

**ICE Did Not Follow
Policies, Guidance, or
Recommendations to Ensure
Migrants Were Tested for
COVID-19 before Transport on
Domestic Commercial Flights**





OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

May 18, 2022

MEMORANDUM FOR: Tae D. Johnson
Acting Director
Immigration and Customs Enforcement

FROM: Joseph V. Cuffari, Ph.D.
Inspector General

SUBJECT: *ICE Did Not Follow Policies, Guidance, or
Recommendations to Ensure Migrants Were Tested for
COVID-19 before Transport on Domestic Commercial
Flights*

JOSEPH V
CUFFARI

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JOSEPH V CUFFARI
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For your action is our final report, *ICE Did Not Follow Policies, Guidance, or Recommendations to Ensure Migrants Were Tested for COVID-19 before Transport on Domestic Commercial Flights*. We incorporated the formal comments provided by your office.

The report contains four recommendations aimed at improving U.S. Immigration and Customs Enforcement's processes for testing migrants for COVID-19 before domestic commercial flights. Your office concurred with three recommendations and did not concur with recommendation 2. Based on information provided in your response to the draft report, we consider all four recommendations open and unresolved. As prescribed by the Department of Homeland Security Directive 077-01, *Follow-Up and Resolutions for the Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated, the recommendations will be considered open and unresolved.

Please send your closure request to OIGAuditsFollowup@oig.dhs.gov. Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Bruce Miller, Deputy Inspector General for Audits, at (202) 981-6000.

www.oig.dhs.gov



DHS OIG HIGHLIGHTS

ICE Did Not Follow Policies, Guidance, or Recommendations to Ensure Migrants Were Tested for COVID-19 before Transport on Domestic Commercial Flights

May 18, 2022

Why We Did This Review

We conducted this review to determine the extent to which ICE mitigates safety risks by testing migrants for COVID-19 before transport on domestic commercial flights and whether a process is in place for escorting noncitizen UCs during transport.

What We Recommend

We made four recommendations to ICE ERO to protect the health and safety of migrants, ERO staff, and the general public.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov.

What We Found

U.S. Immigration and Customs Enforcement's (ICE) Enforcement and Removal Operations (ERO) policy requires coronavirus disease 2019 (COVID-19) testing of migrants before transfer, transport, or release from ICE detention facilities. These policies do not include requirements to test family units or noncitizen unaccompanied children (UC) before transfer from U.S. Customs and Border Protection custody. ERO has a process for escorting UCs, but the process does not include requirements to ensure UCs are tested for COVID-19 before transport to the Department of Health and Human Services' Office of Refugee Resettlement. The Department of Homeland Security Chief Medical Officer recommended UCs receive a COVID-19 test before transport. However, ICE has not implemented this recommendation.

We identified numerous instances where ERO could not provide evidence that single adults, family units, and UCs were tested for COVID-19 before transport on domestic commercial flights. It is important for DHS and all its components to detect and slow the spread of COVID-19, and ICE is responsible for transporting migrants domestically to ICE facilities and other locations. Therefore, to reduce the spread of COVID-19, ICE should ensure migrants in its care are COVID-19-negative before they board domestic commercial flights. Without ensuring all migrants are COVID-19-negative and without complete records, ERO could risk exposing other migrants, ERO staff, and the general public to COVID-19 on domestic commercial flights.

ICE Response

ICE concurred with recommendations 1, 3, and 4 and did not concur with recommendation 2.



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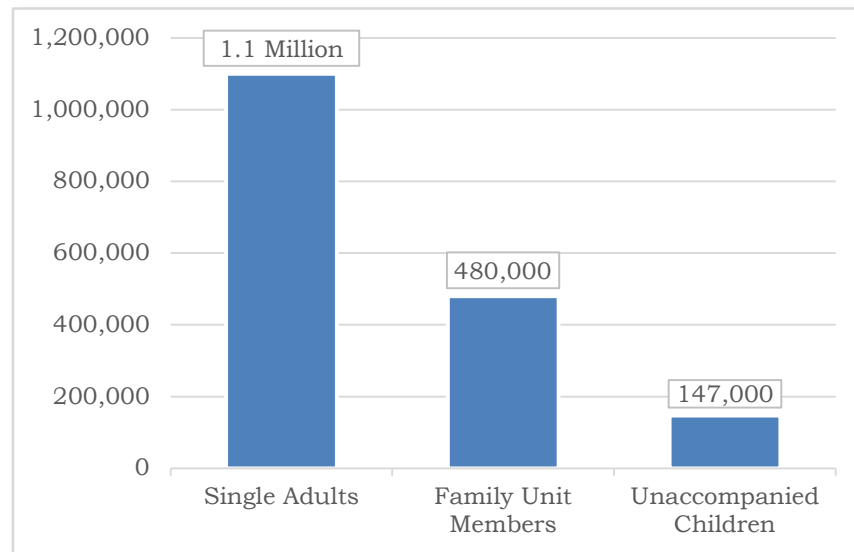
Background

In fiscal year 2021, U.S. Customs and Border Protection (CBP) encountered more than 1.7 million migrants along the country's southwest border. Migrant populations comprise single adults, family units, and noncitizen unaccompanied children (UC):

- Single adults are migrants older than age 18.
- Family units consist of adult parents or legal guardians accompanied by their own juvenile child or children.
- UCs are migrants younger than age 18 with no lawful immigration status and for whom no parent or legal guardian is present, or available to provide care and physical custody, in the United States.¹

Of the migrants CBP encountered along the southwest border in FY 2021, approximately 1.1 million were single adults, 480,000 were members of family units, and 147,000 were UCs, as shown in Figure 1.

Figure 1. FY 2021 CBP Encounters along the Southwest Border



Source: CBP website data

Typically, CBP apprehends migrants crossing the border without authorization, or at U.S. ports of entry if individuals are deemed inadmissible. After CBP encounters migrants, some are immediately expelled, returned, or removed to their country of last transit. U.S. Immigration and Customs Enforcement's

¹ 6 United States Code (U.S.C.) § 279(g)(2) and 8 Code of Federal Regulations (C.F.R.) § 236.3(b)(3).

