



505 Fifth Avenue, Suite 808  
Des Moines, IA 50309-2317  
www.aclu-ia.org

Iowa

Peter Berg  
Deputy Field Office Director  
**Enforcement and Removal Operations,  
U.S. Department of Homeland Security  
St Paul Field Office**  
1 Federal Drive Suite 1601  
Fort Snelling, MN, 55111  
Phone: (612) 843-8600  
*Delivered via e-mail*

Jim Stolley  
Chief Counsel  
**Office of the Principal Legal Advisor**  
1 Federal Drive, Suite 1800  
Fort Snelling, MN, 55111  
Phone: (612) 843-8935  
*Delivered via e-mail*

Darrin E. Hetfield  
Deputy Chief Counsel  
**Department of Homeland Security  
Office of the Chief Counsel**  
1717 Avenue H, Room 174  
Omaha, NE 68110  
*Delivered via e-mail*

April 16, 2020

**Re: ICE enforcement and COVID-19**

Dear ICE leaders:

On behalf of the undersigned 37 Iowa legal and advocacy organizations, attorneys and law firms, we write to urge that you heed the advice of public health experts by halting new ICE detentions and release people already detained by ICE in Iowa jails, beginning with the medically vulnerable. The lives and health of thousands of people in detention in Iowa jails, ICE officers, Iowa jail staff, and the

public in the broader community are at stake. We urge you to act now to prevent an outbreak, which would stretch our local health care system to the breaking point.

Community transmission of COVID-19 is now ongoing in Iowa, and ICE's practices will influence its severity. 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>1</sup> They have warned that once an outbreak occurs in immigration detention, it will spread quickly and have a devastating impact. According to another group of medical professionals:

We can expect spread of COVID-19 [in immigration detention facilities] in a manner similar to that at the Life Care Center of Kirkland, Washington, at which over 50% of residents have tested positive for the virus and over 20% have died in the past month. Such an outbreak would further strain the community's health care system. Considering the extreme risk presented by these conditions in light of the global COVID-19 epidemic, it is impossible to ensure that detainees will be in a 'safe, secure and humane environment,' as ICE's own National Detention Standards state.<sup>2</sup>

The continued detention of immigrants also jeopardizes the health and safety of ICE officers, facility staff and other workers in the jail facilities. As long as these facilities operate, staff will inevitably be exposed to either detained individuals or co-workers with COVID-19, including asymptomatic transmitters who do not yet and may never show signs of the disease.<sup>3</sup> As these ICE officers, jail facility staff and workers return home each day, they also risk exposing loved ones and community members to COVID-19.

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<sup>1</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-AllenRich-to-Congress-Re.pdf>.

<sup>2</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-OpenLetter-to-ICE-From-Medical-Professionals-Regarding-COVID-19.pdf>.

<sup>3</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 local healthcare workers and first responders already face critical shortages of equipment and protective gear. An outbreak in Iowa jail facilities could flood local healthcare facilities with additional cases, adding to the crisis they are facing and undermining our collective efforts to “flatten the curve” as recommended by the CDC and senior government officials. Nor will Iowa jail staff likely have enough personal protective equipment for themselves or detained people, if an outbreak does occur, given current nationwide shortages.

People in congregate environments, which are places where people live, eat, and sleep in close proximity, face increased danger of contracting COVID-19, as already evidenced by the rapid spread of the virus in cruise ships and nursing homes. People who are confined in Iowa jails will find it virtually impossible to engage in the necessary social distancing and hygiene required to mitigate the risk of transmission, even with the best-laid plans.

At the very least, we urge you to immediately release people from custody who are particularly at risk to complications from COVID-19, based on guidance by the CDC and other medical experts. That includes all people who are over 50 years old and all people (of any age) who have an underlying medical condition that increases their risks—heart disease, chronic liver or kidney disease (including hepatitis and dialysis patients), diabetes, epilepsy, hypertension, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease), inherited metabolic disorders, stroke, developmental delay, and pregnancy.<sup>4</sup>

As Field Office Director you have the authority to exercise discretion to release individuals from ICE custody. This exercise of discretion comes from a long line of agency directives explicitly instructing officers to exercise favorable discretion in cases involving severe medical concerns and other humanitarian equities militating against detention.<sup>5</sup> ICE has released individuals on medical grounds regardless of the

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<sup>4</sup> Centers for Disease Control and Prevention, “Groups at Higher Risk for Severe Illness,” (last updated Apr. 2, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>; American College of Obstetrics and Gynecologists, “Practice Advisory: Novel Coronavirus 2019 (COVID-19)” (last updated Mar. 13, 2020), <https://www.acog.org/clinical/clinical-guidance/practice-advisory/articles/2020/03/novel-coronavirus-2019>.

