

Alejandro Mayorkas  
Secretary  
U.S. Department of Homeland Security  
3801 Nebraska Ave. NW  
Washington, D.C.  
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Tae Johnson  
Acting Director  
U.S. Immigration and Customs Enforcement  
500 12th St. SW  
Washington, D.C.  
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Esther Olavarria  
Deputy Director  
Domestic Policy Council  
1600 Pennsylvania Ave. NW  
Washington, D.C.  
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February 11, 2021

Dear Secretary Mayorkas, Acting Director Johnson, and Ms. Olavarria:

Our organizations provide legal and medical services to and advocate for people detained by Immigration and Customs Enforcement (ICE). We write to urge you to prioritize the implementation of a file review process, initiated by ICE, to reconsider the custody determination for every person currently in ICE custody.

We are heartened by the early steps the Biden-Harris Administration has taken to reorient the U.S. immigration system toward a framework that embraces human rights and compassion. However, we are concerned that these policies have not yet been implemented in a meaningful or systemic way with regard to the approximately 14,000 people in ICE detention. Leaving behind the thousands who continue to suffer in detention will undermine efforts by your agencies to rebuild trust with communities and is at odds with President Biden's stated commitment to racial equity and human rights.

Many of our organizations provide services to countless individuals in ICE detention who do not fall within the interim enforcement priorities outlined in the January 20th memo issued by Acting Secretary Pecoske (hereinafter [January 20th Pecoske Memo](#)). Many of our clients have been detained by ICE for *years*. Some are at heightened risk of serious illness or death from the COVID-19 virus, face protracted separation from their young children, and/or struggle with histories of trauma while behind bars. Many had dared hope they might have a chance for freedom with the beginning of the new administration; this hope is diminishing and turning to despair.

The January 20th Pekoske Memo called for a top-to-bottom review of the Department of Homeland Security (DHS) enforcement mechanisms. Nowhere is this review more urgent than in ICE detention centers, which have been infected by abuse and corruption for decades, with medical neglect [escalating](#) during the COVID-19 pandemic. Just this past week [two people](#) have died in custody. Yet for those detained, the day-to-day has not markedly changed since the inauguration, and no meaningful process is available to escalate urgent requests for their release. Our organizations have begun renewing release requests to ICE for those clients for whom detention poses the gravest risk; these requests sit largely unanswered and in some cases have already been denied. The situation is even more dire for unrepresented individuals who lack meaningful access to email and have received no instructions as to how to renew their request for freedom.

We urge you to immediately:

- Affirmatively implement a file review process for every person in ICE custody, operating under a presumption of release for everyone. DHS should create an independent review system for all decisions made by ICE to continue detention conducted by an agency independent of ICE such as the Office for Civil Rights and Civil Liberties or Office of the Detention Ombudsman. Independent review is critical to the integrity of this process.
- Ensure through this process that all persons who fall outside the interim enforcement priorities outlined in the January 20 Pekoske Memo are released. The January 20th Pekoske Memo specifically requires ICE to apply the interim guidance to decisions regarding “whom to detain or release.”
- Prioritize the release of individuals who face a heightened risk of serious illness or death from COVID-19 due to age or a preexisting condition as defined by the Centers for Disease Control, transgender people, HIV+ people, and all families and children. (ICE is already subject to a nationwide court order requiring that it identify persons vulnerable to COVID-19 and consider them for release, but compliance has been inconsistent at best.)
- Ensure that all persons are eligible for release pursuant to this process, including those subject to statutory mandatory custody provisions. Even where the immigration statutes otherwise appear to require confinement, it has [long been acknowledged](#) that ICE maintains discretion to release such individuals for urgent humanitarian reasons. ICE officials in fact already exercise their discretion to release people detained under the mandatory custody provision at 8 U.S.C. § 1226(c) in cases where humanitarian equities are present, including the COVID-19 pandemic.

Thousands of people remain detained because of unjust decision-making by Customs and Border Protection and ICE. Revisiting these decisions and releasing individuals to their loved ones and communities cannot wait. A file review process will require a significant commitment of resources but is feasible. The vast majority of those detained have a family member or loved one waiting to house and support them upon release. For those who do not, a network of

community-based [support](#) programs and faith-based organizations stand at the ready to provide housing and services. Immigrants released from detention show up for their hearings, especially when provided legal representation; a [study](#) issued just two weeks ago by the American Immigration Council shows that over an 11-year period, 96% of all individuals with counsel appeared in court for every one of their hearings.

We appreciate your attention to this urgent matter and request the opportunity to meet with you to discuss implementation of a file review process as soon as possible.