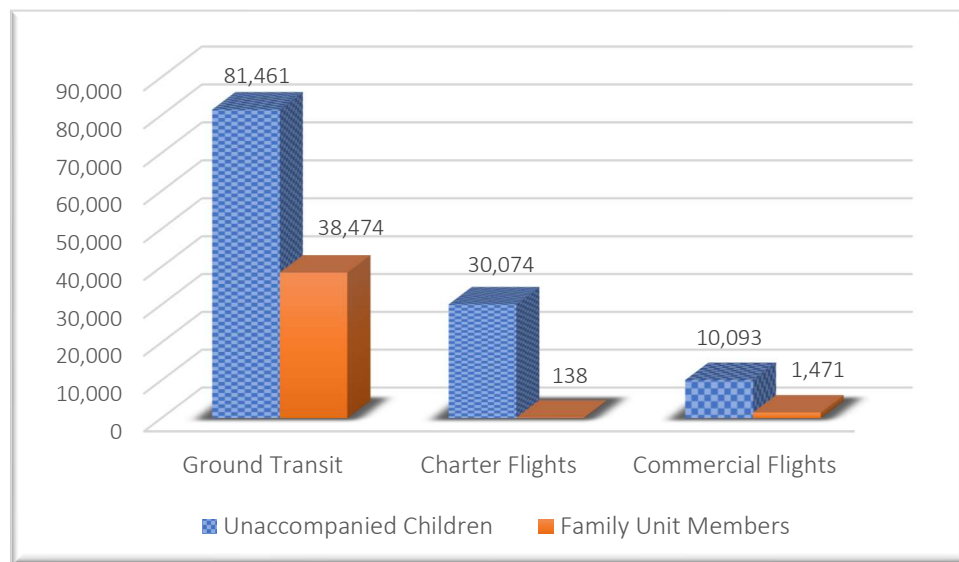


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(ICE) Enforcement and Removal Operations directorate (ERO) transports migrants who remain in the country from CBP custody to facilities located throughout the United States; ERO may also transfer migrants between facilities during their detention. This transport occurs via several methods, including ground transit, charter flights, and domestic commercial flights. See Figure 2 for a breakdown of the modes of transportation ERO used to transfer UCs and members of family units during FY 2021. ERO could not provide data to show the modes of transportation used to transfer single adults.

Figure 2. FY 2021 Modes of Transportation for UCs and Family Unit Members



Source: ICE transport records

ERO detains single adults who remain in the United States at 127 ICE detention facilities until they are either released or removed from the country. ERO escorts and transports family units to family staging centers or contracted hotels, where they remain until release or removal from the country.² Generally, within 72 hours of when UCs are identified as unaccompanied minors, ERO escorts and transports them to the custody of the U.S. Department of Health and Human Services' (HHS) Office of Refugee Resettlement (ORR).³

The onset of the coronavirus disease 2019 (COVID-19) pandemic in March 2020 added new complexity to the Department of Homeland Security's border

² See *ICE Spent Funds on Unused Beds, Missed COVID-19 Protocols and Detention Standards while Housing Migrant Families in Hotels* (OIG-22-37), April 2022, for more information on ICE's use of hotels to house migrant families.

³ 8 U.S.C. § 1232(b)(3).



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security operations. As of the end of FY 2021, the United States reported more than 43 million cases of COVID-19 and 694,701 deaths due to the disease.⁴ According to Centers for Disease Control and Prevention (CDC), COVID-19 spreads easily within communities, and one person may infect many others. A person does not need to be visibly sick to spread the virus; there is evidence that an infected person may be able to spread COVID-19 without experiencing symptoms of the disease. The virus is thought to spread primarily by person-to-person contact through respiratory droplets and particles exhaled by an infected person. It may also spread through contact with surfaces or objects contaminated with these droplets. People closer than 6 feet from an infected person are most likely to get infected.

The CDC and DHS issued requirements and recommendations for travelers to reduce the spread of COVID-19, including:

- In December 2020, the CDC recommended COVID-19 testing for all travelers 1 to 3 days before a flight. In April 2021, the CDC updated their guidance to recommend COVID-19 testing 1 to 3 days before a domestic flight for non-vaccinated travelers.
- In January 2021, the CDC issued requirements for air passengers, two years of age and older, arriving from a foreign country, regardless of nationality, to have a negative COVID-19 test or documentation of having recovered from COVID-19.
- In November 2021, the CDC issued requirements for non-U.S. citizens, 18 years of age and over, seeking to enter the United States by air travel, to be fully vaccinated against COVID-19.
- In January 2022, DHS extended the requirements to non-U.S. citizens seeking to enter the United States via land ports of entry and ferry terminals at the U.S.–Mexico and U.S.–Canada borders. According to DHS, “These changes — which were first announced in October 2021 and made in consultation with the White House and several federal agencies, including the Centers for Disease Control and Prevention (CDC)— will align public health measures that govern land travel with those that govern incoming international air travel.”

Migrants may cross the border in large groups and be held in CBP or ICE facilities where it is not possible to maintain distance from other migrants. A migrant’s journey, which by definition includes crossing an international border from a foreign country, may include several transfers between multiple Federal entities and facilities within the United States. Migrants traveling on domestic commercial flights while in DHS custody may be in close proximity to

⁴ CDC COVID Data Tracker.



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other migrants and to the general public. These circumstances increase the risk that migrants could be exposed to COVID-19.

On April 20, 2021, the U.S. House of Representatives Committee on Homeland Security sent a letter to DHS Secretary Mayorkas, expressing concern that migrants were not being tested for COVID-19 before travel on domestic transportation systems. In its letter, the committee requested responses to seven questions by April 26, 2021.⁵

We conducted this review to determine the extent to which ICE mitigates safety risks by testing migrants for COVID-19 before transport on domestic commercial flights and whether a process is in place for escorting noncitizen UCs during transport.

