

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Sixteenth Congress

April 7, 2020

Mr. Matthew T. Albence
Acting Director
U.S. Immigration and Customs Enforcement
500 12th Street, SW
Washington, DC 20536-5003

Dear Acting Director Albence:

On March 13, 2020, Chairman Nadler wrote to you requesting the urgent implementation of “aggressive measures to reduce the spread of COVID-19, including a reduction in the overall number of detainees” in the custody of Immigration and Customs Enforcement (ICE).¹ As the COVID-19 pandemic continues to spread throughout the United States and has now infiltrated ICE detention facilities, we reiterate our request that ICE release individuals—on their own recognizance or into alternatives to detention—who pose no threat to public safety or national security, particularly those who are at heightened risk of death or serious illness from COVID-19.

Without a swift reduction in the number of detainees currently housed in ICE detention facilities, a massive outbreak of COVID-19 in such facilities is inevitable. At the end of last week, the agency identified four individuals in ICE custody and five detention facility personnel who tested positive for COVID-19.² As of the date of this letter, the number of confirmed cases among detainees has more than tripled, with 13 detainees across 8 different facilities testing positive.³ Moreover, an individual detained by ICE in Arizona and deported to Guatemala on March 26, 2020 tested positive for COVID-19 several days later.⁴ The presence of COVID-19 in ICE detention facilities is clear. It is only a matter of time before the agency discovers additional cases and is forced to take drastic measures. As confirmed by Department of Homeland Security medical experts, there is an “imminent risk to the health and safety of immigrant detainees” once

¹ Letter from Chairman Jerrold Nadler, House Committee on the Judiciary, to Matthew T. Albence, Acting Director, U.S. Immigration and Customs Enforcement (Mar. 13, 2020).

² Immigration and Customs Enforcement, *ICE Guidance on COVID-19: Confirmed Cases*, <https://www.ice.gov/coronavirus> (last visited Apr. 1, 2020, 3:00 p.m.).

³ *Id.* (last visited Apr. 7, 2020, 9:10 a.m.).

⁴ Chantal Da Silva, *Migrant Deported from U.S. Reportedly Tests Positive for Coronavirus Days Later*, NEWSWEEK (Mar. 30, 2020), <https://www.newsweek.com/guatemalan-migrant-deported-u-s-tests-positive-coronavirus-days-later-1495037>.

COVID-19 begins spreading in ICE facilities; as detainees are transferred to hospitals, these risks will spill over into the community, further straining limited medical resources.⁵

Although ICE has released a small number of detainees suffering from autoimmune disorders in places where detainees have tested positive, more must be done.⁶ ICE should release certain detainees—those who pose no threat to public safety or national security—on their own recognizance or into alternatives to detention. Medical experts have repeatedly warned that detention facilities will soon become dangerous “incubators” for COVID-19 due to crowded, unsanitary conditions.⁷ Many state and local governments have heeded these warnings, releasing inmates from confinement in order to slow the spread of this virus.⁸ On March 26, 2020, Attorney General Barr announced the expansion of home confinement for certain federal inmates, including those over age 60 or with pre-existing medical conditions.⁹ By reducing the overall detained population, ICE can better implement social distancing measures, reduce rates of infection, and save lives.¹⁰

As ICE begins releasing individuals who pose no threat to public safety or national security, the agency should prioritize release of individuals who are particularly vulnerable to infection by COVID-19. Consistent with numerous federal court rulings, ICE should immediately release individuals who are at risk of death or serious illness if infected by COVID-19, including elderly detainees and individuals suffering from chronic medical conditions.¹¹

⁵ Catherine E. Shoichet, *Doctors Warn of ‘Tinderbox Scenario’ if Coronavirus spreads in ICE Detention*, CNN (Mar. 20, 2020), <https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html>.

⁶ See e.g. Daniel Gonzalez, *ICE Releases Some Immigration Detainees with HIV Amid COVID-19 Pandemic*, LGBTQ Group Says, AZCENTRAL (Mar. 25, 2020), <https://www.azcentral.com/story/news/politics/immigration/2020/03/25/ice-releases-some-migrant-detainees-hiv-amid-covid-19-pandemic-coronavirus/5083279002/>.

