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HUMAN RIGHTS WATCH

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RE: Petition for Writ of Mandate in *California Attorneys for Criminal Justice and American Immigration Lawyers Association, Southern California Chapter v. Gavin Newsom and Xavier Becerra*, Supreme Ct. No. S261829

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

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Pursuant to Rule 8.500(g) of the California Rules of Court, *amicus curiae* Human Rights Watch respectfully requests that this Court grant the Petitioners' writ of mandate and halt the transfers of individuals from state and local law enforcement to the custody of US Immigration and Customs Enforcement ("ICE") during the Covid-19 pandemic.

Our investigations into medical care in US immigration detention have repeatedly found evidence of severely substandard care, as well as systemic failure by ICE to address problems identified by its own experts. Given ICE's record, the detention system is wholly unprepared to address a public health crisis of this magnitude. California's prisons and jails significantly contribute to the immigration detention population because many deportable non-citizens who are released from prisons and jails—because they have completed sentences, earned parole, or been granted bail—are then transferred into the federal immigration detention system. By ending transfers from California prisons and jails into immigration detention centers, California can significantly reduce the number of people who enter a system where they are unlikely to be adequately protected from the Covid-19 outbreak.

*In Memoriam (1935–2019)

Document received by the CA Supreme Court.

I. Interests of Amicus

Human Rights Watch is a non-profit, independent organization and the largest international human rights organization based in the United States. Human Rights Watch investigates allegations of human rights violations in more than 90 countries around the world, including in the United States, by interviewing witnesses, gathering information from various sources, issuing detailed reports, and advocating for systemic change.

We believe the court would benefit from our experience based on investigations and monitoring of medical care in immigration detention centers in California and throughout the United States.

II. ICE's systemic and pervasive failure to provide adequate medical care and oversight in immigration detention indicate the risks to people in ICE custody are particularly acute.

Covid-19, even more than other infectious diseases, poses a particularly serious risk to populations that live in close proximity to each other, such as people in prisons, jails, and immigration detention centers. Human Rights Watch has called on authorities to take all necessary steps to protect people in immigration detention centers, as well as jails and prisons, from infection by the coronavirus, including supervised release and other non-custodial alternatives for detained individuals who are at high risk of serious effects from Covid-19.¹ Medical and public health experts have similarly called on local, state, and federal governments to protect the health of people deprived of their liberty, including through release of individuals.² Public health experts have noted that protecting the health of people in custody is necessary to protect the broader community as well, since staff leave the facilities and go to their homes every day.³

Specifically with regard to immigration detention, a recent paper posted online in advance of publication in the *Journal of Urban Health* modeled the rate of Covid-19

¹ "Covid-19 Threatens People Behind Bars," Human Rights Watch news release, March 12, 2020, <https://www.hrw.org/news/2020/03/12/us-covid-19-threatens-people-behind-bars>.

² Jaimie P. Meyer et al., "Covid-19 and the Coming Epidemic in Immigration Detention Centers," *The Lancet*, April 5, 2020, [https://www.thelancet.com/journals/lanpub/article/PIIS1473-3099\(20\)30295-4/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS1473-3099(20)30295-4/fulltext) (accessed April 28, 2020); New York Lawyers for the Public Interest Medical Providers Network and Doctors for Camp Closure, "Open Letter to ICE from Medical Professionals Regarding Covid-19," March 19, 2020, <https://nylpi.org/nylpis-medical-provider-network-allies-send-open-letter-to-i-c-e-advocating-for-the-release-of-people-from-immigration-detention-to-help-stop-spread-of-covid-19/> (accessed April 28, 2020).

³ Physicians for Human Rights, "Epidemiologists and medical experts highlight the ticking time bomb of Covid-19 in immigrant detention facilities," April 3, 2020, <https://phr.org/news/epidemiologists-and-medical-experts-highlight-ticking-time-bomb-of-covid-19-in-immigrant-detention-facilities/> (accessed April 28, 2020).

transmission within 111 ICE detention facilities and impacts on regional hospital intensive care unit (ICU) capacity. The study found high rates of transmission and inadequate ICU capacity even under the most optimistic assumptions of coronavirus transmission dynamics. In that model, 72 percent of people detained in ICE facilities would be infected with Covid-19 90 days after a facility had five infected cases. The study also found that a Covid-19 outbreak at a number of detention facilities would potentially overwhelm local ICU capacity within a 10-and 50-mile radius of each facility.⁴ The study echoes the concerns expressed by two doctors who have served as subject matter experts for the US Department of Homeland Security, who sent a letter to Congress warning of a “tinderbox scenario” in immigration detention, where outbreaks could overwhelm local hospital resources, thereby impacting health resources for the broader community.⁵

