

United States Senate
WASHINGTON, DC 20510

June 09, 2021

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
2801 Nebraska Ave., NW
Washington, DC 20528

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

Dear Secretary Mayorkas and Acting Director Johnson:

We write regarding the more than 3,700 individuals who were formerly detained by Immigration and Customs Enforcement (ICE), then released due to COVID-19 concerns while in ICE detention,¹ and are now being threatened with re-detention.² The lack of evidence-based health measures and conditions of confinement continue to endanger the safety of detained people and staff in ICE detention facilities nationwide, leading to major outbreaks in local communities while furthering the spread of the virus.³ We urge the Department of Homeland Security (DHS) and ICE to issue new guidance for all ICE field offices and the facilities they oversee to not re-detain individuals who have complied with the conditions of their release and who pose no public safety concerns, as evidenced by the fact that since their release, they have been living safely at home with their families, in compliance with the terms of their court-ordered releases and posing no danger to their community.

ICE detention facilities imperiled detainees' health during the COVID-19 pandemic. According to one report, "As Covid-19 cases rose last June, ICE detention facilities had an average infection rate five times that of prisons and 20 times that of the general population."⁴ To date, 16,816 immigrants in ICE detention centers have been confirmed to have COVID-19, and

¹ U.S. Immigration and Customs Enforcement, "Judicial Releases," accessed on May 27, 2021, <https://www.ice.gov/coronavirus#detStat>; New York Times, "4 Takeaways From Our Investigation Into ICE's Mishandling of Covid-19," Isabelle Niu and Emily Rhyne, April 25, 2021, <https://www.nytimes.com/2021/04/25/video/immigration-detention-covid-takeaways.html>.

² See, e.g., *Thakker v. Doll*, No. 1:20-cv-480 (M.D. Pa.), Dkts. 325, 327, 331, 333; *Vazquez Barrera v. Mayorkas*, No. 4:20-cv-1241 (S.D. Tex.), Dkt. 210.

³ Washington Post, Editorial, "Opinion: ICE is the superspreader agency," May 2, 2021, https://www.washingtonpost.com/opinions/ice-is-the-superspreader-agency/2021/05/01/eb079944-a9f2-11eb-8c1a-56f0cb4ff3b5_story.html; New York Times, "4 Takeaways From Our Investigation Into ICE's Mishandling of Covid-19," Isabelle Niu and Emily Rhyne, April 25, 2021, <https://www.nytimes.com/2021/04/25/video/immigration-detention-covid-takeaways.html>.

⁴ New York Times, "4 Takeaways From Our Investigation Into ICE's Mishandling of Covid-19," Isabelle Niu and Emily Rhyne, April 25, 2021, <https://www.nytimes.com/2021/04/25/video/immigration-detention-covid-takeaways.html>.

at least nine people in ICE custody have died after contracting COVID-19.⁵ This data is almost certainly incomplete, which has spurred Congressional legislation to require better data collection and more transparency in these facilities.⁶ ICE facilities have recently been referred to as “petri dishes for the pandemic,”⁷ which is corroborated by multiple reports—including a report released by the DHS Inspector General in March 2021⁸—indicating many ICE facilities failed to enforce basic COVID-19 precautions, blatantly disregarded public-health guidance regarding face coverings and social distancing during the pandemic,⁹ and allowed COVID-19 breakouts by concealing hospitalizations of detainees who got sick.¹⁰

In April 2020, as the gravity of the pandemic started to unfold, a federal judge granted an emergency preliminary injunction¹¹ ordering ICE to “begin considering for release all detained immigrants at higher risk of complications from covid-19,” including individuals “over 55, who are pregnant or who have serious underlying health conditions.”¹² The judge deemed court intervention necessary since “numerous ICE detention centers are operated by private-prison contractors”¹³ who “are unlikely to take independent or decisive action given the economic imperative to maintaining full capacity.”¹⁴ Since this injunction, the issuing judge has found that ICE failed to substantially comply with the Court’s Order and that it continued to detain a large number of individuals not subject to mandatory detention, including medically vulnerable

⁵ U.S. Immigration and Customs Enforcement, COVID-19 ICE Detainee Statistics by Facility (as of 06/07/2021), <https://www.ice.gov/coronavirus#detStat>.

⁶ See S. 681 and H.R. 1681, COVID-19 in Immigration Detention Data Transparency Act. See also Senator Elizabeth Warren, “Warren, Castro, Booker, Colleagues Reintroduce Bicameral Legislation to Require COVID-19 Data Collection in Immigration Detention Facilities,” press release, March 9, 2021, <https://www.warren.senate.gov/newsroom/press-releases/warren-castro-booker-colleagues-reintroduce-bicameral-legislation-to-require-covid-19-data-collection-in-immigration-detention-facilities>.

⁷ Washington Post, Editorial, “Opinion: ICE is the superspreader agency,” May 2, 2021, https://www.washingtonpost.com/opinions/ice-is-the-superspreader-agency/2021/05/01/eb079944-a9f2-11eb-8c1a-56f0cb4ff3b5_story.html.

