

April 3, 2020

The Honorable Chad F. Wolf  
Acting Secretary  
U.S. Department of Homeland Security  
3801 Nebraska Avenue, NW  
Washington, D.C. 20016

The Honorable Matthew T. Albence  
Deputy Director and Senior Official Performing the Duties of  
the Director  
U.S. Immigration and Customs Enforcement  
500 12th Street, SW  
Washington, D.C. 20536



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Susan Herman  
*President*

Anthony Romero  
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**Re: ICE civil immigration enforcement and detention during  
the COVID-19 pandemic**

Dear Acting Secretary Wolf and Deputy Director Albence:

On behalf of the American Civil Liberties Union (ACLU), and our more than 8 million members, supporters, and activists, we write to ask you to **temporarily suspend Immigration and Customs Enforcement (ICE) civil immigration enforcement activities and release all people currently in ICE custody for the duration of the COVID-19 pandemic.** These steps are necessary to ensure that individuals are not afraid to access testing and care, to reduce the spread of COVID-19, and to save lives — protecting staff and officers, their communities, detained people, and the general public. Based upon the rapid spread of — and increasing fatalities from — COVID-19, all government agencies, including ICE, must take vital steps to combat the pandemic and save lives.

1. **Temporarily Suspend Civil Immigration Enforcement**

We appreciate that ICE has taken initial steps to recognize the gravity of this moment, including reiterating its sensitive locations policy.<sup>1</sup> However, more is needed to ensure that individuals can act in accordance with recommendations by public health experts to keep their families and communities safe — including seeking care, accessing testing, or making essential trips to secure groceries or

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<sup>1</sup> U.S. Immigration and Customs Enforcement, Updated ICE statement on COVID-19, (Mar. 18 2020), <https://www.ice.gov/news/releases/updated-ice-statement-covid-19>.

medicine. We are extremely concerned that civil enforcement activity has continued, particularly in communities that are facing increasingly high numbers of COVID-19 cases such as New York and California. Continued civil enforcement discourages immigrants and their family members from seeking testing and treatment.<sup>2</sup> It also puts ICE staff and officers at risk by creating unnecessary physical contact during ICE arrests and other routine enforcement activity during which they may be exposed to COVID-19. Finally, civil immigration enforcement adds to the detained population at a time when public health experts warn the agency must reduce it to prevent the spread of COVID-19 in communities across this country.



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**ICE should issue a clear and unequivocal statement temporarily suspending civil enforcement activity during the COVID-19 pandemic, so all people, regardless of immigration status, feel safe to access the care they may need during this pandemic. Specifically, ICE must temporarily suspend all civil immigration enforcement activities by: (1) Halting all civil arrests; (2) Canceling ICE check-ins for all individuals; (3) Ending Operation Palladium<sup>3</sup> and other special deployments of ICE agents; and (4) Suspending practices of seeking the collaboration of state and local law enforcement in the arrest or detention of individuals. These actions are of an emergency nature, and should last only as long as the COVID-19 pandemic lasts.**

Fear of enforcement in immigrant communities makes us all less safe and continued ICE enforcement is causing confusion and alarm. In New York, the location with the most COVID-19 cases in the United States, agents carried out at least three separate raids this month.<sup>4</sup> In Denver, two parents of school-aged children were taken to the Aurora immigration detention facility — where ten people are quarantined for possible exposure to COVID-19.<sup>5</sup> In California, ICE agents arrested

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<sup>2</sup> Charles Bethea, *The Doubled Fears of the Undocumented During the Coronavirus Shutdown* The New Yorker (Mar. 31 2020), <https://www.newyorker.com/news/news-desk/the-doubled-fears-of-the-undocumented-during-the-coronavirus-shutdown>.

<sup>3</sup> Caitlin Dickerson, Zolan Kanno-Youngs and Annie Correal, *'Flood the Streets': ICE Targets Sanctuary Cities With Increased Surveillance* The New York Times (Mar. 5 2020), <https://www.nytimes.com/2020/03/05/us/ICE-BORTAC-sanctuary-cities.html>.

<sup>4</sup> Clifford Michel, *ICE Raids Continue in Staten Island Despite Global Pandemic* The City (Mar. 25 2020), <https://thecity.nyc/2020/03/ice-raids-continue-in-staten-island-despite-global-pandemic.html>.