<sup>5</sup> See, e.g., U.S. Immigration and Customs Enforcement, “Detention Reform,” (last updated July 24, 2018), <https://www.ice.gov/detention-reform#tab1> (referencing use of risk classification assessment tools that “require[] ICE officers to determine whether there is any special vulnerability that may impact custody and classification determinations”); ICE Enforcement and Removal Operations, “Directive 11071.1:

statutory basis for a noncitizen’s detention. ICE not only has authority to exercise prosecutorial discretion to release individuals due to medical concerns, it has routinely exercised such discretion in the past.

In addition to releasing individuals on humanitarian parole, ICE has the authority to redetermine bond and release people in custody on their own recognizance or on a reasonable bond amount that is based on their ability to pay. ICE also has the authority to release people on lesser forms of supervision, including Alternatives to Detention programs, to mitigate any concerns about flight risk. In addition, ICE should eliminate in person check-in requirements.

In short, the more people ICE targets and detains during the COVID-19 pandemic, the more deadly the consequences might be for detainees, correctional staff, and others. We urge you to take four immediate actions to protect the health and safety of all Iowa residents:

1. All actions at medical facilities and other sensitive locations should be completely suspended. We appreciate the public statement that ICE does not conduct operations at medical facilities, except under extraordinary circumstances.<sup>6</sup> However, this step should be taken further to protect the community, including immigrants, Iowa jail staff, and field agents from increased risk of transmission of COVID-19, and to avoid discouraging immigrants from seeking the medical treatment they need.
2. Undertake a case-by-case review of all the individuals currently in ICE custody and identify those who should be released immediately – starting with older adults and those with underlying medical conditions or diseases. Ultimately, all detainees who can be released without risk to the public should be released, so that those people can protect themselves by engaging in social distancing.

As you may know, a federal district court in Pennsylvania ordered ICE to release a group of thirteen inmates found to be at imminent risk of death or serious injury if exposed to COVID-19 as a result of chronic medical conditions such as high blood pressure, high cholesterol, and diabetes. The

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Assessment and Accommodations for Detainees with Disabilities” (Dec. 15, 2016), at 9 (providing for release as an option for detainees with disabilities); Doris Meissner, “Exercising Prosecutorial Discretion,” Immigration and Naturalization Services (Nov. 17, 2000), at 11 (citing “aliens with a serious health concern” as a trigger for the favorable exercise of discretion).

<sup>6</sup> See U.S. Immigration and Customs Enforcement, “ICE Guidance on COVID-19,” (last updated April 15, 2020), <https://www.ice.gov/coronavirus>.

court specifically found that the threat to high risk individuals posed by COVID-19 constitutes irreparable harm and that Petitioners were likely to succeed in showing that continued incarceration in ICE detention facilities would violate petitioners due process rights by exposing them to the serious risks associated with COVID-19. *Id. at 19.*

3. Ensure that immigration detainees have adequate and free access to health care, hygiene products, and telephone and other communication services, including confidential calls with attorneys.
4. Attorneys with the Office of Chief Counsel should stop their practice of resisting all bond requests in order to facilitate the immediate release of individuals who have underlying conditions or do not pose risks to public safety. Instead, attorneys should work with immigrants' counsel to facilitate the emptying of facilities. Failure to do so undermines the important work and cooperation by Iowa state prosecutors, defense attorneys, and state judges to significantly reduce populations of criminal pretrial detainees in Iowa jails.

Releasing detained individuals will save the lives of immigrants, other Iowans detained in Iowa jails, ICE officers, Iowa jail staff and the broader community. We urge you to seize this opportunity and do your part to address the risks that COVID-19 pose to us all.

Although ICE may previously have made case-by-case determinations regarding detention, these determinations were not made with the information regarding the COVID-19 global pandemic and the risks it poses to detainee and public health. It is now critical to immediately recalibrate each of these decisions in light of the urgent public health risks posed by COVID-19, especially in a carceral setting.

