



ACLU of New York

New York Civil Liberties Union
125 Broad Street, 19th Floor
New York, NY 10004
(212) 607-3300
www.nyclu.org



New Jersey

ACLU of New Jersey
P.O. Box 32159
Newark, NJ 07102
(973) 642-2086
www.aclu-nj.org



Connecticut

ACLU of Connecticut
765 Asylum Ave., First Floor
Hartford, CT 06105
(860) 523-9146
www.acluct.org

April 19, 2020

Via Email

Hon. Andrew M. Cuomo
Governor of the State of New York
NYS Capitol Building
Albany, N.Y. 12224

Hon. Philip D. Murphy
Governor of the State of New Jersey
225 W. State Street
Trenton, NJ 08625

Hon. Ned Lamont
Governor of the State of Connecticut
State Capitol
210 Capitol Avenue
Hartford, CT 06106

RE: Protecting the Health and Safety of People Detained by ICE in Northeast Region

Dear Governors Cuomo, Lamont, and Murphy,

We write concerning the urgent need to take action to protect the large numbers of people detained by U.S. Immigration and Customs Enforcement (ICE) and currently held in local jails and private detention facilities in your states amid the ongoing COVID-19 pandemic. We appreciate the proactive efforts you have taken to work together on a multi-state approach to combat the threat of this virus in the northeast region. In the face of the current public health crisis and with conditions in immigration detention facilities worsening, we are asking you to use your positions of power to ensure that all people are released from civil immigration detention and to advocate that they not be transferred to other facilities.

As you are aware, several local correctional facilities and private detention centers in the northeast – including long-term detention facilities in New York, New Jersey, and Massachusetts (where people arrested by ICE in Connecticut are often detained) – have contracts with the federal government to hold people arrested and detained by ICE. Notably, large numbers of people arrested and detained in the New York and New Jersey area are held in the Orange County Correctional Facility in New York, and the Hudson County, Bergen County, and Essex County Correctional Facilities and Elizabeth Detention Center in New Jersey. The innovative

regional approach to addressing COVID-19 that you have championed recognizes that working collectively across state lines is necessary for our survival. Given that immigration enforcement, detention, and legal representation also occurs across state lines, we urge you extend this approach to address the risks facing people detained by ICE in these local and private facilities.

These individuals – who are kept in county jails and private detention facilities solely for alleged violations of civil immigration law – are at acute risk amid the COVID-19 pandemic. Across the country, thousands of medical professionals have called upon ICE to release people who are detained.¹ Doctors who serve as medical experts for the U.S. Department of Homeland Security (DHS), who are deeply knowledgeable of the immigration detention system, have warned that proactive measures are necessary to mitigate a catastrophic outbreak of COVID-19, including releasing those who are detained in large numbers.² In our region, our local healthcare workers and first responders already face critical shortages of equipment and protective gear. Allowing the outbreaks at ICE facilities in our region to intensify, as ICE is currently doing, could flood local healthcare facilities with additional cases and create what doctors at DHS described weeks ago as a “tinderbox scenario,”³ adding to the crisis they are facing and undermining our collective efforts to “flatten the curve” as recommended by the Centers for Disease Control and Prevention (CDC), senior federal government officials, and your administrations.

Medical professionals have confirmed that release is the most important means of mitigating the spread of COVID-19 due to the grave risks of communicable disease spread inherent in detention centers, and the impossibility of social distancing in these facilities.⁴ If ICE responds to an individual’s positive test for COVID-19 by transferring apparently asymptomatic individuals to an ICE facility in another region, it risks contributing to the spread of COVID-19 across communities. ICE officers and facility staff do not have enough personal protective equipment for themselves or detained people, if an outbreak does occur, given current shortages – as evidenced by news that at least four staff members in Hudson County have recently died due to COVID-19.⁵ Allowing people to return to their communities, where they can practice social distancing and take precautionary measures, will lessen the risk of contributing to the outbreak more broadly.

To date, ICE has failed to sufficiently respond to the COVID-19 pandemic with sufficient proactive measures of its own. Though ICE has said that it regularly reviews custody determinations, the agency’s actions have been slow-moving and ICE only recently shared the

¹ See *Open Letter to ICE from Medical Professionals Regarding COVID-19*, available at <https://nylpi.org/wp-content/uploads/2020/03/FINAL-LETTER-Open-Letter-to-ICE-From-Medical-Professionals-Regarding-COVID-19.pdf>.

² Scott A. Allen & Josiah Rich, MD, *Letter to Chairpersons and Ranking Members of House and Senate Homeland Security and Oversight and Reform Committees*, March 19, 2020, available at <https://www.documentcloud.org/documents/6816336-032020-Letter-From-Drs-Allen-Rich-to-Congress-Re.html#document/p4/a557238>.

³ Shoichet, Catherine, *Doctors warn of 'tinderbox scenario' if coronavirus spreads in ICE detention*, CNN (March 20, 2020), <https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html>

⁴ Declaration of Dr. Robert Greifinger ¶ 18, *Arriaga Reyes*, No. 20cv03600 (No. 13-1).

