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SITUATIONAL BRIEF: ASYLUM SEEKERS, DETAINED MIGRANTS, AND DOCUMENTED/UNDOCUMENTED MIGRANTS IN THE UNITED STATES DURING THE COVID-19 PANDEMIC

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CONTEXT: COVID-19, ASYLUM SEEKERS & DETAINED MIGRANTS IN THE UNITED STATES

Migrants in the United States experience various living conditions primarily dependent on their residency status. Asylum seekers and undocumented migrants are subject to detention while awaiting trial for asylum claims or removal proceedings. There are 211 detention facilities in the U.S., and they are broadly comprised of government-run facilities that house only detainees, and contracted jails or private prisons with mixed detainee and other incarcerated populations. Refugees receive resettlement assistance from nine U.S. non-governmental organizations (known as Resettlement Agencies) who work across 49 states and the District of Columbia to provide initial reception and placement services for a minimum of 90 days. These Resettlement Agencies work in coordination with the State Department's Bureau of Population, Refugees and Migration in addition to Department of Health and Human Services' Office of Refugee Resettlement (ORR). Refugees may apply for permanent residence one year after admission, and naturalization after five years.

Asylum Seekers and Detained Migrants

1. In January 2019, the Trump Administration implemented the Migrant Protection Protocols (MPP), a new program that requires asylum seekers to wait in Mexico while their immigration application is processed and to return to the US for court hearings.[6] As a result of this program, an estimated 60,000 asylum seekers have been forced to await their US immigration court hearings in Mexico.[7]
2. On March 20, 2020, the Department of Health and Human Services granted the Center for Disease Control and Prevention (CDC) the authority to restrict entry of individuals based on public health concerns. Immediately, the CDC issued an order halting asylum-seekers from entering the U.S. through entry ports on the Canadian and Mexican borders.[8]
3. On April 22, 2020, President Trump issued an Executive Order suspending all immigration to the U.S. for a minimum of 60 days.[9] As a result, the U.S. has stopped accepting asylum seekers—returning them to Mexico or their country of origin. At the end of April, approximately 20,000 asylum seekers, including unaccompanied children (UAC), encountered at the U.S. southern border have been expelled by Customs and Border Patrol (CBP).[10]
4. Cumulatively, border and travel restrictions have curtailed the ability of asylum seekers to gain access to protection in the US. Along the southern border, asylum-seekers and UAC – including those who do not qualify for expedited deportation through the Trafficking Victims Protection Reauthorization Act of 2008 – are being turned away and denied the opportunity to claim asylum.[11]
5. According to the most recent figures available from the Department of Homeland Security (DHS), 38,687 individuals were granted asylum in 2018.[12] An estimated 19,831 individuals were granted asylum in FY2019 according to non-partisan research groups.[13] Between March 21 and May 13, 2020, only two asylum seekers were reported to have been allowed to enter the U.S. at the southern border.[14]
6. As of May 23, 2020, there were 14,459 detainees in U.S. Immigration and Customs Enforcement (ICE) custody and 11,362 detainees in CBP custody.[15] As a result of the border and asylum restrictions, the average daily population (ADP) in CBP facilities

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[6] https://www.americanimmigrationcouncil.org/research/policies-affecting-asylum-seekers-border
[7] https://www.nytimes.com/2020/03/04/us/migrants-border-remain-in-mexico-mpp-court.html
[8] https://www.americanimmigrationcouncil.org/research/impact-covid-19-us-immigration-system
[9] https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/
[10] https://www.americanimmigrationcouncil.org/sites/default/files/research/the_impact_of_covid-19_on_noncitizens_and_across_the_us_immigration_system.pdf
[11] https://www.americanimmigrationcouncil.org/research/impact-covid-19-us-immigration-system
[12] https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/refugees_asylees_2018.pdf
[13] https://trac.syr.edu/immigration/reports/588/
[14] https://www.washingtonpost.com/immigration/border-refuge-trump-records/2020/05/13/93ea9ed6-951c-11ea-8107-acde2f7a8d6e_story.html
[15] https://www.ice.gov/detention-management

has decreased by more than half compared to October 2019 (12,385 vs. 31,155) while the average length of stay has almost doubled in the same time period (109.7 days vs. 57.8); the ADP for ICE declined only marginally (15,283 vs. 19,073) while detainees stay an average of 10 days longer. More than 80% of those in ICE custody are detained in private prisons.[16]