<sup>5</sup> Alex Burness and Saja Hindi, *ICE Immigration Arrests Continuing in Denver Despite Coronavirus Outbreak* The Denver Post (Mar. 17 2020),



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people on the first day of the state's lockdown, causing fear for heads of households about providing for their families.<sup>6</sup> The fear extends to mixed status families, some of whom worry that seeking out health care could result in enforcement actions towards their loved ones.<sup>7</sup>

Additionally, ICE personnel are at risk. Officers and staff do not know whether they were exposed to COVID-19 during the course of an arrest, and ICE personnel are risking their and their families' health through unnecessary exposure. The same is true of state and local law enforcement officers who ordinarily collaborate in immigration enforcement activity; they should be empowered to focus exclusively on local community needs at this time. While ICE has taken steps to carry out raids using protective personal equipment (PPE) and precious N95 respirator masks,<sup>8</sup> this medical equipment should be diverted to local hospitals, where health care workers are desperately seeking donations<sup>9</sup> and scraping by with disposable rain ponchos and goggles.<sup>10</sup> Following the announcement by DHS officials that protective gear in the national stockpile is nearly depleted, agency leadership has an obligation to not further diminish these supplies by continuing civil enforcement activity that puts their own employees and communities at risk.<sup>11</sup>

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<https://www.denverpost.com/2020/03/17/coronavirus-ice-immigration-arrest-colorado-denver/>.

<sup>6</sup> Brittney Mejia, *With Masks at the Ready, ICE Agents Make Arrests on First Day of California Coronavirus Lockdown* Los Angeles Times (Mar. 17 2020), <https://www.latimes.com/california/story/2020-03-17/for-ice-agents-its-business-as-unusual-day-after-sweeping-coronavirus-order>.

<sup>7</sup> Bethea, *supra* note 2.

<sup>8</sup> Meijia, *supra* note 6 (Noting "The agents had N95 respirator masks in their vehicles, just in case."); David DiSalvo, *I Spent A Day In The Coronavirus-Driven Feeding Frenzy Of N95 Mask Sellers And Buyers And This Is What I Learned* Forbes (Mar. 30 2020), <https://www.forbes.com/sites/daviddisalvo/2020/03/30/i-spent-a-day-in-the-coronavirus-driven-feeding-frenzy-of-n95-mask-sellers-and-buyers-and-this-is-what-i-learned/#77100c6956d4>. (highlighting the high demand and limited supply of N95 masks).

<sup>9</sup> Michelle Ma, *How You Can Donate Protective Equipment to Help Hospitals Fight Coronavirus* The Wall Street Journal (Mar. 27 2020), <https://www.wsj.com/articles/how-you-can-donate-protective-equipment-to-help-hospitals-fight-coronavirus-11585323638>.

<sup>10</sup> Shannon Firth, Kristina Fiore, and Amanda D'Ambrosio, *Clinicians Struggle With PPE Shortages* MedPage Today (Mar. 23 2020), <https://www.medpagetoday.com/infectiousdisease/covid19/85572>.

<sup>11</sup> Nick Miroff, *Protective gear in national stockpile is nearly depleted, DHS officials say*, The Washington Post (Apr. 1 2020), [https://www.washingtonpost.com/national/coronavirus-protective-gear-stockpile-depleted/2020/04/01/44d6592a-741f-11ea-ae50-7148009252e3\\_story.html](https://www.washingtonpost.com/national/coronavirus-protective-gear-stockpile-depleted/2020/04/01/44d6592a-741f-11ea-ae50-7148009252e3_story.html).