Results of Review

ERO Did Not Follow Policies, Guidance, or Recommendations to Ensure Migrants Were Tested for COVID-19 before Transport on Domestic Commercial Flights

Consistent with CDC guidelines on COVID-19 mitigation measures for travel and detention facilities, ERO issued policies for its staff and contractors to ensure migrants are tested for COVID-19 before transfer, transport, or release from ICE detention facilities. For example, in April 2020, ERO developed the *COVID-19 Pandemic Response Requirements* (PRR) to address evolving public health concerns related to COVID-19 within ICE detention facilities. Additionally, on April 1, 2021, the DHS Chief Medical Officer (CMO) issued a memorandum recommending that UCs receive a COVID-19 test before transport. See Appendix B for the DHS CMO memorandum and Appendix C for a timeline of DHS, ICE, and CDC COVID-19 mitigation policies and recommendations.

Despite the requirements and recommendations for testing, ERO did not ensure all migrants, including UCs, single adults, and family units, were tested for COVID-19 before transport on domestic commercial flights. This occurred because ERO's policies are unclear and ERO does not have controls in place to enforce them. Additionally, some of these policies do not apply to UCs, who are not detained in ICE facilities. Without clear COVID-19 testing policies and controls in place to enforce these policies, ERO may transport COVID-19–

⁵ We requested DHS' response to the congressional inquiry, but according to ICE officials, as of December 1, 2021, DHS had not responded to the committee's request.



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positive migrants on domestic commercial flights. This poses a risk of exposing other migrants, ERO staff, and the general public to COVID-19.

ERO Has a Process for Escorting UCs but Did Not Follow Recommendations to Ensure UCs Were Tested for COVID-19 before Transport on Domestic Commercial Flights

ERO transports and escorts UCs from CBP custody to HHS ORR facilities. ERO uses a contractor (MVM, Inc.) to escort most noncriminal UCs on domestic commercial flights. Although we did not evaluate the effectiveness of ERO's and MVM's escorting policies and procedures, we reviewed the MVM contract, MVM policies, and ERO policies and determined that standard operating procedures are in place, including:

- *Juvenile and Family Residential Management Unit Field Office Juvenile Coordinator Handbook*, September 2020;
- Memorandum of agreement among HHS ORR, ICE, and CBP on consultation and information sharing related to UCs, March 2021;
- ICE contract with MVM: performance work statement for UC and family unit transportation; and
- MVM standard operating procedures: *Transportation by Air* and *COVID-19 General Protocols*.

MVM policies for escorting UCs during transport to HHS ORR include COVID-19 mitigation measures such as temperature checks and mask requirements. However, the policies do not include requirements to ensure UCs are tested for COVID-19 before transport.

ERO did not ensure all UCs were COVID-19-negative before transport. We requested UC transport records for FY 2021. However, the records contained incomplete information, and we could not determine the exact dates UCs were transferred or if a transfer actually occurred. ERO also provided UC transport data for 1 day in September 2021 showing that ERO transported 45 UCs on domestic commercial flights to HHS ORR facilities on that day without verifying or documenting whether the UC received a COVID-19 test before transport. Although this data represents only a small subset of UC records, we confirmed that ICE transported some UCs via domestic commercial flight without confirming whether the UCs were COVID-19-negative. We reviewed the data to determine whether UCs received a test before transport and found that 28 UCs had negative COVID-19 tests and 14 UCs did not receive a COVID-19 test before transport. Test entries for the other 3 UCs were blank, meaning it was not known whether they had been tested.



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Although the PRR requires COVID-19 testing for migrants detained in ICE facilities, this policy does not apply to UCs because they are transferred from CBP to HHS custody rather than to an ICE facility. ICE, CBP, and HHS signed a memorandum of agreement in March 2021 outlining interagency coordination and information sharing requirements related to UCs. However, this agreement does not define which entity, if any, is responsible for administering COVID-19 tests to UCs.

On April 1, 2021, the DHS CMO issued a memorandum to ICE and CBP recommending an immediate change to the approach for testing UCs in DHS custody. The DHS CMO recommended that CBP and ICE test UCs for COVID-19 before transport to HHS facilities. The DHS CMO also recommended that ICE transport UCs in COVID-19-positive and COVID-19-negative cohorts, as shown in Figure 3. Although the background section of the memorandum referenced the risk of COVID-19 transmission on buses, the DHS CMO's recommendations for testing UCs do not specify a mode of transportation.

“Effective immediately, all UCs should be tested prior to transport to Health and Human Services (HHS) facilities.”

Source: April 2021 DHS CMO Memorandum to ICE and CBP

Figure 3. DHS CMO Memorandum Recommendations

Recommendations

1. All UCs should be tested immediately prior to transport to HHS facilities.
2. UC testing should be done via rapid antigen test kits (e.g. Abbott Binax Now).
3. UCs should be transported in COVID-19 positive and COVID-19 negative cohorts to HHS.
4. COVID-19 test results should be submitted daily to the DHS CMO.

Source: DHS CMO memorandum, April 2021

Neither ERO nor CBP ensured that UCs received a COVID-19 test before transport in accordance with the DHS CMO's recommendations. Instead, ERO officials deferred testing responsibility for UCs to HHS. ERO officials stated that COVID-19-positive UCs would not be transported on commercial flights. However, ERO did not record which UCs HHS tested for COVID-19; instead it used word of mouth to determine which UCs were COVID-19-positive and -negative.

