

May 27, 2021

**VIA EMAIL**

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 12<sup>th</sup> St. SW  
Washington, DC 20536



**Re: COVID-19 Vaccine Availability in ICE Detention Facilities**

Dear Secretary Mayorkas and Acting Director Johnson:

Throughout the COVID-19 pandemic, Immigration and Customs Enforcement (ICE) detention centers have been among the most dangerous places in the United States. COVID-19 infection rates in ICE detention are 20 times higher than that of the general population, and five times greater than in prisons.<sup>1</sup> COVID-19 outbreaks in ICE detention have also led to the rapid spread of the virus in surrounding communities, so that ICE has been labeled by many a “superspreader agency.”<sup>2</sup> As of May 26, 2021, over 15,000 immigration detainees have been infected with COVID-19, and at least nine have died after contracting COVID-19 in ICE custody.<sup>3</sup>

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<sup>1</sup> Isabelle Niu and Emily Rhyne, *The Most Dangerous Places in a Deadly Pandemic*, NY Times, May 8, 2021 at A8, <https://www.nytimes.com/2021/04/25/video/immigration-detention-covid-takeaways.html?searchResultPosition=2>.

<sup>2</sup> Washington Post, *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](https://www.washingtonpost.com/opinions/ice-is-the-superspreader-agency/2021/05/01/eb079944-a9f2-11eb-8c1a-56f0cb4ff3b5_story.html).

<sup>3</sup> ICE, COVID-19 ICE Detainee Statistics by Facility, <https://www.ice.gov/coronavirus#detStat> (last checked May 26, 2021). This is likely an underestimate, given ICE’s practice of not counting deaths that occurred after an individual’s release from ICE custody, and does not include the number of private contract employees who grew ill or died from COVID-19 after exposure to the virus ICE detention. ACLU, *The Survivors: Stories of People Released from ICE Detention During the COVID-19 Pandemic* 10-12 (2021), [https://www.aclu.org/sites/default/files/field\\_document/20210512-ice-detention-report.pdf](https://www.aclu.org/sites/default/files/field_document/20210512-ice-detention-report.pdf); see *supra* notes 1-2.



ICE’s failure to ensure a coordinated strategy for vaccination continues to endanger people in detention nationwide. ICE’s COVID-19 plan has left it to individual detention facilities to “contact their state’s COVID-19 vaccine resource . . . to obtain vaccine.”<sup>4</sup> This vaccination approach, however, has led to widespread failure. While more than 60 percent of adults in the United States have received at least one dose of a vaccine,<sup>5</sup> the vast majority of people in ICE detention have yet to receive a dose: as of May 7, 2021, less than seven percent of ICE detainees nationwide had received COVID-19 vaccines.<sup>6</sup> In many instances, state and local public agencies have publicly stated that the federal government bears the responsibility to provide COVID-19 vaccines to people in federal ICE custody.<sup>7</sup> Meanwhile, COVID-19 outbreaks continue to spread in detention facilities nationwide, risking the health and safety of detainees despite ICE’s duty to protect those in its custody, in violation of their constitutional rights.<sup>8</sup> As one court has noted of ICE’s failed vaccination policy, “the fact that the federal government has not adopted a plan to insure that they are vaccinated runs counter to the science. Further, it defies common sense given the fact that the United States has a surplus of vaccines and, in fact, plans to export 80 million doses this summer.”<sup>9</sup>

In contrast to ICE’s failed vaccination strategy, the Federal Bureau of Prisons, which worked to secure vaccine doses directly from the federal government, has administered over 184,000 doses of the COVID-19 vaccine to prisoners and staff.<sup>10</sup> By mid-May, the Bureau of Prisons has offered vaccines to *all* incarcerated individuals in federal prisons.<sup>11</sup>

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<sup>4</sup> ICE ERO, *COVID-19 Pandemic Response Requirements, Version 6.0* 24 (Mar. 16, 2021), <https://www.ice.gov/doclib/coronavirus/eroCOVID19responseReqsCleanFacilities.pdf>.

