

June 13, 2023

The Honorable Tae Johnson
Acting Director, U.S. Immigration and Customs Enforcement
Department of Homeland Security
Washington, DC 20528

Via email

Re: Key Steps on Interior Immigration Enforcement & Detention

Dear Acting Director Johnson,

We appreciate your stated commitment to ensuring that Immigration Customs and Enforcement (ICE) operates “humanely, effectively and with professionalism.”ⁱ As you prepare to conclude your long career in public service and your tenure as Acting Director of Immigration and Customs Enforcement (ICE), we write to share seven impactful steps that you can take prior to your departure from ICE.ⁱⁱ These steps would prepare the ground for further reforms by the next ICE director.

1. Order a Review of ICE Detention Facilities for Closure

We urge you to order ICE’s Office of Immigration Program Evaluation to conduct a new, comprehensive review of ICE detention facilities and recommend facilities for closure based on health, safety and due process issues.

Early in your tenure, we wrote Homeland Security Secretary Alejandro Mayorkas urging the closure of 39 detention facilities notorious for their substandard conditions and abuses of civil rights.ⁱⁱⁱ We renewed that request in September 2022, noting that appalling conditions at ICE detention facilities persist—including conditions that have continued to deteriorate during your tenure as Acting Director.^{iv} While we appreciate that ICE has closed or discontinued use of a handful of facilities based in part on abusive treatment and substandard conditions, far more is needed.

A stark example is Baker County Detention Center in Macclenny, Florida. We have documented abuses such as: a person beaten so badly they suffered lasting hearing damage and experienced months in solitary confinement without justification, exacerbating well-documented and serious mental health conditions; a person pepper sprayed while already being pinned under a guard’s knee; sexual voyeurism, such as women being watched when they use the restroom; women being denied sanitary napkins and clean clothes as punishment, leading to infections and being forced to sleep in blood-soaked sheets; a person denied medical care leading to seizures and a diabetic coma; and cutting off of water in retaliation for peaceful hunger strikes.^v



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We share these graphic, specific details because they are disturbing; yet they are not aberrational. The ACLU and our affiliates have documented inhumane conditions and shameful mistreatment at detention facilities across the United States.^{vi}

By ordering a detention facility review and recommendations for closure, you can set the stage for your successor to act decisively on this matter.

2. Order the Review and Reform of ICE's 287(g) Program

The prior administration expanded ICE's 287(g) program dramatically, leaving it five times bigger and without adequate supervision.^{vii} The prior administration also removed expiration dates and other guardrails from 287(g) agreements, and devised a new form of 287(g) agreement in an attempt to shield local officers from liability when they violate people's rights.^{viii} Although as a candidate, President Biden pledged to reverse the program's expansion, it remains mostly intact. The ACLU and our partners have repeatedly called on the Biden administration to abandon this program as a vehicle for racial profiling that undermines public safety.^{ix} So too have law enforcement leaders, faith leaders and members of Congress.^x Yet the last major reform to the program occurred in 2012.

As a modest step forward, we urge you to order a review of how 287(g) agreements and processes can be revised to serve public accountability, transparency and the rule of law. As part of this review, we urge you direct ICE to review and make recommendations in the following three areas:

- A) **Steering Committee Meetings:** Existing agreements direct local agencies to do "community outreach" to facilitate transparency and identify concerns, but the agreements do not specify any timeline or consequences for failing to do so. In the absence of an explicit requirement, local law enforcement agencies (LEAs) have historically failed to hold these meetings, and in 2009 DHS made them optional.^{xi} A 2010 DHS OIG report noted: "By eliminating the requirement for steering committees and not fostering participation by community stakeholders, ICE reduces its ability to gain an independent perspective on 287(g) operations."^{xii}

We have also heard from colleagues at partner organizations that both ICE regional staff and LEAs have failed to provide timely information and meaningfully publicize steering committee meetings, effectively precluding participation. In one case, an LEA announced that members of the public would need to request an invitation ten days in advance of the meeting.

ICE should revise 287(g) agreements to:

- i. Require steering committee meetings be held at least annually, with 30 days notice to the public;
- ii. Prohibit LEAs from requiring that participants request an invitation or register in advance, since this prevents participation and may have a chilling effect.
- iii. Require that steering committee meetings include an opportunity for members of the public to provide comment and ask questions—through videoconference and in-person participation.