7. Based on a 2019 report, a majority of detainees are from Mexico, Guatemala, El Salvador, and Honduras.[17]
8. The average number of UAC in ORR custody has declined from 4,530 in October 2019 to 2,331 in April 2020 while the average length of stay in ORR care has increased from 123 days to 215 (for those not discharged).[18]
9. In March and April 2020, 166 UACs were granted admission to the US, 915 UACs were expelled from the US southern border by CBP, and 60 were deported from the interior of the country, largely to Central American countries and Mexico.[19]

COVID-19 Among Migrants and Asylum Seekers

- As of June 2, 2020, there were 1,579 confirmed cases of COVID-19 in detainees under ICE custody in detention facilities across the country, 813 confirmed cases are reported to be "under isolation or monitoring." A total of 3,092 detainees have been tested since February 2020—a 51% positivity ratio.[20] In comparison, the cumulative percent of positive tests from public health, clinical, and commercial laboratories in the U.S. (from March 1) is 13.1%.[21]
- The proportion of coronavirus infection among ICE detainees is 213%, or four times, higher than the country's epicenter of the virus in New York (6,093 vs. 1,948 per 100,000 population).[22, 23]
- On May 6, 2020 ICE announced the first death of a detainee, age 57, due to COVID-19 in California.[24] They had been detained at Otay Mesa Detention Center operated by the private prison corporation CoreCivic. At the time of their death, 140 of 629 detainees had tested positive at Otay Mesa, by May 27 this number was 160—the highest number of cases of any ICE detention facility. ICE has released 70 of 130 medically vulnerable detainees at Otay Mesa by order of a federal judge.[25] The agency will not be releasing an additional 34 vulnerable detainees on the grounds that changes in the facility (i.e., reduction in occupancy rate, cohorting of positive cases) have reduced the risk of infection.
- On May 25th, a second detainee, age 34, held at the Stewart Detention Center in Lumpkin, Georgia, also operated by CoreCivic, died from COVID-19.[26] As of June 2nd, 25 detainees have tested positive at Stewart Detention Center.
- Forty-four of ICE employees and a number of contractor staff have reportedly contracted COVID-19.[27] ICE does not officially disclose infections among their contracted employees, including those working in private corporations or state and local jails, nor infections among other detainees/incarcerated populations housed with migrants.
- Confirmed cases of COVID-19 in UACs is less regularly reported, but as of April 14, 2020, 42 children in a Chicago facility alone tested positive; 6 children had previously tested positive in a New York shelter.[28]

US Refugee Admissions Program

1. Annually, the President in consultation with Congress sets an admissions ceiling for the U.S. Refugee Admissions Program (USRAP). Since assuming office, President Trump has annually decreased the admissions ceiling. In fiscal year (FY) 2020, the Presidential determination was set at 18,000 refugees, an 84% decrease from President Obama's FY2017 ceiling of 110,000,[29] and the lowest admissions ceiling in the program's history.[30]

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[16] www.aclu.org/sites/default/files/field_document/justice- free_zones_immigrant_detention_report_aclu_hrw_nijc_0.pdf

[17] United States Government Accountability Office. Immigration enforcement: arrests, detentions, and removals, and issues related to special populations. Vol GAO-20-36. Washington, D.C., USA: GAO; 2019.

[18] https://www.hhs.gov/programs/social-services/unaccompanied-alien-children/latest-uac-data-fy2020/index.html

[19] https://www.nytimes.com/2020/05/20/us/coronavirus-migrant-children-unaccompanied-minors.html

[20] https://www.aila.org/infonet/ice-issues-guidance-on-covid-19

[21] https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html

[22] https://www.ice.gov/coronavirus

[23] https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#states

[24] https://cmsny.org/publications/immigrant-detention-covid/#_ftnref18

[25] https://www.cbsnews.com/news/coronavirus-outbreak-ice-detention-center-immigrants/

[26] https://www.aila.org/File/Related/16050900bb.pdf

[27] https://www.ice.gov/coronavirus

[28] https://www.propublica.org/article/at-least-19-children-at-a-chicago-shelter-for-immigrant-detainees-have-tested-positive-for-covid-19

[29] https://www.pewresearch.org/fact-tank/2019/10/07/key-facts-about-refugees-to-the-u-s/

[30] https://www.pewresearch.org/fact-tank/2019/10/07/key-facts-about-refugees-to-the-u-s/

