

The Pains and Profits of Immigrant Imprisonment:
Migrant Testimonies from ICE Detention Centers in the El Paso ICE Field Office



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Co-authors:

Margaret Brown Vega, Advocate Visitors with Immigrants in Detention, AVID
Nathan Craig, Advocate Visitors with Immigrants in Detention, AVID
Emily Durkin, New Mexico State University
Neil Harvey, New Mexico State University
Daniela Navarro Verdugo, Cal Poly Pomona
Brennan Ramsey, New Mexico State University
Fernanda Reyes, University of Kansas
Avigail Turima Romo, Columbia University

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Executive Summary

This report examines the experiences and concerns of 33 migrants incarcerated by ICE during the first months of the COVID-19 pandemic: March 13-June 19, 2020. All individuals were imprisoned at detention facilities under the jurisdiction of the El Paso ICE Field Office: Otero County Processing Center (n=24), Torrance County Detention Facility (n=6), and the El Paso Service Processing Center (n=3).

Information about detained migrant experiences was obtained through telephone calls made to an Advocate Visitors with Immigrants in Detention (AVID) volunteer who took notes on those conversations. Detained migrants reached out to express concerns and seek support regarding their situation.

Under the direction of a faculty adviser and in collaboration with AVID coordinators, a team of five student researchers transcribed and coded the volunteer's handwritten notes. Results of this process identified 196 complaints that fell into five key themes of concern:

- 1) Daily micro-aggressions and humiliating treatment (24 complaints by 8 individuals). ICE officials and private contractor staff would shout insults and behave in coercive ways which created a generally hostile environment.
- 2) Denial of reasonable and equitable access to telephone services and legal representation (20 complaints by 11 individuals). Telephones were not in working order, access to tablet computers was highly restricted, ICE was not providing the promised number of free telephone minutes, and there was a lack of privacy during calls.
- 3) Poor quality food, hunger and sickness (25 complaints by 12 individuals). Food was of poor quality, individuals suffered food related illness, portions were limited and people felt hungry; there was inconsistent access to food and hostile eating environments.
- 4) Cruel and inhumane sanitary conditions (34 complaints by 10 individuals). Basic hygiene items were lacking, there was insufficient access to showers, bed sheets and clothes went unchanged, personal grooming supplies were denied, there was disregard for clean spaces, and there was a lack of personal protective face coverings.
- 5) Insufficient protections from COVID-19 (93 complaints by 17 individuals). There was inadequate testing and inappropriate quarantine, individuals experienced medical negligence and there was a widespread inability to engage in social distancing.

Each of the five areas of concern expressed by migrants were evaluated in light of ICE's Performance Based National Detention Standards (PBNDs) and their Pandemic Response Requirements. According to these guiding documents, none of the five frequently expressed areas of concern should have existed because each represents a clear violation of ICE detention policy and procedure. We conclude that ICE detention standards are ineffective, that the use of private detention contractors incentivizes cost cutting, and that these cost cutting efforts

endanger detained persons. Prior attempts to reform ICE detention and improve conditions have failed. The poor conditions and abuses detailed here are chronic, and are made more acute by the pandemic. There is no way to make immigration detention humane, and thus the detention system should be abolished.

“...they are hiding it”, “...it is like double punishment” - phone call from migrant detained in Otero County Processing Center after he was placed in solitary confinement for testing positive for COVID-19

Introduction

Recent news reports of how detained migrants suffer abuse and exposure to COVID-19 in U.S. Immigration and Customs Enforcement (ICE) facilities have caught the public’s attention (Lanard 2020b; 2020a; J. Olivares and Washington 2020; Martyn 2020; Tapper 2020; Swetlitz 2020b; 2020a; Rosenberg, Cooke, and Levinson 2020; Rosenberg 2020; Ackerman 2020; Moore 2020a; 2020b; Brown Vega and Craig 2020). In the last year, ICE reports the highest number of deaths of individuals in their custody since 2005 (Shoichet 2020). Reports of forced-medical procedures (Treisman 2020), pepper spray attacks on peaceful protests (Castillo 2020; Swetlitz 2020b), and punitive use of prolonged solitary confinement (Molina Acosta 2020) are the kinds of egregious abuses that generate periodic public outrage.

While these cases rightly call for justice, accountability, and greater protection of the rights of migrants, we must also consider how such abuses are made possible by a culture of impunity for the daily mistreatment, micro-aggressions and denial of basic care that are present in ICE detention centers. It is one thing to speak of abuse in detention and another to recognize the abuse that is detention (Arrigo and Milovanovic 2009, 10). This paper provides evidence of how seemingly isolated acts of neglect – such as failing to repair telephone service or serving poorly prepared food – add up to a daily routine of abuse. This routine is an expression of “the pains of immigrant imprisonment” (Longazel, Berman, and Fleury-Steiner 2016; Sykes [1958] 1971) which through the abrogation of individual agency, serves to undermine the will of migrants to sustain their efforts to seek relief from deportation and the acquisition of legal immigration status. Whether or not the combination of these acts of abuse are part of a conscious

governmental strategy, they clearly limit the ability of migrants to demand fair treatment while in detention, or to even challenge their detention at all.

In addition, we argue that the for-profit nature of ICE detention, which is structured around *per diem* rates, fosters dual incentives among detention contractors to maximize the detained population while lowering operating costs (Carson and Diaz 2015; Gruberg 2015; DWN 2011; Gilman and Romero 2018; Small and Altman 2018). Minimizing detention costs in particular incentivizes contractors to cut corners in meeting the basic requirements for adequate service, as defined by the federal government's own criteria and described in detail in the ICE Performance-Based National Detention Standards (PBNDS) (ICE 2016). Our purpose is to add to existing literature on the conditions of immigrant detention in the U.S, with particular focus on how long-standing substandard and punitive conditions have now been exacerbated during the COVID-19 pandemic. We argue for an end to immigrant detention by showing how current practices contribute to a strategy of deterrence based on migrants' suffering and the pursuit of corporate profits, rather than demonstrating compliance with existing-standards for running detention centers. It is important to note that because PBNDS is neither statutory nor incorporated into regulation, the standards are not legally enforceable and lack disciplinary or financial consequences for facilities that fail to comply (Craig and Brown Vega 2018, 5).

