



COVID-19's Effect on Interior Immigration Enforcement and Detention

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In response to the Coronavirus Disease 2019 (COVID-19) pandemic, immigration authorities have altered interior immigration enforcement activities including arrests, detention, and immigration court proceedings. The [Department of Homeland Security \(DHS\)](#) [claims these efforts](#) “have facilitated a speedy, whole-of-government response in confronting COVID-19, keeping Americans safe, and helping detect and slow the spread of the virus.” This Insight considers how the COVID-19 pandemic has impacted interior immigration enforcement.

Background

DHS's [Immigration and Customs Enforcement \(ICE\)](#), and more specifically its [Enforcement and Removal Operations \(ERO\)](#), is responsible for immigration enforcement in the interior of the United States. ICE identifies and arrests non-U.S. nationals (aliens) who have committed immigration violations and [places them](#) in removal proceedings. These proceedings are [conducted by an immigration judge \(IJ\)](#) within the Department of Justice's [Executive Office for Immigration Review \(EOIR\)](#), which oversees the adjudication of [immigration court proceedings](#). ICE may [detain or release an alien pending removal proceedings](#), unless the agency is [statutorily required](#) to detain the alien (e.g., when the alien is removable on account of certain criminal or terrorist activity). Detained aliens may request an IJ's review of ICE's custody determination.

The composition of the population held in ICE detention facilities has changed due to recent shifts in migration trends at the southern border. Apprehensions by DHS's [Customs and Border Protection \(CBP\)](#) reached a 10-year high mark in FY2019, with many more migrants seeking asylum. As a result, ICE's detention and supervision functions have had to accommodate a distinctively different population than the typical population arrested in the interior. For context, [more than 500,000](#) individuals were booked into ICE custody in FY2019, an increase of 19% compared to FY2018, largely as a result of the higher than typical border apprehensions. The average daily population in detention in FY2019 was just over 50,000, also a 19% increase. In addition, at the end of FY2019 there were more than 3.2 million persons in the “non-detained docket,” who have been released from ICE custody (including on orders of recognizance, parole, and bond) but mostly remain under ERO supervision. Some in the non-detained docket have been enrolled in ICE's alternative to detention program. [More than 267,000](#) foreign nationals were removed

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from the United States in FY2019. Recent changes to policies affecting arriving aliens at the southern border, combined with [new travel restrictions](#) in place at both the [southern and northern borders](#) to deter the spread of COVID-19, have lowered the number of apprehensions considerably.

Impact of COVID-19 on Immigration Arrests and Detention

ICE has [announced](#) the suspension of most immigration arrests within the United States. The agency says it will [prioritize](#) enforcement against aliens who pose “public safety risks” or are subject to mandatory detention based on the commission of specified crimes. In other cases, ICE “will exercise discretion to delay enforcement actions until after the [COVID-19] crisis or utilize alternatives to detention, as appropriate.” The agency “will not carry out enforcement operations at or near health care facilities ... except in the most extraordinary of circumstances.” (This announcement seems to track ICE’s long-standing “[sensitive locations](#)” policy). [According to ICE](#), aliens otherwise subject to removal “should not avoid seeking medical care because they fear civil immigration enforcement.”

ICE has [begun releasing](#) some detained aliens in light of the COVID-19 pandemic, and some federal courts [have ordered the release](#) of aliens given the potential risk of infection. ICE has [reported](#) that some detained aliens, as well as ICE [personnel](#) at detention facilities, have tested positive for COVID-19. But ICE cites “[comprehensive protocols](#)” to protect detention facility staff and detainees, including using protective equipment (e.g., respirators, masks), screening detainees and isolating those with COVID-19-related symptoms (or who meet the [CDC’s criteria for risk of infection](#)), and temporarily suspending most visitations. ICE has also [limited or postponed](#) scheduled “check-ins” for non-detained aliens in removal proceedings.

ICE has not suspended removals, but is medically [screening](#) detainees before removal flights. Detainees with symptoms of COVID-19 are to be referred to an ICE facility or a medical provider for evaluation.

Impact of COVID-19 on Immigration Court Proceedings

EOIR has [postponed](#) all immigration court hearings except in cases involving detained aliens. EOIR has also [closed](#) some immigration courts. Although the agency has not postponed cases involving detained aliens, IJs retain [broad authority](#) over ongoing removal proceedings, including the [scheduling of cases](#). An IJ typically conducts proceedings in person, but [may choose to hold the hearings](#) telephonically or by video conference under some circumstances. The IJ may also [waive](#) an alien’s appearance at a hearing. An IJ may also [postpone](#) a hearing for “good cause shown.” Unless an alien is statutorily required to remain in detention, an IJ may [permit an alien’s release](#) pending removal proceedings.

Policy Proposals and Relevant Legislation

[Advocacy groups](#) and [policymakers](#) have proposed ways to address COVID-19 related to immigration enforcement measures. Some entities [recommend](#) closing all immigration courts, immediately releasing from custody “vulnerable” aliens more susceptible to infection, and generally decreasing the number of detainees to limit exposure to the virus. Conversely, some groups [argue](#) that detainees should be kept in ICE facilities that already have adequate medical treatment facilities rather than being released into the general population and potentially contributing to the spread of COVID-19.

Recent legislation has been offered to restrict ICE’s ability to arrest and detain aliens seeking medical treatment or who are more susceptible to illness. The [Coronavirus Immigrant Families Protection Act](#) and the [Federal Immigrant Release for Safety and Security Together \(FIRST\) Act](#) would suspend immigration arrests at medical treatment facilities and certain other “sensitive locations.” The [FIRST Act](#) would also require the release of detained aliens who are over the age of 50 or under the age of 21, or who have

certain health conditions. The [Homeland Security Improvement Act](#) passed by the House in 2019 would require immigration officers to be trained to deal with “vulnerable populations” like the “acutely ill.”

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