2. On March 18, 2020 the Trump Administration temporarily suspended the USRAP, except for emergency cases (suspension went into effect on March 19, 2020).[31] The U.S. suspension was a direct result of the United Nations High Commissioner for Refugees and International Migration Organization March 17, 2020 suspension of refugee resettlement departures.
3. Resettlement is still occurring through the Special Immigrant Visa program for Afghans and Iraqis and through a 2017 US-Australia agreement which resettles individuals from Nauru, Papua New Guinea, and Australia.[32]
4. At the end of June 2020, a total of 7,742 refugees have been resettled to the US in 2020. Since the Trump Administration's suspension of USRAP a total of 359 refugees were resettled: 27 individuals in April, 134 individuals in May, and 198 individuals in June.[33]

COVID-19 RISK TO MIGRANTS IN DETENTION FACILITIES

1. As a result of the MPP program, make-shift camps have arisen along the southern border and are characterized by over-crowding, poor sanitation, and limited access to health care.[34] Since the policy went into effect, rates of sexual assault, kidnapping, and torture of migrants has risen.[35] As of May 29, at least twelve migrants have tested positive for COVID-19 in a government-run shelter in a Mexico border city, Ciudad Juarez and have been put in isolation.[36] Cases have also been reported in NGO-run shelters on the border.[37]
2. Migrants held in detention facilities are at high risk of contracting COVID-19 due to unsanitary conditions, crowded and communal living, and limited access to health services. Those with pre-existing health conditions are at particular risk of severe illness. Reports have shown that migrants often lack access to basic personal hygiene including soap, showers, functional bathrooms, and clean clothing.[38]
3. There is limited access to protective supplies such as masks, disinfectant, and soap for detainees and staff; ICE is unable to provide social distancing for most detainees;[15] and there is limited isolation of suspected or confirmed cases. Detainees report that they are not provided masks and that detention officers enter units and deliver food without proper protective equipment such as masks and gloves.[39] Detainees, therefore, are unable to follow recommended preventative practices against COVID-19.
4. ICE has resorted to cohorting detainees with suspected exposures, which by CDC guidelines should only be implemented as a last resort.[40,41,42]
5. ICE relies mainly on local hospital capacity for treatment of detainees with severe illness. It has not put in place contingency plans for if and when local hospitals become overwhelmed.
6. On April 17, 2020, ICE announced that it had conducted medical reviews of its detainee population to identify those medically vulnerable for release. In late April, ICE conceded before a judge in California that medical review of its population would be "unduly burdensome" casting doubt as to whether the thorough review of medical and criminal histories of vulnerable detainees was actually conducted.[43, 44] This is also compounded by evidence that ICE has previously been unable to identify and treat detainees with medical conditions, and has various standards for medical care across facility types.[45]

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[31] https://cmsny.org/cms-initiatives/migration-covid/.
[32] https://cmsny.org/cms-initiatives/migration-covid/#refugee-admissions
[33] https://www.wrapsnet.org/admissions-and-arrivals/
[34] https://time.com/5830807/asylum-seekers-coronavirus-mpp/
[35] https://www.nytimes.com/2020/03/04/us/migrants-border-remain-in-mexico-mpp-court.html
[36] https://www.reuters.com/article/us-health-coronavirus-mexico-immigration/twelve-migrants-test-positive-for-coronavirus-at-mexican-government-shelter-idUSKBN23601V
[37] https://reliefweb.int/report/mexico/covid-19-has-reached-irc-shelter-along-us-mexico-border-ciudad-juarez-mexico
[38] https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf
[39] https://www.bbc.com/news/world-us-canada-52476131
[40] https://www.cardin.senate.gov/imo/media/doc/MD%20Delegation%20Letter%20to%20DHS%20on%20COVID-19%20in%20Immigration%20Detention%20Centers%20-%20Senate.pdf
[41] https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-05-14.CBM%20JR%20to%20Wolf-%20DHS%20Albence-ICE%20re%20Coronavirus%20in%20Detention%20Centers.pdf
[42] https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html
[43] https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-05-14.CBM%20JR%20to%20Wolf-%20DHS%20Albence-ICE%20re%20Coronavirus%20in%20Detention%20Centers.pdf
[44] https://www.courthousenews.com/judge-scolds-ice-for-failing-to-protect-detainees-from-coronavirus/
[45] https://www.hrw.org/report/2018/06/20/code-red/fatal-consequences-dangerously-substandard-medical-care-immigration

