

May 1, 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: Rule 8.500(g) Amici Curiae Letter in SUPPORT of Petition for Writ of Mandate
California Attorneys for Criminal Justice and American Immigration Lawyers
Association, Southern California Chapter v. Gavin Newsom, California Governor and
Xavier Becerra, California Attorney General, 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 concerned community members write to strongly urge this Court to grant Petitioners' writ of mandate and halt all voluntary transfers from state and local law enforcement custody to U.S. Immigration and Customs Enforcement (ICE) custody.

Freedom from imprisonment, detention, or any other form of governmental custody or restraint lies at the heart of the liberty that the Due Process Clause of the U.S. and California Constitutions protect. As the detention of noncitizens has been an instrument of governmental oppression and human indifference, amici curiae urge this Court to exercise its powers and preserve the liberty enshrined in the U.S. and California Constitutions during this time of unprecedented crisis in our state. Freedom from immigration detention in this critical moment is more than just physical liberty; it is also a safeguard against conditions giving rise to the imminent spread of COVID-19 and the fears, worries, and mental duress those conditions bring to detained individuals and their loved ones. Amici implore this Court to be a faithful steward of that most precious freedom, by granting the petition for writ of mandate.

I. Interests of Amici Curiae

Amici curiae are individuals who have been previously detained by ICE in various immigration detention centers throughout the United States and have direct lived experience of being held to face deportation. All of us were also transferred from local or state custody in California on our release dates directly into the hands of either ICE agents or their private subcontractors who have no legal authority to make an arrest.¹ With the full understanding of

¹ 8 U.S.C section 1357 provides that “[u]nder regulations prescribed by the Attorney General, an officer or employee of the Service . . . may execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States.” Implementing regulations at 8 C.F.R. sections 287.5(c) and 287.8(c) limit that arrest power to “immigration officers who have successfully completed basic immigration law enforcement training” No provisions allow delegation of arrest authority to civilian personnel. ICE’s use of private subcontractors who are not thus authorized to execute arrests on its behalf violates federal immigration law and its implementing regulations.

what ICE detention means through living that experience, amici are concerned for the well-being of people currently detained and the effects of their detention on their loved ones. With humility, we offer this Court our insights on this matter.

II. **It Is Practically Impossible to Distinguish Immigration Detention and Deportation from Punishment**

It is impossible for us to distinguish immigration detention and deportation from punishment and to sever their nexus from our contacts with the criminal legal system. For many of us who have been incarcerated, we often compare the two and find immigrant detention to be worse. For what is legally defined a civil matter, immigration detention mirrors punitive incarceration in the criminal context. As the U.S. Supreme Court recognized in *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010), “deportation is an integral part—indeed, sometimes the most important part—of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes.”

Rightly or wrongly, all of us had some form of contact with the criminal legal system that sent us into ICE custody and detention. In some cases, we were arrested by local authorities but neither charged nor ever convicted of any crime, yet we were still transferred into ICE custody to face deportation. In other cases, we encountered the criminal legal system in our youth and we served our sentences, even earning early releases. Yet, we would be further punished with ICE detention and deportation when we were supposed to return to our communities after our incarceration time ended.²

Some of us as green card holders have served in the U.S. military in conflicts in Iraq, Afghanistan, the Persian Gulf, and even Vietnam. After our service, we faced common struggles upon returning to civilian life like substance abuse. Our struggles led to contact with the criminal legal system and eventually transfer to ICE custody.

We all faced deportation—many of us were in fact deported—to countries we were brought from as children, toddlers, or infants. We all faced being permanently separated from our families and loved ones. Some of us were even slated to be banished to countries we were neither born in nor ever set foot in.

