

April 9, 2020

SENT VIA ELECTRONIC SUBMISSION

The Honorable Chad F. Wolf
Acting Secretary
Department of Homeland Security
2801 Nebraska Avenue NW
Washington, D.C. 20528

Matthew T. Albence
Acting Director
U.S. Immigration and Customs Enforcement
500 12th Street, SW
Washington, D.C. 20536

Dear Acting Secretary Wolf and Acting Director Albence:

I write to encourage the prioritization of employee and community safety by reducing the mass detention of immigration detainees such as asylum seekers and the most vulnerable amid growing health risks posed by the COVID-19 pandemic in U.S. Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) detention facilities. While the novel coronavirus strand, which has led to the COVID-19 pandemic, has implications on the safety of detention facilities nationwide, I would like to focus on your plans to protect the health of the people who work in Cibola County Correctional Center, Torrance County Detention Facility, and Otero County Processing Center in the state of New Mexico, communities surrounding these facilities, and the individuals in custody.

COVID-19 is a unique virus that spreads from person to person with a risk of infection that is higher for people who are close contacts of someone known to have the virus. Health experts believe the virus spreads mainly between people who are in close contact with one another (within about 6 feet) through respiratory droplets produced when an infected person coughs or sneezes.

The CDC continues to study the spread and effects of the novel coronavirus across the United States. We now know from recent studies that a significant portion of individuals with coronavirus lack symptoms (“asymptomatic”) and that even those who eventually develop symptoms (“pre-symptomatic”) can transmit the virus to others before showing symptoms. This means that the virus can spread between people interacting in close proximity, through speaking, coughing, or sneezing. And, spread can occur even if those people are not exhibiting symptoms. In light of this new evidence, CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies) especially in areas of significant community-based transmission.¹

¹ Centers for Disease Control and Prevention, *Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission*, Apr. 3, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>.

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I appreciate that some of your detention centers have guidelines in place to handle the devastating outbreak of COVID-19 and few have started to release migrants from detention, but without taking further steps to decrease the detention population, I fear the worst for the employees and detained individuals present in your facilities.

There is a long history of disease outbreaks in detention facilities. These facilities are crowded with shared dorm-like living quarters and lack the proper space to engage in social distancing to prevent the spread of disease. Additionally, detention facilities have struggled with providing adequate humanitarian standards for hygiene prior to COVID-19.² Practicing good hygiene plays a huge role in the reduction of the disease, and it is a challenge in detention facilities' congregate settings. People mistakenly believe that epidemics can be contained in these detention facilities, but staff's habitual entrance and exit of facilities, along with a regular influx of new detainees enables the transmission of diseases to fellow coworkers and the individuals in detention.

The conditions at detention facilities coupled with the risk factors of COVID-19 transmission create a deep public health risk to everyone entering and detained at detention facilities across the country. The reality of living in close, confined quarters, often with multiple people sharing rooms and any lack of additional cleaning or sanitary precautions creates a tinderbox effect that allows disease to spread rapidly. Among the most at-risk individuals are employees who report to work at detention facilities and prisons and return home to their families on a daily basis.

The CDC and health professionals insist that, if employees come into contact with someone who has COVID-19 or begins experiencing symptoms of the virus, they commit to a 14 day quarantine. However, that is not the case for employees at detention centers. Every employee in these facilities, including wardens, guards, cooks, kitchen staff, etc. do not have the choice but to work in environments where they are at a higher risk of contracting COVID-19. Recent reports have indicated that a federal prison employee who came into contact with an individual who contracted and died from COVID-19 was directed to return to work without quarantine.³ Such directives are unacceptable to prevent the spread of the contagion especially because the travel of employees to and from detention facilities threatens larger transmission of the virus to employees' homes, families, and broader public.

As long as high numbers of individuals remain in detention, the more employees and individuals are at risk of contracting the disease. Those individuals who contract COVID-19 that require medical intervention will need to be treated at local hospitals, overwhelming the already-overburdened treatment facilities and increasing the risk of infection to the public at large. At this moment, ICE has conceded to the House Committee on Oversight and

² Caitlin Dickerson, *There Is a Stench': Soiled Clothes and No Baths for Migrant Children at a Texas Center*, N.Y. TIMES, Jun. 21, 2019, available at <https://www.nytimes.com/2019/06/21/us/migrant-children-border-soaphtml>.

³ Sadie Gurman, Zusha Elinson & Deanna Paul, *Coronavirus Inside Oakdale Prison: 'Our Sentences Have Turned Into Death Sentences*, WALL ST. J., Apr. 6, 2020, available at <https://www.wsj.com/articles/inside-oakdale-prison-our-sentences-have-turned-into-death-sentences-11586191030?mod=searchresults&page=1&pos=1&ns=prod/accounts-wsj>.

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Reform that it has “no contingency plan” for COVID-19 treatment if hospitals in the areas surrounding its facilities become overwhelmed and are unable to treat detainees.⁴

Among recommendations urged by the Centers for Disease Control, social distancing is the most essential method to reduce the spread of the virus. However, social distancing is not possible in congregate settings like immigration detention facilities with dense populations, so outbreaks are imminent if health and safety precautions are not implemented strategically.