⁸ U.S. Department of Homeland Security, Office of Inspector General, “Violations of Detention Standards Amidst COVID-19 Outbreak at La Palma Correctional Center in Eloy, AZ,” March 30, 2021, <https://www.oig.dhs.gov/reports/2021/violations-detention-standards-amidst-covid-19-outbreak-la-palma-correctional-center-eloy-az/oig-21-30-mar21>.

⁹ Washington Post, “ICE flew detainees to Virginia so the planes could transport agents to D.C. protests. A huge coronavirus outbreak followed.,” Antonio Olivo and Nick Miroff, September 11, 2020, https://www.washingtonpost.com/coronavirus/ice-air-farmville-protests-covid/2020/09/11/f70ebe1e-e861-11ea-bc79-834454439a44_story.html; New Orleans Public Radio, “‘They Don’t Care About Anything’: Inside A COVID-19 Outbreak At One Louisiana Ice Facility,” Rosemary Westwood, August 12, 2020, <https://www.wwno.org/latest-news/2020-08-12/they-dont-care-about-anything-inside-a-covid-19-outbreak-at-one-louisiana-ice-facility>; Intercept, “Immigrants Detained by ICE Say They Were Punished for Requesting COVID-19 Tests,” Clarissa Donnelly-DeRoven, December 3, 2020, <https://theintercept.com/2020/12/03/etowah-ice-detention-covid-outbreak/>.

¹⁰ Mother Jones, “ICE Allowed COVID-19 Breakouts and Concealed Hospitalizations, a New Report Shows,” Noah Lanard, May 11, 2021, <https://www.motherjones.com/politics/2021/05/ice-allowed-covid-19-breakouts-and-concealed-hospitalizations-new-report-shows/>.

¹¹ *Fraihat et al. v. ICE*, 106 Fd. R. Serv. 3d 511 (C.D. Cal. 2020)

¹² Washington Post, “ICE delayed its pandemic response, putting detainees at ‘substantial’ risk of harm, judge finds,” Meagan Flynn, April 21, 2020, <https://www.washingtonpost.com/nation/2020/04/21/ice-coronavirus-detention-ruling/>.

¹³ *Id.*

¹⁴ *Fraihat et al. v. ICE*, 106 Fd. R. Serv. 3d 511 (C.D. Cal. 2020)

people.¹⁵ Many other federal courts have reached similar conclusions, ordering hundreds more released from ICE custody due to the COVID-19 pandemic.¹⁶

As of March 22, 2021, ICE has released only 3,741 detainees from its custody,¹⁷ which amounts to less than 16% of the currently detained population.¹⁸ According to the American Civil Liberties Union, which has over 800 previously detained clients who have been released, the overwhelming majority of these individuals are now living safely at home with their families, in compliance with the terms of their court-ordered releases and posing no danger to their community.¹⁹ Yet court filings indicate that while some ICE field offices have agreed not to re-detain anyone released by court order as a result of COVID-19,²⁰ others have pressed for the immediate re-detention of people or have stated that no decision on re-detention have been made.²¹ In at least one recent case, ICE has actively sought to reverse court orders granting release of medically vulnerable people due to the pandemic.²² This inconsistency in the approaches taken by ICE field offices is leading to needless unpredictability and uncertainty, and means that some formerly detained people are arbitrarily subject to the prospect of re-detention and increased risk of COVID-19 exposure.

Returning these formerly detained immigrants to ICE facilities poses a direct danger to their health and safety. COVID-19 outbreaks are continuing to spread in ICE detention facilities across the country.²³ While COVID-19 vaccines have ramped up nationwide, this vaccination

¹⁵ The New York Times, “4 Takeaways From Our Investigation Into ICE’s Mishandling of Covid-19,” Isabelle Niu and Emily Rhyne, April 25, 2021, <https://www.nytimes.com/2021/04/25/video/immigration-detention-covid-takeaways.html>; https://www.splcenter.org/sites/default/files/2021-03-10_0281_-_minutes_in_chambers_by_judge_jesus_g_bernal_order_granting_plaintiffs_motion_to_appoint_special1.pdf

¹⁶ See, e.g. *Hernandez Roman v. Wolf*, 977 F.3d 935 (9th Cir. 2020); *Coreas v. Bounds*, 458 F. Supp. 3d 352 (D. Md. 2020); *Vazquez Barrera v. Wolf*, 455 F. Supp. 3d 330 (S.D. Tex. 2020); *Yanes v. Martin*, 464 F. Supp. 3d 467 (D.R.I. 2020); *Zepeda Rivas v. Jennings*, 465 F. Supp. 3d 1028 (N.D. Cal. 2020); *Malam v. Adducci*, No. 20-10829, 2020 WL 5891394 (E.D. Mich. Oct. 2, 2020); *Gomes v. DHS*, No. 20-cv-453, 2020 WL 3258627 (D.N.H. Jun. 16, 2020); *Alcantara v. Archambeault*, No. 20-cv-756, 2020 WL 2315777 (S.D. Cal. May 1, 2020); *Amaya-Cruz v. Adducci*, No. 1:20-cv-789, 2020 WL 1903123 (N.D. Ohio, Apr. 18, 2020).