Judge Sarokin, now living in California after retiring from the U.S. Third Circuit Court of Appeals, opined in *Scheidemann v. INS*, 83 F.3d 1517, 1527 (3d Cir. 1996) that “[t]he legal fiction that deportation following a criminal conviction is not punishment is difficult to reconcile with reality, especially in the context of this case.” That case was about a man who was 12 when

² Immigration law was legislated with the intent to punish people under the guise of a civil matter. *See, e.g.*, Remarks of Sen. Roth, 142 Cong. Rec. S4600 (daily ed. May 2, 1996) (emphasis added) (“[T]he bill broadens the definition of aggravated felon to include more crimes *punishable* by deportation.”); García Hernández, *Immigration Detention as Punishment* (2014) 61 UCLA L. Rev. 1346; Caldwell, *Banished for Life: Deportation of Juvenile Offenders as Cruel and Unusual Punishment* (2013) 34 Cardozo L. Rev. 2261; Chin, *Illegal Entry as Crime, Deportation as Punishment: Immigration Status and the Criminal Process* (2011), 58 UCLA L. Rev. 1417.

he came to this country and in which he had lived here for thirty-six years. His family was here including his children, siblings, and parents. Like most people facing transfer from state and local custody, he had completed his sentence and had no ties to the country he faced deportation to. “If deportation under such circumstances is not punishment, it is difficult to envision what is.” *Id.* These circumstances ring true for those of us with convictions and the many we encountered during our time in ICE detention. For those without convictions, the struggle of being housed in a lock-up feels cruelly unjust. This is the reality that we felt viscerally while we were detained.

Languishing in ICE detention waiting for the unknown is an excruciating form of anguish; we did not know what fate awaited us and our families. For noncitizens with criminal convictions like many but not all of us, avenues of relief are limited and complex—making it difficult for us to navigate successfully.³ We often saw that people, like us, had no option except to expedite requests through post-conviction relief vehicles in state court⁴. In some cases, options were limited exclusively to gubernatorial clemency, including some of ours.⁵ Immigration judges would not grant continuances to seek those forms of relief creating overwhelming pressure.

ICE detained us without bond or with bonds beyond our ability to pay, and many of us became trapped in indefinite detention while our cases wound their way through the immigration system—which could mean years of waiting. Months in immigration detention would feel like years in the penal system. In this context, many people often decided to give up on their cases and accept deportation—a fate that often placed them in harm’s way upon their arrival in the country of removal, including death.⁶

Furthermore, for lack of the legal designation of criminal punishment, our immigration cases often went before immigration judges or administrative officers without any guaranteed access to counsel violative of basic due process principles. Imagine having someone being tried before you, with the full resources of the government against them, but without an attorney to represent them or ensure their rights are protected. Imagine the stress we and our families felt. This is the predicament most people currently detained by ICE are in.

This mental anguish is inescapable—and exacerbated when coupled with conditions of confinement that go unchecked. We know first-hand that immigration detention does not receive meaningful oversight. As a civil form of detention, detainees are not to be subjected to any harmful treatment but that has not been the reality in our experience.

³ Immigrant Legal Resource Center, *Immigration Relief Toolkit* (2018) <https://www.ilrc.org/sites/default/files/resources/relief_toolkit-20180827.pdf> [as of Apr. 25, 2020].

⁴ Immigrant Legal Resource Center, *Infographic about California Post-Conviction Relief Vehicles* (2017) <https://www.ilrc.org/sites/default/files/resources/capostconviction-one_pager.pdf> [as of Apr. 25, 2020].

⁵ Immigrant Defense Project, *Pardon: The Immigrant Clemency Project* (2018) <<https://immigrantpardonproject.com/>> [as of Apr. 25, 2020].

⁶ Human Rights Watch, *Deported to Danger* (2020) <<https://www.hrw.org/report/2020/02/05/deported-danger/united-states-deportation-policies-expose-salvadorans-death-and>> [as of Apr. 25, 2020].