- iv. Require LEAs to present information at steering committee meetings regarding local program activities, including: any encounters through the 287(g) program that resulted in the detention or removal of the individual; compliance with training requirements; and traffic stop data, including the race and ethnicity of the motorist and passengers, the reason for the stop, and the result of the stop.

In addition, we urge ICE to post information about steering committee meetings on ICE's 287(g) website, to ensure that members of the public have notice and information about the meetings.

B) Expiration Dates: While previous 287(g) agreements expired every three years, the prior administration changed nearly all 287(g) agreements to have no definite expiration date.^{xiii} Expiration dates serve vital interests for ICE and local communities. They give ICE the opportunity to assess whether an LEA is meeting performance goals and complying with the terms of an agreement. Expiration dates serve transparency, local accountability and good governance; when local sheriffs are required to decide whether to renew an agreement, local community members have the opportunity to weigh in and share documentation of problems and needs. We urge ICE to set a one-year term for all agreements.

C) Delegated Federal Authorities: Jail enforcement agreements currently permit local officers to perform a wide range of tasks—interrogate inmates, issue warrants, issue detainers, and make arrests—for which they lack adequate training. While Warrant Service Officer agreements delegate far fewer responsibilities, they still harmfully encourage officers to view themselves as immigration enforcement agents more broadly. To limit this perception and lessen the damage to community relations, the agreements should remove any arrest and detention-related authorities, and should be limited to authorizing officers to effectuate notification-only detainers. ICE's requests for such notification could be conveyed using an existing form—ICE Form I-247N—which requests notice of a person's release date, but does not request or authorize detaining a "subject beyond the time he or she is currently scheduled for release."^{xiv}

3. Order a Review of the Need for a Nationwide Policy Regarding Warrantless Arrests and Vehicle Stops

A settlement agreement in the class action lawsuit, *Castañon Nava et al. v. DHS*, No. 18-cv-3757 (N.D. Ill.), currently limits ICE's ability to conduct warrantless arrests, through raids as well as vehicle stops. In particular, the settlement agreement required ICE to issue a nationwide policy and conduct nationwide trainings for all ICE officers regarding the policy.

This nationwide policy is crucial, particularly to constraining future administrations. Recent history is instructive. The Trump administration wielded the threat of mass ICE raids and arrests as a political tool against so-called "sanctuary jurisdictions"—and to foment anti-immigrant hatred and division across our nation. ICE conducted immigration

sweeps that resulted in the collateral arrest of hundreds of individuals, spreading fear and anxiety among immigrant communities. The ACLU received reports from across the country of ICE agents barricading cars with their vehicles, approaching people with rifles pointed, and threatening to shoot.

The *Castañon Nava* lawsuit arose from one such operation. Within just six days in May 2018, ICE arrested and detained more than 100 people across the Chicago area in “Operation Keep Safe.” As part of the operation, ICE agents saturated known Latino areas of the city of Chicago and surrounding communities accosting anybody who “looked” undocumented, and used unmarked vehicles to feign routine traffic stops.^{xv}

While it creates a significant safeguard, the *Castañon Nava* settlement agreement is only in effect for three years. It provides for enforcement actions, but only for people in the jurisdiction of the ICE Chicago Field Office. Moreover, ICE is not required to provide the public with information regarding warrantless arrests and vehicle stops, nor compliance with training requirements.

We urge you to direct the relevant ICE offices to review how ICE can adopt this nationwide policy outside the settlement agreement. ICE should expand upon it by providing all members of the public, regardless of their geographic location in the United States, the opportunity to report violations and seek remedies. ICE should support robust enforcement and accountability to the policy by reporting data on warrantless arrests and vehicle stops on the ICE website, as well as information on trainings. These actions would cement important changes negotiated through the settlement agreement—and limit potential abuse by a future anti-immigrant administration.

4. Review ICE Street Enforcement Tactics Including Ruses

We urge you to order ICE’s Office of Immigration Program Evaluation to review the public safety and civil rights impacts of ICE street-level enforcement tactics—particularly ICE’s impersonations of local police and other ruses, including past abuses and potential abuses by future administrations.

