuters.com/article/us-health-coronavirus-portugal/portugal-to-treat-migrants-as-residents-during-coronavirus-crisis-idUSKBN21F0N7>.

<sup>208</sup> *Id.*

care they inherently deserve as acknowledged by the international human rights to health and life.

## 2. Canadian Law

While Canada and the United States normally share similar immigration policies,<sup>209</sup> Canada recently altered its immigration laws to help ease the serious threat of COVID-19 on the immigrant detainee population. Specifically, Canada released about half of the immigrant population held in its detention facilities.<sup>210</sup> This shows that Canada prioritizes the wellbeing of immigrant detainees over other immigration issues, unlike in the United States where the Trump Administration has increased the immigration detention system.

Additionally, a federal court invalidated the Safe Third Country Agreement (STCA) which prevented immigrants from seeking asylum at Canada's borders if the immigrants initially traveled through the United States.<sup>211</sup> The court ruled that STCA violates Canada's Charter of Rights by unjustly interfering with life, liberty, and security.<sup>212</sup> The court explained that requiring immigrants to apply for asylum

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<sup>209</sup> Tony Keller, *Canada Has Its Own Ways of Keeping Out Unwanted Immigrants*, ATLANTIC (July 12, 2018), <https://www.theatlantic.com/ideas/archive/2018/07/canada-immigration-success/564944/>.

<sup>210</sup> Rachel Browne, *Canada is Releasing Immigration Detainees at Unprecedented Rates Amid COVID-19 Fears*, GLOB. NEWS (Apr. 25, 2020), <https://globalnews.ca/news/6861756/canada-releasing-immigration-detainees-coronavirus-covid-19/>.

<sup>211</sup> *Canada-U.S. Safe Third Country Agreement*, GOV'T OF CAN., <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/safe-third-country-agreement.html> (last visited Aug. 14, 2020).

<sup>212</sup> Steve Scherer & Moira Warburton, *Canada Court Rules 'Safe Third Country' Pact with U.S. Invalid, Cites Detention Risk*, REUTERS, July 22, 2020, <https://www.reuters.com/article/us-canada-refugee-safethird/canada-court-rules-safe-third-country-pact-with-u-s-invalid-cites-detention-risk-idUSKCN24N2B2>.

in the United States constitutes a violation of human rights because of the poor conditions of United States immigration detention centers during COVID-19 and under the Trump Administration.<sup>213</sup> This indicates that other countries, like Canada, disapprove of the inhumane conditions of ICE detention facilities in the United States, especially during the COVID-19 pandemic. The fact that the United States gets international recognition for its poor treatment of immigrants shows the urgent need for reform of United States detention policies.

### 3. Australian Law

Similar to the United States, Australia's immigration laws treat immigrant detainees as inferior beings and ignore fundamental human rights. Undocumented immigrants who do not have a valid visa are detained until they are granted a visa or leave the country.<sup>214</sup> In 2019, immigrant detainees were held for about 500 days on average.<sup>215</sup> The Australian Minister has sole discretion in releasing detainees which increases the number of detainees held in immigration detention centers.<sup>216</sup> Furthermore, like the United States, Australia continues to deport immigrants during the COVID-19 pandemic which risks spreading COVID-19 to other

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<sup>213</sup> *Id.*

<sup>214</sup> *Australia's Detention Policies*, REFUGEE COUNCIL OF AUSTRALIA (May 20, 2020), <https://www.refugeecouncil.org.au/detention-policies/>.

<sup>215</sup> *Risk Management in Immigration Detention*, AUSTRALIAN HUM. RTS. COMM'N (June 18, 2019), <https://humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/risk-management-immigration-detention-2019>.

<sup>216</sup> *Id.*

detention facilities.<sup>217</sup> This indicates that Australia, like the United States, does not recognize the significance of all human lives but treats immigrant detainees like caged animals by taking away their freedom to maintain their health through access to necessary COVID-19 treatment. The deportation and indefinite detention of immigrant detainees, especially during the COVID-19 pandemic, violates the international human rights to health and life by forcing detainees into harsh environments where they lack sufficient health care access.

