



California Collaborative for Immigrant Justice
Colaborativo de California de Justicia para Inmigrantes

April 29, 2020

The Honorable Chief Justice Tani Cantil-Sakauye
The Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

**Re: Letter of Amici Curiae in SUPPORT of Petition for Writ of Mandate
Nat'l Assn of Criminal Defense Lawyers v. CA Atty Gen. and Governor, Supreme Ct.
No. S261829**

Dear Chief Justice Cantil-Sakauye and Hon. Justices of the California Supreme Court:

Pursuant to Rule 8.500(g) of the California Rules of Court, the undersigned immigration legal service providers strongly urge this Court to grant Petitioners' writ of mandate and halt state and local cooperation with ICE detainer (I-247) requests for transfer.

I. Interests of Amici Curiae

Amici curiae are a coalition of nonprofit organizations that provide free legal services to immigrants detained by Immigration and Customs Enforcement ("ICE") in California. Lawyers who work for by amici and their affiliates represent clients in every ICE detention center in the state.

Collectively, amici have dozens of clients detained in California detention centers who fit within the Centers for Disease Control's definition of people who are medically vulnerable to COVID-19, who are detained solely to ensure their appearance in their civil immigration proceedings. California's state prisons and county and city jails' practices of transferring individuals into ICE custody directly impacts those clients. Should transfers continue during this COVID-19 pandemic emergency, amici are concerned that these clients will suffer serious harm or death.

II. Detention in ICE Facilities is Unnecessary and Unsafe

This court should grant the writ of mandate because civil detention in ICE facilities unnecessarily threatens the lives and health of detainees and the community. Adding to the existing population through transfers, particularly where California prisons and jails have released those individuals due to their own COVID-19 outbreaks, significantly heightens that threat. ICE can and should utilize a variety of alternatives to detention to ensure that individuals are present for their removal proceedings, without endangering lives.

a. Immigration Detention Centers Have a Heightened Risk of COVID-19 Spread

Detained individuals face an extremely elevated risk of contracting COVID-19 and spreading the virus to others. Because of the enclosed environment and regimented procedures of detention facilities, “[p]rison and jail populations are extremely vulnerable to a contagious illness like COVID-19. Moreover, prisoners have fewer options for protecting themselves and others. They don’t have the option to stay away from other people when they are sick. They can ask for medical attention, but prisons and jails have few infirmary beds and fewer rooms for medical isolation.”¹ COVID-19 spread quickly in China and Italy’s jails,² and is quickly spreading in other prisons and jails in the United States.³ The Cook County Jail in Chicago is now the “nation’s largest-known source of coronavirus infections.”⁴

Significantly, COVID-19 has already spread within ICE detention centers nationwide, including in California. As of April 29, 2020, 425 immigration detainees at 32 detention centers have tested positive.⁵ One of the largest outbreaks has occurred here in California, at San Diego’s Otay Mesa facility: as of April 29, ICE reports that 84 detainees and 8 employees at Otay Mesa have tested positive for COVID-19.⁶ As of April 15, 37 children in immigration custody in the Chicago-area alone tested positive for COVID-19.⁷ To our knowledge no testing has taken place or is being reported in the other California ICE detention centers, despite ample reports from clients/detainees that people inside are sick with COVID symptoms.

These statistics confirm that immigration detention facilities have a heightened risk of infectious spread due to crowding, deficient hygiene and sanitation, scant medical resources, and the heightened medical vulnerabilities of people in detention. People live in close quarters and are unable to maintain the recommended distance of six feet from others; there is often insufficient capacity for isolation of potentially or actually infected people; people share or touch objects used by others; toilets, sinks, and showers are shared, without disinfection between each use; food preparation and service is communal with little opportunity for surface disinfection; and detainees and staff come and go frequently.

¹ Maria Morris, “Are Our Prisons and Jails Ready for COVID-19?,” ACLU.org (Mar. 6, 2020), <https://www.aclu.org/news/prisoners-rights/are-our-prisons-and-jails-ready-for-covid-19/>.