<sup>5</sup> See *How Vaccinations Are Going in Your County and State*, NY Times (updated May 20, 2021), <https://www.nytimes.com/interactive/2020/us/covid-19-vaccine-doses.html>.

<sup>6</sup> 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>.

<sup>7</sup> Elizabeth Trovall, *Few Texas ICE Detention Centers Are Vaccinating for COVID-19. Feds Say It’s Up to Local Health Departments*, Houston Public Media, 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/>; Ana Ibarra, *Immigration Detention Centers Showcase California’s Vaccine Chaos*, Cal Matters, Feb. 22, 2021, <https://calmatters.org/health/coronavirus/2021/02/immigrants-detention-centers-vaccine/>.

<sup>8</sup> See ICE ERO, *COVID-19 ICE Detainee Statistics by Facility* <https://www.ice.gov/coronavirus#detStat> (documenting 400 cases at Adams County Correctional Center; 192 cases at Richwood Correctional Center; 157 cases at Eloy Federal Contract Facility; 155 cases at La Palma Correctional Facility) (last checked May 26, 2021); *Helling v. McKinney*, 509 U.S. 25, 36 (1993).

<sup>9</sup> *Fraihat v. ICE*, No. 5:19-cv-1546 (C.D. Cal.), Special Master’s Report and Recommendation 17, May 21, 2021, ECF No. 304.

<sup>10</sup> Federal Bureau of Prisons, *COVID-19*, <https://www.bop.gov/coronavirus/> (last visited May 26, 2021).

<sup>11</sup> The Marshall Project, *COVID Cases in Prisons*, <https://data.world/associatedpress/marshall-project-covid-cases-in-prisons> (last checked May 26, 2021).

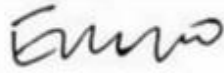


Given the urgency posed by COVID-19—including the introduction of new variants and continued outbreaks throughout detention centers across the country from increased population numbers—it is imperative that ICE act quickly to provide vaccines to all detained people and staff in all detention facilities nationwide. ICE should, at minimum:

- Directly provide sufficient COVID-19 vaccines at each ICE detention facility—including facilities under direct contracts, intergovernmental service agreements, and intergovernmental agreements with U.S. Marshals Services—to ensure that every detained person and staff member can be vaccinated, as well as all new detainees at the time of admission to the facility. Ensure that each ICE detention facility has proper storage capacity for vaccines.
- Encourage vaccination and require documentation of COVID-19 vaccination among ICE detention facility staff, including third-party contractors.
- Ensure that linguistically and culturally appropriate educational materials are provided to detained people and staff prior to offering COVID-19 vaccines. Permit local stakeholder organizations to provide supplementary educational materials for distribution to detainees. (A sample is provided as an attachment).
- Ensure that all detainees who have previously declined vaccinations be reoffered vaccination at regular intervals, with the provision of educational materials and the opportunity to speak with a medical provider regarding any questions or concerns.
- Ensure that detainees can request a vaccine by submitting a sick call or request for health services, and be provided with a vaccine within 48 hours of the request.
- Ensure that vaccination arrangements are made for all detainees who have received the first dose of a two-dose vaccine if scheduled for release or transfer after receiving only the initial dose, including providing proper documentation.

We appreciate your prompt attention and response to this matter. Please contact Eunice Cho, Senior Staff Attorney, ACLU National Prison Project at [echo@aclu.org](mailto:echo@aclu.org) and Michael Tan, Deputy Director, ACLU Immigrants' Rights Project at [mtan@aclu.org](mailto:mtan@aclu.org) with any questions.

Sincerely,



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/S/ Michael Tan

Michael Tan  
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CC: Tim Perry, Royce Murray, Charyana Krishnaswami, Claire Trickler  
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