



February 1, 2021

via e-mail

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David W. Jennings
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Re: Release of people from ICE custody pursuant to January 20 memorandum

Dear ICE ERO Field Office Directors Archambeault, Jennings, and Marin,

We are organizations that advocate for and represent people in immigration detention, and we urge you to release and return to our communities all people in your custody given the priorities identified in the January 20, 2021, Department of Homeland Security (“Department”) memorandum entitled “Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities,” issued by Acting Secretary David Pekoske (“Pekoske memo”).¹

¹ See U.S. Department of Homeland Security, *Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities*, Memorandum of Jan. 20, 2021, https://www.dhs.gov/sites/default/files/publications/21_0120_enforcement-memo_signed.pdf. Although a federal judge has issued a Temporary Restraining Order applicable to Section C of the Pekoske Memo, that does not impact our request, which is grounded in Section B. See Ord. Granting Plaintiff’s Motion for Temp. Ord., *Texas v. United States*, No. 6-21-cv-00003 (S.D. Tex. Jan. 26, 2021), ECF No. 16.

The Pekoske memo provides that “DHS *must* implement civil immigration enforcement based on sensible priorities” and directs that these enumerated priorities “*shall* apply . . . to a broad range of [] discretionary enforcement decisions,” including “whom to detain or release.” *Id.* (emphasis added). The vast majority of—if not all—people currently in your custody fall outside of the Pekoske memo’s priorities, warranting their immediate release.

Implementing the Pekoske memo’s priorities requires even greater urgency given the ongoing COVID-19 pandemic. The memo recognizes that we are facing “the most serious global public health crisis in a century” and directs DHS to focus its resources on implementing “public health guidelines and protocols.” *Id.* Since the pandemic’s inception, ICE has failed to follow public health guidance to protect the health and lives of people in its custody.² As of January 28, 9,099 people in ICE custody nationwide have reportedly tested positive for COVID-19—a number experts believe is an undercount due to the lack of testing during the first few months of the pandemic.³ Moreover, the court-ordered release of people from ICE custody during the past year has *increased* community health and safety during the pandemic, aptly demonstrating that the continued detention of thousands of our community members is unnecessary and unjustifiable.⁴

Further, consistent with the Pekoske memo’s directives, we call on you to rescind and cancel all detainers or notification requests for currently incarcerated people who do not have an “aggravated felony” conviction. And beyond that, particularly in light of the ongoing pandemic, we call on you to cease populating immigration detention facilities through the transfer of our community members from prisons and jails. Transfers endanger public safety and are inconsistent with the Pekoske memo.

² See, e.g., Catherine E. Shoichet, *The death toll in ICE custody is the highest it's been in 15 years*, CNN (Sept. 30, 2020), <https://www.cnn.com/2020/09/30/us/ice-deaths-detention-2020/index.html>; Hailey Konnath, *Judge Slams ICE for ‘Spotty Compliance With Virus Safety*, LAW360 (Oct. 8, 2020), <https://www.law360.com/articles/1318310/judge-slams-ice-for-spotty-compliance-with-virus-safety>; Anagha Srikanth, *Judge slams for-profit ICE detention facility for treatment of immigrants*, THE HILL (Dec. 4, 2020), <https://thehill.com/changing-america/resilience/refugees/528801-judge-slams-for-profit-ice-detention-facility-for>.

³ See U.S. Immigration and Customs Enforcement, *ICE Guidance on COVID-19*, <https://www.ice.gov/coronavirus> (last updated Jan. 28, 2021); Noelle Smart and Adam Garcia, *Tracking COVID-19 in Immigration Detention*, THE VERA INSTITUTE, <https://www.vera.org/tracking-covid-19-in-immigration-detention> (last visited Jan. 31, 2021).

⁴ See, e.g., Chantal da Silva, *Federal Judge Orders California ICE Detention Center to Release Detainees as Coronavirus Cases Climb*, NEWSWEEK (April 24, 2020), www.newsweek.com/federal-judge-orders-california-ice-detention-center-release-detainees-coronavirus-cases-climb-1500095; *SF Judge Orders Process for Release of Immigrants at 2 ICE Facilities*, NBC BAY AREA (April 29, 2020), www.nbcbayarea.com/news/coronavirus/sf-judge-orders-process-for-release-of-immigrants-at-2-ice-facilities/2281828. See also Anna Bauman, *Women released from Mesa Verde ICE detention facility amid coronavirus fears*, SAN FRANCISCO CHRONICLE (May 7, 2020), www.sfchronicle.com/bayarea/article/Women-released-from-Mesa-Verde-ICE-detention-15255567.php (describing ICE’s voluntary release of over a dozen women from Mesa Verde Detention Facility).

If consistently and swiftly implemented, the Pecoske memo marks a welcome new direction. Should you wish to discuss our requests, please contact Lisa Knox at lisa@ccijjustice.org.

We eagerly await your respective field offices' actions to implement the memo faithfully and fully.

Sincerely,

ACLU Foundation of Northern California
ACLU Foundation of San Diego and Imperial Counties
ACLU Foundation of Southern California
California Collaborative for Immigrant Justice (CCIJ)
Centro Legal de la Raza
Immigrant Defenders Law Center
Jewish Family Service of San Diego
UFW Foundation

and

A L Costa Community Development Center
African Advocacy Network
Alianza Sacramento
Amigos de Guadalupe: Center for Justice and Empowerment
California Coalition for Women Prisoners
California Immigrant Policy Center
California Immigrant Youth Justice Alliance (CIYJA)
Campaign for Immigrant Detention Reform (CIDR)
Catholic Charities of Santa Clara County
Center for Gender & Refugee Studies
CHIRLA
Community Justice Alliance
Council on American-Islamic Relations, California
CRLA Foundation
Desert Support for Asylum Seekers
Dolores Street Community Services
Education and Leadership Foundation
Esperanza Immigrant Rights Project
Estamos Unidos
Faith in the Action Bay Area
Haitian Bridge Alliance
Higuera Law
Human Agenda
Immigrant Defense Advocates
Immigrant Legal Defense
Immigrant Legal Resource Center
Immigration Task Force

Interfaith Movement for Human Integrity
Kern Welcoming and Extending Solidarity to Immigrants (KWESI)
La Raza Centro Legal, San Francisco
Labor and Community for an Independent Party Los Angeles (LCIP-LA)
Lakeshore Avenue Baptist Church
Lakin & Wille LLP
Latinos Unidos for a New America (LUNA)
Law Office of Peggy J. Bristol
Law Office of Ravi Patel
Long Beach Immigrant Rights Coalition
NorCal Resist
North Bay Rapid Response Network: Napa, Solano and Sonoma Counties
Oasis Legal Services
PACT - People Acting in Community Together
Pangea Legal Services
Public Counsel
Rapid Response Network of Monterey County
Reverend Charles T. Shawver
San Bernardino Community Service Center
San Francisco Immigrant Legal & Education Network
San Francisco Rapid Response Network
San Joaquin College of Law - New American Legal Clinic
San Mateo County Rapid Response Network
Santa Clara Rapid Response Network
Secure Justice
SIREN (Services, Immigrant Rights and Education Network)
Stand Together Contra Costa
STEP UP! Sacramento
Tahirih Justice Center San Francisco Bay Area Office
UC Davis
USC Gould School of Law Immigration Clinic

c: David Pecoske, Acting Secretary, Department of Homeland Security
Susan Rice, Director, Domestic Policy Council
Jeffrey Zients, Federal COVID-19 Czar