## **2. Release All People in ICE Custody During the COVID-19 Pandemic**

The conditions in ICE detention facilities risk the lives and health of almost 37,000 people in detention and of ICE staff and officers. While we are cognizant of protocols ICE has sought to enact to respond to COVID-19,<sup>12</sup> these facilities are not designed or equipped to handle this unprecedented public health crisis. We commend ICE for the release of some people from custody in the past week, but more needs to be done to prevent the further spread of this virus in detention facilities. **ICE should temporarily release all people in its detention facilities to prevent an outbreak — which will spread rapidly within facilities and to communities outside of them — and contain this pandemic.**

People in ICE detention facilities are unable to practice social distancing and hygiene in manners prescribed by the World Health Organization and the Centers for Disease Control and Prevention. They live, sleep, and eat in close quarters, and share toilets and showers that may not be disinfected between use. At many facilities, detained individuals do not have regular access to soap and cleaning supplies. There is an “imminent risk to the health and safety of immigrant detainees,” according to physicians who have investigated detention facilities on behalf of DHS and are experts in the field of detention health.<sup>13</sup> Experts have warned that once an outbreak occurs in immigration detention, it will spread quickly and have a devastating impact. Public health experts warn that outbreaks spreading quickly through detention centers will likely overwhelm medical resources for entire communities — it is the opposite of “flattening the curve.” A group of medical professionals also stated that in light of this crisis, “it is impossible to ensure that detainees will be in a ‘safe, secure and



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<sup>12</sup> U.S. Immigration and Customs Enforcement, ICE Guidance on COVID-19, (Mar. 31 2020), <https://www.ice.gov/coronavirus>.

<sup>13</sup> Letter from Dr. Scott A. Allen, Professor Emeritus, Clinical Medicine University of California Riverside School of Medicine and Dr. Josiah “Jody” Rich, Professor of Medicine and Epidemiology, Brown University to Congress (Mar. 19 2020), <https://assets.documentcloud.org/documents/6816336/032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.pdf>.

humane environment,’ as ICE’s own National Detention Standards require.”<sup>14</sup>

ICE’s policy of subjecting detained individuals to “cohorting” — a form of collective isolation — is not the answer. It involves crowding people in rooms for 23 hours a day or more with the same individuals. This increases the risk of exposure and transmission for all people in the cohort, placing vulnerable detained people at even greater risk. Moreover, if ICE responds to an individual’s positive test for COVID-19 by transferring apparently asymptomatic individuals to an ICE facility in another region, it risks contributing to the spread of COVID-19 across the country.

The continued detention of immigrants also jeopardizes the health and safety of ICE staff and officers. As long as these facilities operate, ICE employees will inevitably be exposed to either detained individuals or coworkers with COVID-19, including asymptomatic transmitters who do not yet and may never show signs of the disease.<sup>15</sup> When these ICE staff and officers return home each day, they risk exposing loved ones and community members to COVID-19 and further spreading the virus.

Releasing people from ICE detention is a responsible and safe solution. ICE has alternatives to detention to ensure that immigrants appear for their removal hearings, and many immigrants facing removal are not subject to detention at all. Immigration detention is civil only, and should not be designed to punish. To the extent that any immigrants pose a danger to the public, the criminal justice system is fully capable of addressing that concern. People can be released into the custody of family or community sponsors with guidance on self-quarantine/isolation and seeking medical help. People who are suspected of suffering from COVID-19 or are enduring mild symptoms should be released from detention so that they can safely self-quarantine and obtain medical evaluation and assistance as appropriate. Individuals who are suffering severe cases of COVID-19 should be released to a local hospital bed if medically appropriate.



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<sup>14</sup> Letter from Medical Professionals to ICE Acting Director Matthew T. Albence (Mar. 19 2020), <https://nylpi.org/wp-content/uploads/2020/03/FINAL-LETTER-Open-Letter-to-ICE-From-Medical-Professionals-Regarding-COVID-19.pdf>.

<sup>15</sup> Sam Whitehead, *CDC Director on Models for the Months to Come: ‘This Virus Is Going To Be With Us* National Public Radio (Mar. 31, 2020), <https://www.npr.org/sections/health-shots/2020/03/31/824155179/cdc-director-on-models-for-the-months-to-come-this-virus-is-going-to-be-with-us>.

Our nation faces an extraordinary health crisis at this time. We urge ICE to take all possible steps to combat the pandemic by temporarily suspending civil immigration enforcement and releasing all detainees from ICE custody during the COVID-19 pandemic.

Thank you for your consideration. If you have any questions, please contact Andrea Flores, Deputy Director of Policy, at [aflores@aclu.org](mailto:aflores@aclu.org).

Sincerely,



Andrea R. Flores  
Deputy Director of Policy, Equality Division



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