As of April 8, 2020, ICE reported that 32 detainees, 11 detention facility employees, and 63 ICE employees tested positive for COVID-19.⁵ And in the criminal system, the Federal Bureau of Prisons reported as of April 6, 2020, 59 employees and 138 inmates have tested positive for COVID-19 and at least seven inmates have died.⁶ These statistics reflect that each day a detention or prison employee reports to a facility and returns home, more individuals are at risk of contracting the virus in close and neighboring communities.

The Strategic National Stockpile exists to respond to a crisis like the coronavirus pandemic. However, the United States faces hundreds of thousands of COVID-19 cases and a nationwide shortage of medical supplies and personal protective equipment (PPE). Consequently, in addition to the vulnerability of detainees, detention and prison employees do not have the ability to adhere to safety standards of wearing the necessary equipment to prevent the spread of the virus both at work and once they leave work premises. A migrant held in the Otero County Processing Center recently shared that he has observed neither guards nor doctors wear gloves or masks and there are guards who sneeze and cough with cold-like symptoms. The account of the migrant’s experience is worrisome because of the close contact that guards and other detention facility employees have with detainees and other co-workers in simple daily encounters.⁷ And as the PPE shortage continues the virus will also continue to spread to the broader public.

For these reasons, Federal and state prison facilities across the country have started to reduce their jail and prison populations during the COVID-19 pandemic through a variety of releases. Some states have also taken the initiative to provide individual testing for COVID-19 before release.⁸ Attorney General William Barr has also exercised his authority to move individuals to home confinement due to the COVID-19 pandemic emergency. Attorney General Barr recently ordered federal prison officials to intensify efforts to release “vulnerable” inmates

⁴ House Committee on Oversight and Reform Letter to DHS, ICE, and CBP, Apr. 7, 2020, *available at* https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-04-07.CBM%20JR%20to%20DHS%20re%20Protecting%20Immigrants_0.pdf

⁵ Immigration and Customs Enforcement, *Guidance on COVID-19: Confirmed Cases*, Apr. 7, 2020, *available at* <https://www.ice.gov/coronavirus>.

⁶ Ryan Lucas, *Inmates, Staff on Edge as COVID-19 Spreads through Federal Prisons*, NPR, Apr. 6, 2020, *available at* <https://www.npr.org/2020/04/06/827922287/inmates-staff-on-edge-as-covid-19-spreads-through-federal-prisons>.

⁷ Bob Moore (@BobMooreNews), Twitter (Apr. 7, 2020, 2:35 PM), <https://twitter.com/BobMooreNews/status/1247593743961767937?s=09>.

⁸ *Kentucky Plans to Release More Than 900 Prisoners Because of the COVID-19 Outbreak*, WDRB, Apr. 2, 2020, *available at* https://www.wdrb.com/news/kentucky-plans-to-release-more-than-900-prisoners-because-of-the-covid-19-outbreak/article_aef84282-7541-11ea-8a18-efe5a8cf107d.html.

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at three prison complexes that are struggling to contain major outbreaks of the coronavirus in Danbury, Connecticut, Oakdale, Louisiana, and Elkton, Ohio.⁹

Given the similar congregate setting of ICE detention facilities, I believe that the precautionary measures taken by several state officials and Attorney General Barr for federal and state prisons should be followed especially for those migrants who do not pose any threat to public safety or national security. It is important to note that most migrants detained in ICE facilities are held for civil, not criminal, matters.

Medical professionals across the nation have called on ICE to implement community-based alternatives to detention (ATDs).¹⁰ Community-based alternatives to immigration detention are a feasible, practical, and rights-respecting solution. Amid the COVID-19 pandemic, release on ATDs will save the lives of migrants, facility staff, their families, and the broader public. Otherwise, the insistence on holding migrants in detention makes these facilities worrisome conduits to spread the virus, further, both inside and outside of facility walls. I request that your COVID-19 response not be viewed through an immigration enforcement lens, but instead with an eye towards keeping New Mexican employees and communities safe.

At this stage of the pandemic, I encourage you to put the health and safety of your employees and our communities first by decreasing your detention populations. I understand Federal immigration authorities have started to release migrants from detention and are reviewing the cases of other detainees who could be at risk to contract the new coronavirus. I recommend you start reducing the mass detention of immigration detainees by focusing on asylum seekers, vulnerable migrants, and those who do not pose a threat to public safety or national security, and immediately cease transfers of detainees between facilities as a way of curbing potential transmission of COVID-19. I strongly urge DHS and ICE to enter into community engagement with stakeholders, as well as public health officials to coordinate plans to contain this virus upon release. Handling the operations of detention facilities during the COVID-19 pandemic is not a responsibility that can be delegated to contractors and subcontractors. Rather, ICE must be the one to make important decisions to manage detention facility operations to protect the health of everyone involved. I also recommend you follow CDC recommendations and develop strong and smart COVID-19 response plans that go beyond screening, isolating, and quarantining in order to control the spread of COVID-19 in your facilities.

Sincerely,



CC:

⁹ Josh Gerstein, *Barr to Speed Releases at Federal Prisons Hard Hit by Virus*, POLITICO, Apr. 3, 2020, available at <https://www.politico.com/news/2020/04/03/barr-to-speed-releases-at-federal-prisons-hard-hit-by-virus-164175>.

¹⁰ *Achieving a Fair and Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State and Local Leaders from Public Health and Legal Experts in the United States*, Mar. 2, 2020, available at https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final_covid19_letter_from_public_health_and_legal_experts.pdf.

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