

Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
3801 Nebraska Ave. NW
Washington, D.C.
20016

Tae Johnson
Acting Director
U.S. Immigration and Customs Enforcement
500 12th St. SW
Washington, D.C.
20536

Esther Olavarria
Deputy Director
Domestic Policy Council
1600 Pennsylvania Ave. NW
Washington, D.C.
20500

March 29, 2021

Dear Secretary Mayorkas, Acting Director Johnson, and Deputy Director Olavarria:

The undersigned organizations write today to draw your attention to urgent, unaddressed concerns regarding the Immigration and Customs Enforcement (ICE) detention system. On February 11th, many of our organizations delivered [a letter](#) urging you to prioritize the implementation of a file review process, initiated by ICE, to reconsider the custody determination for every person in ICE custody. More than a month later, the process made available by ICE for case review has been shown to be plainly inadequate, [another person has died](#) in ICE custody, and thousands remain unnecessarily behind bars at grave risk to their wellbeing.

We write to reiterate our request that ICE meaningfully consider all people in custody for release as the first step toward a longer term dismantling of the harmful ICE detention system.

More than [14,000](#) people remain behind bars in ICE's system of more than 200 jails and prisons plagued by abuse and negligence and governed by a [corrupted system](#) of contracts and inspections that breed impunity (the Government Accountability Office [confirmed these persistent problems](#) this January). On January 20th, the Department of Homeland Security (DHS) [formally called](#) for a top-to-bottom review of the agency's enforcement practices. On February 18th, ICE issued a [follow-up memo](#) outlining enforcement priorities in greater detail. For those detained by ICE, these memos have not resulted in meaningful change. Conditions in detention remain harsh and punishing and people in detention live at [greatly heightened risk](#) of COVID-19.

We implore you to take quick action to ensure that the Biden administration does not leave these individuals behind.

On March 5th, ICE announced a [Case Review Process](#) for those facing detention or imminent removal to seek review of their case. Weeks into its roll-out, attorneys, advocates, and people in detention have found the process to be inadequate, resulting in little meaningful relief. Denials are sent in summary fashion, with scant if any discussion of the basis for the denial and no opportunity to seek reconsideration. Systemic problems include:

First, the Case Review Process appears to generate an automatic kick-back response delaying review of the case until the field office with jurisdiction has made a decision, even when the field office has already issued a decision on a previous release request or when the field office has not been responsive for extended periods of time. This bureaucratic shuffling leaves people stuck in detention with no recourse as delays at the field office level drag on for weeks, even in cases with emergent medical or mental health issues. It also renders the process almost entirely inaccessible to individuals without an attorney or advocate on the outside.

Second, it is our understanding that the escalation email address is being staffed by rotating Field Office Directors, which renders the process vulnerable to the very problem it was intended to address – a bias toward negative exercises of discretion at the field office level.

Third, decision-making through the Case Review Process appears heavily weighted against individuals with a criminal conviction, regardless of other equities. Rather than holistic consideration, the process also appears to automatically disqualify *anyone* who falls within one of the presumptive public safety categories.

We are frightened for our clients and community members whose lives, health, and safety are at risk in ICE custody, and frustrated at the lack of access to meaningful consideration of release pursuant to the administration's own priorities and commitment to equity. We share the following examples of individuals who remain detained at odds with the February 18th memo, despite their efforts to utilize the Case Review Process:

Mariposa Legal requested the release of their client Moris, who has lived in the U.S. for 29 years since he was 9 years old. Mariposa submitted a lengthy evidentiary submission with their request on behalf of Moris, including records showing that ICE has not permitted him to get married to his U.S. citizen fiancée due to COVID-19 in the jail where he is detained. Because of these rules, he has unjustly been unable to pursue a family petition despite his long-term relationship and the fact that his entire nuclear family are U.S. citizens or lawful permanent residents. Yet, despite these equities, neither the Chicago nor national ICE office provided any rationale as a part of the ICE Case

Review for denying his request for release even though he does not fall under the Administration's enforcement priorities.

Ubaldo Ochoa-López came to the United States from Guatemala with his then six-year-old son, seeking asylum from Guatemala. Ubaldo and his son were victims of the Trump administration's zero tolerance policy, torn apart at the border. They were subsequently reunited only to be separated again when ICE detained Ubaldo five months ago. ICE has denied repeated requests for Ubaldo's release submitted by his attorneys at RAICES, including through the Case Review Process. Ubaldo is unambiguously outside the February 18th enforcement priorities, with one misdemeanor conviction for driving under the influence and tremendous community support. Ubaldo's son cries when they speak on the phone, now enduring a second separation from his father at the government's hands.