Like the United States, Australian detention facilities are at an increased risk for spreading COVID-19 due to their overcrowded conditions that complicate sanitation and quarantines.<sup>218</sup> There is no requirement that immigration detention centers mandate social distancing.<sup>219</sup> Also, according to the Australian Ombudsman, there is a lack of monitoring of immigration detention centers' compliance with health services.<sup>220</sup> Recently, an immigrant detainee died while held in the Melbourne immigration detention facility despite a court's recognition

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<sup>217</sup> Eleanor Ainge Roy & Hannah Ryan, *Australia Resumes Deportations from Melbourne to New Zealand Despite Coronavirus*, GUARDIAN (July 12, 2020), <https://www.theguardian.com/world/2020/jul/13/new-zealand-minister-unhappy-at-australia-resuming-deportations-during-coronavirus>.

<sup>218</sup> *Commission Concerned for Detainees During COVID*, AUSTL. HUM. RTS. COMM'N (July 16, 2020), <https://humanrights.gov.au/about/news/media-releases/commission-concerned-detainees-during-covid>.

<sup>219</sup> *Id.*

<sup>220</sup> *Statement by the Commonwealth Ombudsman Michael Manthorpe on the Management of COVID-19 Risks in Immigration Detention Facilities*, COMMONWEALTH OMBUDSMAN (July 1, 2020), [https://www.ombudsman.gov.au/\\_\\_data/assets/pdf\\_file/0013/111235/1-July-2020-Statement-by-the-Commonwealth-Ombudsman-Michael-Manthorpe-on-the-management-of-COVID-19-risks-in-immigration-detention-facilities.pdf](https://www.ombudsman.gov.au/__data/assets/pdf_file/0013/111235/1-July-2020-Statement-by-the-Commonwealth-Ombudsman-Michael-Manthorpe-on-the-management-of-COVID-19-risks-in-immigration-detention-facilities.pdf).

that his poor health created a greater risk that he would contract COVID-19.<sup>221</sup> Yet Australian officials still plan on reopening the Christmas Island detention facility to house detainees with criminal offenses.<sup>222</sup> This shows that Australia's immigration laws disregard the international human right to health by failing to guarantee protection for immigrant detainees against COVID-19.

### B. Current United States Laws, Policies and Attitudes

The United States' immigration laws and policies neglect immigrant detainees' entitlement to internationally recognized human rights. However, the Pew Research Center reports that the majority of United States citizens support the federal government providing medical care to undocumented immigrants who contract the coronavirus.<sup>223</sup> Also, "a majority of Americans (61%) say it is primarily the federal government's responsibility to make sure there are enough COVID-19 tests in order to safely lift the restrictions."<sup>224</sup> This is further exemplified by the skywriting of various artists who displayed "phrases like 'Care Not Cages,' 'Unseen Mothers,' and 'Nosotras Te Vemos (We See You)' [which

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<sup>221</sup> Michael McGowan, *New Zealand Man Dies While Detained in Melbourne Immigration Detention Centre*, GUARDIAN (Aug. 10, 2020), <https://www.theguardian.com/australia-news/2020/aug/10/new-zealand-man-dies-while-detained-in-melbourne-immigration-detention-centre>.

<sup>222</sup> Hannah Ryan, *Australian Government to Reopen Christmas Island Detention Centre During Covid-19 Crisis*, GUARDIAN (Aug. 5, 2020), <https://www.theguardian.com/australia-news/2020/aug/04/australian-government-to-reopen-christmas-island-detention-centre-during-covid-19-crisis>.

<sup>223</sup> Jens Manuel Krogstad & Mark Hugo Lopez, *Americans Favor Medical Care but Not Economic Aid for Undocumented Immigrants Affected by COVID-19*, PEW RES. CTR. (May 20, 2020), <https://www.pewresearch.org/fact-tank/2020/05/20/americans-favor-medical-care-but-not-economic-aid-for-undocumented-immigrants-affected-by-covid-19/>.