III. Pursuing Our Right to Remain in the United States Should Not Include Risking Serious Illness or Death

We worry that many detained individuals will give up their right to seek relief just to get out of detention to avoid becoming ill with COVID-19; at the moment, the only alternative is for them to keep fighting their case in the present or imminent dangers ICE has forced upon them. The decision they must wrestle with is a moral dilemma entwined with their human instincts of survival. Conditions in ICE detention facilities have been so grave that people have taken to hunger strikes for lack of alternatives. Simply put, immigration detention is deadly, but ICE does not care. People are forced to make the decision to brave it through, in the hopes of a successful outcome on their cases, in order to reunite with their families.

For those of us who dealt with our immigration cases without any deadly pandemic, it seems insurmountable to add COVID-19 to the equation. Where being outside of confinement allows us to stay in self-isolation, the physical design and limitations of immigration detention do not. People are placed in close quarters and share every inch of common space. Everyone's daily life there is intermixed. Everyone's bed is close together. Everyone shares restroom facilities and recreation areas. Everyone uses the same phones and breathes the same air. If one person gets ill, it spreads more rampantly.

People should not be forced to defend against deportation from inside. They should be able to continue fighting their cases free from the deadly conditions of detention. ICE has the discretion to release people and utilize proven alternatives, but they choose not to. This is more the reason this Court must step in. Our state prisons and jails have seen cases of infection rise and have begun to depopulate; for noncitizens released under these circumstances, they should not be handed over into another system of confinement, defeating the purpose of their release.

IV. State and Local Transfers to Immigration Detention Further Family Separation at a Time When Families Need to Be Together More Than Ever

These are times when families need to be together for us to get through this crisis safely. Yet, immigration detention has torn families apart. A significant number of the people detained are breadwinners and heads of households. Families cannot visit ICE detention centers now and often live so far away that it is not feasible for many to do so. Phone calls are costly and operate under a functioning monopoly. By transferring individuals to immigration detention, state and local law enforcement agencies have been furthering family separation in our state.

Some of us are fortunate to have been given the chance to remain in California and be home with our families and in our communities, reaffirming our humanity, for one reason or another, whether through legal relief, release with pending cases with or without bond, or under final orders of removal pending our deportation in some cases. Others of us have been permanently banished and write this letter from abroad. We are thankful to at least be outside of the deadly immigration detention system in this moment and take refuge from inhumane conditions. That benefit should be a human right given to everyone in California, especially in times like these, when we are advised by our public health experts to maintain social distancing and look after each other's health for the greater good of our communities—something that cannot be done in a lock-up.

Family ties and community investments in us as people have kept us grounded in a path of self-improvement. For those of us who are abroad, those same investments keep our hope alive that one day we can return to our homes and our families. For those of us who achieved parole from state prison through the parole board, those efforts and investments are what helped make us the people we are today in our communities, wherever we are. When people took the time to care about us, we found healing and gave it back to those around us. That value cannot be offered through the concrete warehouse that immigration detention is. It is not a place conducive to health in any way.


Immigration detention should not be the norm. As a society, we are beginning to better invest in people and provide chances for those who have a conviction or are formerly incarcerated. We see these investments and opportunities bringing social benefits. As an example, many Southeast Asians are freed from detention in our communities under final orders of deportation and ICE supervision. They had become entangled in the criminal legal system but upon release from immigration detention, they were able to thrive when given the chance to do so although still uncertain of their future.⁷

V. Conclusion

For these reasons and more, we, the undersigned, again humbly urge this Court to grant the petition for writ of mandate to stop the facilitation of transfers of people from local and state facilities to immigration detention during this pandemic.

Dated: May 1, 2020

Respectfully Submitted,

By: 

Phal Sok
Gubernatorial Pardon Recipient 2018
Pro Per

⁷ Southeast Asian Resource Action Center, *The Devastating Impact of Deportation on Southeast Asian Americans* (2018) <<https://www.searac.org/immigration/the-devastating-impact-of-deportation-on-southeast-asian-americans/>> [as of Apr. 25, 2020].

Joined signatories:

Mario De La Cruz, Tijuana, Mexico.

Deported Veteran. Transferred by CDCR into ICE custody. Held by ICE detention for 12 months.