7. The risk of infection is increased within facilities and in surrounding communities through interaction between detainees and staff, transport between facilities, and turnover of detainees.[46]
8. The U.S. private detention program routinely transfers detainees between facilities to prevent over-crowding, meet minimum bed requirements at facilities, and/or coordinate deportation travel.[47] These transfers have continued during COVID-19 and are suspected to have led to outbreaks in facilities in Florida, Louisiana, Mississippi, Ohio, and Texas.[48] Transfers between facilities continue during the pandemic although CDC guidance recommends restricting movement between facilities. [49, 50]
9. In April, ICE transferred 72 immigrants from facilities in New York and Pennsylvania with confirmed COVID-19 cases to a facility in Prairieland, Texas where no cases had been confirmed. Subsequently, 41 detainees in Prairieland tested positive, including 21 of the transferred immigrants.[51] ICE does not test detainees who are asymptomatic before their transfer to other facilities.[52]

RESPONSE TO COVID-19 AS RELATES TO ASYLUM SEEKERS, DETAINEES & DOCUMENTED/UNDOCUMENTED MIGRANTS

The primary response the U.S. has taken to curtail the spread of COVID-19 by foreign nationals has been to restrict immigration access to the U.S. For asylum seekers and other migrants currently held in detention, the risk of COVID-19 is heightened while access to personal protective measures, health services, and legal services is limited. Access to federal aid programs to mitigate the economic impact of COVID-19 and provide medical assistance varies between immigrant groups and between U.S. states.

Immigration Processing, Hearings, and Deportations

1. On March 16, 2020, the Department of Justice's Executive Office for Immigration Review (EOIR) suspended all court hearings for non-detained immigrants.[53] This includes the postponement of court hearings for over 60,000 asylum seekers temporarily living in Mexico while their cases are being processed.[54] In-person court proceedings remain in effect for detained immigrants.[55]
2. The Trump Administration has been sued by several immigration groups who argue that the continued EOIR hearings pose health and safety concerns.[56]
3. On April 24, 2020, the U.S. Customs and Immigration Service (USCIS) temporarily suspended all in-person immigration services, though they continue to process immigration applications that do not require in-person interviews or biometrics.[57]
4. The U.S. has continued to deport individuals throughout the pandemic, including those suspected to be COVID-19 positive. Haiti, Mexico, Guatemala, and Jamaica have all reported COVID-19 infections in returning migrants. In late April, Guatemala stopped accepting deportations from the U.S. until the U.S. government agreed to test all Guatemalan detainees prior to removal.[58] DHS and ICE are now testing a fraction of detainees using 15-minute rapid tests prior to removal from the U.S.[59] This rapid test, called the 'Abbot ID NOW', has been under scrutiny for low sensitivity (high false negatives) and has been deemed unreliable by the Food and Drug Administration. The Haitian government does not endorse the use of rapid tests nor the strategy of testing only a sample of detainees.
5. Several deportees who tested negative for COVID-19 in the U.S. tested positive upon arrival in their country of origin.[60] As of May 22, 2020, there have been 117 COVID-19 positive deportees transferred to Guatemala, which has heightened tensions

[46] https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(20)30295-4/fulltext
[47] https://www.americanimmigrationcouncil.org/research/impact-covid-19-us-immigration-system
[48] https://www.nbcnews.com/politics/immigration/ice-keeps-transferring-detainees-around-country-leading-covid-19-outbreaks-n1212856
[49] https://www.cardin.senate.gov/imo/media/doc/MD%20Delegation%20Letter%20to%20DHS%20on%20COVID-19%20in%20Immigration%20Detention%20Centers%20-%20Senate.pdf
[50] https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html
[51] https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-05-14.CBM%20JR%20to%20Wolf-%20DHS%20Albence-ICE%20re%20Coronavirus%20in%20Detention%20Centers.pdf
[52] https://www.miamiherald.com/news/local/immigration/article243054631.html
[53] https://www.americanimmigrationcouncil.org/research/impact-covid-19-us-immigration-system
[54] https://cmsny.org/cms-initiatives/migration-covid/
[55] https://cmsny.org/cms-initiatives/migration-covid/
[56] https://thehill.com/regulation/court-battles/490330-immigration-groups-sue-trump-administration-for-keeping-courts-open
[57] https://www.americanimmigrationcouncil.org/research/impact-covid-19-us-immigration-system
[58] https://www.miamiherald.com/news/local/immigration/article243054631.html
[59] https://www.miamiherald.com/news/local/immigration/article243054631.html
[60] https://www.miamiherald.com/news/local/immigration/article243054631.html

between governments and led to concerns that deportation operations are spreading COVID-19 throughout the southern hemisphere.[61]