This paper is based on the information provided by 33 detained migrants held at three detention centers located within the jurisdiction of ICE's El Paso Field Office: 24 at the Otero County Processing Center (OCPC), 6 at the Torrance County Detention Facility (TCDF), and 3 at the El Paso Service Processing Center (EPSPC). The information was provided by way of telephone calls to Margaret Brown Vega, a member of Advocate Visitors with Immigrants in

Detention (AVID), during the three-month period from March 13 to June 19, 2020. The information received calls for a more systematic analysis of the kinds of concerns that migrants expressed during the first three months of the COVID-19 pandemic, when broad public measures were taken to stem the spread of the disease.

The paper is the product of a collaborative research project between AVID members Margaret Brown Vega and Nathan Craig, and a group of undergraduate students and their faculty adviser. The idea for the collaboration emerged out of a zoom meeting in early June 2020 attended by representatives of local immigrant advocacy groups in southern New Mexico, including AVID, and five undergraduate students participating in the National Science Foundation-Research Experience for Undergraduates (NSF-REU) Site Program on Immigration Policy and Border Communities (in alphabetical order: Emily Durkin, Daniela Navarro, Brennan Ramsey, Fernanda Reyes and Avigail Turima Romo), as well as one of the program's two co-Principal Investigators (Neil Harvey). For details about this program, see NSF Award #1659195 (https://www.nsf.gov/awardsearch/showAward?AWD_ID=1659195).

The goal of the NSF-REU program is to provide students with training and experience in qualitative research concerning the impacts of U.S. immigration policies for migrants and residents of border communities under a community-based participatory research (CBPR) framework. The chance to work with AVID in analyzing the testimonies of detained migrants during the first three months of the coronavirus pandemic therefore appeared to be a timely opportunity for documenting conditions in detention centers. We agreed that writing this report could provide insight on how existing conditions in detention centers made migrants more vulnerable to COVID-19.

After transcribing all the hand-written notes, we divided up the task of analysis and data presentation by five main themes that tended to capture most of the problems identified by migrants in their phone calls, while Brown Vega and Craig of AVID provided necessary context, documents, editing and clarification, as necessary. In addition, Daniela Navarro formatted all the tables so that they would adhere to the same style of presentation, while Nathan Craig ensured consistency in citation style and the list of references. The names in parentheses denote who was responsible for the analysis and writing of the following themes:

1. Daily micro-aggressions and humiliating treatment (Ramsey)
2. Denial of reasonable and equitable access to telephone services and legal representation (Harvey and Durkin)
3. Poor quality food, hunger and sickness (Romo)
4. Cruel and inhumane sanitary conditions (Navarro)
5. Insufficient protections from COVID-19 (Reyes)

We examine each of these problems in turn. In each case we contrast the standards that are laid out in the PBNDS with the experiences of detained migrants in this sample study. We include two types of numerical data to show the prevalence of violations as reported by detained migrants: (i) the number of migrants who mentioned a specific type of violation; and, (ii) the number of times this type of violation occurred. We provide summary tables for each type violation as well as an overall summary table in the concluding section. These data allow us to see, in absolute and percentage terms, the most common violations, how many migrants are affected, and how many times such violations occurred. While each section draws its own

conclusions regarding the disparity between official standards and actual practice, we conclude the paper by summarizing our findings and arguing for the end of immigrant detention.

This collaboration reflects our shared goal of providing policy makers, scholars, the media and general public with new findings regarding the violation of basic standards of care suffered by migrants in detention. While recognizing the large literature on how immigration has been tied to criminality, and specifically crimmigration (Stumpf 2006), with the resulting increase in detention as one further aspect of deterrence strategies (Abrego et al. 2017; García Hernández 2014), we respond specifically to the need for social scientists to “recognize ‘the centrality of criminalization in the process of racially organizing society’” (Longazel, Berman, and Fleury-Steiner 2016, 994; Escobar 2016, 59–60). A key part of such a response is to highlight the lived experiences of detained migrants, particularly the frequent acts of abuse and humiliation which often go unreported but which constitute a “daily grind” that seeks to undermine the dignity and autonomy of those held in ICE detention. Methodologically, our study therefore takes a phenomenological approach (sensu Creswell and Poth 2018, 201–2) that draws on significant complaints made by migrants regarding the sub-standard conditions that they have faced. Our analysis proceeded from a complete transcription of the entire content of the telephone calls to their categorization into five main areas of concern. We then counted the number of complaints by category and paid attention to how migrants expressed their complaints. In doing so, we were able to come up with a composite picture of the pains of immigrant detention today.

Our methodology also contrasts the official standards for detention with the statements made by detained migrants. Our main point of comparison is the ICE PBNDS. ICE developed

these standards in response to public pressure and scrutiny that mounted following a series of 83 deaths in ICE detention between 2003-2008, several of which were widely covered in national news venues (Bernstein 2009b; 2009a; 2008; Priest and Goldstein 2008a; Goldstein and Priest 2008a; Priest and Goldstein 2008b; Goldstein and Priest 2008b). The standards represent a type of reform effort, and were first developed in 2008 (ICE 2008), with a major revision in 2011 and additional minor revisions in 2016 (ICE 2016). Despite the fact that ICE detention is purely civil administrative confinement, with absolutely no penological purpose whatsoever, both versions of PBNDS are based on “corrections law and promulgated by correctional organizations to guide the operation of jails and prisons” (Schriro 2009, 4). Each section of this report explicitly refers to PBNDS in order to show discrepancies between official policy and migrants’ lived experiences. We also refer to inspections made by the Department of Homeland Security’s Office of the Inspector General (DHS OIG) which have been critical of poor sanitary and health conditions in ICE detention centers generally and OCPC specifically (DHS OIG 2017).