The best time to engage in practices to reduce the spread of COVID-19 among detained population is now, before COVID-19 enters Iowa detention facilities.<sup>7</sup>

For the sake of all Iowa residents and communities, customary enforcement practices must be altered to address this pandemic. The urgency of deliberate and thoughtful action cannot be overstated. We are eager to work with you to take the steps outlined above, and we are willing to be a resource for you throughout this

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<sup>7</sup> David Mills and Emily Galvin-Almanza, *As many as 100,000 incarcerated people in our jails and prisons will die from the coronavirus, unless the US acts now*, Business Insider (Apr. 2, 2020), <https://www.businessinsider.com/failure-to-release-prisoners-is-condemning-thousands-to-death-2020-4>.

process. We want to ensure implementation of policies that will limit the threats presented by this public health crisis.

If you have questions or would like to discuss these recommendations further, please contact Shefali Aurora, ACLU of Iowa staff attorney, at [shefali.aurora@aclu-ia.org](mailto:shefali.aurora@aclu-ia.org), or at 515-243-3988 and/or Daniel Zeno, ACLU of Iowa policy and advocacy director, at [daniel.zeno@aclu-ia.org](mailto:daniel.zeno@aclu-ia.org), or at 515-207-3417.

Sincerely,



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Mark Stringer  
Executive Director  
ACLU of Iowa Foundation  
505 Fifth Ave., Ste. 808  
Des Moines, Iowa 50309

Rev. Alejandro Alfaro-Santiz  
Lead Pastor  
Rev. Emily Ewing  
Social Justice Pastor  
Trinity Las Americas United  
Methodist

Lena Avila Robison  
Founder and President  
Latinos Unidos

Beth Barnhill  
Executive Director  
Iowa Coalition Against Sexual Assault

Melissa Cano Zelaya  
Executive Director  
Latinas Unidas para un Nuevo  
Amanecer (LUNA)

Lori Chesser  
Attorney  
Davis Brown Law Firm

Carla Dawson  
President  
Iowa CURE

Hugh Espy  
Executive Director  
Iowa Citizens for Community  
Improvement

Christopher Foster  
Attorney  
Foster Law Office

Julie Fugenschu  
Executive Director  
Project Iowa

Teresa Grant  
President  
League of Women Voters of Iowa

Joe Henry  
Advisor to the National President  
League of United Latin American  
Citizens (LULAC)

Mary J. Ingham  
Executive Director  
Crisis Intervention Service

Dawn Martinez Oropeza  
Executive Director  
Al Exito

Rafael Morataya  
Executive Director  
Center for Worker Justice

Stephanie Moris  
Director  
Refugee Alliance of Central Iowa

Ann Naffier  
Legal Director  
Justice for Our Neighbors

Luana Nelson-Brown  
Executive Director  
Iowa Coalition for Collective Change

Jean O'Donnell  
Leadership Team member  
Des Moines SURJ (Showing Up for  
Racial Justice)

Bobby Pate  
President/Founder  
The Image Program

Courtney Reyes  
Executive Director  
One Iowa

Mónica Reyes  
President  
Dream Iowa

Adam Robinson  
Executive Director  
Rape Victim Advocacy Program  
Connie Ryan  
Executive Director  
Interfaith Alliance of Iowa

Nick Salazar  
State Director  
League of United Latin American  
Citizens (LULAC) of Iowa

Tammy Shull  
Chair  
Iowa Welcomes Immigrant Neighbors  
(Iowa WINs)

Sophia Stone  
President  
Transformations Iowa

Laurie Schipper  
Executive Director  
Iowa Coalition Against Domestic  
Violence

Jack Schuler  
Founder and Director  
Transgender Voter Network

Brandon Wright  
President  
Regret No Opportunities

Lori A. Young  
President  
Just Voices Iowa

Mira Yusef  
Executive Director  
Monsoon Asians & Pacific Islanders in  
Solidarity

Sarah Ziegenhorn  
Executive Director  
Iowa Harm Reduction Coalition

Jessica Malott  
Attorney  
Vondra & Malott, PLC

Law Offices of Sonia Parras, PLLC

Trey Sucher Law, PLC

Argueta and Gomez Law Offices, LLP