COVID-19 Preventative Policies and Practices in Detention

1. In March 2020, ICE convened a working group of disease control specialists, medical professionals, and detention experts to identify how to best minimize the spread of COVID-19 in detention facilities.[62] In response, ICE updated its guidance to minimize the spread of COVID-19.
2. On March 18, 2020, ICE announced that it would temporarily adjust its enforcement practices to focus on public safety risks and criminal convictions, and exempt low-risk individuals from mandatory detention.[63] As of May 5, 2020 ICE has used CDC medical risk guidance to identify and reportedly release over 900 immigrants from detention facilities. To determine eligibility for release, ICE officials reviewed medical records, criminal records, immigration history, and potential flight or public safety risks.[64]
3. Initially starting March 18, ICE reviewed cases of pregnant detainees and those >70 years of age.[65] On April 14, the guidelines were expanded to include those older than 60, those who've given birth in the last 2 weeks, and all cases with chronic conditions that impair immunity (e.g. blood disorders, chronic kidney disease, heart and lung disease, endocrine disorders, etc.).[66] However, aforementioned court proceedings put in question whether ICE was able to thoroughly review the records of all 32,000 detainees who were initially in custody before releases began.
4. As of May 23, 2020, ICE reports releasing 392 detainees by forced judicial order.
5. For those in custody there have been several changes to detention guidelines for suspected or confirmed COVID-19 cases, including:

- Personal visitation practices should be curtailed, and in-person legal visitation should be limited. Facilities are directed to offer non-contact legal visitation, except in cases where in-person visitation is determined "essential" by legal representatives. If in-person legal visitation is deemed necessary and approved by the Warden or Facility Administration, then legal representatives should be required to supply and wear personal protective equipment and follow the same entry screening and safety protocol as facility staff.
- Access to free domestic or international phone or video calls has been increased; up to 520 minutes per month is available for all detainees in facilities served by Talton Communication (roughly 52% of facilities.[67]
- Detainees must be provided with "no-cost and unlimited access to supplies for hand cleansing."[68]
- Detention facility staff should adhere to CDC guidelines and recommendations concerning cleaning facilities and medically isolating and caring for confirmed COVID-19 cases.[69]
- To prevent the spread of COVID-19 from new intakes, staff should screen individuals for symptoms of COVID-19 and if an individual has symptoms, they should be isolated and referred to healthcare professionals for further evaluation. If an individual has been in an area affected by COVID-19, or if they have a close contact that is COVID-19 positive, the individual must be quarantined for 14 days and evaluated twice daily.[70]
- Detainees who are confirmed or suspected to have COVID-19 should be immediately separated from other individuals. Facilities must make "every possible effort to isolate persons" individually. Confirmed cases of COVID-19 are the only cases who should be isolated as a cohort.[71] Face masks should be provided to and required for individuals outside of the isolation space.
- If confirmed cases exceed isolation spaces at a facility, the facilities must notify ICE so that detainees can be transferred to other facilities or hospitals or be released.[72]

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[61] https://cmsny.org/cms-initiatives/migration-covid/

[62] https://www.ice.gov/coronavirus

[63] https://www.americanimmigrationcouncil.org/research/impact-covid-19-us-immigration-system

[64] https://www.ice.gov/coronavirus

[65] https://www.ice.gov/doclib/coronavirus/attk.pdf

[66] https://www.ice.gov/doclib/coronavirus/attk.pdf

[67] https://www.ice.gov/coronavirus

[68] https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf

[69] https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf

[70] https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf

[71] https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf

[72] https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf

6. Several nongovernmental organizations, immigrants' rights groups, and lawmakers question the extent to which these updated guidelines are being implemented by facilities, leading to calls for increased monitoring of federal and sub-contracted entities.[73] A May 14, 2020 letter from the US House of Representatives' Committee on Oversight and Reforms outlined various failures of detention facilities to follow ICE and CDC guidelines. The letter posits that "systemwide inaction" has led to higher rates of COVID-19 in detention facilities than in any state.[74] For thousands still in detention, continued confinement poses both risk of COVID-19 and exacerbation of mental health conditions such as depression and post-traumatic stress disorder.[75] The Inspector General of DHS announced on May 19, 2020 that an investigation into ICE's COVID-19 preparedness and response efforts will be conducted upon a request from members of Congress who've noted reports of poor practices and lack of transparency by the agency.[76]