In addition, we need to take into account the fact that privately-run immigration detention centers are also shaped by the goal of making financial gain (Carson and Diaz 2015; Gruberg 2015; Torrey 2015; M. Olivares 2016; Luan 2018; Staff Report 2020). In the case of El Paso Field Office, EPSPC is managed by ICE, but all security staff and guards are employees of Global Protection Services. OCPC is privately-run by Management and Training Corporation, Inc. (MTC), and TCDF is privately-run by CoreCivic. All three facilities, despite two being privately-managed, must abide by PBNDS. Privately run detention centers seek to maximize profits to shareholders by seeking to maintain the maximum number of detained migrants possible, while reducing their costs, particularly those related to the provision and quality of the protections and services within their facilities (Takei, Tan, and Lin 2016). Because these

facilities are part of ICE's larger detention network, ICE Field Offices like the one in El Paso, make decisions on how many people are transferred into and between facilities. It is thus appropriate to consider accounts from multiple facilities, especially those that fall under a single Field Office. Despite official ICE transfer directives that state otherwise (Morton 2012), ICE's transfer decisions are often made to "maintain numbers", or meet private contract guaranteed minimums. As has been well-documented during the COVID-19 pandemic, public health concerns or the need to take protective measures against disease spread do not factor into these decisions (Kerwin 2020, 8–9).

In short, we argue that the discrepancy between official standards and migrants' experiences should not be seen as the result of isolated cases of neglect but, rather, as integral to both immigration policies, based on a philosophy of "prevention through deterrence" (U.S Border Patrol 1994, 6) which relies on suffering and death to deter migration, and the financial incentives of interest to private contractors that operate the vast majority of ICE detention centers. The pains and profits of immigrant detention explain why migrants denounce the kinds of violations described in the following sections of this report.

1. **Daily micro-aggressions and humiliating treatment**

Daily abuse inside immigration detention centers is nothing new. It pre-dates ICE and was a facet of the establishment of the modern "processing center" system developed in the 1980's (Lipman 2013; Lindskoog 2018; Zucker 1983; Dow 2004). The existence of abuses in immigration detention is a well-established fact (USCCR 2019; 2015; 2018). However, this abuse only makes media headlines when abhorrent treatment of detained persons, such as appalling neglect, a beating, force feeding (Brown Vega and Craig 2019) or even death occurs

(Craig and Brown Vega 2019). Due to the nature of the 24-hour news cycle and current social climate, a story has to reach a certain shock value to draw the world's attention. Testimonies of migrants being detained by ICE are held to the same standard of insatiability in the media. This creates an environment in which the incidents that are broadcast across the world do not capture the daily micro-aggressions and humiliation suffered by migrants who are in ICE detention.

a) *Insults and Coercion*

Individuals from detention centers included in this study reported enduring insults and abuse from ICE officials, staff, and guards based on individual characteristics such as race, ethnicity, nationality, appearance, and language ability. It was reported that they received insults based on indignities suffered inside the facility such as in the case of the next individual. This individual reported that some guards tell them they have to clean fast[er], they rush them and they can't clean well; however, they were not being provided with soap. Additionally, individuals reported that guards made demands that they walk, bathe, and eat faster. Sometimes, the abuse was based on nothing that the person being detained had done; an additional individual reported that guards yelled things like "Cállate!" ("*Shut up!*"); "Camina más rápido!" ("*Walk faster!*"); and, "Está sordo?!" ("*Are you deaf?!*"), and pushed them to eat more rapidly. On the other extreme, the guards ignored detained migrants all together. In addition to this abuse, two individuals reported that ICE officials, staff, and guards induced psychological duress and coerced them into signing documents that were unintelligible to them, or a document they understood but did not want to sign.

b) *Prevalence and examples of abuse*

33 detained individuals included in this study, 8 of them reported incidents in which they suffered abuse of different types. This comes out to 24% of our sample, almost 1 in 4, who reported an incident of abuse. In addition, each of the eight individuals in question reported experiencing *multiple incidents* of abuse by ICE officials, staff, and guards. Two detained migrants reported experiencing various types of abuse (see below) *four separate times* each. Overall, these eight individuals reported incidents of abuse at the hands of ICE officials, staff, and guards 24 separate times within the span of just three months.

Table 1. Daily Micro-aggressions and Humiliating Treatment.

Issue	Number of detained migrants who reported this violation (n=8)	Number of reports (n=24)
Forced signing or destruction of documents by U.S. Officials	1	2
Guards expressing anger, racism, or specific harassment	7	14
Non-guard ICE officials ignore request, express anger, specific harassment	4	8

c) *ICE's Detention Standards: Protections from Personal Abuse*

Contract detention facilities guarantee that detained individuals have the right to protections from personal abuse, unnecessary and excessive use of force, and harassment based on “race, religion, national origin, sexual orientation, physical or mental ability, or political beliefs” (ICE 2016, 217). Detained individuals are also to be guaranteed the right to file a grievance and have it addressed in a timely manner (ICE 2016, 217). All staff must be trained on

“appropriate conduct with detainees” yet any details on such appropriate conduct that staff are required to comply with is not specified under the sections (ICE 2016, 455).

d) *Official standards versus migrants’ experiences of the “slow grind”*

We can observe a direct conflict between the standard procedure specified by ICE and what is actually happening according to the individuals in this study. Though detained persons are guaranteed the right to a grievance system and protection from abuse, those guidelines are not specified under staff training and regulations. This disparity suggests that the expression of rights under *Notice to Detainees* and “*appropriate conduct with detainees*” under *Staff Training* are performative at best and used to avoid liability in the case of a serious incident (ICE 2016, 455).

Exploring the complexities of for-profit private detention centers and the less than perfect privately contracted inspections reinforces the argument that the guidelines are performative (Greener 2019). Detained persons are to be treated with respect yet the very agency that determines these standards consistently fails to meet them. On top of that through privately contracted inspections, oversight and accountability has been reduced to an exercise in bureaucratically concealing the problems. For example, though nearly a quarter of the individuals in this sample made complaints about staff mistreatment, and prior DHS OIG reports describe how staff misconduct produces a generally hostile atmosphere, ICE’s contract inspectors, the Nakamoto Group for their 2019 inspection claim that “[w]ithout exception, detainees stated that they felt safe at the facility” and no one raised substantive concerns about abusive treatment (ERO 2020, 3). In a sample of 49 individuals, Craig and Brown Vega (2018, 5) found a complaint rate of 78%.