<sup>224</sup> *Most Americans Say Federal Government Has Primary Responsibility for COVID-19 Testing*, PEW RES. CTR. (May 12, 2020), <https://www.pewresearch.org/politics/2020/05/12/most-americans-say-federal-government-has-primary-responsibility-for-covid-19-testing/>.

hovered] above 80 [immigration-related locations].”<sup>225</sup> This means that immigration law functions without the support of the American people who recognize the importance of providing health care for immigrants. These positive attitudes toward health care for immigrants is likely linked to the United States’ history as a nation of immigrants.

The Immigration and Nationality Act (INA) and the Public Health Service Act (PHSA) fail to confer rights to immigrant detainees that respect the fundamental right to health. Not only do these laws only permissively provide health care to detainees, but they give discretion to detention officers to determine need for health services.<sup>226</sup> The permissive language of “*may*” does little to provide immigrant detainees with the guarantees of medical care and testing during the COVID-19 pandemic. This makes immigrant detainees passive recipients of their medical care choices and overall health which contravenes the United Nations’ definition of the right to health care. The right to health care is vital at all times, but especially during the COVID-19 pandemic. Therefore, it is imperative that the United States prioritizes the safety of every human being and especially vulnerable populations like immigrant detainees who are confined in ICE facilities.

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<sup>225</sup> Zachary Small, *Protesting U.S. Immigration Policies, Artists Aim for the Sky*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/2020/07/03/arts/design/july-4-skytyping-skywriting-immigration.html?searchResultPosition=2>.

<sup>226</sup> 8 U.S.C. §1231 (2018); 42 U.S.C. § 249 (2018).

The INA and PHSA should not be failing to provide basic access to health care for immigrant detainees. However, the Trump Administration’s influence over the Attorney General and ICE significantly effects the detention center system. The Trump Administration’s anti-immigrant agenda focuses on “securing borders” and deporting immigrants rather than ensuring their safety within detention centers.<sup>227</sup> In fact, the current standards, policies, and practices of ICE do not incorporate all CDC guidelines,<sup>228</sup> which places immigrant detainees at a greater risk of contracting COVID-19. Despite the growing number of positive COVID-19 cases that surge through immigration detention centers, ICE continues to unnecessarily expose immigrant detainees to the coronavirus through employees, other inmates, and lack of space.<sup>229</sup> This lack of respect for immigrant detainees’ lives must not be tolerated, especially by ICE employees who are entrusted with protecting detainees.

It is unethical to allow detainees with symptoms like body aches and headaches to wait weeks to see doctors.<sup>230</sup> Such inaction has left immigrant detainees with the belief that “you are either a survivor or you die of COVID-

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<sup>227</sup> *The Trump Administration’s Immigration Agenda Protects American Workers, Taxpayers, and Sovereignty*, WHITE HOUSE (Feb. 4, 2020), <https://www.whitehouse.gov/briefings-statements/trump-administrations-immigration-agenda-protects-american-workers-taxpayers-sovereignty/>.

<sup>228</sup> *COVID-19 Pandemic Response Requirements*, U.S. IMMIGR. AND CUSTOMS ENFORCEMENT (July 28, 2020), <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>.

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

19.”<sup>231</sup> This is dehumanizing for immigrant detainees and deportees who must constantly worry about surviving. Immigrants should not be treated as less-than simply because they are from a different part of the world. While ICE created a working group to “identify additional enhanced steps to minimize the spread of the virus,”<sup>232</sup> this working group must establish strong changes in order to address the needs of immigrants that are currently and recklessly unmet.

### 1. Proposed Legislation

The proposed legislation advocating for access to health information and medical services are important in guaranteeing that immigrant detainees’ lives are not forgotten amid the COVID-19 pandemic. The CIFP Act, FIRST Act, PANDEMIC Act, and CIRR Act demonstrate that many leaders in the United States Congress recognize the need to address the vulnerable population of immigrant detainees during the COVID-19 pandemic. However, the fact that all of the current proposed legislation regarding protection for immigrants against COVID-19 has stalled in Congress reflects the United States’ unwillingness to protect immigrants, even during a global pandemic that threatens everyone.

There is currently a disconnect between the United States citizens and the Trump Administration in addressing the lives of immigrants. The CIFP Act and

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<sup>231</sup> *Id.*

<sup>232</sup> *What Has ICE Done to Protect Detainees in ICE Custody?*, U.S. IMMIGR. AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/coronavirus> (last updated May 4, 2020).