These are plausible scenarios. In Marion County, Ohio, the prison has started testing all inmates and over 80 percent have tested positive. The county is already seeing the impact on the larger community, with most cases of community spread coming from prison staff.⁶

The need to reduce the number of people who enter ICE custody is particularly acute because of ICE’s poor record of substandard medical care even in normal times.

For over 13 years, Human Rights Watch has been monitoring and publishing reports on medical care in US immigration detention. Throughout our investigations, from a 2007 report on inadequate care for people with HIV in immigration detention to a report we released this week with the American Civil Liberties Union and the National Immigrant Justice Center on the expansion of immigration detention under the Trump administration, we have consistently found severe failures on the part of ICE to provide adequate medical care. Given its record, ICE is unlikely to successfully manage a severe public health crisis that is testing hospitals and medical systems around the country.

ICE’s poor record in providing adequate medical care is most striking when looking at cases in which people have died in ICE custody. In 2017 and 2018, Human Rights Watch published reports based on independent medical experts’ review of Detainee Death Reviews, conducted by ICE’s Office of Detention Oversight, and released by ICE from 2012

⁴ Michael Irvine et al., “Modeling Covid-19 and Impacts on U.S. Immigration and Customs Enforcement (ICE) detention facilities, 2020,” *Journal of Urban Health* (in press), https://whistleblower.org/wp-content/uploads/2020/04/Irvine_IUH_ICE_COVID19_model.pdf (accessed April 28, 2020).

⁵ Catherine Shoichet, “Doctors warn of ‘tinderbox scenario’ if Covid-19 spreads in immigration detention,” *CNN*, March 20, 2020, <https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html> (accessed April 28, 2020).

⁶ Sarah Volpenhein, “Marion Prison Coronavirus Outbreak Seeping Into Larger Community,” *Marion Star*, April 25, 2020, <https://www.marionstar.com/story/news/local/2020/04/25/marion-prison-ohio-coronavirus-outbreak-seeping-into-larger-community/3026133001/> (accessed April 29, 2020).

to 2017. In nearly all of these reviews, these experts found evidence of substandard and dangerous medical care, such as failure to follow up on symptoms that required attention; medical personnel apparently practicing beyond the scope of their licenses and expertise; and sluggish emergency responses. In 15 out of 33 cases, the experts found the deaths were preventable.

Several of these cases involved people who died in ICE custody in California. Jose Azurdia, 54, died while in custody at Adelanto Detention Facility in Adelanto, California, in 2015. When he became ill and started vomiting, a guard told a nurse about his condition. Her response was that “she did not want to see Azurdia because she did not want to get sick.” Within minutes, he was exhibiting symptoms of a heart attack but due to additional delays by the medical staff, two hours passed before he was sent to the hospital, with his heart by then too damaged to respond to treatment. He died in the hospital four days later.⁷

Raul Ernesto Morales Ramos died of organ failure with signs of widespread cancer in 2015 after also being detained at Adelanto and Theo Lacy Facility for more than two years. The two experts who reviewed the records from his death investigation found that there had been symptoms of widespread cancer two years earlier, but that they essentially went unaddressed until a month before he died. Throughout this time, Morales-Ramos repeatedly begged for care.⁸

Marjorie Annmarie Bell died in 2014 due to sudden cardiac death, acute coronary syndrome, and multivessel coronary artery disease while in custody at the CoreCivic-operated San Diego County Detention Facility (also known as the Otay Mesa Detention Center). One of the experts who found her death preventable stated, “This is a woman with a known history of heart attacks...On six separate occasions she informed nurses that she was having chest pain, and on none of those occasions did a nurse contact a physician or call an ambulance.”⁹

Findings of inadequate medical care have been echoed in several reports by government agencies, including the Department of Homeland Security’s Office of Inspector General and its Office of Civil Rights and Civil Liberties. The latter’s 2018 report found that at Adelanto Detention Facility, among other issues, it was “more likely than not” that problems with medical care “contributed to medical injuries, including bone deformities and detainee

⁷ Human Rights Watch et al., *Code Red: The Fatal Consequences of Dangerously Substandard Medical Care in Immigration Detention*, June 2018, <https://www.hrw.org/news/2018/06/20/us-poor-medical-care-deaths-immigrant-detention>.