Andrew De Leon, Tijuana, Mexico.

Deported Veteran. Transferred by CDCR into ICE custody from California Training Facility, Soledad, in 2008. Held by ICE detention for three months.

Miguel Hernandez, Tijuana, Mexico.

Deported Veteran. Transferred by CDCR into ICE custody in 2017.

Van Huynh, Orange County, CA

Granted early release under SB260 youth offender parole. Transferred by CDCR into ICE custody for several months. Now engaged with non-profits.

Hector Lopez, Tijuana, Mexico.

Deported Veteran. Transferred by CDCR into ICE custody in 2006. Held by ICE detention or 24 months.

Luis “George” Lopez, Los Angeles, CA.

Transferred to ICE from the Downtown Los Angeles courthouse by the Los Angeles County Sheriff’s Department in August 2018 and detained by ICE at the Adelanto ICE Processing Center for 19 months. Currently facing deportation.

Jose Maldonado, Los Angeles County, CA

Transferred to ICE by the Huntington Park Police Department in July 2019 without any criminal convictions in violation of SB54 California Values Act. Detained by ICE at the Adelanto ICE Processing Center for 6 months. Currently facing deportation.

Mario Martinez, Los Angeles, CA.

U.S. Army veteran. Transferred by CDCR into ICE custody in 2013. Detained at El Centro ICE Detention Center for six months. Currently facing deportation.

Kent Mendoza, Los Angeles, CA.

Transferred to ICE from Los Angeles County Jail in April 2014 at the age of 20. Secured relief through Special Immigrant Juvenile Status.

Ny Nourn, San Francisco, CA.

Transferred by CDCR into ICE custody in 2017 after serving 15 ½ years in the Central California Women’s Facility in Chowchilla, California. Held in Yuba County Jail ICE detention for six months. Released on bond. Currently works at a non-profit supporting advocacy, post-conviction, and re-entry work. Board member of several organizations working with incarcerated people.

Alain Martinez Perez, Pasadena, CA.

Transferred by Los Angeles County Sheriff's Department into ICE custody in 2011 after an arrest that resulted in no charges. ICE detained him in the former Mira Loma immigration detention center in Lancaster, CA.

Mario Rodriguez, Tijuana, Mexico.

Deported Veteran. Transferred by CDCR into ICE custody from Calipatria State Prison in 2005. Held in ICE detention for 15 days.

Kelvin Hernandez Roman, Orange County, CA.

Transferred to ICE by the Tustin Police Department in September 2019 in violation of SB54 California Values Act. Detained by ICE at the Adelanto ICE Processing Center for 9 months. Currently facing deportation.

Phal Sok, Los Angeles, CA.

First of SB260 youth offender parole releases after serving 16 years; CDCR transferred into ICE custody in 2015. Held in detention for eight months throughout California, Arizona, and Washington. Released under deportation order, redetained four months later, held in California and Louisiana. Final release in November 2016 on bond. Pardoned in 2018. Works at a non-profit.

Asdrubal Solis, Los Angeles, CA.

Transferred by CDCR into ICE custody after 28 years of incarceration. Held by ICE for ten months. Recently released.

Jose Sotelo, Kern County, CA.

Transferred by CDCR into ICE custody after 18 years of incarceration.

Houth Taing, San Gabriel, CA.

Former National Guard Reserves. Transferred by CDCR into ICE custody in 2016, released, redetained, and released again. Pardoned in 2018.

Joaquin Sotelo Tarin, Los Banos, CA.

U.S. Navy veteran. Transferred by CDCR into ICE custody in 2015 from Corcoran State Prison. Held by ICE for 18 months between Mesa Verde Detention Center and at the Rio Cosumnes Correctional Center. Currently facing deportation.

Robert Vivar, Tijuana Mexico.

Deported Father/Grandfather. Active duty son and grandson. Transferred to ICE from Riverside County Jail in 2002 and detained by ICE for eight months in 2002 and for 18 months starting in 2011.