



March 17, 2020

Honorable Chad Wolf
Acting Secretary
U.S. Department of Homeland Security
301 7th Street, S.W.
Washington, D.C. 20528

Honorable Matthew Albence
Deputy Director and Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement
500 12th Street, S.W.
Washington, D.C. 20536

Re: COVID-19 and Immigration Detention

Dear Acting Secretary Wolf and Deputy Director Albence:

We write to urge, as you prepare for the humanitarian and public health challenges presented by the COVID-19 pandemic,¹ that your agencies take critical steps to mitigate the risk of infection, illness and death for the men, women and children held by Immigration and Customs Enforcement (ICE) in federal detention facilities, county and local jails, as well as for facility staff and others.

One of the most critical steps your agencies can implement immediately is to release immigrants and asylum seekers held in administrative detention by ICE. Such releases strongly benefit public health interests given the pressing need to drastically reduce prison and detention populations and the documented inadequacies of medical care and basic hygiene in immigration detention facilities.² Many immigrants currently detained are longtime residents of the United States who were taken from established lives in this country, and many others, including asylum seekers, have close family, faith and other community ties who would help house them.

The release of detained immigrants is already authorized under existing laws, regulations and agency guidance. ICE has the legal authority to release these individuals under its parole authority. INA § 212(d)(5)(A); INA § 236(a)(2)(B); 8 C.F.R. § 212.5(b); 8 C.F.R. § 236.1(c)(8). Moreover, release of many asylum seekers is also authorized under ICE's parole directive³ – a directive that the government has repeatedly told U.S. courts is in effect (despite ICE's failure to apply it to release many eligible asylum seekers).⁴ As of March 7, there were over 6,500 asylum

seekers in immigration detention who had already passed a credible fear screening, according to ICE statistics.⁵

Detained individuals—in addition to facility, immigration court, and agency staff as well as outside lawyers and others—will face grave risks in immigration detention facilities if they are exposed to infection, such as through a staff member who is unaware that he or she has COVID-19. Rapid spread within crowded detention centers is of major concern. For example, at least ten facilities used as ICE jails hold on average over 1,000 detainees, including 1,600 in the Adelanto ICE Processing Center.⁶ In addition, ICE has in recent years begun detaining an increasing number of people in detention centers whose remote locations make the provision of adequate medical care challenging even under normal circumstances. The release of immigrants in civil, administrative detention is warranted in the public interest to reduce the number of individuals in detention facilities, prisons and jails to limit the spread of COVID-19 to both detainees and staff and ensure that medical staff—and area hospitals—have the capacity to manage COVID-19 cases that may arise.

Public health experts have already recommended reducing prison and detention populations. For example, Dr. Marc Stern,⁷ a correctional health expert and former health services director for Washington State’s Department of Corrections told Human Rights Watch that “[w]ith a smaller population, prisons, jails, and detention centers can help diseases spread less quickly by allowing people to better maintain social distance,” and “[i]f staff cannot come to work because they are infected, a smaller population poses less of a security risk for remaining staff.”⁸ Dr. Anne Spaulding,⁹ at the Emory Center for the Health of Incarcerated Persons has recommended that correctional facilities “consider measures other than detention” and ask themselves who “can [be] release[d] on their own recognizance.”¹⁰

Among those held in immigration detention are many who would be particularly vulnerable to COVID-19 due to their age or serious medical conditions.¹¹ For instance, in fiscal year 2018, ICE held more than 700 individuals over the age of 65 in its immigration detention facilities.¹² ICE must also release families from detention facilities. As the American Academy of Pediatrics has warned, detention harms the health and development of children.¹³ Even before COVID-19, a DHS advisory committee recommended expansion of community-based programs for families with children rather than detention.¹⁴ This fiscal year ICE’s three family jails have held over 1,500 children and their parents each day on average.¹⁵

The U.S. government is responsible for the well-being of detainees in its custody, and there are many reasons ICE should release immigrants and asylum seekers from civil detention. Many detained immigrants have long-standing family, faith, and other community ties in the United States who could safely house them should they be released from detention. Many asylum seekers are survivors of horrific persecution, torture, and trauma in their home countries. Multiple studies and data confirm that immigrants, including asylum seekers, who have

community support—such as through case management programs¹⁶ and legal representation—overwhelmingly appear for immigration court hearings.¹⁷ ICE has the ability to conduct telephonic supervision and check-ins, and should use community-based case management (which could be adapted to provide telephonic and remote support and referrals) rather than punitive alternatives for those who need additional appearance support. Moreover, as the COVID-19 crisis is already affecting international travel, it is likely that ICE’s ability to remove detainees in the near term will be affected, further diminishing justifications for their continued detention.