⁸ Human Rights Watch and Freedom for Immigrants, *Systemic Indifference: Dangerous and Substandard Medical Care in US Immigration Detention*, May 2017, <https://www.hrw.org/report/2017/05/08/systemic-indifference/dangerous-substandard-medical-care-us-immigration-detention>.

⁹ Ibid.

deaths.” The expert inspectors recommended “immediately” transferring “at-risk” detainees in Adelanto to another facility to protect their health and safety. They also found that ICE and GEO had been either unwilling or unable to fix problems despite repeated warnings over the years.¹⁰

Human Rights Watch has not published reports based on independent medical expert analysis of more recent deaths because ICE has released significantly less information about deaths in custody since April 2018. The reports ICE now makes public are only three-to-four pages long, with bulleted summaries of incidents leading up to each death, with no analysis or assessment of the care the person received, nor recommendations for addressing failures, compared to the 20- to 40-page Detainee Death Reviews released in the past.¹¹

Nevertheless, there is significant evidence that substandard care has continued to contribute to the death of people in ICE custody in recent years. In December 2019, BuzzFeed News published a whistleblower complaint from within ICE Health Services Corps (IHSC), which alleged that IHSC had “systematically provided inadequate medical and mental health care and oversight to immigration detainees across the U.S.” Along with a series of allegations of life-threatening lapses in medical care affecting a child and adults in ICE custody, the complaint includes claims that four deaths since 2017 were linked to dangerous, neglectful care that IHSC leadership knew or should have known about but failed to address.¹²

This previously inadequate system of medical care in immigration detention is already showing signs of severe strain under an unprecedented public health crisis. Otay Mesa Detention Center currently has a severe outbreak of Covid-19; as of April 26, at least 111 detainees (in the custody of ICE or US Marshals) and 33 employees are reported to have

¹⁰ Tom Dreisbach, “Despite Findings of ‘Negligent’ Care, ICE to Expand Troubled California Detention Center,” *National Public Radio*, January 15, 2020, <https://www.npr.org/2020/01/15/794660949/despite-findings-of-negligent-care-ice-to-expand-troubled-calif-detention-center>; see also US Department of Homeland Security, Office of Inspector General, “Management Alert – Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California,” September 27, 2018, <https://www.oig.dhs.gov/sites/default/files/assets/Mga/2018/oig-18-86-sep18.pdf> (finding significant health and safety risks).

¹¹ American Civil Liberties Union, Human Rights Watch, and National Immigrant Justice Center, *Justice-Free Zones: US Immigration Detention Under the Trump Administration*, April 30, 2020, <https://www.hrw.org/news/2020/04/30/us-new-report-shines-spotlight-abuses-and-growth-immigrant-detention-under-trump>.

¹² Memorandum from Cameron Quinn, Office for Civil Rights and Civil Liberties, to Ronald Vitiello, Deputy Director of U.S. Immigration and Customs Enforcement, Re: ICE Health Service Corps (IHSC) Medical/Mental Health Care and Oversight, March 20, 2019, <https://www.documentcloud.org/documents/6575024-ICE-Whistleblower-Report.html> (accessed April 28, 2020).

tested positive.¹³ The outbreak began as early as February 14.¹⁴ According to one public health expert, existing ICE protocols to manage the outbreak are “entirely inadequate to prevent or mitigate the rapid transmission of Covid-19 that has already begun in [Otay Mesa Detention Center], and that is likely to arise in [Imperial Regional Detention Facility].”¹⁵ In his declaration in support of several detainees’ motion for a temporary restraining order and release from Otay Mesa Detention Center, Joseph Amon states that ICE’s guidance on social distancing is “merely aspirational and therefore insufficient.” He further states that ICE’s guidance on high-risk individuals fails to adhere to guidelines from the Centers for Disease Control and Prevention and that ICE is “unlikely to detect illness in these patients until many of them ... have already been exposed to and contracted the coronavirus and fallen critically ill.”¹⁶

People detained at Otay Mesa Detention Center and other facilities in California and around the country are reporting they do not have sufficient access to soap, masks, or other basic hygiene supplies.¹⁷