FIRST Act recognize that immigrant detainees should be released from detention facilities at least until social distancing requirements are met. Furthermore, the CIFP Act and CIRR Act protect other communities around the world from the spread of COVID-19 by preventing unnecessary deportations and requiring COVID-19 testing before deportation. This aligns with both the view of a majority of the United States' citizens as well as the international human right to health. Meanwhile, the PANDEMIC Act recognizes the need for decreasing the detainee population through expedited deportations. This aligns with the Trump Administration's focus on removing detainees without providing medical care for deportees.

While these proposed bills are still in the early stages, if passed, three out of the four bills would represent the United States Citizens' desire to aid immigrant detainees, while one bill would follow the Trump Administration's failure to recognize the human right to health. Still, all the proposed legislation does not affirm the fundamental human right to health care. Even if these proposed bills were passed in both the Senate and the House, the President has a veto power of the bill.<sup>233</sup> Still, the U.S. Congress may override the veto with a two-thirds vote which would allow the bill to become law.<sup>234</sup>

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<sup>233</sup> *The Legislative Branch*, WHITE HOUSE, <https://www.whitehouse.gov/about-the-white-house/the-legislative-branch/> (last visited Aug. 9, 2020).

<sup>234</sup> *Id.*

## 2. Trump Administration

The Trump Administration's actions are endangering the lives of deportees, detainees, and all people in other countries.<sup>235</sup> According to the Pew Research Center, there have been "337,287 removals of unauthorized immigrants, a 17% increase from the previous year."<sup>236</sup> The Trump Administration's increase in deportations is particularly dangerous during the COVID-19 pandemic because various countries report that detainees arrive already infected with COVID-19.<sup>237</sup> Further, other immigrant detainees may be exposed to COVID-19 when deportees are transferred between facilities. Therefore, President Trump's "shut-the-border mentality" is causing the spread of COVID-19 to other countries despite the "United States having the largest number of coronavirus cases in the world."<sup>238</sup>

According to the Pew Research Center, "The number of interior arrests made by ICE ... rose 30% in fiscal 2017 after Trump signed an executive order giving the agency broader authority to detain unauthorized immigrants, including those without criminal records."<sup>239</sup> This shows that the immigrant detainees held in ICE detention centers are often those who are nonviolent and do not have criminal

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<sup>235</sup> *Why is the United States Exporting Coronavirus?*, N.Y. TIMES (June 18, 2020), <https://www.nytimes.com/2020/06/18/opinion/trump-immigration-covid19-deportations.html>.

<sup>236</sup> John Gramlich, *How Border Apprehensions, ICE Arrests, and Deportations Have Changed Under Trump*, PEW RES. CTR. (Mar. 2, 2020), <https://www.pewresearch.org/fact-tank/2020/03/02/how-border-apprehensions-ice-arrests-and-deportations-have-changed-under-trump/>.

<sup>237</sup> *Why is the United States Exporting Coronavirus?*, *supra* note 235.

<sup>238</sup> *Id.*

<sup>239</sup> Gramlich, *supra* note 236.

records. Instead, immigrant detainees are often seeking refuge from other issues in their country of origin like violence, lack of resources, or discrimination.

Immigrant detainees do not deserve to be treated worse than inmates who recently were released into the community despite their criminal background. Yet these immigrant detainees are forced into greater danger when the United States detains immigrants without access to health care or regard to safer alternatives. Therefore, if the United States hopes to uphold its reputation for defending freedoms, then the United States must protect immigrant detainees' human rights to health and life.

Still, some citizens share President Trump's concern that affording resources to immigrant detainees will take away limited resources from United States citizens. However, not providing immigrant detainees with COVID-19 prevention and treatment could still affect the communities surrounding detention centers as ICE employees work in these high-risk, congregate settings. ICE employees who become exposed to the coronavirus while working in detention centers can then spread COVID-19 to the community. This means that President Trump cannot simply choose when and where to assert efforts to prevent the spread of COVID-19 as this highly contagious disease does not discriminate based on immigration status.