*With questions, contact: Heidi Altman, National Immigrant Justice Center, [haltman@heartlandalliance.org](mailto:haltman@heartlandalliance.org)  
Jorge Loweree, American Immigration Council, [jloweree@immcouncil.org](mailto:jloweree@immcouncil.org)*

Sincerely,

Adelante Alabama Worker Center

Advancement Project, National Office

Advocate Visitors with Immigrants in Detention

African American Ministers In Action

African Communities Together

Aldea - The People's Justice Center

Alianza Americas

America's Voice

American Immigration Council

American Immigration Lawyers Association

Americans for Immigrant Justice

Amnesty International USA

Asian Americans Advancing Justice | AAJC

Bay Area Asylum Support Coalition (BAASC)

Beyond Legal Aid

Black Immigrant Collective (BIC)

Bridges Faith Initiative

California Collaborative for Immigrant Justice

California Immigrant Policy Center

Capital Area Immigrants' Rights Coalition

Catholic Legal Immigration Network, Inc.

Catholic Legal Services, Archdiocese of Miami

Catholic Migration Services

Center for American Progress

Center for Constitutional Rights

Center for Gender & Refugee Studies

Center for Law and Social Policy (CLASP)

Center for Popular Democracy

Center for Victims of Torture

Central American Resource Center- CARECEN- of California

Chicago Religious Leadership Network on Latin America

Church World Service

Coalition for Humane Immigrant Rights (CHIRLA)

Colorado Medical Coalition for Human Rights

Community Justice Exchange

Conversations with Friends (MN)

DC Immigration Hub

Desert Support for Asylum Seekers

Detention Watch Network

Disability Rights Advocates

Disciples Refugee & Immigration Ministries

Doctors for Camp Closure

Esperanza Community Housing Corporation

Families for Freedom

Florence Immigrant & Refugee Rights Project

Franciscan Action Network

Freedom for Immigrants

Government Accountability Project

Grassroots Leadership

Gulf Coast Immigration Collaborative

Haitian Bridge Alliance

Hispanic Federation

Human Rights First

Human Rights Watch

Illinois Coalition for Immigrant and Refugee Rights

Immigrant & Non-Citizen Rights Clinic, CUNY School of Law

Immigrant Action Alliance

Immigrant and Non-Citizen Rights Clinic, CUNY School of Law

Immigrant ARC

Immigrant Defenders Law Center

Immigrant Legal Advocacy Project

Immigrant Legal Defense

Immigrant Legal Resource Center (ILRC)

Immigration Equality

Inland Coalition for Immigrant Justice

Innovation Law Lab

Interfaith Movement for Human Integrity

International Rescue Committee

Jefferson County Immigration Rights Advocates

Kitsap Immigrant Assistance Center

Legal Aid Justice Center

Lincoln Park Presbyterian Church Chicago

Long Beach Immigrant Rights Coalition

Louisiana Advocates for immigrants in Detention

Make the Road New York

Make the Road NJ

Mariposa Legal, Program of COMMON Foundation

Massachusetts Immigrant and Refugee Advocacy Coalition

Mid-South Immigration Advocates

Migrant Center for Human Rights

Minnesota Interfaith Coalition on Immigration

National Immigrant Justice Center

National Immigration Law Center

National Immigration Project (NIPNLG)

National Network for Immigrant & Refugee Rights

Neighbors Link

New Mexico Immigrant Law Center

New Sanctuary Coalition

NorCal Resist

Northern Illinois Justice for Our Neighbors

Northwest Immigrant Rights Project

NYU Immigrant Rights Clinic

Orange County Justice Fund

Orange County Rapid Response Network

Oxfam America

Pangea Legal Services

Physicians for Human Rights

Provincial Council Clerics of St. Viator

Proyecto Dilley

Public Counsel

Reformed Church of Highland Park Affordable Housing Corp

Refugee and Immigrant Center for Education and Legal Services (RAICES)

Rocky Mountain Immigrant Advocacy Network

Santa Fe Dreamers Project

Services, Immigrant Rights & Education Network (SIREN)

Sisters of Charity, BVM

Sisters of St. Joseph of Carondelet, LA Province

South Asian Americans Leading Together (SAALT)

Southeast Asia Resource Action Center

The Bronx Defenders

The Advocates for Human Rights

Transformations CDC

UC Irvine School of Law Immigrant Rights Clinic

UndocuBlack Network

UnidosUS

United We Dream

Univ. of Massachusetts School of Law Immigration Law Clinic

Univ. of Southern California Gould School of Law Immigration Clinic

Univ. of Colorado, Division of Infectious Diseases

UnLocal

Voces Unidas: Louisiana Immigrant's Rights Coalition

Women's Refugee Commission

Young Center for Immigrant Children's Rights