Initially, the DHS CMO's office asserted that HHS-contracted healthcare providers at CBP facilities test all UCs for COVID-19 before transport to HHS ORR facilities. HHS clarified that its contractors test UCs in only five of the nine U.S. Border Patrol sectors along the southwest border. DHS' Senior Medical Officer later confirmed this information. In each of those five sectors,

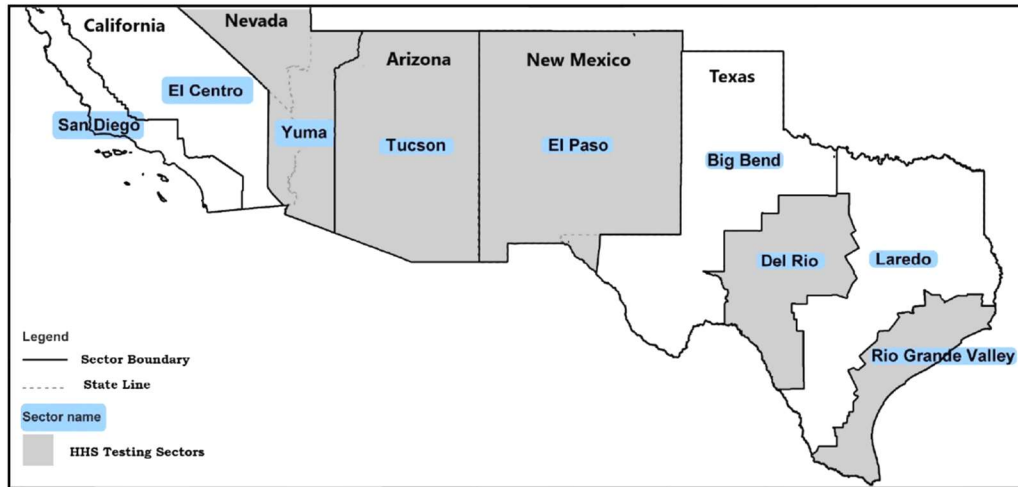


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DHS transports UCs from Border Patrol stations to a centralized location in the sector to receive a COVID-19 test. See Figure 4 for a map showing in solid gray the five Border Patrol sectors where HHS contractors test UCs for COVID-19.

Figure 4. CBP Sectors Where HHS' Contractor Tests UCs for COVID-19



Source: DHS Senior Medical Officer, CBP, and HHS

HHS officials stated they have recommended DHS expand testing to all nine Border Patrol sectors along the southwest border using the HHS contractor. We then asked DHS' Senior Medical Officer why HHS contractors are only testing in five sectors. He explained that he believes the current testing strategy is sufficient to test the majority of UCs because approximately 85 percent of UCs come through these five sectors. We confirmed that in FY 2021, 91 percent of UCs entered through one of these five sectors.

ERO Did Not Follow Policies to Test Single Adults for COVID-19 before Transport on Domestic Commercial Flights

In response to the COVID-19 pandemic and to mitigate the risks in detention facilities, ERO developed the PRR, and ICE Health Service Corps issued a COVID-19 reference sheet,⁶ which mandated COVID-19 testing for all detainees. Although these policies do not provide a timeframe for testing or include explicit requirements related to domestic commercial flights, they do require that ERO test detainees for COVID-19 before transfer between ICE detention facilities, which would include transfer via domestic commercial flights.

⁶ *Interim Reference Sheet on 2019-Novel Coronavirus (COVID-19): Fraihat and COVID-19 Management*, December 22, 2020.



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ERO did not have controls in place to ensure staff and contractors followed the requirements to test all single adult migrants for COVID-19 before transfer, transport, or release using domestic commercial flights in FY 2021. We reviewed a sample of 48 detainees and identified 24 occasions where a migrant boarded a domestic commercial flight. In 11 of those 24 occasions, ERO could not provide evidence the migrant received a COVID-19 test within 3 days of transport. For example, ERO records showed a migrant was tested for COVID-19 upon intake into an ICE facility. However, ERO could not produce records showing the migrant was tested again before transport to another ICE facility by a domestic commercial flight 2 months later. In another instance, ERO did not provide evidence that a migrant received a COVID-19 test upon intake into an ICE facility or before the migrant boarded a domestic commercial flight for transfer between facilities 3 months later.

ERO Did Not Ensure Members of Family Units Were Tested for COVID-19 before Transport on Domestic Commercial Flights

ERO could not provide evidence that members of family units were tested for COVID-19 before transport from CBP custody to ICE family staging centers via domestic commercial flights in FY 2021. We requested testing information about 47 members of family units that ERO transported from CBP custody to ICE in FY 2021; ERO officials confirmed that they did not test these family unit members for COVID-19. Two of the 47 family unit members tested positive for COVID-19 upon intake into an ICE facility the day after transport via domestic commercial flight. ERO officials deferred to CBP for information on whether members of family units received COVID-19 tests while in CBP custody. CBP officials stated that CBP does not test migrants in family units for COVID-19.

The ERO requirements to test detainees upon intake into a facility, transfer to another facility, or release into the community apply to family units in ICE custody. However, these policies do not include requirements to test members of family units before transfer from CBP to ICE custody, and they do not include timeframes for testing or specify that testing must occur before transfer using domestic commercial flights. Additionally, although the DHS CMO recommended testing UCs before transport from CBP custody, the CMO did not include family units in the recommendation.

ERO Did Not Maintain Complete Migrant Testing and Transport Records to Help Mitigate the Spread of COVID-19

The Government Accountability Office's *Standards for Internal Control in the Federal Government* state management should use quality information that is complete to achieve an organization's objectives. Management should also



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clearly document all transactions and other significant events in a manner that allows the documentation to be readily available for examination.

ERO policy states that ICE field offices must prepare a custody-transport packet for UCs before transport. This includes a medical screening form, medical paperwork, and other identifying information received from CBP. However, ERO could not provide requested documentation, including COVID-19 testing and transport records, for some migrants, and ICE officials stated that MVM does not review or document COVID-19 test results for UCs. ERO officials stated that COVID-19-positive UCs would not be transported on commercial flights; however, the only way they knew about COVID-19 test results for UCs was by “word of mouth.” Some UC transport records included COVID-19 screening information such as temperature checks and test results, but other records did not. Finally, ERO did not review or maintain COVID-19 test results for the previously mentioned 45 UCs transported on domestic commercial flights on 1 day in September 2021.