Christopher (pseudonym) has lived in the United States for more than 15 years and supports his wife, who has serious and chronic physical and mental health issues, and their three step-children. ICE has detained Christopher for nearly 13 months, and his deportation is now imminent, threatening to leave his family facing severe financial insecurity. Christopher was transferred to immigration custody after facing criminal charges, but those charges were terminated after the prosecution declined to proceed. He has a pending petition for review of his application for relief from removal before a federal court. In late January, Christopher was transferred to Louisiana for his deportation, but his removal was temporarily stayed by ICE after intervention from DHS officials and Congressmembers. His request for release, supported by members of the Free Them All VA Coalition, was summarily denied through the ICE Case Review Process.

Immigration Equality represented Laura (pseudonym), a transgender woman who was detained by ICE and had previously been ordered removed despite fear of return to her country of origin. On February 23rd, Immigration Equality submitted an emergency stay of removal request on her behalf, arguing that Laura should not be subject to removal per the February 18th memo. The centralized Case Review email (then under the moniker of the ERO Ombudsman) replied that they could not review the case because the local Field Office had not yet reviewed the request. The Field Office denied Laura's request for a stay of removal on February 25th and ICE deported her within hours, before any meaningful review could be obtained through the Case Review Process.

The legal team representing Jonathan (pseudonym) included a lengthy evidentiary submission with their request for his release. Jonathan has been in prolonged detention for over a year because of two convictions from approximately 16 years ago. Jonathan

suffers from asthma, elevated blood pressure, adjustment disorder, and depression. He has made significant efforts to prepare to re-enter society having served his sentence, including converting to a religion where he has found meaning, learning English, and participating in various life-skills programs. The ICE Case Review process resulted in a denial of Jonathan's requested release, with no analysis or discussion of the evidence presented. Worse, ICE's denial included multiple factual errors, including the wrong detention facility, suggesting that the review was cursory at best.

In August 2020, a federal district court judge ordered that Robert Panton be released from prison because his numerous underlying conditions put him at heightened risk of COVID-19 and because his record during his time in custody left "no doubt" that he had "fully rehabilitated himself." Robert had served 30 years on a non-violent drug conviction from the early 1990s and was eager to reunite with his children and grandchildren. Yet upon his release he was immediately transferred to ICE custody, where he has languished for more than seven months despite the explicit finding of a federal judge that he does not pose a public safety risk. Robert is represented by the National Immigrant Justice Center, whose requests for his release through the ICE Case Review Process have been met with summary denials.

Turning your attention to the abusive ICE detention system cannot wait. Our organizations reaffirm our request that DHS immediately implement a file review process ensuring that the government assumes the obligation of considering every person for release under a standard that presumes liberty. This system must not repeat the failings of the ICE Case Review Process. The following imperatives, as outlined in our February 11th letter, must be met:

1. The review must be conducted under the authority of the DHS Secretary, with an independent review mechanism outside of ICE, and *without* required reliance on field office level decision-making.
2. The review should expedite the release of individuals who face a heightened risk of serious illness or death from COVID-19 due to age or a preexisting condition as defined by the Centers for Disease Control, transgender people, HIV+ people, and all families and children. Although ICE is already subject to a nationwide court order in *Fraihat v. ICE* requiring that it identify persons vulnerable to COVID-19 and consider them for release, compliance has been inconsistent at best. The Immigrant Action Alliance, for example, reports that of 42 requests its team has submitted to ICE to release individuals pursuant to *Fraihat* since December 2020, one has been denied and ICE has not even responded to the other 41.

3. DHS must ensure that all persons are eligible for release pursuant to this process, including those subject to statutory mandatory custody provisions. Even where the immigration statutes otherwise appear to require confinement, it has [long been acknowledged](#) that ICE maintains discretion to release such individuals for urgent humanitarian reasons. ICE officials in fact already exercise their discretion to release people detained under the mandatory custody provision at 8 U.S.C. § 1226(c) in cases where humanitarian equities are present, including the COVID-19 pandemic.

This file review must be the first step toward a long overdue process to dismantle the immigration detention system as it exists today. Many of our organizations and the We are Home campaign outlined these steps, including the full phase out of contracts with private prisons companies and state and local jails and prisons, in [this February 18th letter](#).

For Moris, Ubaldo, Christopher, Laura, Jonathan, Robert, and the thousands of people detained alongside them, each day that passes is another day separated from their loved ones and another day where their health is at risk and liberty denied.

We appreciate your attention to this urgent matter and look forward to your response.

With questions, contact: Heidi Altman, National Immigrant Justice Center, haltman@heartlandalliance.org
Jorge Loweree, American Immigration Council, jloweree@immcouncil.org
Sirine Shebaya, National Immigration Project, sirine@nipnlg.org
Ruthie Epstein, We Are Home Campaign, repstein@communitychange.org

Sincerely,

ACCESS (Arab Community Center for Economic and Social Services)

ACCESS of WNY

Advocating Opportunity

Aldea - The People's Justice Center

Alianza Nacional de Campesinas

America's Voice

American Friends Service Committee

American Immigration Council

American Immigration Lawyers Association

American Muslim Empowerment Network (AMEN)