The Trump Administration's disregard for international human rights negatively impacts immigrant populations during the COVID-19 pandemic. The

Trump Administration's continued use of executive proclamations exemplifies an attack on immigrants and use of the COVID-19 pandemic to swiftly deport immigrants as promised in his presidential agenda. President Trump justified the proclamation via Twitter, "In light of the attack from the Invisible Enemy, as well as the need to protect the jobs of our GREAT American Citizens, I will...temporarily suspend immigration into the United States."<sup>240</sup> In his own words, President Trump is using the pandemic to accomplish the immigration policies he initially ran on during the election.<sup>241</sup> President Trump is disregarding the public health concerns involved with immigration in order to address an unfounded fear of job loss for Americans.<sup>242</sup>

ICE detention facilities, under the Trump Administration, also disregard immigrant detainees as COVID-19 continues to rampage through detention centers. This is exemplified in ICE's rollback of alignment with national detention standards which shows immigrant care is no longer ICE's priority under the Trump Administration.<sup>243</sup> Further, ICE's continued detention of new immigrant detainees creates a greater risk that detainees will contract COVID-19 by forcing them into a

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<sup>240</sup> Donald J. Trump (@realDonaldTrump), TWITTER (Apr. 20, 2020, 7:06 PM), <https://twitter.com/realdonaldtrump/status/1252418369170501639?lang=en>.

<sup>241</sup> Deborah Amos, *U.S. Immigration Crackdowns Not Unusual During Times of Crisis*, NAT'L PUB. RADIO (June 21, 2020), <https://www.npr.org/2020/06/21/881358609/u-s-immigration-crackdowns-not-unusual-during-times-of-crisis>.

<sup>242</sup> *Id.*

<sup>243</sup> Cho, *supra* note 177.

congested environment.<sup>244</sup> Yet detention centers still lack the appropriate accessibility to health care for immigrant detainees which means ICE employees are failing to perform their job in taking care of immigrant detainees and deportees.<sup>245</sup> ICE detention centers' failures during the COVID-19 pandemic under the Trump Administration likely contribute to the public's disapproval of President Trump's response to the COVID-19 outbreak. In fact, the "majority of Americans say Donald Trump is doing an only fair (17%) or poor job (42%) responding to the COVID-19 outbreak."<sup>246</sup> In order to represent the public, align with international law, and protect the vulnerable population of immigrant detainees during the COVID-19 pandemic, the Trump Administration must end its discrimination against immigrants.

### 3. Case Law

The United States should align its immigration laws and policies with the holding in *Garza v. Hargan*. Specifically, the United States needs to codify the fundamental human right to health in order to establish health care access for all people within the United States. Codification of the right to health would guarantee all individuals access to health care in the United States which is a basic necessity

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<sup>244</sup> Rachko, *supra* note 35.

<sup>245</sup> *Detained and Denied: Healthcare Access in Immigration Detention*, *supra* note 16.

<sup>246</sup> *Most Americans Say Federal Government Has Primary Responsibility for COVID-19 Testing*, *supra* note 224.

in order to live a quality life. This would also allow the United States to align its treatment of immigrant detainees and deportees with international law.

Furthermore, the inconsistencies in healthcare treatment for immigrant detainees must be corrected and solidified into a clear set of regulations. This means that if a juvenile immigrant detainee has a right to an elective medical procedure, then all immigrant detainees should have an absolute right to necessary health services during a global pandemic. This requires, that at a minimum, there be a right for detainees to obtain testing and treatment for serious illness, such as COVID-19, while detained, and the same for deportees prior to deportation. Codification of the human right to health would create a consistent standard of health for all persons, including immigrant detainees, that respects the inherent dignity of human beings.

The fair hearings required under *Miranda v. Barr* protect immigrant detainees from unlawful or needless detention. By placing the burden on the government to justify detention at bond hearings, ICE employees are barred from needlessly or discriminatorily detaining immigrant detainees. This is extremely important during the COVID-19 pandemic because the poor conditions of immigration detention centers increase the likelihood of contracting the coronavirus. Therefore, the federal government must abide by the *Miranda v. Barr*

ruling in order to respect immigrant detainees' human rights to life and health by justifying detention during a global pandemic.