We also requested documentation supporting completed COVID-19 tests ICE performed for a sample of single adult migrants booked on domestic commercial flights in FY 2021, but ERO could not provide all of these records because it does not maintain the records for COVID-19 testing and domestic commercial flight status in one place. For example, we received commercial flight booking information from ERO Commercial Air Operations, details of enforcement actions from ERO field offices, and COVID-19 testing documents from ICE Health Service Corps. This occurred because ERO does not require its staff or contractor to track transport information or COVID-19 test results for migrants.

Conclusion

DHS’s mission includes using available means to keep Americans safe by detecting and slowing the spread of COVID-19 or other future pandemics. DHS is also responsible for the care of detained migrants. As part of this care, ICE is responsible for the health and wellbeing of migrants during transport. Unlike the general public, detained migrants do not have the freedom to schedule a COVID-19 test before transport. Therefore, to reduce the spread of COVID-19 among other migrants and the general public, ICE should ensure migrants in its care are COVID-19-negative before boarding a domestic commercial flight.

However, ERO transported migrants without ensuring all migrants were COVID-19-negative before transport and did not retain complete transport records. These practices risk exposing other migrants, ERO staff, and the



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general public to COVID-19. It is imperative that ERO establish and enforce policies and procedures to mitigate public health concerns regarding COVID-19 or other future pandemics.

Recommendations

We recommend the ICE Executive Associate Director for Enforcement and Removal Operations (ERO):

Recommendation 1: Coordinate with CBP and the DHS Chief Medical Officer to determine and document whether noncitizen unaccompanied children and family units should be tested for COVID-19 before transport on domestic commercial flights. If ICE ERO determines noncitizen unaccompanied children and family units should be tested, we recommend ICE ERO develop detailed testing policies and establish controls to ensure staff and contractors follow the policies. These policies should include modes of transportation and timeframes for mandatory testing before transport.

Recommendation 2: Establish controls to ensure staff and contractors follow existing requirements to test single adults for COVID-19 before transfer using domestic commercial flights.

Recommendation 3: Clarify existing COVID-19 testing policies to include modes of transportation and timeframes for mandatory testing before transport.

Recommendation 4: Maintain complete and accurate migrant COVID-19 testing and transport records.

Management Comments and Office of Inspector General Analysis

We provided DHS a draft of this report on February 28, 2022, for its review and response. DHS, ICE, and CBP responded with technical comments on March 29, 2022. During an exit conference on March 31, 2022, we discussed OIG responses to technical comments and provided an updated version of the draft report. ICE formally responded to our draft report on April 14, 2022. It concurred with recommendations 1, 3, and 4, and did not concur with recommendation 2. A summary of ICE's response and our analysis follows. We included ICE's full response to the draft report as Appendix A.



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ICE Comments to Recommendation 1: Concur. ICE responded that it coordinates with CBP and the DHS CMO on a regular basis and will continue to do so. ICE documents its COVID-19 testing protocols in the PRR, which aligns with CDC's *Guidance on Management of COVID-19 in Correctional and Detention Facilities*. ICE explained that it developed the current PRR protocols in close coordination with medical and public health specialists on the DHS CMO's team. ICE Health Service Corps leadership also meets with personnel from the DHS CMO to coordinate care along the southwest border on a weekly basis, or more frequently as conditions necessitate. ICE procedures required new admissions to an ICE facility to receive a COVID-19 test and additional tests based on exposure to COVID-19 or following CDC requirements. ICE requested OIG consider this recommendation resolved and closed, as implemented.

OIG Analysis: ICE did not respond to the correct recommendation. Therefore, ICE's actions are not responsive to the intent of the recommendation. OIG provided ICE an updated draft report on March 31, 2022, with an update to recommendation 1. On March 31, 2022, OIG held the exit conference and discussed the agency's technical comments and updates to the draft report. OIG recommended that ICE coordinate with the DHS CMO and CBP to determine and document whether UCs and family units should be tested before transport on domestic commercial flights. OIG requested additional documentation, beyond testimony from the DHS CMO, regarding the analysis and decision to test or not test UCs and family units. However, neither the DHS CMO nor ICE provided documentation on the final analysis and decision to test or not test. OIG considers this recommendation open and unresolved.

ICE Comments to Recommendation 2: Non-concur. ICE's response noted that testing protocols for COVID-19 documented in the PRR are mandatory requirements for all detention facilities. ICE noted that the PRR requires all new admissions to receive a test upon intake to an ICE facility regardless of vaccine status. In addition, officials stated ICE tests upon removal as dictated by the requirements of the receiving country of record, release to the community, or transfer to another ICE detention facility. ICE indicated that it is inappropriate to apply different standards for noncitizens in DHS custody and that current testing protocols and requirements are sufficient. ICE requests OIG consider the recommendation resolved and closed, as implemented.

OIG Analysis: In April 2020, in response to the COVID-19 pandemic and to mitigate the risks in detention facilities, ICE ERO developed the COVID-19 PRR, which mandated COVID-19 testing for all detainees before transport, transfer, or release. Our audit work identified numerous instances in which



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ICE could not provide evidence that single adults were tested for COVID-19 before transport on domestic commercial flights. Our recommendation is focused on ICE consistently following the standards it has put into place. Without a record of test results, ICE cannot confirm a single adult received a test before transport, transfer, or release. OIG considers this recommendation open and unresolved.

ICE Comments to Recommendation 3: Concur. The ICE PRR discontinued transfers and transport of ICE detainees unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, release, removal, or to prevent overcrowding. The PRR also requires transferred, removed, or released detainees to receive medical clearance. ICE noted that it only has authority to test noncitizens in ICE custody and it would be inappropriate for ICE to dictate testing protocols between other departments and agencies. If ICE's testing requirements change, ICE will conduct an assessment to ensure the modes of transportation and timeframes for mandatory testing before transport are well-defined and communicated appropriately. ICE requested OIG consider this recommendation resolved and closed, as implemented.

