

March 26, 2020

Field Office Director Peter Berg
St Paul Field Office
1 Federal Drive, Suite 1601
Fort Snelling, MN 55111

Chief Counsel Jim Stolley
Office of the Principal Legal Advisor
1 Federal Drive, Suite 1800
Fort Snelling, MN 55111

RE: ICE Response to COVID-19

Dear Director Berg and Mr. Stolley:

As organizations that support immigrant communities and provide legal representation to detained immigrants throughout the Upper Midwest, we ask that you take immediate measures to protect the health of the people in ICE custody, immigrant communities, and public health by immediately **releasing people from administrative detention and halting detainer hold requests, arrests, and enforcement actions**. We are aware of ICE HQ's announcement regarding COVID-19¹ and of your office's efforts to respond to the situation, but we remain concerned that current guidance fails to adequately address the complexities and urgency of this public health crisis.

Decisive action and clear communication by your office are essential to supporting efforts underway throughout the region to slow the spread of the virus and ensure that people seek necessary medical attention. Time is of the essence, as the gravity and spread of the disease increase exponentially every day.

The growing COVID-19 crisis requires the immediate release of people from custody. The health risks posed by COVID-19 are particularly acute in places of detention where the virus can spread rapidly. COVID-19 already has been detected in ICE detention centers and immediate release – before an outbreak occurs in Minnesota – is needed.

In light of the unprecedented risks posed by COVID-19 to people in confinement, ICE should immediately release from administrative detention anyone not subject to federal mandatory detention provisions, refrain from opposing requests for release on bond or appealing custody redetermination decisions, exercise its parole authority to release people designated as arriving aliens, and implement alternatives to confinement for those subject to mandatory detention

¹ <https://www.ice.gov/covid19>

provisions of federal immigration law. This public health crisis should not serve as an excuse to expand detention capacity by delaying release until additional detention centers are online.²

Public health officials and medical professionals are clear that COVID-19 poses serious, and in some cases, fatal consequences. This virus is highly contagious, and those who are detained in close quarters are particularly susceptible to infection and to rapidly spreading the illness to each other and to the staff. Because efforts to slow the transmission of COVID-19, including social distancing and quarantine, are unrealistic in the detention environment, continuing to detain people puts the lives of people in detention at risk. Even basic measures, such as hand washing, may be unrealistic in jails where the people in custody must purchase their own hygiene products or go without. Lack of transparency as to the precautions that are being taken to reduce risks and obtain emergency medical treatment for detained persons who fall ill is leading to panic inside the facilities and causing unnecessary stress to family members worried about the safety of loved ones in detention.

ICE and county jails are responsible for ensuring the basic human rights, including the health and safety, of those they choose to detain. Governments, including ICE and the counties which contract with ICE to detain people, have an obligation to ensure medical care for those in their custody at least equivalent to that available to the general population, and must not deny or limit detainees, including asylum seekers or undocumented immigrants, equal access to preventive, curative or palliative health care.³ Everyone held at these jails must be provided with free access to soap and hand sanitizer. ICE, jail personnel, and all others who come into contact with people in detention, must take precautions to avoid introducing the virus into the facility.

Continuing to detain people also means ICE must continue to transport detainees for their court hearings. To reach court, detainees must ride together, in close contact, for at least an hour. Observers in immigration court have witnessed basic failures to protect detained persons from disease transmission when they appear at detained immigration court hearings, including the failure to clean the respondent's table, chair, and microphone after each detained person appears before the judge. Guards do not wear gloves. Paper is passed between the judge, attorneys, clerks, guards, and detained individuals. No one is wearing a mask or gloves. This disregard for the health of people appearing in open court casts doubt on the commitment to their safety when locked behind jail doors. We recognize that the decision to keep open the Immigration Court rests with EOIR, but the continued operation of the detained immigration docket is made necessary because of ICE's detention and deportation efforts.

Preventing the spread of infection is not only necessary for the health of detained individuals and

² Human Rights Watch, "Human Rights Dimensions of COVID-19 Response," March 19, 2020, available at https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response#_Toc35446577

³ Human Rights Watch, "Human Rights Dimensions of COVID-19 Response,:"March 19, 2020, *available at* https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response#_Toc35446577

those with whom they interact, it is an essential step to reduce the strain on already exhausted medical resources. While ICE and its contracted detention centers provide medical care for detained immigrants, there are insufficient resources at these locations to provide ICU and emergency care required with many COVID-19 cases. By keeping individuals in circumstances that do not allow social distancing, immigration detention risks further burdening hospital resources.