In *Gayle v. Meade*, the court's recent class certification and acknowledgement of poor conditions in immigration detention centers during COVID-19 moves the United States toward aligning its immigration laws with international law. The ruling already pushes ICE employees to prove that immigrant detainees are being properly cared for during the COVID-19 pandemic. Still, the court needs to do more than just require weekly reports and compliance with the CDC guidelines. There needs to be an order guaranteeing that immigrant detainees have the fundamental right to health. This would help protect immigrant detainees against COVID-19 while establishing a precedent for health care that remains consistent for all detained populations. Guaranteeing access to health is critical for immigrant detainees as they are deprived of their freedom and often have little means to address various health issues in detention. The federal courts need to protect detainees when they are unable to do so through a court ruling that sets this consistent precedent for health care.

### **PROPOSED SOLUTION**

Doctors have identified a possible solution to the rapid spread of COVID-19 in places like detention centers. Paralleling to prisons, doctors have advocated for the process of reducing the inmate population by "identifying people detained for

minor crimes or vulnerable to severe infection” with “low-flight-risk immigrants.” They argue that such low-risk immigrants should be released from detention centers due to the threat of COVID-19 in highly populated areas.<sup>247</sup> Meanwhile, other authors call for CDC guidance for operating detention centers during the COVID-19 pandemic and argue that “States have an obligation to ensure medical care for prisoners at least equivalent to that available to the general population.”<sup>248</sup>

Many individuals throughout the United States are outraged by the incarceration of immigrants during the COVID-19 pandemic. With more than 140,000 deaths caused by the coronavirus and more than 3.7 million people contracting the coronavirus, United States citizens have called for “the abolition and the release of [immigrant detainees].”<sup>249</sup> Protestors gathered outside the ICE detention facility in Aurora, Colorado, shot off fireworks, and participated in caravans for 50 days in order to express their disapproval of detaining immigrants.<sup>250</sup> The United States’ societal desire to protect immigrant detainees through major changes to immigration law and health law is further evidenced by

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<sup>247</sup> Kathleen R. Page et al., *Undocumented U.S. Immigrants and COVID-19*, NEW ENG. J. OF MED. (Mar. 27, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMp2005953>.

<sup>248</sup> Joseph J. Amon, *COVID-19 and Detention: Respecting Human Rights*, HEALTH AND HUM. RTS. J. (Mar. 23, 2020), <https://www.hhrjournal.org/2020/03/covid-19-and-detention-respecting-human-rights/>.

<sup>249</sup> Jasmine Aguilera, *The Objective is to Save Lives. Inside the Effort to Get ICE Detainees Released During the Coronavirus Pandemic*, TIME (July 20, 2020), <https://time.com/5864170/covid-ice-detention-activists/>.

<sup>250</sup> *Id.*

the lawsuits, petitions, and protests against other detention centers and the federal government.<sup>251</sup>

#### A. Release Immigrant Detainees

The optimal solution to address the contagious coronavirus while protecting the vulnerable community of immigrant detainees is to release detainees. This means not separating children from their parents but allowing the whole family to be released in order to safely protect themselves from the coronavirus. To keep track of released immigrants, ICE officials could set up a “check-in” program or even require ankle monitors as a condition of release. In fact, immigrant detainees have previously been released under similar conditions as “Issis Zavala of Honduras... was released with an ankle bracelet [due to] a 2007 bout of tuberculosis [that] made her vulnerable to COVID-19.”<sup>252</sup> While ankle monitors can be considered dehumanizing, this alternative to detention protects immigrant detainees from congested detention facilities during the COVID-19 pandemic.

However, according to the United Nations Network on Migration, release from immigration detention centers “should never result in situations of homelessness or destitution and should never lead to immediate deportation without due process.”<sup>253</sup> This means that immigrant detainees should be able to be

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<sup>251</sup> *Id.*

<sup>252</sup> *How the Coronavirus Spread Through One Immigration Facility*, *supra* note 10.

<sup>253</sup> *COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do*, *supra* note 24.

released to family, friends, or volunteers once verified by ICE employees.