OIG Analysis: ICE's actions are not responsive to the intent of the recommendation. ICE updated the PRR on April 4, 2022, after receipt of the draft report. The updates to the PRR discontinued transfers of detainees. However, the PRR identifies exceptions in which transfers would still be allowed. Therefore, ICE should clarify the modes of transportation and timeframes for mandatory testing before transport. Further, OIG did not recommend that ICE change its testing policy. Rather, we recommended that ICE clarify the existing policy. OIG considers this recommendation open and unresolved.

ICE Comments to Recommendation 4: Concur. Officials stated ICE tests migrants for removal flights and provides the results to CBP for processing. Further, ICE notes it maintains medical and transport records for noncitizens in its custody and can neither provide nor maintain records for noncitizens that are not in ICE custody. ICE does not maintain records for testing or vaccinations that are administered prior to travel and before ICE takes custody at a detention facility. ICE defers to the department or agency that performed the testing and transport since the DHS approach focuses on supporting a multi-layered COVID mitigation framework that is based on partnerships across governmental and non-governmental organizations. ICE requests OIG consider this recommendation resolved and closed, as implemented.



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OIG Analysis: ICE's actions are not responsive to the intent of the recommendation. ICE is responsible for transporting UCs and family units from CBP custody to HHS and ICE detention facilities, respectively. Before transport, ICE receives documentation from other agencies related to identification, health, criminal history, transportation location, etc., for each noncitizen transported. Therefore, ICE should require the documentation to include information related to COVID-19 testing before transport. OIG considers this recommendation open and unresolved.

Objective, Scope, and Methodology

The Department of Homeland Security (DHS) Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

The objective of this review was to determine the extent to which ICE mitigates safety risks by testing migrants for COVID-19 before transport on domestic commercial flights and whether a process is in place for escorting noncitizen UCs during transport.

To achieve our objective, we interviewed officials from ICE Headquarters divisions including ICE Health Service Corps, ERO Commercial Air Operations, and the Juvenile and Family Residential Management Unit. We also interviewed officials from ERO field offices in San Antonio, San Francisco, San Diego, Detroit, and Miami. Additionally, we obtained, reviewed, and analyzed information from DHS Headquarters, ICE, CBP, ICE's transportation contractor (MVM), and HHS including:

- policies and procedures for transporting migrants and testing them for COVID-19;
- records/systems maintained, accessed, and shared by DHS related to COVID-19 testing and commercial air transport;
- MVM's contract and performance work statement; and
- policies and procedures for escorting UCs during transport.

We analyzed data about migrants transported via domestic commercial flights for FY 2021, including COVID-19 test results. We used UC transport data for 1 day in September 2021 and CBP's booking system to determine whether UCs received a COVID-19 test before transport on domestic commercial flights. We performed a judgmental selection of single adults and family unit migrants to determine if they were tested for COVID-19 within 3 days before boarding a domestic commercial flight. We used 3 days as a benchmark in accordance



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with CDC guidelines for the general public that recommend unvaccinated individuals get tested for COVID-19 1 to 3 days prior to flight.

Due to the COVID-19 pandemic, we conducted this audit via telephone, email, and video communication. Although the team did not physically travel for meetings or site visits, we believe these restrictions did not impair our ability to gather sufficient evidence to support our conclusions.

We conducted this review between June 2021 and March 2022 under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

The Office of Audits major contributors to this report are Shelley Howes, Director; Heather Dugan, Audit Manager; Jacklyn Pham, Acting Audit Manager; Diane Benton, Auditor-in-Charge; Denis Foley, Program Analyst; Kierra Pineda, Program Analyst; Richard Puglisi, Program Analyst; Maria Romstedt, Communications Analyst; and Dwight McClendon, Independent Referencer.



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Appendix A
ICE Comments to the Draft Report

Office of the Chief Financial Officer

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536



**U.S. Immigration
and Customs
Enforcement**

April 14, 2022

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
Inspector General

FROM: Jason Houser *JASON P HOUSER*
Chief of Staff (Acting)

SUBJECT: Management Response to Draft Report: "ICE Did Not Follow
Policies, Guidance, or Recommendations to Test Migrants for
COVID-19 before Domestic Commercial Flights"
(Project No. 21-036-AUD-DHS)

Thank you for the opportunity to comment on this draft report. U.S. Immigration and Customs Enforcement (ICE) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

ICE is pleased to note OIG's recognition that, consistent with the Centers for Disease Control and Prevention (CDC) guidelines on COVID-19 mitigation measures for travel and detention facilities, ICE's Enforcement and Removal Operations (ERO) issued policies for its staff and contractors to ensure single adult and family unit migrants are tested for COVID-19 before transfer, transport, or release, including the COVID-19 Pandemic Response Requirements (PRR), dated April 4, 2022, to address evolving public health concerns related to COVID-19 within ICE detention facilities.

ICE leadership agrees with the intent of OIG's findings and considers a number of proposed actions regarding the testing of noncitizen family units or unaccompanied children already addressed. ICE is committed to ensuring noncitizens in its custody reside in safe, secure, and humane environments, and under appropriate conditions of confinements. As such, ICE has implemented, executed, and ensures healthcare protocols and testing procedures for COVID-19 in alignment with the CDC's Guidance on Management of COVID-19 in Correctional and Detention Facilities¹.

¹ <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>

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The draft report contained four recommendations. ICE concurs with recommendations 1, 3 and 4, and non-concurs with recommendation 2. Attached please find our detailed response to each recommendation. ICE previously submitted technical comments addressing several accuracy, contextual, and other issues under a separate cover for OIG's consideration, as appropriate.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions.

Enclosure



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Enclosure: Management Response for Recommendations Contained in 21-036-AUD-DHS

OIG recommended that the Executive Associate Director of ERO:

Recommendation 1: Coordinate with CBP and the DHS [U.S. Department of Homeland Security] Chief Medical Officer to determine whether UCs [unaccompanied children] and family units should be tested for COVID-19 before transport on domestic commercial flights. If ICE ERO determines UCs and family units should be tested, we recommend ICE ERO develop detailed testing policies and establish controls to ensure staff and contractors follow the policies. These policies should include modes of transportation and timeframes for mandatory testing before transport.