In addition, ICE's and local jails' response to the COVID-19 pandemic has resulted in the virtual elimination of attorney access to people in ICE detention, violating their due process rights. While facilities have made some efforts to allow remote communication with represented individuals, the practical reality is that access is limited, insufficient, and not confidential. Detainees in Sherburne County Jail, for example, are given free phone calls and limited free video conferencing with their attorneys but must sit in the public area of their pods while speaking with their attorneys. Detainees at Kandiyohi County Jail are given a tablet on which they can send text messages, but people must pay for the messages even when communicating with their attorneys. While immigration judges are aware of the barriers facing counsel in preparing for hearings, continuances necessarily mean more time in detention. ICE offers of stipulated removal orders or waivers of the right to a hearing in exchange for removal to those isolated from counsel and family also will become increasingly coercive in the COVID-19 environment.

We have no doubt that responding to the COVID-19 pandemic is straining the Department of Homeland Security's resources. But the decision to continue administrative detention of more than 50,000 people on an average daily basis, in the face of these constraints, is a choice, and if ICE continues to make this choice it must ensure that fundamental rights are not violated in the process.

Continued ICE arrests inhibit immigrants from seeking necessary medical attention, thwart public safety officials' efforts to reduce jail populations, introduce new people into detention, and strain our overburdened medical system. We recognize that ICE has issued statements regarding enforcement during the pandemic,⁴ but the equivocal communication leaves communities in doubt of their safety. While ICE has indicated that it conducts enforcement operations at medical facilities only under extraordinary circumstances, the vague "extraordinary circumstances" can lead to hesitation in seeking medical attention. Word of continued enforcement actions quickly increases fear in immigrant communities and threatens to deter immigrants from seeking the care and treatment that they need if they are sick or prompting people to decline to self-quarantine out of fear that ICE will find them and arrest them in their own home. In the midst of this crisis, ICE should unequivocally state that no enforcement will be

⁴ <https://www.ice.gov/covid19>

conducted at or near medical facilities and ICE should end enforcement operations generally during this time.

Arrests also increase points of contact and exposure to the virus, and ICE must do its part to minimize this public health risk. ICE should immediately stop issuing detainer requests to state correctional facilities or county jails and cease taking people into custody when they are released by local officials. Continuing to introduce new people into detention poses a high risk of introducing COVID-19 into the facility. As our country experiences a shortage of COVID-19 tests, ICE cannot guarantee that new detainees are virus-free. Agents undertaking enforcement operations will require personal protective equipment which is in perilously short supply; diverting such resources threatens our medical professionals and public at large. The only responsible and safe solution is to not introduce new people into the existing population. **An end to arrests, together with clear public messaging that public health is DHS's first priority during this time of pandemic, is essential.**

Communities across the Upper Midwest have banded together to flatten the curve. Workers, including employees of the undersigned organizations, are working from home to comply with guidance from state health officials. Many businesses have temporarily closed. Neighbors have started driveway food pantries to ensure everyone has enough to eat. Schools have retooled to provide online education to thousands of schoolchildren. Governor Tim Walz has joined other states in issuing stay-at-home orders to attempt to slow the rate of infection. **ICE shares this duty to participate in efforts to curb the spread of this disease.** Ending immigration detention and enforcement during this pandemic is critical to public health and safety, not only for this moment but also for the months that lie ahead, as we are all called upon to engage in social distancing and other important preventative measures necessary to stop the further spread of the virus.

Respectfully,

ACLU of Minnesota
The Advocates for Human Rights
The Center for Victims of Torture
Filipinx for Immigrant Rights & Racial Justice MN (FIRM)
Immigrant Law Center of Minnesota
Immigrant Welcoming Working Group, Plymouth Congregational Church, Minneapolis
Interfaith Coalition on Immigration (ICOM)
James H. Binger Center for New Americans
Jewish Community Action
Mid-Minnesota Legal Aid