Access to Federal Aid and Relief Programs (including public charge rule)

1. Four separate federal aid packages have been passed by the US Congress. None of the packages provides explicit aid, support, or benefits for non-citizens.[77] This lack of support has prevented many immigrants from being able to access services, grants, benefits, or other programs.
2. Through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, individuals who filed tax returns in 2018 or 2019, who have government issued social security numbers (SSNs), and who have permanent residence cards ("green card") or who meet the Internal Revenue Service's (IRS) residency requirements are eligible to receive a one-time direct cash payment (referred to as *individual recovery rebates* or *economic impact payments)* of up to $1,200 per adult filer (amount determined by income level) with an additional $500 per dependent child.[78] Undocumented migrants and others without SSNs, many of whom are "essential workers,"[79] are ineligible for the payment although they have Individual Taxpayer Identification Numbers that could be used for allocation purposes.[80]
3. Additionally, between an estimated 1.2-2 million American citizens will not receive the impact payment under the CARES Act because they are married to a non-eligible immigrant (i.e. do not have a SSN) and filed taxes jointly; previously, filing jointly was preferable for those seeking residency in the U.S.[81]
4. Pandemic-induced unemployment has disproportionately affected immigrant communities. In April 2020, when the US unemployment rate reached 14.7%, Latina immigrant women experienced the highest unemployment rate (22% jobless in April).[82]
5. Undocumented migrants lack access to health insurance through the Affordable Care Act (insurance marketplace), Medicare, and many Medicaid programs (state-sponsored health insurance available to low income or disabled individuals).[83] Very few states cover COVID-19 testing and treatment for undocumented migrants through emergency Medicaid (emergency medical coverage for the uninsured who are not eligible for Medicaid because of immigration status). The Families First Coronavirus Response Act (FFRCA) provides free coronavirus testing only for the uninsured that are eligible for non-emergency Medicaid, excluding 3.7 million low-income, uninsured noncitizens.[84] The CARES Act provides $100 billion in reimbursements to providers for COVID-19 testing and treatment cost, with an unknown portion allocated to the uninsured, but does not prohibit cost-sharing with patients. Community Health Centers that provide primary and preventative health services regardless of immigration status received $2 billion under the CARES Act.[85]
6. Prior to COVID-19, DHS implemented a *Public Charge* rule that allows the denial of permanent residence visas to immigrants who have used public programs such as Medicaid or Supplementary Nutrition Assistance Program (commonly referred to as

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[73] https://www.brookings.edu/blog/fixgov/2020/05/14/as-covid-19-spreads-in-ice-detention-oversight-is-more-critical-than-ever/

[74] https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-05-14.CBM%20JR%20to%20Wolf-%20DHS%20Albence-ICE%20re%20Coronavirus%20in%20Detention%20Centers.pdf

[75] https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(20)30081-5/fulltext

[76] https://www.tomudall.senate.gov/imo/media/doc/04282020-DetentionFacilityInspections.pdf

[77] https://www.americanimmigrationcouncil.org/research/impact-covid-19-us-immigration-system

[78] https://www.irs.gov/coronavirus/economic-impact-payment-information-center

[79] https://www.migrationpolicy.org/research/immigrant-workers-us-covid-19-response

[80] https://www.migrationpolicy.org/research/immigrant-workers-us-covid-19-response

[81] https://abcnews.go.com/Politics/12-million-americans-stimulus-checks-married-immigrants/story?id=70493620

[82] https://www.migrationpolicy.org/sites/default/files/publications/COVID-19-Unemployment-Industry-Nativity-Gender-FS-Final.pdf

[83] https://www.healthaffairs.org/do/10.1377/hblog20200416.887086/full/

[84] https://www.migrationpolicy.org/article/covid19-immigrants-shut-out-federal-relief

[85] https://www.nilc.org/wp-content/uploads/2020/04/COVID19-relief-bills-understanding-key-provisions.pdf