The reality of the situation is that the lived experience of most people who are detained remains hidden from view. The majority of negative situations experienced as described above make up what we may call the “slow grind.” The constant endurance of these conditions means that the agency of detained persons is taken from them in all aspects of their life. This abuse, in addition to the sensationalized trauma that is shown on the news, serves as a mechanism of deterrence that is based on making detention painful. Many people simply give up the fight for their legal right to apply for some form of relief because detention itself is designed to grind them down. According to their own rules, ICE has a responsibility to the people they detain to proficiently provide a safe and respectful environment. Based on this sample, and prior literature, it is now well documented that ICE cannot meet their own standards for detention, and therefore ICE has no business detaining people and should immediately release the persons in their custody.

2. Denial of reasonable and equitable access to telephone services and legal representation

ICE detention facilities have a history of problematic telephone services (GAO 2007). DHS OIG previously found that OCPC had faulty telephone services with non-working telephones (DHS OIG 2017, 5). Faulty telephone services are particularly problematic in the context of the COVID-19 pandemic.

Of the 33 detained migrants who made calls to AVID in the period under study, 11 (33.33%) made complaints about the lack of adequate phone service. All 11 of these migrants were held at OCPC. Given that one third of the 33 migrants who make up this study reported the same or similar problem, it is clear that this is not an isolated issue affecting only a small

minority of individuals but rather something that is broad-based and which limits the ability of detained migrants to obtain the legal and consular support to which they are entitled.

The following table summarizes the number of individuals who complained about one or more of four main impediments to ensuring adequate access to a working phone service at OCPC between March and June 2020 (total = 11). Note that some migrants made complaints about more than one of the listed impediments. We also include the number of complaints per violation to reflect the fact that some migrants reported several instances of the same problem (total = 20).

Table 2. Denial of Reasonable and Equitable Access to Telephone Services and Legal Representation.

Issue	Number of detained migrants who reported this violation (n=11)	Number of reports (n=20)
Phones not in working order	7	12
Restricted access to tablets	3	4
Restricted access to free calls	3	3
Lack of privacy	1	1

a) “Telephones Shall Be Maintained in Proper Working Order”: US ICE

The majority of complaints pertained to the fact that phones are not in working order. This is in violation of PBNDS (ICE 2016, 385), Part 5.6, Telephone Access, which states that:

This detention standard ensures that detainees may maintain ties with their families and others in the community, legal representatives, consulates, courts and government agencies by providing them reasonable and equitable access to telephone services.

Two particular standards of major concern for migrants seeking legal services and connections to family, friends and consular services are as follows:

“Detainees and their legal counsel shall be able to communicate effectively with each other” (ICE 2016, 385 Standard 4).

“Telephones shall be maintained in proper working order” (ICE 2016, 385 Standard 8).

In addition, PBNDS Expected Practices for Telephone Services, under Section 3 on Maintenance, states that (ICE 2016, 386):

“Each facility shall maintain detainee telephones in proper working order. Designated facility staff shall inspect the telephones daily, promptly report out-of-order telephones to the repair service so that required repairs are completed quickly. This information shall be logged and maintained by each Field Office. Facility staff shall notify detainees and the ICE/ERO free legal service providers of procedures for reporting problems with telephones.”

The following section provides evidence that the above-mentioned standards were violated in practice at OCPC (Kerwin 2020, 8–9).

b) “No Sirven Los Teléfonos”: Migrant Testimonies

Migrants who have been detained at OCPC frequently refer to dropped calls, how their calls get disconnected, the phones not being in proper working order and the connections being very poor (“*no sirven los teléfonos*,” the telephones don’t work; and, “*todos son mudos*,” they are all silent).

This lack of working phones affects detained migrants' ability to communicate with family, friends, lawyers, consulates and legal service providers on important issues such as seeking bond, sharing information about the impact of COVID-19 inside the detention centers, and trying to contact consular services. Examples from calls made to AVID include instances where migrants were unable to gain information to seek bond, or report being placed in the Secure Housing Unit (SHU) for 18-19 days due to exhibiting COVID-19 symptoms. Another migrant who had been ordered deported could not contact their consulate because the phone kept cutting out.

While the most common grievance concerned poor or nonexistent phone service, other testimonies refer to three additional problems: the use of tablets; limited access to free calls; and, the potential violation of privacy.

One migrant said that their request for use of a tablet was met with no response, while another said that the tablets were turned off.

Access to free calls was also seen as a problem as migrants were required to use funds in their commissary accounts for such calls. In addition, migrants said that they were not informed about when free calls would be available to them (ICE ERO 2020c; 2020d).

Another individual raised concern that communicating through the tablet could be recorded and therefore violate their right to privacy as per PBNDS Expected Practices on Legal Calls, Section F.2. "Privacy," which states (ICE 2016, 389):

"For detainee telephone calls regarding legal matters, each facility shall ensure privacy by providing a reasonable number of telephones on which detainees can make such calls without being overheard by staff or other detainees. Absent a court order, staff may not

monitor phone calls made in reference to legal matters. The facility shall inform detainees to contact an officer if they have difficulty making a confidential call relating to a legal proceeding. If notified of such a difficulty, the officer shall take measures to ensure that the call can be made confidentially. Privacy may be provided in a number of ways, including: a. telephones with privacy panels (side partitions) that extend at least 18 inches to prevent conversations from being overheard; b. telephones placed where conversations may not be readily overheard by others; or c. office telephones on which detainees may be permitted to make such calls; and d. detainees shall be supervised within eyeshot, but out of earshot.”

c) Legal calls and access to lawyers

The ICE website states that “ICE began providing 520 minutes of free domestic or international phone or video calls per month to detainees on April 22 at all facilities served by Talton Communications (serving approximately 57% of the ICE population), and has been negotiating with all other facilities to provide 500 minutes or more” and that “ICE detainees are able to make free calls to legal service providers on the ICE pro bono network to contact legal representatives, consular officials” and DHS (ICE ERO 2020d). However, ICE COVID-19 Pandemic Response Requirements (Version 5.0) states that responses “may include” “[w]orking with the various detention contractors and telephone service providers to ensure that all detainees receive some number of free calls per week” (ICE ERO 2020c, 27).