¹⁷ U.S. Immigration and Customs Enforcement, “Judicial Releases,” accessed on May 27, 2021, <https://www.ice.gov/coronavirus#detStat>; New York Times, “4 Takeaways From Our Investigation Into ICE’s Mishandling of Covid-19,” Isabelle Niu and Emily Rhyne, April 25, 2021, <https://www.nytimes.com/2021/04/25/video/immigration-detention-covid-takeaways.html>.

¹⁸ U.S. Immigration and Customs Enforcement, “ICE Detainee Statistics,” accessed on June 8, 2021, <https://www.ice.gov/coronavirus#detStat>.

¹⁹ According to the American Civil Liberties Union, only an extremely small fraction of their hundreds of clients have failed to comply with the terms of their release. The stories of some of these previously detained individuals are described in their report “The Survivors: Stories of People Released from ICE Detention During the COVID-19 Pandemic,” 2021, <https://www.aclu.org/report/survivors>.

²⁰ See, e.g. *Alcantara v. Archambeault*, 462 F. Supp. 3d 1073 (Dist. Ct. SD CA, 2020); *Savino vs. Souza*, 453 F. Suppl. 3d 441 (Dist. Ct. D MA, 2020); The National Law Review, “Immigrant Advocates Fear Re-Detention of Medically Vulnerable Immigrants in Pennsylvania,” June 3, 2021, <https://www.natlawreview.com/article/immigrant-advocates-fear-re-detention-medically-vulnerable-immigrants-pennsylvania>.

²¹ *Thakker v. Doll*, 451 F. Suppl. 3d 358 (Dist. Ct. MD, 2020).

²² *Vazquez Barrera v. Mayorkas*, No. 4:20-cv-1241 (Dist. Ct. S.D. TX, 2021).

²³ U.S. Immigration and Customs Enforcement, “COVID-19 ICE Detainee Statistics by Facility” (as of May 25, 2021), <https://www.ice.gov/coronavirus#detStat>; UCLA Law COVID-19 Behind Bars Data Project, “COVID-19 in ICE Detention,” accessed on May 27, 2021, <https://uclacovidbehindbars.org/ice>.

effort has left immigrants in ICE custody behind.²⁴ Less than seven percent of ICE detainees nationwide had received COVID-19 vaccines as of May 7, 2021,²⁵ and only 1,229 detainees had been fully vaccinated as of May 5, 2021.²⁶

It is imperative that federal authorities protect the health, safety, and rights of detained individuals and the wellbeing of the staff, families, and the surrounding communities of ICE detention centers. We urge DHS and ICE to take steps to remove the unpredictability, uncertainty, and arbitrariness generated by the varying approaches of different ICE field offices regarding re-detaining released individuals. We ask that you promptly issue guidance to all ICE field offices and detention facilities directing that individuals who have been released from custody due to COVID-19, and who have complied and continue to comply with the conditions of their release, should be permitted to remain free from custody.

Thank you for your attention to this important matter. We look forward to your response.

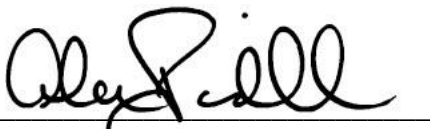
Sincerely,



Elizabeth Warren
United States Senator



Richard Blumenthal
United States Senator



Alex Padilla
United States Senator



Edward J. Markey
United States Senator

²⁴ Houston Public Media, “ICE Begins COVID-19 Vaccine Program At Houston Immigrant Detention Facility,” Elizabeth Trovall, May 3, 2021,

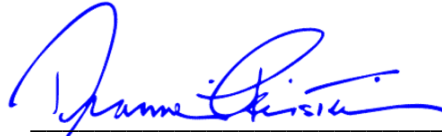
<https://www.houstonpublicmedia.org/articles/news/politics/immigration/2021/05/03/397139/houston-immigrant-detention-facility-to-vaccinate-migrants-against-covid-19/>.

²⁵ C-SPAN, ICE Acting Director Johnson Testifies Before the House on ICE Priorities (broadcast May 13, 2021), <https://www.c-span.org/video/?511611-1/ice-acting-director-johnson-testifies-house-ice-priorities&start=599>; Houston Public Media, Few Texas ICE Detention Centers Are Vaccinating for COVID-19. Feds Say It’s Up to Local Health Departments, Elizabeth Trovall, May 6, 2021, <https://www.houstonpublicmedia.org/articles/news/in-depth/2021/05/06/397348/with-hundreds-sick-in-texas-ice-says-its-up-to-local-health-departments-to-vaccinate-detained-immigrants/>.

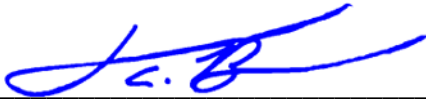
²⁶ CNN, “ACLU urges Biden administration to offer Covid-19 vaccine to detained immigrants,” Priscilla Alvarez, May 27, 2021, <https://www.cnn.com/2021/05/27/politics/aclu-covid-vaccine-immigrants/index.html>.



Sheldon Whitehouse
United States Senator



Dianne Feinstein
United States Senator



Cory A. Booker
United States Senator



Robert Menendez
United States Senator