⁷ Martin Kaste, *Prisons and Jails Worry About Becoming Coronavirus ‘Incubators’*, NPR (Mar. 13, 2020), <https://www.npr.org/2020/03/13/815002735/prisons-and-jails-worry-about-becoming-coronavirus-incubators> (quoting Dr. Robert Greifinger).

⁸ Ned Parker et al., *Spread of Coronavirus Accelerates in U.S. Jails and Prisons*, REUTERS (Mar. 28, 2020), <https://www.reuters.com/article/us-health-coronavirus-usa-inmates-insigh/spread-of-coronavirus-accelerates-in-us-jails-and-prisons-idUSKBN21F0TM>; see also Merrit Kennedy, *U.N. Calls For Countries to Reduce Prison Populations*, NPR (Mar. 25, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/03/25/821417365/u-n-calls-for-countries-to-reduce-prison-populations>.

⁹ Alexander Mallin, *AG William Barr Pushes Expansion of Home Confinement to Reduce Prison Populations Amid Coronavirus*, ABC NEWS (Mar. 26, 2020), <https://abcnews.go.com/Politics/ag-william-barr-pushes-expansion-home-confinement-reduce/story?id=69816504>.

¹⁰ See Letter from Scott A. Allen, Professor Emeritus of Clinical Medicine, University of California Riverside School of Medicine, and Josiah Rich, Professor of Medicine and Epidemiology, Brown University to The Honorable Bennie Thompson, Chairman, House Committee on Homeland Security et al., 5 (Mar. 19, 2020), <https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238>.

¹¹ See e.g. *Thakker v. Doll*, 20-cv-480, Dkt. No. 47 (M.D. Pa., Mar. 31, 2020) (granting TRO, ordering immediate release of 13 ICE detainees with preexisting medical conditions); *Castillo v. Barr*, 20-cv-605, Dkt. No. 32 (C.D. Cal. Mar. 27, 2020) (ordering immediate release of two ICE detainees with preexisting medical conditions); *Coronel v. Decker*, 20-cv-2472, Dkt. No. 26 (S.D.N.Y. Mar. 27, 2020) (ordering release of four detainees with preexisting medical conditions); *Basank v. Decker*, 20-cv-2518, Dkt. No. 11 (S.D.N.Y. Mar. 26, 2020) (ordering release of 10

According to the Centers for Disease Control and Prevention, individuals aged 65 and older, as well as those who are immunocompromised, or suffer from lung disease, asthma, serious heart conditions, or severe obesity, are at “high-risk for severe illness from COVID-19.”¹² At a minimum, ICE should ensure that these individuals are immediately released, subject to any reasonable conditions.

Federal, state, and local law enforcement agencies all acknowledge the growing threat of COVID-19 in our nation’s detention facilities. As civil detainees, individuals in ICE custody are entitled to “more considerate treatment than criminal detainees, whose conditions of confinement are designed to punish.”¹³ As such, there is simply no reason that ICE should not follow suit and immediately start releasing individuals who pose no threat to public safety or national security, particularly those who are at risk of serious illness or death if infected by COVID-19. Adopting these life-saving measures will help ensure the health and well-being of detainees, ICE personnel serving in detention facilities, and the surrounding communities.

Sincerely,



Jerrold Nadler
Chairman
House Committee on the Judiciary



Zoe Lofgren
Chair
Subcommittee on Immigration and
Citizenship

cc: The Honorable Jim Jordan, Ranking Member, House Committee on the Judiciary
The Honorable Ken Buck, Ranking Member, Subcommittee on Immigration and
Citizenship

individuals with chronic health conditions); *see also Flores v. Barr*, 85-cv-4544 (C.D. Cal. Mar. 28, 2020) (directing ORR and ICE to “promptly release or provide justification for retaining custody” of minors).

¹² *Coronavirus Disease 2019 (COVID-10): People Who Are At Higher Risk*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (last visited Mar. 30, 2020, 3:30 p.m.).

¹³ *Castillo*, 20-cv-605, Dkt. No. 32 at 5 (citing *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982)).