According to PBNDS, the number and duration of legal calls a detained person makes can only be limited by a detention facility for security purposes, or to sustain fair phone access. If such time limits are found to be necessary, the limit shall be no shorter than 20 minutes, and the individual is permitted to resume the call as soon as possible. It also states that those who

have limited English proficiency will be provided interpretation and translation services for these calls (ICE 2016, 385–89). ICE claims that privacy and confidentiality for legal matters shall be ensured by: privacy panels on telephones, placement of telephones where conversations cannot be heard, use of office telephones, and supervision of people making calls will take place outside of earshot (ICE 2016, 389). Additionally, ICE officers are expected to deliver incoming phone messages to people in detention “as promptly as possible” (ICE 2016, 390).

The contrast between standards as set forth in PBNDS and migrants’ daily lived experiences reveals several violations which have been similarly noted in the American Immigration Council’s lawsuit against ICE which was filed in May 2020 in light of similar violations of PBNDS standards regarding phone service at the EPSPC and OCPC (AIC, AILA, and AIRP 2020).¹ These violations were noted by attorneys seeking to assist detained clients and included: (i) clients’ inability to call at designated times when interpreters had been made available; (ii) the inability of detained migrants to call attorneys or family members unless they had funds in their commissary accounts; (iii) the failure of ICE to provide privacy; (iv) the sudden dropping of calls; and, (v) the late response, or lack of response, from ICE to calls from attorneys.

d) Failure to meet official standards

The failure of ICE to enforce its own standards remains a concern four years after the *Lyon vs. ICE Settlement Agreement* (2016) in which it was shown that detained migrants were prevented from preparing for their court hearings due to unlawful restrictions on detained migrants’ access to a functional telephone service.

¹ Several of the testimonies reviewed in this report were included in an affidavit that formed part of the complaint.

Our findings also differ from the Annual Detention Inspection of OCPC which was conducted by the Nakamoto Group, Inc. on 28-30 January, 2020 (ERO 2020). This is an annual inspection to review operations at OCPC to determine compliance with the standards of PBNDS (ICE 2016). The inspection report made no mention of any problems with phone service at OCPC and gave the OCPC a rating of “Meets Standards” as it had in its previous annual review. In contrast to the Nakamoto Group’s report, the testimonies in our study reveal that access to a reliable phone service is not the daily reality for detained migrants at OCPC.

3. Poor quality food, hunger and sickness

OCPC failed its first inspection largely due to abysmally poor sanitation in the food preparation area, mandatory weekly sanitation inspections were not taking place, and none of the food service staff had a New Mexico Food Handlers Card as required by MTC policy (ERO 2008, 21). The second inspection continued to find houseflies in the kitchen area (ERO 2009, 82). A prior study of concerns by individuals detained at OCPC found that inadequate and poor quality food was the most frequently expressed complaint (Craig and Brown Vega 2018, 18).

Testimonies from migrants covered in this study reveal that ICE is not abiding by the basic food service standards described in PBNDS. Migrants in these facilities report nutrient deficient and poor-quality food, limited portions resulting in hunger, and inconsistent access to food. These unjust living conditions are among the many human rights violations that migrants detained by ICE are subject to on a daily basis. A total of 12 (36%) people in this study made food-related complaints. The following table provides a summary of these recurring issues.

Table 3. Poor Quality Food, Hunger, and Sickness.

Issue	Number of detained migrants who reported this violation (n=12)	Number of reports (n=25)
Poor quality food	8	8
Food related sickness	3	5
Hunger/limited food portions	5	5
Inconsistent access to food and hostile eating environments	6	7

a) Poor Quality Food

Multiple individuals expressed that they were fed poor quality food that causes sickness and digestive problems. ICE states that “all detainees shall be provided nutritionally balanced diets that are reviewed at least quarterly by food service personnel and at least annually by a qualified nutritionist or dietitian” (ICE 2016, 228). Meals provided should be “appetizing” and migrants will be protected from food-related illness (ICE 2016, 228). Yet 24% of individuals reported that the food they were receiving was both unappetizing and unhealthy. People describe the food as “bad quality,” “not healthy,” “too spicy,” and “bad on the stomach.” One individual expressed that the food quality declined during the 3-month period, and described it as “worse than before.”

In OCPC, a man specified that they were fed beans, potatoes, and pasta that were hard (undercooked) and caused stomach inflammation. He also reported experiencing nausea, vomiting, and an inability to eat as a result of the food. There are similar complaints in OCPC that describe the beans and rice as hard and undercooked, and an individual reported finding hair in his food. 9% of people experienced diarrhea, nausea, and other digestive symptoms as a result

of the poor-quality food they are fed daily. This unhealthy food and food-related sickness directly contradict the food service standards presented in the ICE detention standards. As ICE guarantees access to nutritious food, the agency should be held accountable for providing food that causes illness.

b) Insufficient Nutrition

In addition to the poor-quality food, migrants detained by ICE reported not receiving enough food to eat. 15% of those spoken to on the phone reported being fed very little and experienced hunger. There were multiple complaints of people losing weight while in detention as a result of insufficient nutrition. Depriving individuals of a sufficient amount of food is a form of abuse that severely harms physical and mental health.

While limited food and frequent hunger have an enduring impact on migrants in the detention centers, the lack of nutrition people are receiving has severe consequences during the COVID-19 pandemic. Recent research on immigration detention reveals that people held in detention centers are contracting COVID-19 at disproportionately high rates (Kerwin 2020, 2). The report details that by May 27, 2020, during the early months of the pandemic, 51 percent of those in ICE detention centers tested positive for COVID-19 (Kerwin 2020, 2). This percentage is alarmingly higher than national COVID-19 positive rates yet is still an underestimate due to the lack of testing occurring within these centers (Kerwin 2020, 2).

The limited food provided to people has amplified the negative impact of the pandemic inside detention centers. According to the CDC's guidelines on COVID-19, "getting plenty of fruits and vegetables" is "important for health" and the nutrients and vitamins found in good quality food can have an effect on the way one's immune system fights off infections and

diseases (CDC 2020). By depriving people of sufficient nutrients, ICE is responsible for weakening people's immune systems and making them more susceptible to illness. Insufficient nutrition may be contributing to the spread of COVID-19, and for those that contract the virus, their immune systems may be too weak to fight it. A man who had been detained in OCPC expressed this concern, stating "the food is so poor and so little that people don't have the strength to fight the virus."