² Hannah Summers, “‘Everyone will be contaminated’: prisons face strict coronavirus controls,” The Guardian (Mar. 23, 2020), <https://www.theguardian.com/global-development/2020/mar/23/everyone-will-be-contaminated-prisons-face-strict-coronavirus-controls>.

³ “21 Inmates, 17 Employees Test Positive for COVID-19 on Rikers Island,” NBC New York (Mar. 22, 2020), <https://www.nbcnewyork.com/news/coronavirus/21-inmates-17-employees-test-positive-for-covid-19-on-rikers-island-officials/2338242/> (“The Federal Bureau of Prison reported on Saturday that one inmate had tested positive for COVID-19 at the Metropolitan Detention Center in Brooklyn. The inmate at MDC marks the first known case inside a federal jail, and the 39th case inside jails within New York City.”).

⁴ Timothy Williams & Danielle Ivory, “Chicago’s Jail Is Top U.S. Hot Spot as Virus Spreads Behind Bars,” New York Times (Apr. 8, 2020), <https://www.nytimes.com/2020/04/08/us/coronavirus-cook-county-jail-chicago.html>

⁵ ICE Guidance on COVID-19, “Confirmed Cases” (last updated Apr. 28, 2020), <https://www.ice.gov/coronavirus#tab1>.

⁶ *Id.*

⁷ WGN, “37 immigrant children at Chicago-area shelters have COVID-19” (Apr. 14, 2020), <https://wgntv.com/news/coronavirus/37-immigrant-children-at-chicago-area-shelters-have-covid-19/>.

Indeed, governments across the world, including in California, have recognized the threat posed by COVID-19 spread in prisons and jails, and have released incarcerated individuals as a result. Iran temporarily released more than 80,000 people to curb the spread of the virus.⁸ In the United States, many jurisdictions—including San Diego County and Kern County, where ICE detention centers are located—have released detained individuals for the same reasons.⁹

Immigration detention facilities have seen outbreaks of other infectious diseases in recent years due to overcrowding, poor hygiene measures, medical negligence, and limited access to resources and medical care.¹⁰ As recently as last year, ICE mishandled and failed to take adequate measures to protect detainees in Virginia against an outbreak of chicken pox and mumps.¹¹

The majority of California’s detainees are housed in facilities operated by private, for-profit prison companies, whose track record on medical care is particularly abysmal. CoreCivic, which operates the Otay Mesa facility, has “a history of denying hospital stay to patients and punishing them when they make repeated requests.” As a consequence, the company has “faced very public law suits and deadly prison riots.”¹²

There is no vaccine against COVID-19, nor is there any known medication to prevent or cure infection. The only effective measure known to reduce the risk of severe illness or death from COVID-19 is preventing infection in the first place. Social distancing, or remaining physically separated from known or potentially infected individuals, and vigilant hygiene, including washing hands with soap and water, are the only known effective measures to prevent infection.

Conditions at California detention centers make the rapid spread of COVID-19 a near certainty. We have seen firsthand that detainees live in close quarters and are unable to maintain the six-foot distance that the CDC recommends. They spend their days in together in common spaces, where they sleep in bunk beds that are close together and they share tables, telephones,

⁸ Parisa Hafezi, “Iran Temporarily Frees 85,000 From Jail Including Political Prisoners,” Reuters (Mar. 17, 2020), <https://www.reuters.com/article/us-health-coronavirus-iran-prisoners/irantemporarily-frees-85000-from-jail-including-political-prisoners-amid-coronavirus-idUSKBN21410M>.