As the ACLU recently documented, ICE ruses have caused profound harm to immigrant communities.^{xvi} Under prior administrations, ICE agents have misrepresented themselves as local police or probation officers to trick individuals into granting them entry into their homes and arrest them without consent or a judicial warrant—in violation of the Fourth Amendment as well as ICE’s own rules.^{xvii} ICE agents have claimed to be investigating a serious crime or threat to family members, wearing uniforms identifying them only as police (and using Velcro to cover up parts of their attire that identify them as ICE).^{xviii}

Members of Congress as well as state and local officials have long called on ICE to stop impersonating police.^{xix} ICE impersonations of police undermine and exploit the trust between immigrant communities and local law enforcement. That trust is vital to ensuring immigrants can access police protection and assist police in investigations of serious crimes.

It is all too easy to imagine a future anti-immigrant administration deploying impersonations of police and other ICE ruses in its effort to make the United States a

hostile, dangerous place for our immigrant neighbors and loved ones. That makes it incumbent on the current administration to initiate lasting reforms in this area.

5. Increase Transparency of Detention Facilities Subject to Intergovernmental Service Agreements

We urge you to order ICE to develop a process for disclosure of detention records—serving good governance and accountability.

Many ICE detainees are held in local jails that contract with ICE using Intergovernmental Services Agreements (IGSAs). Under this arrangement, the local jail, not ICE, creates and keeps most of the person’s records—including their medical records, detention records, disciplinary records, and more. Yet some local jails have refused to produce *any* of these documents, citing an inapposite federal regulation, 8 C.F.R. § 236.6, which provides that certain detainee records are “under the control of” ICE.^{xx} But because ICE does not have these records, the IGSA jails’ refusal to produce them threatens to render huge swaths of detention records entirely secret, even to the individuals those records are about, and even though the records are plainly subject to disclosure under state and federal freedom of information laws.

IGSA facilities hold hundreds of thousands of ICE detainees each year. There is no valid reason for their records to be kept secret. ICE should correct this problem by issuing a simple policy laying out a process for IGSA facilities to follow when they receive a records request: The local facility should send the records to ICE to review and flag any sensitive materials, after which the facility must produce the records. Indeed, in at least one case, the ICE field office did just that, but only after years of delay and litigation, resulting in the sheriff’s loss at the state supreme court.^{xxi} To prevent such delays, ICE should commit to a reasonable timeline to review and produce IGSA records. This will prevent enormous litigation costs for IGSA providers and, most importantly, ensure that ICE detainees and the public are not deprived of information about ICE detention.

6. Issue a Revised Directive on ICE’s Treatment and Care of Detained Hunger Strikers

Every year, hundreds of people in immigration detention engage in hunger strikes as a means of protesting mistreatment, medical neglect and denial of due process—often as a last resort, after other methods of petition have failed.^{xxii} In response, ICE has employed involuntary medical procedures on detained hunger strikers that violate ethical guidelines for medical personnel, including force-feeding, forced hydration, forced urinary catheterization, involuntary blood draws, and use of restraints.

Following a groundbreaking 2021 report, the ACLU and Physicians for Human Rights urged ICE to issue a directive on the treatment of hunger strikers to ensure appropriate standards of care. We provided detailed recommendations and medical ethics experts. We now renew our request, and note that in recent months, the ACLU and partner organizations have witnessed new incidents of violence and other mistreatment of hunger strikers—underscoring the urgent need for policy change.^{xxiii}

7. Ensure Legal Access and Resources in ICE Detention

As you know, through the Consolidated Appropriations Act of 2023,^{xxiv} Congress allocated \$10 million to DHS “to improve law libraries, update legal materials, provide online legal access, expand video attorney visitation, and facilitate the secure exchange of legal documents between noncitizens and their counsel.”^{xxv} With these funds, Congress also directed ICE to “brief the [Senate and House Appropriations Subcommittees on Homeland Security] on an expenditure plan for increased legal access within 60 days of the date of the enactment of this Act,”^{xxvi} which is required to be published publicly.^{xxvii}

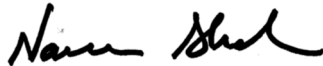
We urge ICE use these funds to require the implementation of its Virtual Attorney Visitation (VAV) program at every detention facility nationwide, or in the interim, and at the very minimum, require that each detention facility establish a system for attorneys to schedule free, confidential, and private video teleconferencing or telephone calls with clients, and provide either a dedicated email address or fax machine for confidential communication and exchange of documents.

Thank you for your consideration of these important issues. If you have any questions or need further detail, please contact National Political Advocacy Department senior legislative counsel Naureen Shah (nshah@aclu.org).

