



April 17, 2020

VIA ELECTRONIC MAIL

Field Office Director Robert Guadian,

On behalf of the American Civil Liberties Union of Kentucky, and Kentucky Refugee Ministries, Maxwell Street Clinic, Neighbors Immigration Clinic, and Catholic Charities of Louisville, I write to urge you to take decisive action to protect detainees, ICE officers, detention facility staff, and the families of those staff, from COVID-19. We urge you to follow the clear advice of public health experts and release detainees, starting with the medically-vulnerable, detained in the Boone County Detention Center, as well as any other individuals in ICE custody anywhere else in the Commonwealth. Taking swift action will help prevent an outbreak in a detention facility, and mitigate the worst effects of the ongoing pandemic. The lives and health of thousands of people are at stake, from those in detention, to those in the communities in which ICE staff live.

Detention facilities are not designed or equipped to handle this unprecedented public health crisis. There is an “imminent risk to the health and safety of immigrant detainees,” according to physicians who have investigated detention facilities on behalf of the Department of Homeland Security (DHS) and are experts in the field of detention health.¹ These expert physicians have warned that once an outbreak occurs in an immigration detention center, it will spread quickly and have a devastating impact. Another group of medical professionals warned:

[W]e can expect spread of COVID-19 [in Boone County Detention Center] in a manner similar to that at the Life Care Center of Kirkland,

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¹ 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>.



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.²

The continued detention of immigrants also jeopardizes the health and safety of ICE officers, facility staff, other workers in these facilities, and the families and communities to which the employees return. As you know, an inmate who was recently transported out of Boone County Detention Center tested positive for COVID-19.³ Recently, two ICE officers tested positive for COVID-19 at facilities in different states. These infections risk widespread infection in detention facilities and nearby areas.⁴ As long as these facilities operate, staff will inevitably be exposed to detained individuals and co-workers with COVID-19, including asymptomatic transmitters who do not currently, and may never, show signs of the disease.⁵ As these ICE officers, facility staff, and other workers return home each day, they also risk exposing loved ones and their communities to COVID-19.

² 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>.

³ Chris Kenning, *Kentucky jail refuses new ICE detainees after transferred inmate tests positive for COVID-19*, COURIER JOURNAL, April 10, 2020, <https://www.courier-journal.com/story/news/2020/04/10/kentucky-coronavirus-former-boone-county-ice-detainee-tests-positive/5132750002/>.

⁴ Emily Kassie, *The Marshall Project, First ICE Employees Test Positive for Coronavirus*, March 19, 2020, <https://www.themarshallproject.org/2020/03/19/first-ice-employees-test-positive-for-coronavirus?fbclid=IwAR3x9DPiIOjKP5vq8wkofpJq7NOVvVZyiJDtICAzM6v3UaLSXQ50-PrkZSk>.

⁵ 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>.



In addition to the toll an outbreak of COVID-19 in a detention center could take on individuals, it would also increase the burden on healthcare systems that are already stretched beyond their limits. An outbreak at the Boone County Detention Center would flood local healthcare facilities with additional patients suffering from COVID-19, exacerbating the ongoing crisis and undermining our collective efforts to “flatten the curve,” as recommended by the Centers for Disease Control and Prevention (CDC) and President Trump. Despite aggressive proactive steps from Ohio Governor Mike Dewine and Kentucky Governor Andy Beshear, Cincinnati and northern Kentucky have already seen an outbreak of COVID-19, and many deaths. We cannot afford to make the situation in the region even worse.

Furthermore, our local healthcare workers and first responders already face critical shortages of equipment and protective gear. Given these current worldwide shortages, ICE officers and facility staff will not be able to acquire enough personal protective equipment (PPE) for themselves or detained individuals if an outbreak does occur. Even if the facility is able to obtain adequate PPE, it will unnecessarily divert life-saving PPE from frontline healthcare workers.