Response: Concur. ICE coordinates with CBP and the DHS Chief Medical Officer on a regular basis and will continue to do so. Based on this coordination, ICE understands its current testing protocols for COVID-19, which are documented within the PRR are sufficient as the PRR sets forth requirements and expectations so that detention facility operators sustain detention operations while mitigating potential risk to the safety and well-being of detainees, staff, contractors, visitors, and stakeholders. These testing protocols are in alignment with the CDC's Guidance on Management of COVID-19 in Correctional and Detention Facilities and are mandatory requirements for all ICE detention facilities. The current PRR protocols were developed in close coordination with medical and public health specialists on the DHS Chief Medical Officer's team. In addition, ICE Health Service Corps (IHSC) leadership meets with personnel from the Office of the DHS Chief Medical Officer to coordinate care along the southwest border on a weekly basis, or more frequently as conditions necessitate.

Accordingly, ICE ERO procedures already require that all new admissions, including families, are tested upon intake at an ICE facility, regardless of vaccine status, and address further testing to be performed based on exposure to COVID-19 or following CDC requirements. ERO performs onsite testing using Abbott ID NOW analyzers and rapid Polymerase Chain Reaction cartridges. ICE will continue to follow the CDC's guidance, and will adapt testing protocols, as appropriate. ICE will continue to coordinate with CBP and the DHS Chief Medical Officer, as appropriate, to continue to ensure a collaborative and comprehensive approach should testing policies and controls change to ensure staff and contractors follow the policies.

ICE requests OIG consider this recommendation resolved and closed, as implemented.

Recommendation 2: Establish controls to ensure staff and contractors follow existing requirements to test single adults for COVID-19 before transfer using domestic commercial flights.



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Response: Non-concur. ICE testing protocols for COVID-19, which are documented within the PRR and are mandatory requirements for all detention facilities currently: (1) require that all new admissions are tested upon intake to an ICE facility, regardless of vaccine status; and (2) address further testing to be performed based on exposure to COVID-19 or following CDC requirements. In addition, testing is done upon removal as dictated by the requirements of the receiving country of record, release to the community or transfer to another ICE detention facility.

ICE believes that applying a different standard for noncitizens in DHS custody would not be appropriate, and that current testing protocols and requirements are sufficient. Again, ICE's current processes, policy, and procedures are aligned with guidance from the DHS Chief Medical Officer.

ICE requests OIG consider this recommendation resolved and closed, as implemented.

Recommendation 3: Clarify existing COVID-19 testing policies to include modes of transportation and timeframes for mandatory testing before transport.

Response: Concur. The ICE PRR includes a section for transportation of noncitizens titled, "Transporting Detained Individuals," which notes that transfers and transport of ICE detainees are discontinued unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, release or removal, or to prevent overcrowding. Additionally, any detainee that is transferred, removed, or released must be first cleared medically.

It is important to note that ICE ERO only has the authority to test noncitizens in ICE custody, and it would not be appropriate for ICE to dictate testing protocols between other departments and agencies. As stated in the OIG's draft report, the Department of Health and Human Services (HHS) contracted healthcare providers at CBP facilities to test all unaccompanied migrant children coming through five U.S. Border Patrol sectors for COVID-19 before transport to HHS Office of Refugee Resettlement (ORR) facilities. Accordingly, as these migrant children are being transferred from CBP to HHS ORR custody, rather than to an ICE detention facility, it would therefore be inappropriate for ICE to enforce or require additional testing in these circumstances.

Should ICE's testing requirements change in the future, then ICE will conduct an assessment to ensure the modes of transportation and timeframes for mandatory testing before transport of a noncitizen in ICE custody are well-defined and communicated appropriately.

ICE requests OIG consider this recommendation resolved and closed, as implemented.



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Recommendation 4: Maintain complete and accurate migrant COVID-19 testing and transport records.

Response: Concur. Currently, IHSC assists CBP with testing migrants for removal flights (no later than eight hours prior to their flight) and provides the test results to CBP for processing. Specifically, IHSC conducts rapid COVID-19 tests on removal migrants, and CBP isolates migrants who test positive and makes determinations on their housing locations. If the determination is made to transfer a noncitizen to ICE custody, then ICE will conduct testing upon intake at an ICE facility, regardless of vaccine status, and address further testing to be performed based on exposure to COVID-19 or following CDC requirements.

ICE ERO maintains medical and transport records for noncitizens in its custody, and cannot provide nor maintain records for noncitizens that are not in ICE custody. In addition, ICE does not maintain records for testing or vaccinations that are administered prior to travel, and prior to ICE taking custody at a detention facility. For example, ICE would not have the medical records for unaccompanied children tested by HHS at a CBP facility and transported to an HHS ORR facility. ICE defers to the department or agency that performed the testing and transport since the DHS approach focuses on supporting a multi-layered COVID mitigation framework that is based on partnerships across governmental and non-governmental organizations.

ICE requests OIG consider this recommendation resolved and closed, as implemented.



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Appendix B

DHS CMO Memorandum to ICE and CBP dated April 1, 2021

Chief Medical Officer
U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

April 1, 2021

MEMORANDUM FOR: Troy Miller
Acting Commissioner
U.S. Customs and Border Protection

Tae Johnson
Acting Director
U.S. Immigration and Customs Enforcement

FROM: Pritesh Gandhi, MD, MPH
Chief Medical Officer
U.S. Department of Homeland Security 

SUBJECT: **Southwest Border Facilities – COVID-19 Testing of Unaccompanied Children**

Summary

The numbers of unaccompanied children in U.S. Customs and Border Protection (CBP) custody continue to increase. This, coupled with the more transmissible B.117 variant becoming predominant in many geographic regions, necessitates an immediate change to the testing approach of unaccompanied children (UC) in our custody. Effective immediately, all UCs should be tested *prior* to transport to Health and Human Services (HHS) facilities. U.S. Immigration and Customs Enforcement (ICE) should transport UCs in *COVID-19 positive* and *COVID-19 negative* cohorts.