ICE claims to be working with professionals to take "enhanced steps to minimize the spread of the virus" (ICE ERO 2020b). Although the agency suggests it is taking necessary measures to lessen the detrimental impact of COVID-19 in detention centers, these personal testimonies reveal that the pandemic and its effects are not taken seriously by ICE officials. Providing people with enough nutrients to have healthy immune systems is a basic measure that needs to be taken at all times, but especially during this global pandemic.

c) Inconsistent Access to Food

Migrants in this study also revealed that people received food inconsistently, especially because the pandemic impacted where and when they could eat. In June, individuals in OCPC stated that the kitchen was closed due to a COVID-19 outbreak, and as a result, people receive food in their dorms rather than eating in the cafeteria. As it is up to the guards to bring food to the dorms and to the SHU where those that test positive for COVID-19 are held in solitary confinement, there is inconsistency in when people are able to eat. Migrants complained that they often have to request food from the guards. Sometimes they are brought food and other times they are not. This inconsistency in feeding people in the agency's care is an explicit abuse of power. Guards in these detention centers are obliged to fulfill their responsibility to feed those they detain. Yet testimonies indicate they do not always do so.

The ICE detention manual explicitly states that “food shall never be used for punishment or reward” (ICE 2016, 228). However, the personal testimony of a man detained in OCPC demonstrates that facility staff used food punitively. He stated that he was told by a guard “*si no tiendan la cama, no van a traer la comida*”— if you do not make the bed, [the staff] will not bring food. This abuse by the guards is an example of their failure to abide by the standards of care they are supposed to uphold. Detention standards also state that “dining room facilities and operating procedures shall provide sufficient space and time for detainees to eat meals in a relatively relaxed, unregimented atmosphere” (ICE 2016, 228). Individuals detained by ICE only have 20 minutes to eat meals, and even within this limited time frame, there are complaints of being rushed by the guards and being told to eat more rapidly. Not knowing when one’s next meal will be and eating in a rushed, hostile environment are conditions that unjustly strip migrants of their comfort and human dignity.

PBND (ICE 2016, sec. 4.1) outlines food service standards and conveys an image to the public of what life should look like inside the agency’s migrant detention centers. However, conversations with individuals held in these detention centers demonstrate that ICE and privately-contracted staff blatantly fail to meet these standards, creating an unsafe and harmful environment behind closed doors. ICE’s disregard for the health and safety of the people it detains is apparent when analyzing the food service they provide. Individuals detained by the agency are fed unhealthy and unappetizing food that causes illness; they do not receive sufficient nutrition which weakens their immune systems and creates hunger; they are given food inconsistently, and are forced to eat in hostile and rushed environments. As the following sections demonstrate, these violations are only one part of the inhumane conditions that detained migrants are forced to endure on a daily basis.

4. Cruel and inhumane sanitary conditions

Across the U.S., individuals are facing and experiencing the effects that COVID-19 has had worldwide. Migrants that are currently detained by ICE are no different. In fact, they have been experiencing harsh and cruel conditions under ICE and their regulations. In this study, a total of 10 (33%) individuals expressed concerns regarding personal hygiene and sanitary conditions. These included complaints regarding not being provided basic hygiene items and showers, being denied personal grooming supplies, a lack of clean clothes and face coverings, and a disregard for maintaining clean spaces. The table provided summarizes complaints regarding sanitation and hygiene measures inside the three detention centers.

Table 4. Cruel and Inhumane Sanitary Conditions.

Issue	Number of detained migrants who reported this violation (n=10)	Number of reports (n=34)
Basic necessities	6	9
Lack of access to showers	2	3
Lack of clean sheets and clothes	4	5
Denied personal grooming supplies	3	4
Disregard for clean spaces	5	5
Lack of face covering	6	8

a) Basic necessities

PBNDs states that “staff shall directly supervise the issuance of personal hygiene items to male and female detainees appropriate for their gender and shall replenish supplies as needed.

Distribution of hygiene items shall not be used as reward or punishment” (ICE 2016, 328). Contrary to these standards, six (18%) of the individuals that contacted AVID, stated that they were not provided with these basic hygiene items, specifically shampoo, deodorant, and soap. Some of these individuals reported having to buy soap, instead of being provided with it as the standards clearly state. This is cause of concern, especially during the COVID-19 pandemic, because without these supplies these individuals may not be able to properly care for themselves.

b) Lack of Access to Showers

Similarly, the PBNDS explains that “detainees shall be provided: operable showers that are thermostatically controlled to temperatures between 100 and 120° F, to ensure safety and promote hygienic practices” (ICE 2016, 329). This standard was clearly not followed, as two (6%) individuals expressed not being able to have a proper shower. One individual even explained that they did not shower for one day in order to lessen exposure to COVID-19.

c) Lack of clean sheets and clothes

Four (12%) of the individuals that contacted AVID expressed deep concern over not being able to wash their clothes and not being provided with clean bedsheets. Specifically, some individuals reported that they had not been given clean bedsheets in over one month. This directly violates the PBNDS which states “detainees shall be provided with clean clothing, linen and towels on the following basis: at least twice weekly exchange of outer garments (with a maximum of 72 hours between changes); weekly exchange of sheets, towels, and pillowcases at a minimum” (ICE 2016, 330). Clearly, these guidelines were not being respected. While the standards state that the individuals detained will be given a weekly exchange of sheets, the reality is that individuals report going four times as long without clean bedsheets.

d) Denied personal grooming supplies

Another direct violation of the PBNDS standards is made as three (9%) of the individuals reported being denied haircuts and nail cutting clippers. PBNDS states that “detainees are allowed freedom in personal grooming unless a valid safety, security, or medical concern requires an exception that is fully justified and documented” (ICE 2016, 330). However, the opposite is occurring at these ICE detention centers. As the standards state, if individuals cannot have the freedom of personal grooming, they must be given a valid and documented response. However, an individual reported that they asked why they were not allowed to have haircuts and the facility staff did not provide a valid and fully justified reason along with documentation. Again, this is in clear violation of the national standards as the individuals that are detained are denied personal grooming.