Regardless of where the detainees are released, they must have continuous access to essential services [like] health care, adequate housing, food, water and sanitation.<sup>254</sup>

Furthermore, ICE funds should be allocated to alternative living situations for immigrant detainees in order to allow for social distancing and safety. Already, a federal judge prevented the construction of a private company to operate and build an immigration detention center in McFarland, California.<sup>255</sup> Instead of creating more high-risk, congregate settings, the United States should focus its efforts and funds in rethinking the way immigrant detainees are treated and housed to ensure more humane conditions that are conducive with the international human right to health.

#### B. Limit Deportations and Transfers

Deportations should be limited during global pandemics so that deportations only take place under rare and strict circumstances. Such strict circumstances indicating the need for deportation include violence, terrorism, or serious criminal offenses. This aligns with the CDC guidelines on transporting detainees, which is to “limit transfers of incarcerated/detained persons to and from other jurisdictions

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<sup>254</sup> *Id.*

<sup>255</sup> Yesenia Amaro, *Judge Halts New Immigration Detention Center in the San Joaquin Valley – for now*, FRESNO BEE (July 14, 2020), <https://www.fresnobee.com/news/local/article244222217.html>.

and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, release, or to prevent overcrowding.”<sup>256</sup> This will protect people in other countries in addition to the health of immigrants and the health of United States citizens.

Restricting deportations is important as “forced returns can intensify serious public health risks for everyone – migrants, public officials, health workers, social workers and both host and origin communities.”<sup>257</sup> Deportations during the COVID-19 pandemic can create added strain for countries’ health care systems and communities which may lack in capacity or resources.<sup>258</sup> Therefore, some countries may not be able to test or quarantine deportees on arrival which poses a risk to spreading the coronavirus.<sup>259</sup> This is especially true as transfers and deportations create extra risks “such as lack of access to adequate health care, poor water and sanitation systems, halted ground transportation, additional restrictions on movement and violent discrimination and stigma in communities of return.”<sup>260</sup> Lastly, the situation that immigrant detainees and deportees return to if forcefully removed could result in “displacement, trafficking in persons, and extreme financial hardship with increases to already high levels of unemployment due to

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<sup>256</sup> *Coronavirus Disease 2019 (COVID-19): Guidance for Correctional & Detention Facilities*, *supra* note 170.

<sup>257</sup> *UN Network on Migration Official Statement: Forced Returns of Migrants Must be Suspended in Times of COVID-19*, U.N. NETWORK ON MIGRATION (May 13, 2020), <https://migrationnetwork.un.org/un-network-migration-official-statement-forced-returns-migrants-must-be-suspended-times-covid-19>.

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

COVID-19.”<sup>261</sup> Since many countries have “locked-down” travel, it is difficult for deportees to actually reach their country of origin in order to properly shelter.<sup>262</sup>

Deportations are not safe despite “rapid tests” used by ICE because traveling between highly populated detention facilities exposes detainees to more opportunities to contract COVID-19.<sup>263</sup> Many ICE facilities’ failure to adequately separate infected and non-infected detainees make it more likely that deportees contract the coronavirus between testing.<sup>264</sup> Additionally, antibody tests cannot guarantee the safety of deportations as false positives can result and there is no current evidence that once a person is previously infected with COVID-19 that they are then immune from reinfection.<sup>265</sup>

### C. Access to Testing, Healthcare, and Humane Conditions

At a minimum, testing must be available for this vulnerable community in order to stop the spread of the coronavirus and protect immigrants. This means testing and isolation while awaiting results must be mandated for all immigrant detainees before entering the facility. Furthermore, there must be regular testing available for symptomatic detainees and workers. This will help to identify individuals who may need to be quarantined to keep the other detainees safe.

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<sup>261</sup> *Id.*

<sup>262</sup> *Why Testing Does Not Make Deportations Safe During the COVID-19 Pandemic*, PHYSICIANS FOR HUM. RTS. (June 17, 2020), <https://phr.org/our-work/resources/why-testing-does-not-make-deportations-safe-during-the-covid-19-pandemic/>.