"food stamps").[86] Consequently, undocumented migrants have foregone health service utilization and undocumented parents of American citizen children have disenrolled from SNAP. With lost wages and ineligibility for government sponsored food programs during COVID-19, many families are left in acute crisis during the pandemic with long term impacts on child well-being and development.[87,88]

7. On March 13, 2020, US Citizenship and Immigration Services issued a statement explaining that the "[p]ublic [c]harge rule does not restrict access to testing, screening, or treatment of communicable diseases, including COVID-19."[89] In addition, accessing expanded unemployment insurance benefits will not create any negative risk or immigration consequences through the public charge rule. Despite this statement, many immigrants, including refugees, continue to be fearful of the public charge ruling and opt to forgo health care and treatment for COVID-19.[90] The suspension also does not specify whether testing and treatment sought before March 13 will contribute to public charge determinations.
8. Consequently, migrants and refugees are relatively barred from comprehensive health coverage as they lose access to employee-sponsored health insurance and are cautious of enrolling in state-sponsored solutions (when eligible) if it may affect their residency application. Some states are creating emergency funds for financial relief for undocumented migrants affected by COVID-19, however, many individuals avoid seeking care for fear of devastating medical bills, fear of apprehension by ICE, and mistrust of health facilities.[91,92]
9. Through the CARES Act, Congress provided 350 million dollars to the State Department's Migration and Refugee Assistance account to fund healthcare and assistance for refugees in the United States[93] and abroad that "prevent, prepare for, and respond to coronavirus."[94] Refugees' access to healthcare is dependent on the services available to them in their communities. States participating in refugee resettlement have a Refugee Health Coordinator who works in collaboration with resettlement organizations and the State Refugee Coordinator to ensure the medical and mental needs of refugees within their community are met.
10. The Families First Coronavirus Response Act (FFCRA) temporarily expands the Family and Medical Leave Act (FMLA), providing federal funding to businesses with fewer than 500 employees. Through the Act, workers can qualify for up to 80 hours of paid sick leave, and expanded paid childcare leave, if workers: are quarantined or seeking medical assistance for COVID-19 symptoms; are taking care of an individual who is quarantined or ordered to self-quarantine; or are caring for a minor child whose school or childcare has been closed as a result of COVID-19.[95] The FFCRA and FMLA do not require employers to verify an employee's immigration status to determine whether they are eligible for paid leave benefits (benefits are paid directly to the employer and distributed as wages).[96]

RECOMMENDATIONS

Lancet Migration has published a call for urgent global action to include migrants and refugees in the COVID-19 response.[97] *Drawing on this framework, we make the following specific recommendations for the United States:*

1. RELEASE MEDICALLY VULNERABLE DETAINEES & THOSE THAT DO NOT POSE A SAFETY RISK

R1. Immediately release from detention all migrants who do not pose a public safety risk (and whose release does not require a court order), which includes over 9,000 individuals with no criminal record and more than 4,000 with established asylum claims[98]. Decongesting detention facilities is critical for reducing the risk of infection for detainees, staff, and surrounding

[86] https://cmsny.org/cms-initiatives/migration-covid/#refugee-admissions
[87] https://www.nejm.org/doi/full/10.1056/NEJMp2005953
[88] https://www.migrationpolicy.org/news/chilling-effects-us-public-charge-rule-commentary
[89] https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge
[90] https://cmsny.org/cms-initiatives/migration-covid/#refugee-admissions
[91] https://www.vox.com/2020/5/5/21244630/undocumented-immigrants-coronavirus-relief-cares-act
[92] https://www.healthaffairs.org/do/10.1377/hblog20200416.887086/full/
[93] https://cmsny.org/cms-initiatives/migration-covid/
[94] https://www.congress.gov/bill/116th-congress/house-bill/748/text
[95] https://www.dol.gov/newsroom/releases/osec/osec20200320
[96] https://www.natlawreview.com/article/do-families-first-coronavirus-response-act-ffcra-and-coronavirus-aid-relief-and
[97] https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30971-5/fulltext_37
[98] https://www.ice.gov/detention-management

communities. Those released from state custody should have clear, safe, and supported plans for reintegration into the community, including access to testing, isolation, and medical services to protect individuals and prevent community spread.

R2. ICE must urgently carry out the full review of all detainees' medical and criminal histories and immediately release those at risk of severe complications from COVID-19.

R3. Data on hospitalizations and deaths of migrants and staff in detention facilities must be made publicly available, be uniformly collected across all detention facilities, and reported at least weekly timely manner, to ensure transparency of the COVID-19 situation in detention settings.