Aggressive steps must be taken to stem the spread of COVID-19 to save lives and conserve essential medical resources. At the very least, we urge you to immediately release people who are particularly at risk to complications from COVID-19 based on guidance from CDC and other medical experts. This action would include all people 50 years of age and older and all people who have an underlying medical condition that increases their risks of complications from COVID-19 regardless of age, including, but not limited to: heart disease, chronic liver or kidney disease (including people with hepatitis or undergoing dialysis), diabetes, epilepsy, hypertension, compromised immune systems (such as immunodeficiencies from cancer, HIV, or an autoimmune disease), blood disorders (including sickle cell disease), a chronic lung disease, moderate to severe asthma, severe obesity (body mass index [BMI] of 40 or higher), inherited



metabolic disorders, stroke, developmental delay, and pregnancy.⁶

As Field Office Director, you have the authority to release individuals from ICE custody. This 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 mitigating against detention.⁷ ICE has released individuals on medical grounds regardless of the statutory basis for a noncitizen's detention. ICE not only has authority to exercise prosecutorial discretion to release individuals due to medical concerns, but 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 concerning flight risk.

Releasing detainees at risk of contracting COVID-19 is not without precedent and is occurring nationwide. Governors, prosecutors, judges, jails, and others have released detained

⁶ See generally Centers for Disease Control, "People Who Need to Take Extra Precautions," (last updated March 20, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html>.

⁷ 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: 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).



people to limit the spread of COVID-19. For example, over 200 people have been released from Ohio’s Cuyahoga Jail, 600 people have been released by the Los Angeles County Sheriff, and 120 people have been released by the Washington County Jail in Oregon.⁸ In Alameda County, California, the Sheriff’s Office released 67 “nonviolent offenders” on their own recognizance, as well as another 247 people who remain under supervision with electronic monitoring or mechanisms.⁹ Governor Andy Beshear has commuted the sentences of inmates with non-violent records, those whose sentence is set to expire within six months, and individuals who are more likely to suffer severe effects of COVID-19.¹⁰ A Federal Court in Pennsylvania granted detained immigrants’ Habeas Petition to be released due to the COVID-19 pandemic. That Court found that the detained immigrants were “likely to succeed on the merits of their due process claim that their conditions of confinement expose them to serious risks associated with COVID-19” and also “demonstrated that their claim is likely to be successful under the more exacting Eighth Amendment standards as well.”¹¹ The Court explained that:

[the detention] [f]acilities are plainly not equipped to protect Petitioners from a potentially fatal exposure to COVID-19. While this deficiency is neither intentional nor malicious, should we fail to afford relief to Petitioners we will be a party to an unconscionable and possibly

⁸ Conrad Wilson, *Advocates and Sheriffs Worry Prison, Jails Could Be Incubators for COVID-19*, Oregon Public Broadcasting, March 17, 2020, <https://www.opb.org/news/article/prison-jails-incubators-for-covid-19-advocatesworry/>.

⁹ Robert Salonga, Angela Ruggiero, and Nate Gattrell, *Bay Area Courts, Authorities Ramp Up Release of Inmates to Stem COVID-19 Risks in Jails*, The Mercury News, March 19, 2020, <https://www.mercurynews.com/2020/03/19/bay-area-courts-authorities-ramp-up-release-of-inmates-to-stem-covid-19-risks-in-jails/>.

¹⁰ Ky. Exec. Order No. 2020-267 (April 2, 2020), https://governor.ky.gov/attachments/20200402_Executive-Order_2020-267_Conditional-Commutation-of-Sentence.pdf.

¹¹ *Thakker, et. Al., v. Doll*, No. 1:20-cv-00480-JE (M.D.P.A. March 31, 2020); see also Andrew Hursh, *Pennsylvania federal judge orders release of ICE detainees who complained of health risks*, JURIST, March 31, 2020, <https://www.jurist.org/news/2020/03/pennsylvania-federal-judge-orders-release-of-ice-detainees-who-complained-of-health-risks/>.



barbaric result. Our Constitution and laws apply equally to the most vulnerable among us, particularly when matters of public health are at issue. This is true even for those who have lost a measure of their freedom. If we are to remain the civilized society we hold ourselves out to be, it would be heartless and inhumane not to recognize [the detained immigrants'] plight.¹²

Releasing detained individuals will save the lives of the people in detention, ICE officers, facility staff, and the broader community. We urge you to seize this opportunity and take swift action to address the risks that COVID-19 poses to us all.

Thank you for your time and attention to this matter. I hope you, your family, and your staff are healthy and well.

Kate Miller
Advocacy Director, ACLU of Kentucky

¹² *Thakker, et. Al., v. Doll*, No. 1:20-cv-00480-JE (M.D.P.A. March 31, 2020).