Arkansas United

Asian Americans Advancing Justice - Asian Law Caucus

Asian Americans Advancing Justice | AAJC

Asian Americans Advancing Justice-Atlanta
Asylum Seeker Advocacy Project (ASAP)
Bend the Arc: Jewish Action
Black Alliance for Just Immigration (BAJI)
Bridges Faith Initiative
California Collaborative for Immigrant Justice (CCIJ)
CAPAS (Congregational Accompaniment Project for Asylum Seekers)
Capital Area Immigrants' Rights (CAIR) Coalition
Carolina Migrant Network
CASA
Casa Latina
Casa Ruby
Casa San Jose
Catholic Legal Immigration Network, Inc.
Catholic Migration Services
Center for Constitutional Rights
Center for Disability Rights
Center for Gender & Refugee Studies
Center for Law and Social Policy (CLASP)
Center for Victims of Torture
Central American Resource Center- CARECEN- of California
Central Washington Justice For Our Neighbors
Church Council of Greater Seattle
Church of Elohism Thelema
Church World Service
Clerics of St. Viator (Viatorians)
Cleveland Jobs with Justice
Coalition for Humane Immigrant Rights (CHIRLA)
Columbia Law School Immigrants' Rights Clinic
Community Change Action
Comunidad Colectiva
Comunidades Unidas en una Voz (CUUV)
Congregation Action Network
Connecticut Shoreline Indivisible

Corazón Arizona
Cville Immigrant Freedom Fund
Detention Watch Network
Disability Rights Advocates
Entre Hermanos
Esperanza Immigrant Rights Project
Fair Immigration Reform Movement (FIRM)
Faith Commons
Faith Forward Dallas @ Thanks-Giving Square
Faith in Indiana
Familia: Trans Queer Liberation Movement
Farmworker Association of Florida
Farmworker Justice
Florence Immigrant & Refugee Rights Project
Freedom for Immigrants
Freedom Network USA
Global Rights Advocacy
Government Accountability Project
Grassroots Leadership
Grupo de Apoyo e Integracion Hispanoamericano
Haitian Bridge Alliance
HIAS PA
Human Rights First
Human Rights Initiative of North Texas
Human Rights Watch
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Action Alliance
Immigrant and Non-Citizen Rights Clinic, CUNY School of Law
Immigrant ARC
Immigrant Defenders Law Center
Immigrant Defense Project
Immigrant Law Center of Minnesota
Immigrant Legal Advocacy Project
Immigrant Legal Resource Center

Immigration Equality
Immigration Hub
Immigration Working Group CLE
Indivisible
Innovation Law Lab
Interfaith Community for Detained Immigrants
International Rescue Committee
ISLA: Immigration Services and Legal Advocacy
James H. Binger Center for New Americans University of Minnesota Law School
Juntos
La Puerta Abierta, Inc
La Resistencia
Legal Aid Justice Center
Lincoln Park Presbyterian Church Chicago
Long Beach Immigrant Rights Coalition
Louisiana Advocates for Immigrants in Detention
Make the Road New York
Mariposa Legal, Program of COMMON Foundation
Massachusetts Communities Action Network
Mijente
Minnesota Interfaith Coalition on Immigration
Missouri Faith Voices
Missouri Immigrant & Refugee Advocates
Montserrat Padilla
National Employment Law Project
National Immigrant Justice Center
National Immigration Law Center
National Immigration Litigation Alliance
National Immigration Project (NIPNLG)
National Network for Immigrant & Refugee Rights
Neighbors Link
NETWORK Lobby for Catholic Social Justice
New York Immigration Coalition
NorCal Resist

Northern Illinois Justice for Our Neighbors
Northern Virginia DSA
Northwest Immigrant Rights Project
NYU Immigrant Rights Clinic
Orange County Congregation Community Organization
Orange County Equality Coalition
Oregon Justice Resource Center
Oxfam America
Pennsylvania Immigration and Citizenship Coalition
Physicians for Human Rights
Pittsburgh LCLAA
POWER Live Free Immigration Group
Prairielands Freedom Fund
Prophetic Resistance Boston
Public Counsel
Public Defenders Coalition for Immigrant Justice
RAICES
Rapid Defense Network (RDN)
Reformed Church of HP-Affordable Housing Corp
Refugee Women's Alliance
Revolutionary Love Project
Rocky Mountain Immigrant Advocacy Network
San Bernardino Community Service Center
Sanctuary and Resistance to Injustice
Service Employees International Union (SEIU)
SIREN
Southeast Action Resource Action Center
SPLC Action Fund
TASSC (Torture Abolition & Survivors' Support Coalition) International
The Advocates for Human Rights
The Welcoming Center
Tikkun Olam Chavurah
Transformations CDC
UndocuBlack Network

Unitarian Universalist Association
Unitarian Universalist Service Committee
Unitarian Universalists for Social Justice
United Sikhs
United We Dream
UnLocal
USC Gould School of Law Immigration Clinic
VECINA
Wind of the Spirit Immigrant Resource Center
Women's Refugee Commission
Young Center for Immigrant Children's Rights