⁹ Kimberly Kindy Emma Brown and Dalton Bennett, “‘Disaster waiting to happen’: Thousands of inmates released as jails and prisons face coronavirus threat,” The Washington Post (Mar. 25, 2020), https://www.washingtonpost.com/national/disaster-waiting-to-happen-thousands-of-inmates-released-as-jails-face-coronavirus-threat/2020/03/24/761c2d84-6b8c-11ea-b313-df458622c2cc_story.html; “San Diego County Sheriff to release 400 inmates under COVID-19 order,” KSUI News (Apr. 15, 2020), <https://www.kusi.com/san-diego-county-sheriff-to-release-400-inmates-under-covid-19-order/>

¹⁰ “Maloney and Raskin Seek Docs from ICE and CBP on Coronavirus Procedures for Detainees,” Committee on Oversight and Reform (Mar. 11, 2020), <https://oversight.house.gov/news/press-releases/maloney-and-raskin-seek-docs-from-ice-and-cbp-on-coronavirus-procedures-for> (“During a prior quarantine for a mumps outbreak at an ICE facility, hundreds of detainees reportedly were placed on lockdown and deprived of access to their lawyers even though their immigration court cases were not stayed. At least one quarantined detainee was ordered deported after facing an immigration judge without access to counsel.”).

¹¹ Emma Ockerman, “Migrant Detention Centers Are Getting Slammed with Mumps and Chickenpox,” VICE News (Jun. 14, 2019), https://www.vice.com/en_us/article/mb8k5q/migrant-detention-centers-are-getting-slammed-with-mumps-and-chicken-pox.

¹² Jordan Andrews, “The Current State of Public and Private Prison Healthcare,” Wharton Public Policy Initiative (Feb. 24, 2017), <https://publicpolicy.wharton.upenn.edu/live/news/1736-the-current-state-of-public-and-private-prison>

and bathrooms, which are not cleaned between each use. Staff enter, exit, and move throughout the facility during the day on a shift basis, and even asymptomatic staff could carry the infection into the facility.

b. Many ICE Detainees are Particularly Vulnerable to COVID-19

Many of our clients in detention are particularly vulnerable to serious complications or death from COVID-19 due to their age or underlying health conditions. “Around 1 out of every 6 people who gets COVID-19 becomes seriously ill and develops difficulty breathing.”¹³ Older people or those with underlying medical conditions, such as diabetes, chronic lung disease, or hypertension, are more likely to develop serious illness. Complications from COVID-19 include pneumonia, organ failure, and death.¹⁴

Risk mitigation is the only known strategy that can protect vulnerable groups from COVID-19. In congregate environments such as detention centers, it is impossible to engage in the necessary social distancing and hygiene required to prevent transmission. As such, public health experts with experience in carceral settings agree that “the most effective mitigation strategy” is to reduce crowding by releasing detainees from custody.¹⁵ As the Former Acting Director of ICE recently warned: “ICE can, and must, reduce the risk [COVID-19] poses to so many people, and the most effective way to do so is to drastically reduce the number of people it is holding.”¹⁶

Despite these warnings, ICE has repeatedly refused to take meaningful measures to reduce detention center populations in California and protect these vulnerable individuals. Instead, ICE continues to detain vulnerable groups, putting them, facility staff, and the general public at risk of contracting, transmitting, and suffering from the novel coronavirus.

c. Immigration Proceedings are Civil in Nature and Alternatives Exist to Ensure Appearance

ICE’s inaction is all the more egregious given that there are alternatives to detention that can serve the goals of detention. Immigration detention is civil detention. The Supreme Court has made clear that it is intended to ensure compliance with immigration proceedings and is not meant to be punitive.¹⁷ ICE has methods for alternatives to detention that it regularly utilizes, such as regular check-ins, telephonic monitoring and case management, that could be implemented on a wider basis. ICE’s current alternatives to detention program and several

¹³ World Health Organization, “Q&A on Coronaviruses (COVID-19)” (Apr. 8, 2020), <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>

¹⁴ Mayo Clinic, “Coronavirus disease 2019 (COVID-19)” (Apr. 7, 2020), <https://www.mayoclinic.org/diseases-conditions/coronavirus/symptoms-causes/syc-20479963>.