2. ENSURE PROTECTION OF MIGRANT & REFUGEE POPULATIONS THROUGHOUT THE MIGRATION PROCESS

R1. All detainees should receive testing at intake and adequate surveillance and have access to free PPE, hygiene services, and medical care while detained. Any detainee under investigation for, or with confirmed COVID-19 should be isolated immediately and cohorting should not be practiced. Individual isolation, however, does not imply the use of solitary confinement which is detrimental to mental and physical health. The deprivation of liberty, increased risk of infection and illness severity, and forced communal living are factors that exacerbate speedy spreading of COVID19, health inequities among detained migrants and mandate action to prevent further loss of life. All staff working in detention facilities should be tested weekly and wear appropriate PPE as they risk introducing COVID-19 into detainee populations that are vulnerable, and confined in these conditions.

R2. The U.S must immediately resume the provision of due process for migrants seeking asylum as per the 1951 Geneva Convention. Steps can be taken to ensure a safe asylum process through implementing protective measures such as screening and physical distancing.

R3. All deportations should be temporarily suspended: to prevent the international spread of COVID-19, particularly to vulnerable low- and middle-income countries and to prevent refoulement.

R4. Immediately relocate UACs from shelters, and re-unify them with family members or safe community placements.

R5. Access to vital legal services must be guaranteed for detained migrants, ensuring there is no undue burden on the migrant or their legal representatives, particularly as migrants rely on legal counsel for their release on medical grounds.

R6. Immediately suspend the practice of detaining asylum seekers, particularly during the COVID-19 pandemic, as detention is unnecessary for the majority and alternatives can and should be utilized. A vast majority of those monitored through alternatives adhere to immigration hearings.[99]

3. PROVIDE EQUITABLE ACCESS TO HEALTHCARE AND SOCIAL SERVICES INDEPENDENT OF IMMIGRATION STATUS

R1. Immediately expand eligibility criteria for benefits (e.g. unemployment benefits, financial relief, healthcare coverage, etc.) to include all vulnerable populations-- including migrants without dependents who are excluded from traditional programs focused on pregnant women and children-- regardless of immigration status.

R2. Urgently make explicit and clearly communicate to the migrant population about the suspension of the public charge rule and that the CARES Act will cover all costs associated with COVID-19 testing and treatment, regardless of immigration status, ensuring information is accessible in relevant languages and is culturally sensitive. Introduce protections from future repercussions. States can take action by including COVID-19 testing and treatment under emergency Medicaid or providing emergency relief funds to comprehensively cover medical bills.

R3. Explicitly guarantee that no healthcare facility will collaborate or share information with ICE. It is of utmost importance that there is separation between health access and legal status as well as immigration enforcement during this pandemic

R4. Facilitate healthcare access, utilization and outreach to migrant communities with culturally and linguistically appropriate information and resources that acknowledge fears and mistrust.

[99] https://www.aclu.org/other/aclu-fact-sheet-alternatives-immigration-detention-atd

Organisations and acknowledgements

This situational brief was authored by Orit Abrahim[100], Aubrey Grant[101], Paul Spiegel[102], Monica Guerrero Vazquez[103], Kathleen Page[104]*; and expert reviewed by Terry McGovern[105]. Overall direction and review on behalf of the Lancet Migration global collaboration was provided by Miriam Orcutt and editorial review by Sophie McCann. This situational brief represents the views of the authors. This series of situational and policy briefs summarises key aspects of the COVID-19 response in relation to migrants and refugees at country or regional level. They include public health and policy recommendations and perspectives and build on the Lancet Migration Global Statement recommendations to ensure migrants and refugees: have access to healthcare; are included in prevention, preparedness and response; and are part of responsible and transparent public information strategies, during the COVID-19 pandemic. They are intended to be short briefs providing key information on particular migrant and refugee contexts and thematics, rather than fully comprehensive country or regional overviews. Situational briefs have been authored by experts working in academia, operational, or clinical areas of migration and COVID-19, and are hosted on the Lancet Migration website (www.migrationandhealth.org). They are up to date at the time of writing. Lancet Migration is a global collaboration between The Lancet and researchers, implementers, and others in the field of migration and health that aims to address evidence gaps and drive policy change building on the recommendations of the UCL-Lancet Commission on Migration and Health published in December 2018.*

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