

June 9, 2021

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
2801 Nebraska Ave., NW
Washington, DC 20528

Mr. Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement
500 12th St. SW
Washington, DC 20536

Dear Secretary Mayorkas and Acting Director Johnson:

We greatly appreciate your work to curtail deportations, roll back draconian interior enforcement measures, and to end contracts with the Bristol County Sheriff's Office and the Irwin County Detention Center.¹ We urge you to build on this work by protecting individuals from COVID-19 in Immigration and Customs Enforcement (ICE) detention. Specifically, we urge you to refrain from re-detaining individuals previously released due to COVID-19 solely due to the improving pandemic conditions and to continue robust safety measures in ICE detention centers, including access to vaccines. These steps are vital to fulfilling your obligations to protect the health and safety of people in ICE custody, ICE staff, and the families who live in the communities where ICE detention centers exist.

In the past year, the COVID-19 pandemic has spread rapidly throughout ICE detention facilities. As of May 31, 2021, over 16,000 immigrants in detention have contracted COVID-19, and at least nine detained people have died after contracting COVID-19 in ICE custody.² The prevalence of COVID-19 in ICE detention facilities is 20 times greater than in the general public, and five times greater than in prisons.³ Conditions of confinement continue to endanger the safety of detained people, staff, and communities surrounding ICE detention facilities. COVID-19 in detention has led to major outbreaks in local communities, as staff have grown ill and died, while furthering the spread of the virus.⁴ While vaccines are readily available in communities throughout the United States, as of May 7, 2021, less than seven percent of people detained in

¹ Nick Miroff and Maria Sacchetti, *Biden Administration Reins In Street-Level Enforcement by ICE as Officials Try to Refocus Agency Mission*, Washington Post (May 25, 2021) https://www.washingtonpost.com/national/ice-street-arrests-immigrants-fall-biden/2021/05/25/58681782-b972-11eb-bb84-6b92dedcd8ed_story.html.

² Immigration and Customs Enforcement, *COVID-19 ICE Detainee Statistics by Facility*, <https://www.ice.gov/coronavirus#detStat> (last checked June 2, 2021).

³ 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>.

⁴ 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.

ICE custody nationwide had received COVID-19 vaccines.⁵ COVID-19 outbreaks continue to spread in detention facilities across the country.⁶

As a result of the conditions of confinement in ICE detention facilities and the risk of spread in congregate settings, federal courts nationwide have ordered ICE to release thousands of people from custody to ensure their safety throughout the COVID-19 pandemic. We appreciate that ICE has also released many more individuals, including those who are medically vulnerable, as a matter of agency discretion.⁷ The overwhelming majority of these individuals are now living safely at home with their families, with clear improvements to their health. They are now providing valuable support to their communities and loved ones, in compliance with the terms of their release, posing no danger to the community.⁸

These formerly detained people, however, continue to live with the constant fear of re-detention by ICE. ICE's position regarding the re-detention of people released due to COVID-19 has been inconsistent across individual Field Offices, causing great uncertainty for formerly detained people. In some commendable instances, ICE has agreed not to re-detain anyone released as a result of COVID-19 related litigation.⁹ In other instances, however, ICE stated that the agency has not yet come to a decision regarding re-detention, or has actively argued for the re-detention of people previously released by court order solely due to the availability of vaccines and decreased community spread, not as a result of an individualized determination of public safety threat or ability to comply with the terms of release.¹⁰ As of now, there seems to be no clear indication as to the Agency's position regarding re-detention of medically vulnerable people released as a result of a nationwide class action suit.¹¹

⁵ *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>; 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/>.

⁶ ICE ERO, COVID-19 ICE Detainee Statistics by Facility <https://www.ice.gov/coronavirus#detStat> (documenting 416 cases at Adams County Correctional Center; 196 cases at Richwood Correctional Center; 170 cases at La Palma Correctional Facility; and 143 cases at Eloy Federal Contract Facility) (last checked May 24, 2021).

⁷ Immigration and Customs Enforcement, *COVID-19 ICE Detainee Statistics by Facility*, <https://www.ice.gov/coronavirus#detStat> (listing 3,741 people released after court order) (last checked May 24, 2021).

⁸ See ACLU, *The Survivors: Stories of People Released from ICE Detention During the COVID-19 Pandemic* (2021), <https://www.aclu.org/report/survivors>; Noah Lanard, *ICE Allowed COVID-19 Breakouts and Concealed Hospitalizations, a New Report Shows*, Mother Jones, May 11, 2021, <https://www.motherjones.com/politics/2021/05/ice-allowed-covid-19-breakouts-and-concealed-hospitalizations-new-report-shows/>.

⁹ See, e.g. *Alcantara v. Archambeault*, No. 3:20-cv-756 (S.D. Cal.), Dkt. 70-3 ¶ 24 (Declaration of Kelley Beckhelm) (“No detainee who has been released per this Court’s TRO will be re-detained absent a material change in circumstances beyond the government’s control”).

¹⁰ *Thakker v. Doll*, No. 1:20-cv-480 (M.D. Pa.), Dkts. 325, 327, 331, 333 (requesting immediate re-detention); Dkts. 364-67 at 2 (stating that no decision to re-detain has yet been made).

¹¹ *Fraihat v. ICE*, No. No. 5:19-cv-1546 (C.D. Cal.).

Last Congress, Rep. Jayapal introduced the *Federal Immigrant Release for Safety and Security Together (FIRST) Act*, that would move immigrants out of detention and halt immigration enforcement against individuals not deemed a significant public safety risk during the COVID-19 pandemic and future public health emergencies.¹² This legislation would have ensured that individuals released from detention during the pandemic would not be forced to return to detention solely as a result of the public health emergency ending, unless an individualized determination is made that the person is a threat to public safety or alternatives to detention are insufficient to guarantee attendance at immigration proceedings. Re-detaining individuals solely as a result of our nation's recovery from the pandemic is unacceptable. We continue to call for critical protections, including the continued release of people from custody, especially for those who are medically vulnerable to COVID-19.

We respectfully request that DHS and ICE take prompt action to ensure that there is a clear policy regarding individuals who have been released from detention due to COVID-19, and that no one is re-detained solely as a result of our nation's recovery from the pandemic. In addition, we request that DHS and ICE ensure that health and safety measures, releases from custody, and vaccination protocols are reviewed, improved, and enacted at detention facilities to ensure robust protections for those that remain detained.

Thank you for your prompt attention to this matter.

Sincerely,

¹² See Federal Immigrant Release for Safety and Security Together Act or the FIRST Act, 116th Congress, <https://www.congress.gov/bill/116th-congress/house-bill/6537/text?r=10&s=2>