¹⁵ Catherine E. Schoichet, “Doctors warn of ‘tinderbox scenario’ if coronavirus spreads in ICE detention,” CNN (Mar. 20, 2020), <https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html>; Camilo Montoya-Galvez, “‘Powder-kegs,’: Calls grow for ICE to release immigrants to avoid coronavirus outbreak,” CBS News (Mar. 19, 2020), <https://www.cbsnews.com/news/coronavirus-ice-release-immigrants-detention-outbreak/>; Edward Moreno, “Over 3000 medical professions urge ICE to release detainees amid coronavirus pandemic,” The Hill (Mar. 19, 2020), <https://thehill.com/policy/healthcare/488491-over-3000-medical-professionals-urge-ice-to-release-detainees-amid>.

¹⁶ John Sandweg, “I Used to Run ICE. We Need to Release the Nonviolent Detainees,” The Atlantic (Mar. 22, 2020), <https://www.theatlantic.com/ideas/archive/2020/03/release-ice-detainees/608536/>.

¹⁷ *Zadvydas v. Davis*, 533 U.S. 678 (2001)

community supported pilot programs have shown high rates of compliance with immigration check-ins, hearings and - if ordered - removal.¹⁸

Indeed, numerous federal district court judges in California have ordered ICE detainees released in light of the COVID-19 pandemic, recognizing that alternatives to detention exist to achieve the stated purpose of civil immigration detention.¹⁹ Importantly, some of those ordered released were individuals subject to mandatory detention under 8 U.S.C. § 1226(c), who normally would be ineligible to request release due to past criminal convictions.²⁰

d. ICE Detainees in California Have Limited Access to Counsel

Unlike in criminal proceedings, there is generally no recognized right to government-appointed counsel in civil immigration proceedings.²¹ Immigrants must find and retain their own counsel. In California, the majority of immigration attorneys are located in San Francisco and Los Angeles, which house the largest immigration courts. Outside of those areas, immigration services are scarce: one study found that the Central Valley, with close to 600,000 immigrants in need of legal services, is served by only 28 of the state's 400 legal service providers.²²

Immigrants in detention face particular challenges to obtaining counsel. About 30% of detained immigrants are held in facilities more than 100 miles from the nearest government-listed legal aid resource.²³ In California, not all facilities offer consistent legal orientation programs, through which pro bono attorneys visit detention facilities and provide services. When detainees are able to contact pro bono counsel numbers provided by facilities, many organizations are unable to take on new clients. Four of the state's five detention centers are located in rural areas that lack immigration resources. Further, only three of the five California facilities facilitate confidential legal phone calls for detainees who have or are seeking counsel or advice.²⁴

Thus, most individuals who are transferred into ICE custody in California will be unable to access the legal representation that is needed for many individuals to win release and effectively present their claims. A three-year study has shown that 68 percent of detained

¹⁸ In one study, over 95% of those on "full-service" ATDs (which include case management) were found to appear for their final hearings. United States Government Accountability Office. Alternatives to Detention, (Nov. 2014), <http://www.gao.gov/assets/670/666911.pdf>.

¹⁹ *Xochihua-Jaimes v. Barr*, 2020 WL 1429877, No. 18-71460 (9th Cir. Mar. 24, 2020); *Bahena-Ortuno v. Jennings*, No. 20-cv-02064-MMC (N.D. Cal. Apr. 8, 2020); *Bent v. Barr*, No. 4:19-cv-06123-DMR, 2020 WL 1812850 (N.D. Cal. Apr. 9, 2020); *Doe v. Barr*, No. 20-cv-02141-LB (N.D. Cal. April 12, 2020); *Castillo v. Barr*, Case No. 5:20-cv-00605-TJH-AFM (C.D. Cal., March 27, 2020); *Zhang v. Barr*, No. ED CV 20-00331-AB(RAOx) (C.D. Cal. Mar. 27, 2020).