e) Disregard for clean spaces

Next, the PBNDS states that “the facility administrator shall ensure that staff and detainees maintain a high standard of facility sanitation and general cleanliness. When possible, the use of non-toxic cleaning supplies is recommended” (ICE 2016, 21). While the national standards state that cleanliness is a priority and must be upheld with safe cleaning supplies, this is not at all the reality of the individuals in the detention centers. Multiple individuals reported being given a cup of bleach every day to clean their own spaces. While some individuals reported this, others stated that they were often not given supplies at all, leading them to make their own supplies. One individual reported making their own “homemade disinfectant”. This suggests that these standards are not being upheld, which is especially concerning during a pandemic. If the inside of the detention center was not properly cleaned, like the standards require, then violations of those standards threatens the lives of individuals detained by ICE.

f) Lack of face covering

Lastly, while at the time of these calls there were no official guidelines regarding the use and issuance of facial coverings, it is important to note that it was not until late April and early May 2020 that six (18%) of individuals reported being given face coverings. Some individuals indicated the coverings were not in the best condition, including one person who described them as made from “pant rags”. Even when given about two face coverings, not all of these were the correct or safe material to be washed and used again; some individuals reported using these for up to 2 months and were refused new face coverings when they made the request for more.

Overall, the current cruel and inhumane situation inside ICE detention centers regarding hygiene and sanitation are deeply concerning and should be further investigated. The direct violations of the national standards, among other failed hygiene measures, demonstrate the unfit and harmful environment in which these individuals are forced to live.

5. Insufficient protections from COVID-19

The weak structure of the health system in the U.S. has never been more flagrantly exposed than through a series of poor reactions in response to the COVID-19 pandemic. ICE detention centers are an exceptional example of blatant disregard for human health. The lack of adequate and competent medical staff, shortage of sanitary materials and medicine, as well as the irresponsible lack of compliance with CDC recommendations, violates standard defined in PBNDS to “maintain a safe and secure detention environment for staff and detainees” (ICE 2016, sec. 4.3 Medical Care, 257).

On September 4, 2020, ICE published an updated response to the pandemic which set expectations for sustaining detention operations while mitigating risk to the safety and well-

being of the people inside their facilities (ICE ERO 2020a). Not only does this statement allow for loose compliance based on the language that was used, but comments made by those held in detention clearly contrast with the resolutions made in this document. The COVID-19 pandemic did not interrupt or decrease the health standards of the detention centers; instead, it amplified the consequences of irresponsible management by mostly private entities that seek to increase profit margins at the expense of human lives. The pandemic only exacerbated the undignified conditions in which detained individuals are normally subjected to by ICE.

Phone calls reveal failures on behalf of the center to mitigate health concerns regarding COVID-19. 17 (52% of the detained individuals) made calls explicitly concerning COVID-19. The conversations were categorized by issue—some of the comments overlapped in category and are listed accordingly.

Table 5. Insufficient Protections from COVID-19.

Issue	Number of detained migrants who reported this violation (n=17)	Number of reports (n=93)
Inadequate testing/quarantine	13	67
Medical negligence	8	17
Social distancing is undermined	4	9

The plan that ICE released for the preventions and containment of COVID-19 is riddled with language such as “where possible,” “if practical,” “while not mandated,” “consider” and “make an effort to” (ICE ERO 2020a). This kind of phrasing allows for lenience and justifiable insubordination of detention centers at the risk of people who are detained.

a) Inadequate Testing/Quarantine

The detained migrants included in this study expressed uncertainty, discouragement, and fear regarding the current health crisis and how it was being managed inside of the detention centers. The close social confinement in prison settings inherently renders a people immobile to protect themselves from something so destructive as COVID-19 (Rubin 2020; Lofgren et al. 2020; Kuo et al. 2020b; 2020a). Upon detaining someone, ICE assumes the responsibility for the individuals in their detention centers. Yet the repeated complaints of “no sanitation [...] no medical attention [...] no testing” and the waves of COVID-19 positive cases are a clear reflection that ICE is unable to sustain healthy conditions in the detention centers.

b) Medical Negligence

Phone calls made by detained migrants contradict any promise of safety made by ICE. The general “lack of” in the detention center includes medical staff, testing, soap, masks, medicine, and food. An inspection done by the Office of Inspector General in 2017, well before the COVID-19 pandemic, proves the negligence and poor quality service inside the detention centers in regards to medical care (DHS OIG 2017, 7). One of the primary addresses that ICE made to the public about COVID-19 intervention was to “Ensure that individuals under medical isolation receive regular visits from medical staff and have access to mental health services (ICE ERO 2020a, 22). “No medical attention,” “Medical requests – delayed,” “No medicine, no doctor, *nada, nada, nada...*” The detentions centers are unable to handle a challenge as overwhelming as the current pandemic—especially considering the inadequate care they gave before the pandemic. It should be noted that those in danger of contracting the virus are not only detained migrants, but also include staff and contractors (ICE ERO 2020a, 4).

c) Social distancing is undermined

Health negligence is only one of the components affecting the overall failing medical system inside of the detention center. By nature, and intentionality, the detention center is constructed to closely confine a large group of people, which renders social distancing—one of the most effective preventative measures against COVID-19—unfeasible. This fact is also acknowledged in the COVID-19 prevention statement: “Although strict social distancing may not be possible in congregate settings such as detention facilities” (ICE ERO 2020a, 19). This language essentially allows ICE to opt out of social distancing compliance because of the challenges of doing so in the facilities (ICE ERO 2020a, 21). Despite detention facilities being places of confinement, there is a lot of movement and contact that happens when new people are incarcerated, and employees travel in and out of the center. Persons detained by ICE stated that “guards do not wear masks or gloves” “people are not finishing the quarantine” “[outbreak] started in [dorm] D and spread. Guards in [dorm] D would do shifts in other dorms.” “They [the guards] gave us the virus and now they don’t pay attention to us.” Positive cases rise as contagion inside the facilities is inevitable with the rapid and devastating spread of the virus due to lack of protective measures.