Sincerely,



Christopher Anders
Federal Policy Director



Naureen Shah
Senior Legislative Counsel

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- ⁱ Statement of Tae D. Johnson, Acting Director of U.S. Immigration Customs and Enforcement, before the U.S. House of Representatives
- ⁱⁱ This list is not exhaustive, and we continue to urge major ICE reforms that we have described in ACLU policy papers, letters and memoranda. *See, e.g.*, ACLU Immigration Policy Recommendations for the Biden-Harris Administration, <https://www.aclu.org/aclu-immigration-policy-recommendations-biden-harris-administration>; ACLU Letter to Secretary Mayorkas and Acting Director Johnson, “RE: COVID-19 Vaccine Availability in ICE Detention Facilities,” <https://www.aclu.org/letter/letter-dhs-secretary-mayorkas-regarding-vaccine-access> ; Coalition Letter to Secretary Mayorkas and Acting Director Johnson, Oct. 29, 2021, <https://www.aclu.org/letter/coalition-letter-dhs-and-ice-access-counsel-immigration-detention>;
- ⁱⁱⁱ Letter from ACLU to DHS Sec. Mayorkas, Apr. 29, 2021, <https://www.aclu.org/letter/letter-dhs-secretary-mayorkas-regarding-ice-detention>.
- ^{iv} ACLU Letter to Secretary Mayorkas, “Re: Closure of ICE Detention Facilities,” Sept. 6, 2022, https://www.aclu.org/sites/default/files/field_document/220902icedetentionmayorkasletterfinal.pdf.
- ^v *See* ACLU of Florida, “Shut Down Baker Detention Center,” <https://action.aclu.org/petition/fl-shut-down-baker>; Letter to Dr. Rivera, et al. from ACLU of Florida, “RE: Request for Immediate Action on Behalf of Individuals Detained at Baker County Detention Center Due to Systemic Medical Neglect,” May 4, 2023, <https://www.aclufl.org/en/letter-dhs-systemic-medical-neglect-baker-county-detention-center>.
- ^{vi} *See* ACLU, Immigrants’ Rights and Detention, <https://www.aclu.org/issues/immigrants-rights/immigrants-rights-and-detention>.
- ^{vii} *See* Government Accountability Office, Immigration Enforcement: ICE Can Further Enhance its Planning and Oversight of State and Local Agreements (January 2021), <https://www.gao.gov/assets/gao-21-186.pdf>.
- ^{viii} *See* ACLU, License to Abuse: *How ICE’s 287(g) Program Empowers Racist Sheriffs and Civil Rights Violations* (2022), <https://www.aclu.org/report/license-abuse-how-ices-287g-program-empowers-racist-sheriffs>.
- ^{ix} *Id.*
- ^x *See* Politico, “House Dems push DHS to stop working with local police on immigration,” Feb. 12, 2021, <https://www.politico.com/news/2021/02/12/democrats-dhs-police-immigration-468825>; Roll Call, “ACLU urges end to some local immigration enforcement deals,” Aug. 9, 2022, <https://rollcall.com/2022/08/09/aclu-urges-end-to-some-local-immigration-enforcement-deals/>; The Hill, “Law enforcement, ACLU urge Biden to end ICE partnership programs,” March 17, 2021; Letter to Secretary Mayorkas, “Re: 7 Leading Immigrant Rights Groups Urge You to End ICE’s 287(g) Program,” <https://immigrantjustice.org/sites/default/files/content-type/commentary-item/documents/2023-02/230221GroupSignOnLetter287g.pdf>.
- ^{xi} For an analysis in deficiencies in this steering committee meeting requirement, see ACLU of North Carolina and Immigration and Human Rights Policy Clinic, University of North Carolina at Chapel Hill, “The Policies and Politics of Local Immigration Enforcement Laws,” Feb. 2009, <https://law.unc.edu/wp-content/uploads/2019/10/287gpolicyreview.pdf>.
- ^{xii} DHS Office of Inspector General, *The Performance of 287(g) Agreements*, OIG-10-63 at 15 (March 2010).
- ^{xiii} “Changes to the 287(g) program,” Oct 20, 2020, Immigrant Legal Resource Center, https://www.ilrc.org/sites/default/files/resources/changes_to_287g_10.20.20.pdf.
- ^{xiv} ICE, Priority Enforcement Program, <https://www.ice.gov/pep> (archived content). I-247N: <https://trac.syr.edu/immigration/reports/402/include/I-247N.pdf>.
- ^{xv} ACLU of Illinois, “CASTAÑON NAVA V. DEPARTMENT OF HOMELAND SECURITY,” <https://www.aclu-il.org/en/cases/castanon-nava-v-department-homeland-security>.