²⁰ *See, e.g., Bent*, No. 19-cv-06123 at 8 (citing *Jones v. Blanas*, 393 F.3d 932 (9th Cir. 2004), and ordering immediate release for detainee at Mesa Verde detention facility with attempted murder conviction).

²¹ 8 U.S.C. § 1362.

²² Vanessa Ranaño, "Demand for Immigration Lawyers Surges in Central Valley," KQED (May 30, 2017), <https://www.kqed.org/news/11477376/in-central-valley-many-immigrants-but-few-immigration-lawyers>

²³ Kyle Kim, "Immigrants held in remote ICE facilities struggle to find legal aid before they're deported", Los Angeles Times (Sept. 28, 2017), <https://www.latimes.com/projects/la-na-access-to-counsel-deportation/>

²⁴ *Torres v. US DHS*, No. EDCV 18-2604 JGB (SHKx) (C.D. Cal., Apr. 11, 2020); *Lyon v. ICE*, No. 3:13-cv-05878-EMC (N.D. Cal., Nov. 18, 2016)

immigrants in California are unrepresented. Furthermore, the same data shows that detained immigrants who had counsel succeeded in challenging their deportation more than five times as often as did their unrepresented counterparts. Detained immigrants represented by counsel are three times more likely to be granted bond than those who appear pro se.²⁵

III. Conclusion

Transfers from state and local custody into immigration detention centers are exacerbating the already dire conditions inside ICE facilities. ICE's refusal to implement protections means that these facilities are tinderboxes where COVID-19 can easily spread (and in the case of Otay Mesa, is already spreading), and where detainees have limited access to counsel to help them secure release. These conditions threaten not only the health of individual detainees, but public health statewide. As legal service providers, we urge this Court to grant this writ of mandate.

Respectfully Submitted,

AFRICAN ADVOCACY NETWORK

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NORTHERN CALIFORNIA (CARECEN SF)

CENTRAL AMERICAN RESOURCE CENTER-
CARECEN- OF CALIFORNIA

CENTRO LEGAL DE LA RAZA

COMMUNITY LEGAL SERVICES IN EAST PALO
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CALIFORNIA RURAL LEGAL ASSISTANCE
FOUNDATION

DOLORES STREET COMMUNITY SERVICES

ESPERANZA IMMIGRANT RIGHTS PROJECT

IMMIGRANT DEFENDERS LAW CENTER

IMMIGRANT LEGAL DEFENSE

JEWISH FAMILY SERVICE OF SAN DIEGO

LA RAZA CENTRO LEGAL, INC.

MCGEORGE COMMUNITY LEGAL SERVICES

OPEN IMMIGRATION LEGAL SERVICES

PANGEA LEGAL SERVICES

²⁵ California Coalition for Immigrant Justice, California's Due Process Crisis: Access to Legal Counsel for Detained Immigrants (June 2016), <https://www.nilc.org/wp-content/uploads/2016/06/access-to-counsel-Calif-coalition-report-2016-06.pdf>.

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Dated: April 29, 2020



By:

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PROOF OF SERVICE

I am employed in the County of San Francisco, California. I am over the age of 18 and not a party to the within action. My business address is: Justice & Diversity Center of The Bar Association of San Francisco, 301 Battery St, Fl 3, San Francisco, CA 94111

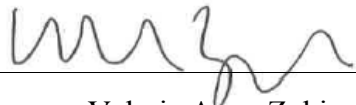
On April 29, 2020 I served the foregoing document(s), described as:

- **AMICUS LETTER IN SUPPORT OF PETITION FOR WRIT OF MANDATE
NAT'L ASSN OF CRIMINAL DEFENSE LAWYERS V. CA ATTY GEN. AND
GOVERNOR, SUPREME CT. NO. S261829**

on the interested parties in this action by e-mail or electronic service [C.C.P. § 1010.6; CRC 2.250-2.261]. The documents listed above were transmitted via e-mail to the e-mail addresses on the attached service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 29th day of April in San Francisco, CA.



Valerie Anne Zukin

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