We urge your field offices to proactively work with local legal, humanitarian, faith-based, health and community organizations—as well as state and local public health officials—to swiftly and safely reduce the populations of immigration detention facilities and mitigate the otherwise inevitable spread of COVID-19 to the men, women and children held in these facilities. Communication and coordination are also needed to ensure that those with underlying health needs receive continuous medical care upon release. For all releases, ICE should communicate with the detainee, their attorney and family, as well as with community and local health resources to ensure any necessary care and to coordinate safe travel arrangements for detainees who are released far from their homes or sponsors.

Ultimately, your agencies are responsible for the health and safety of the immigrants and asylum seekers detained in ICE facilities and must take all appropriate steps to protect these individuals from the COVID-19 pandemic.

Sincerely,

Physicians for Human Rights

Human Rights First

Amnesty International USA

¹ World Health Organization, “WHO characterizes COVID-19 as a pandemic” (Mar. 11, 2020), *available at* <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>.

² *See, e.g.*, U.S. Dep’t of Homeland Sec., Off. of Insp. Gen., “Concerns about ICE Detainee Treatment and Care at Four Detention Facilities” (June 3, 2019), *available at* <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf> (finding threats to detainee health and welfare due to food service issues, poor general conditions and improper provision of toiletries hindering the maintenance of personal hygiene); U.S. Dep’t of Homeland Sec., Off. of Insp. Gen., “Concerns about ICE Detainee Treatment and Care at Detention Facilities” (Dec. 11, 2017), *available at* <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf> (finding delayed medical care, lack of cleanliness and limited hygienic supplies).

³ U.S. Imm. and Customs Enforc., “Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture” (Dec. 8, 2009), *available at* https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alien_found_credible_fear.pdf.

⁴ *See Damus v. Nielsen*, 313 F.Supp.3d 317, 338, 340, 343 (D.D.C. 2018).

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- ⁵ U.S. Imm. and Customs Enforc., “Detention Management: Detention Statistics,” *available at* <https://www.ice.gov/detention-management> (as of Mar. 7, 2020).
- ⁶ U.S. Imm. and Customs Enforc., “Dedicated and Non-Dedicated Facility List,” *available at* <https://www.ice.gov/facility-inspections> (as of Mar. 2, 2020).
- ⁷ University of Washington, Dep’t of Health Services, “Marc Stern,” *available at* https://depts.washington.edu/hserv/faculty/Stern_Marc.
- ⁸ Human Rights Watch, “US: COVID-19 Threatens People Behind Bars: Consider Supervised Release for Those at High Risk of Serious Effects” (Mar. 12, 2020), *available at* <https://www.hrw.org/news/2020/03/12/us-covid-19-threatens-people-behind-bars#>.
- ⁹ Emory University, Rollins School of Public Health, “Anne C Spaulding,” *available at* <https://www.sph.emory.edu/faculty/profile/index.php?FID=52>.
- ¹⁰ Anne C. Spaulding, “Coronavirus and the Correctional Facility,” Emory Center for the Health of Incarcerated Persons (Mar. 9, 2020), *available at* https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators_3.9.2020.pdf.
- ¹¹ U.S. Centers for Disease Control and Prevention, “People at Risk for Serious Illness from COVID-19” <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html> (high risk individuals include older adults and people who have serious chronic medical conditions like heart disease, diabetes, and lung disease).
- ¹² U.S. Gov’t Accountability Off., “Immigration Enforcement: Arrests, Detentions, and Removals, and Issues Related to Selected Populations” (Dec. 2019), *available at* <https://www.gao.gov/assets/710/703032.pdf>.
- ¹³ Am. Academy of Pediatrics, “Detention of Immigrant Children,” 139:4 PEDIATRICS (April 2017), *available at* <https://pediatrics.aappublications.org/content/pediatrics/early/2017/03/09/peds.2017-0483.full.pdf>.
- ¹⁴ Dep’t of Homeland Sec. Advisory Committee, “Report of the DHS Advisory Committee on Family Residential Centers” (Sep. 30, 2016), *available at* <https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf>.
- ¹⁵ U.S. Imm. and Customs Enforc., “Dedicated and Non-Dedicated Facility List,” *available at* <https://www.ice.gov/facility-inspections> (as of Mar. 2, 2020).
- ¹⁶ Office of Inspector Gen., “U.S. Immigration and Customs Enforcement’s Award of the Family Case Management Program Contract” (Nov. 30, 2017), *available at* <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-22-Nov17.pdf>.
- ¹⁷ Am. Imm. Council, “Immigrants and Families Appear in Court: Setting the Record Straight” (July 2019), *available at* https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_and_families_appear_in_court_setting_the_record_straight.pdf.