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- ^{xvi} ACLU, “This Deceptive ICE Tactic Violates the Fourth Amendment,” April 12, 2023, <https://www.aclu.org/news/immigrants-rights/this-deceptive-ice-tactic-violates-the-fourth-amendment>.
- ^{xvii} See Complaint, *Kidd v. Wolf*, No. 2:20-cv-3512 (C.D. Calif.), https://www.aclusocal.org/sites/default/files/kidd_v_wolf_-_complaint.pdf.
- ^{xviii} See, e.g., Felipe De La Hoz, “The ICE Ruse: How Agents Impersonate Local Law Enforcement and Lie to Make Arrests,” DocumentNY.com, June 18, 2018, <https://documentedny.com/2018/06/18/the-ice-ruse-how-agents-impersonate-local-law-enforcement-and-lie-to-make-arrests/>; Roxana Kopetman, “Lawsuit targets ICE practice of posing as police,” OC Register, April 16, 2020, <https://www.ocregister.com/2020/04/16/lawsuit-targets-ice-practice-of-posing-as-police/>.
- ^{xix} See, e.g., “Booker Re-Introduces Bill to Block ICE, CBP Officers from Identifying as Local Police,” July 14, 2022, <https://www.booker.senate.gov/news/press/booker-re-introduces-bill-to-block-ice-cbp-officers-from-identifying-as-local-police>; Rebecca Hersher, Los Angeles Officials to ICE: Stop Identifying Yourself As Police, NPR, Feb. 24, 2017, <https://www.npr.org/sections/thetwo-way/2017/02/24/517041101/los-angeles-officials-to-ice-stop-identifying-yourself-as-police>; Amanda Luz Henning Santiago, “Can NYC prevent ICE agents from impersonating the NYPD?,” City & State NY, Oct. 13, 2020, <https://www.cityandstateny.com/policy/2020/10/can-nyc-prevent-ice-agents-from-impersonating-the-nypd/175557/> (citing a letter from the mayor); KQED, “S.F. Police Commissioners Want ICE Agents to Stop ‘Impersonating’ Police,” Jan. 18, 2018, <https://www.kqed.org/news/11642905/s-f-police-commissioners-want-ice-agents-to-stop-impersonating-police>.
- ^{xx} The ACLU disagrees with the view of § 236.6 that these jails have advanced, and has sued to compel disclosure. See, e.g., *Am. Civ. Liberties Union of Michigan v. Calhoun Cnty. Sheriff’s Off.*, 983 N.W.2d 300, 301, *reh’g denied*, 970 N.W.2d 886 (Mich. 2022) (holding that Michigan public records law does not incorporate § 236.6 as an exemption).
- ^{xxi} *Id.*
- ^{xxii} ACLU, PHR, *Behind Closed Doors: Abuse and Retaliation Against Hunger Strikers in U.S. Immigration Detention* (2021), https://www.aclu.org/sites/default/files/field_document/aclu_phr_behind_closed_doors_final.pdf.
- ^{xxiii} See, e.g., ACLU of Northern California, “After Hours of Violent Abuse, ICE and GEO Group Abruptly Transfer Four Mesa Verde Hunger Strikers to Texas,” May 18, 2023, <https://www.aclunc.org/news/after-hours-violent-abuse-ice-and-geo-group-abruptly-transfer-four-mesa-verde-hunger-strikers>.
- ^{xxiv} Consolidated Appropriations Act of 2023, Pub. L. No. 117-328, 136 Stat. 4459 (Dec. 29, 2022).
- ^{xxv} Explanatory Statement Regarding H.R. 2617, Consolidated Appropriations Act, 2023, Division F—Department of Homeland Security Appropriations Act, 2023, 168 Cong. Rec. S8572 (daily ed. Dec. 20, 2022) (statement by Sen. Leahy).
- ^{xxvi} *Id.*
- ^{xxvii} See Continuing Appropriations Act, 2023 (P.L. 117-80), which extends the terms and conditions of the Fiscal Year (FY) 2022 Department of Homeland Security (DHS) Appropriations Act (P.L. 117-103), requiring that DHS post on its public website any report required in the Act by the Committees on Appropriations of the Senate and the House of Representatives.