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

Lastly, there must be testing for immigrant detainees before being deported to their country of origin. Antibody testing can also aid in identifying those who have been infected in order to understand who can safely work in immigration detention centers.<sup>266</sup>

While awaiting to be tested or receive test results, immigrant detainees must be isolated to prevent the spread of COVID-19. This means ICE detention facilities must be equipped with designated isolation zones. Detainees in isolation must not be commingled with others who have already tested positive or are still awaiting test results. Isolation means that individuals should be provided with their own area to be away from others.

Humane conditions and access to health care are also necessary to mitigate the devastating repercussions of the COVID-19 pandemic. This means immigrant detainees should have constant access to basic sanitary resources such as soap, fresh water, sanitizer, and disinfectant. Additionally, detention facilities should allow families to shelter together and away from other detainees. The United States would need to allocate extra funding that would enable immigration facilities to accommodate social distancing and follow all of the CDC guidelines. This is consistent with human rights law as the United States would be recognizing the

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<sup>266</sup> Eduardo Sanchez, *COVID-19 Science: Why Testing is So Important*, AM. HEART ASS'N (Apr. 2, 2020), <https://www.heart.org/en/news/2020/04/02/covid-19-science-why-testing-is-so-important>.

rights of immigrant detainees while held in federal custody. In order for the United States to uphold the human rights to health and life, immigrant detainees must be afforded medical assistance at request and without hesitation based on immigration status.

#### D. Access to Legal Assistance

Access to legal assistance during the COVID-19 pandemic is essential in order to ensure that immigrant detainees obtain appropriate aid during their detention. This is especially necessary because detention centers temporarily closed visitations since the beginning of the COVID-19 pandemic.<sup>267</sup> In fact, in *Southern Poverty Law Ctr. v. DHS*, a federal judge ruled that ICE must provide properly working communication devices for immigrant detainees to confidentially communicate with their lawyers.<sup>268</sup> This ruling requires ICE to allow immigrant detainees constant access to “teleconferencing, video visitation (e.g., Skype, FaceTime), email, and/or tablets, with extended hours where possible.”<sup>269</sup> Without access to legal assistance, many detainees may be unable to adequately maneuver through the immigration system and demand respect for their rights to health and life.

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<sup>267</sup> *Ice Guidance on COVID-19: Visitation at Detention Facilities*, U.S. IMMIGR. AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/coronavirus> (updated Apr. 2, 2020).

<sup>268</sup> Porter Wells, *DHS Ordered to Expand Remote Legal Access for ICE Detainees*, BLOOMBERG L. (June 18, 2020), <https://news.bloomberglaw.com/coronavirus/dhs-ordered-to-expand-remote-legal-access-for-ice-detainees>.

<sup>269</sup> *Ice Guidance on COVID-19: Visitation at Detention Facilities*, *supra* note 267.

Furthermore, the international rights to health and life will be bolstered by access to legal assistance. Attorneys will be able to help detainees obtain health care access that is currently being denied in ICE detention facilities. Additionally, attorneys will help detainees understand their rights and how they should be treated in detention facilities. This will ensure that their fundamental rights are not being violated. Such legal assistance will also help to monitor whether ICE detention facilities are maintaining humane conditions, testing, and preventative treatment during the COVID-19 pandemic.

## **CONCLUSION**

The conditions in immigration detention centers cannot be tolerated any longer. The grave risks associated with contracting the coronavirus exacerbate the inhumane conditions in detention facilities that scholars have pointed to for years. It is unethical to force immigrant detainees to endure living conditions that leave them unable to access preventative treatment or protect themselves from the life-threatening coronavirus disease. The increasingly dangerous conditions in detention facilities, the United States' inconsistent treatment of detained populations, and greater international recognition of the importance of health care all indicate an urgent need for reform in United States detention centers.

The United States' response to the devastating COVID-19 pandemic inflicts great harm on the country's most vulnerable populations. The fundamental

international human rights to health and life demand that vulnerable populations, like immigrant detainees, not be discriminated against in accessing health care. Instead, the United States federal government has a legal and ethical obligation to protect immigrant detainees and deportees as acknowledged by the international human rights to health and life. Therefore, the United States federal government must act to ensure release of nonviolent immigrant detainees, adequate access to health care, and consistent access to legal representation during the COVID-19 pandemic.