Earlier this month, ICE claimed it had released nearly 700 people from immigration detention, but over 32,000 still remained in custody.¹⁸ Although the number of people in ICE detention has decreased from a recent record high of over 50,000 in fiscal year 2019, the current number of people in custody still represents a massive civil detention system that is four times larger than it was in 1995.¹⁹ Under the Trump administration, there has been a severe decrease in the number of people granted parole, or release, after passing

¹³ “Coronavirus in San Diego and California,” *CBS News 8*, April 26-28 (midday), 2020, <https://www.cbs8.com/article/news/health/coronavirus/covid-coronavirus-in-san-diego-and-california-latest-updates-and-news/509-bc150549-4bd6-45aa-aa0a-66e4e709e220> (accessed April 28, 2020).

¹⁴ “Person back in ICE custody after being evaluated for coronavirus at Sharp Chula Vista,” *10 News San Diego*, February 14, 2020, <https://www.10news.com/news/local-news/no-answers-yet-from-san-diego-county-officials-over-person-discharged-from-chula-vista-hospital-after-coronavirus-evaluation> (accessed April 28, 2020).

¹⁵ Declaration of Joseph Amon, Ph.D., in support of petitioners’ motion for temporary restraining order in *Zelaya Sagastume et al. v. Archambeault* (April 3, 2020 S. Dist. Cal.), on file with Human Rights Watch.

¹⁶ *Ibid.*

¹⁷ Nooman Merchant, “Detained immigrants plead for masks, protection from virus,” *Associated Press*, April 14, 2020, <https://apnews.com/1ea169603b3c1e6b62bded8c5a8d658d> (accessed April 28, 2020); Andrea Castillo, “Advocates say hundreds of immigrants detained in California are on hunger strike. ICE says only two,” *Los Angeles Times*, April 19, 2020, <https://www.latimes.com/california/story/2020-04-19/advocates-say-hundreds-of-immigrants-detained-in-california-are-on-hunger-strike-ice-says-just-two-are> (accessed April 28, 2020).

¹⁸ Matt Katz, “ICE Releases Hundreds as Coronavirus Spreads in Detention Centers,” *National Public Radio*, April 16, 2020, <https://www.npr.org/sections/coronavirus-live-updates/2020/04/16/835886346/ice-releases-hundreds-as-coronavirus-spreads-in-detention-centers> (accessed April 28, 2020).

¹⁹ American Civil Liberties Union, Human Rights Watch, and National Immigrant Justice Center, *Justice-Free Zones: US Immigration Detention Under the Trump Administration*, April 30, 2020.

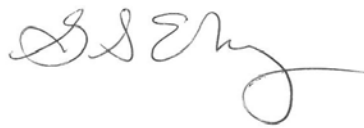
the first step of the asylum application process.²⁰ The administration has also ended policies that limit the detention of populations facing heightened risks to health, like pregnant women.²¹ People held in this civil detention system are not facing criminal charges, but a civil deportation system with severe due process failures. Ongoing transfers of people released from California prisons and jails, after having completed their criminal sentences as required by California’s criminal justice system, increases the number of people entering a detention system with an abysmal record of inadequate medical care.

California has an obligation to protect the rights of people deprived of their liberty, including the right to health, especially when custody heightens the risks they face. While policymakers need to find ways to ensure the right to health of people in prison and jail, including through releases, transfers to immigration detention will only expose those transferred to further risk.

Stopping transfers of people from California jails and prisons into immigration detention centers is an important step toward protecting their rights and protecting the health of people in custody, facility staff, and their broader communities.

Dated:

Respectfully submitted:



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²⁰ Mica Rosenburg, “More asylum seekers sue Trump administration over prolonged U.S. detention,” *Reuters*, May 30, 2019, <https://www.reuters.com/article/us-usa-immigration-asylum/more-asylum-seekers-sue-trump-administration-over-prolonged-u-s-detention-idUSKCN1To2PR> (accessed April 28, 2020).

²¹ Maria Sacchetti, “Pregnant immigration detainees spiked 52 percent under Trump,” *Washington Post*, December 5, 2019, https://www.washingtonpost.com/immigration/pregnant-immigration-detainees-spiked-52-percent-under-trump-administration/2019/12/05/610ed714-16bb-11ea-8406-df3c54b3253e_story.html (accessed April 28, 2020).