Insufficient, and withholding of, supplies, including tests (Michaels and Morel 2020), and incompetent staff, further cripples the inadequate medical care that is chronic in ICE detention centers. An additional factor that is further placing people at risk are preexisting health conditions, despite an entire section of the COVID-19 prevention plan dedicated to protecting these “populations and subclasses” (ICE ERO 2020a, 7). “No medications” is a reoccurring statement in the phone calls. People with diabetes, heart conditions, and asthma had already been physically declining due to lack of medical attention and prescription medicine. The exposure to

COVID-19 placed these individuals at higher risk to for critical condition after viral contagion. From what is gathered from phone calls of persons detained by ICE, there was no risk management for these individuals and their prior chronic illness; instead, conditions were further neglected as positive COVID-19 cases increased.

Preventative measures against contagion include testing, use of masks, and quarantine. The importance of these measures is clearly underestimated by the staff at the detention centers: “not testing them [symptomatic individuals],” “no mask or gloves,” “not finishing quarantine.”. Individuals who previously tested positive were not re-tested, test results were not given back or took too long to be processed, and there was no testing for possible asymptomatic carriers in the facilities. The COVID-19 plan clearly addresses all of these issues and acknowledged CDC standards and recommendations, but again, according to phone calls, there was little to no compliance in these areas. The negligence displayed by management places more responsibility on those detained to care for their own health—something nearly impossible as they were stripped of virtually all autonomy by ICE.

d) *Indifference and Irresponsibility*

The U.S. has been shamefully exposed by the devastation of health due to the COVID-19 pandemic. A broken health system, inequities of health in marginalized communities, and poor leadership have redefined the conception of the U.S. as a “world power.” Inside the walls of the ICE detention centers, the inequities became even more magnified. Individuals detained by ICE were treated without dignity—despite glowing reviews annually published by The Nakamoto Group, and humanitarian promises to improve medical and mental health services (ERO 2020, 3). Persons detained by ICE are concerned and fearful for their lives in the current health crisis. If the dignity, health, and well-being of the persons detained by ICE is a priority, they must be

released on account of dangerous conditions regarding the current health crisis. Messages received by people detained conveyed through phone call center prove ICE's negligence and viral exposure of those detained due to mediocre measures to prevent, protect, and act against COVID-19. Many facility staff and ICE officials are inept, insufficient, and indifferent. ICE is not upholding its standards as stated by PBNDS and their irresponsible actions are harming, and in some cases killing, those they incarcerate, making 2020 the deadliest year for people in ICE detention since 2005 (Shoichet 2020).

Conclusions

This study has shown how the reality of detention for migrants is marked by many daily violations that add to what scholars have called “the pains of immigrant imprisonment” (Longazel, Berman, and Fleury-Steiner 2016; Sykes [1958] 1971). In contrast to the federal government's own standards for immigrant detention, our study has revealed many violations and concerns. The following table summarizes the numerical data for each type of violation and the overall picture based on the information provided by the 33 detained migrants that comprise this study.

Table 6. Summary of Violations of Detention Standards.

Issue	Number of detained migrants who reported this violation ^a	Percentage of migrants who reported this violation ^b	Number of times this violation was reported ^c	Percentage of times this violation was reported ^d
Daily micro-aggressions and humiliating treatment	8	24%	24	12%
Inadequate access to phones and legal services	11	33%	20	10%
Poor food service & food-related sickness	12	36%	25	13%
Poor sanitary conditions	10	30%	34	17%
Insufficient protection from COVID-19	17	52%	93	47%

^a Out of total n=33

^b Out of total n=33

^c Reflecting recurring violations, n=196

^d Out of the total number of all five kinds of violations

From this summary table we can see that the most commonly cited violation was inadequate protection from COVID-19 (47%). This is not surprising given that the statements collected from this group were made during the first three months of the coronavirus pandemic. However, the conditions which make detained migrants even more vulnerable to contracting COVID-19 were also frequently mentioned with around a third of the group specifically referring to poor food, unsanitary conditions and lack of access to reliable phones and legal services. In addition, close to one in four denounced abuses and humiliating treatment received from the guards and staff.

Taken in isolation, it may appear to some that inadequate access to a reliable phone service, unsanitary conditions, food related sicknesses or daily insults do not constitute serious violations of human rights and are problems that could be easily remedied within the existing budgets and staffing resources of privately-run ICE detention centers. However, the overall impact for detained migrants is more than the sum of the parts. Each violation (and their multiple occurrences) constitute a form of institutional violence that undermines the autonomy and well being of detained migrants and their families. The lack of enforcement of the federal government's own standards reflects an indifference and irresponsibility that has only been heightened by the deadly presence of COVID-19. Lack of enforcement of basic standards cannot be swept aside as a simple anomaly but must be seen instead as part of a broader effort that aims to strip detained migrants of their capacity for autonomous action and thereby coerce them into giving up on their legal right to pursue relief from detention and deportation. The inspections regime not only fails to document and address the problems, it occludes and obscures them through performative compliance practices that falsely assert delivery and maintenance of agreed upon services (Greener 2019).

As media outlets raise awareness about shocking events in ICE detention centers including sexual assault, forced sterilizations, and force feeding, there is outrage among the public and a call to hold the government agency responsible for these explicit violations of human rights. Our report seeks to raise awareness about the daily injustices individuals detained by ICE endure that may be less extreme but equally deserving of outrage and attention. ICE deliberately creates an unsafe and hostile living environment in detention centers to deter immigration to the U.S. The constant, dehumanizing mistreatment of migrants by ICE officials

and their private contractors in both subtle and explicit manners takes a toll on migrants physical and emotional health.

While ICE outlines detention center standards in PBNDS, our data demonstrates that the agency fails to abide by these standards. It also reveals severe, irreversible harm caused by ICE, including sickness and trauma. PBNDS's imprecise language and ICE's superficial inspections allow the agency to continue doing harm to those it detains. Given the failure of prior attempts to reform the detention system and the ongoing history of racialized violence against immigrants in the US, ICE detention centers must be abolished.

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