Background

CBP has undertaken significant efforts to reduce COVID-19 transmission in its facilities including but not limited to universal masking, social distancing (when possible), access to handwashing stations, and vaccinations for its workforce. Yet, although UCs are processed in a timely fashion, there are not enough HHS Office of Refugee Resettlement (ORR) beds available downstream. This has two consequences. First, it leads to an increased total number of UCs held far above the COVID-19 capacity for CBP facilities. And second, it leads to an increased time in custody for UCs. Therefore, the risk of COVID-19 transmission increases.



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My team is reviewing enhanced COVID-19 mitigation measures. Keeping HHS beds online for UCs is critically important to maintain throughput in the immigration system at large, thereby decreasing pressure on CBP facilities.

One strategy to maintain open HHS beds is to decrease further transmission of COVID-19 during the journey from CBP via ICE to HHS facilities. COVID-19 transmission risk on a bus, in a setting where the windows are closed, is not negligible. Multiple studies demonstrate the transmission risk and rough modeling clearly identifies the infections that can be prevented with pre-transport testing.

Recommendations

1. All UCs should be tested immediately prior to transport to HHS facilities.
2. UC testing should be done via rapid antigen test kits (e.g. Abbott Binax Now).
3. UCs should be transported in COVID-19 positive and COVID-19 negative cohorts to HHS.
4. COVID-19 test results should be submitted daily to the DHS CMO.

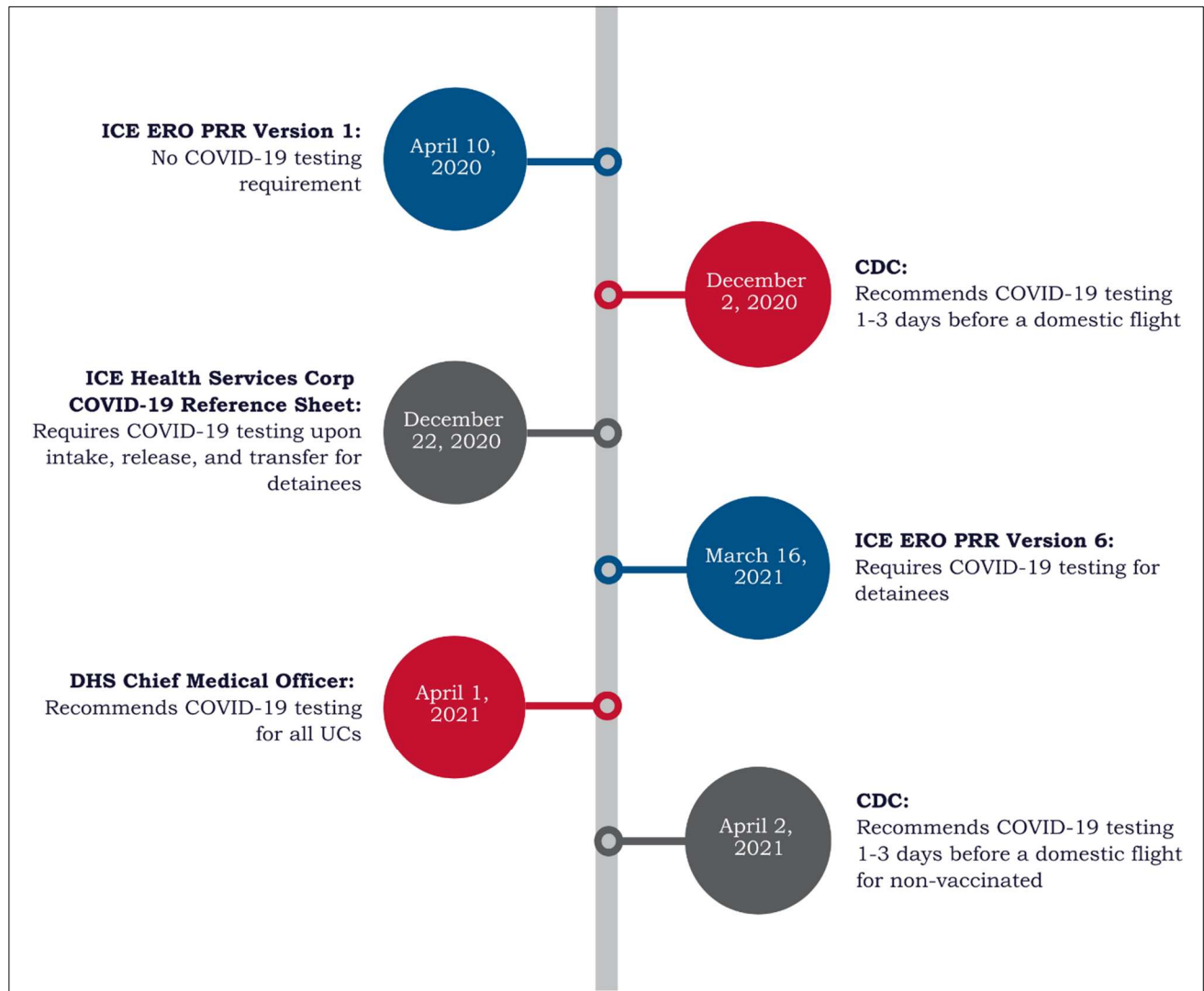
CC:

Dr. Alexander Eastman (CWMD – Senior Medical Officer)
Dr. Herbert Wolfe (CWMD – Deputy Assistant Secretary)
Dr. Stewart Smith (ICE – Assistant Director, IHSC)
Dr. David Tarantino (CBP – Chief Medical Officer)



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Appendix C
COVID-19 Mitigation Policies and Recommendations Timeline



Source: DHS, CDC, and ICE policies, memorandums, and announcements



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Appendix D

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