⁵ Monsy Alvarado, *Another Hudson County jail employee dies of coronavirus complications*, NorthJersey.com (April 7, 2020), <https://www.northjersey.com/story/news/new-jersey/2020/04/07/coronavirus-another-hudson-county-nj-jail-employee-dies/2962894001/>.

limited criteria used to release vulnerable people from detention. Testing in ICE facilities has also been woefully inadequate. As of the date of this letter, ICE has confirmed just 124 positive cases of COVID-19 nationally among the more than 32,000 people it detains – with nearly a quarter of those in New Jersey and New York – raising serious questions about the testing capacity in these facilities.⁶ Though we understand that the Essex County jail has begun antibody testing all people in detention at its facility, that does not appear to be at ICE’s direction, and we are not aware of such measures being taken at other facilities.⁷

The deeply concerning, scant health and safety measures in facilities where people in ICE custody are held have led judges in several states – including New York, New Jersey, and Massachusetts – to order the release of medically vulnerable people.⁸ Some local facilities in New York and New Jersey have already announced that they will temporarily cease accepting new individuals detained by ICE amid this crisis.⁹ In communications with advocates, ICE itself has acknowledged that underlying medical conditions that render people vulnerable to COVID-19 can justify release, and has exercised its discretion to release some people from detention facilities. While ICE has reportedly released nearly 700 people from detention nationally, this action fails to significantly reduce the population within immigration detention facilities.¹⁰ ICE has also told members of Congress that it has completed its review of people for release and does not plan to release anyone else.¹¹ In the absence of a clear policy or practice by ICE to significantly and meaningfully reduce its detention population, more is needed to protect the health and safety of those held in jails on civil immigration violations amid a deadly pandemic.

As governors of your respective states, each of you has substantial power and influence to affect how ICE detention is carried out in local facilities within your jurisdictions. In the current environment, you possess both the authority to address conditions and health maintenance in these facilities, and the access and influence to engage ICE in discussions about its detention practices. We call on you to exercise these powers in the following ways:

⁶ See ICE, *ICE Guidance on COVID-19: Confirmed Cases*, <https://www.ice.gov/coronavirus>.

⁷ Monsy Alvarado, *Essex County jail uses coronavirus antibody test to screen inmates and ICE detainees*, app.com (April 19, 2020), <https://www.app.com/story/news/new-jersey/2020/04/19/essex-county-uses-covid-antibody-test-screen-inmates-ice-detainees/5161525002/>.

⁸ See, e.g., Hamed Aleaziz, *ICE Must Release 10 Chronically Ill Immigrants After a Judge Said They’re Not Safe from the Coronavirus While in Custody*, BuzzFeed News (March 31, 2020), <https://www.buzzfeednews.com/article/hamedaleaziz/ice-release-immigrants-coronavirus-jails>.

⁹ Monsy Alvarado & Steve Janoski, *First ICE detainee in U.S. tests positive for COVID-19 in New Jersey jail*, NorthJersey.com (March 24, 2020), <https://www.northjersey.com/story/news/new-jersey/2020/03/24/coronavirus-nj-ice-detainee-first-nation-test-positive/2911910001/>; Heather Yakin, *Jails working to prevent spread of coronavirus*, Times Herald-Record (March 26, 2020), <https://www.recordonline.com/news/20200326/jails-working-to-prevent-spread-of-coronavirus>.

¹⁰ Matt Katz, *ICE Releases Hundreds of Immigrants As Coronavirus Spreads in Detention Facilities*, NPR (April 16, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/16/835886346/ice-releases-hundreds-as-coronavirus-spreads-in-detention-centers>.

¹¹ U.S. House of Representatives Committee on Oversight and Reform, *DHS Officials Refuse to Release Asylum Seekers and Other Non-Violent Detainees Despite Spread of Coronavirus*, April 17, 2020, <https://oversight.house.gov/news/press-releases/dhs-officials-refuse-to-release-asylum-seekers-and-other-non-violent-detainees>.

- **Work with ICE and local officials to secure the release of as many people as possible from immigration detention, as quickly as possible.** ICE has broad discretion to release on parole the people in its custody for “urgent humanitarian reasons or significant public benefit.”¹² Yet ICE has not made appropriate humanitarian use of this tool amid the COVID-19 pandemic. As the chief executives of your states, we ask that you leverage your positions and all oversight authority you have over your corrections systems and public health systems to advocate with ICE regarding the public health imperative inherent in releasing people from its custody. Each day the rate of infection in ICE detention centers rises exponentially. We urgently ask you to demand that ICE releases as many people as possible.
- **Ensure that state and local correctional facilities do not accept any new detention admissions from ICE while the pandemic persists.** Just as it is critical that ICE reduce its current population of detained people, there must be an immediate moratorium on arrests and new detention admissions. Facilities that contract with ICE must make clear that they will not agree to admit new immigrants detained by ICE pursuant to their agreements under the current circumstances – as some have already done – and simultaneously encourage ICE to cease new enforcement activity in the interest of helping avoid catastrophic disease-spread in detention facilities.
- **Ensure testing of people in ICE detention in local contract facilities and enhance public health oversight of conditions in facilities.** As noted above, ICE has only identified 124 people nationwide in its custody who have tested positive for COVID-19, and 30 detention facility staff who have tested positive.¹³ Given the high numbers of positive tests in other area correctional facilities and the increasing number of detention facility staff absent on sick leave or self-quarantined,¹⁴ there is strong reason to believe ICE is not yet testing or undercounting the people in its custody who have or have had the virus. We ask that you use the regulatory and oversight authority vested in your office, and the agencies you direct, to ensure universal testing of all people detained by ICE in state, local, and private facilities. Your states should ensure that the number of confirmed COVID-19 cases among people in ICE custody is fully documented and publicly accessible, in order to present a complete picture of how COVID-19 has spread in the ICE detention context. Finally, we urge your states to increase state public health oversight of the jails and immigration detention centers, actively monitor the conditions that immigrants detained by ICE are experiencing, and publish the health protocols undertaken by each of these facilities to protect the health and safety of those detained

¹² 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(b).

¹³ U.S. Immigration and Customs Enforcement, *ICE Guidance on COVID-19: Confirmed Cases*, <https://www.ice.gov/coronavirus>.

¹⁴ For example, the Legal Aid Society has identified 362 positive cases among the nearly 4,000 people detained at Rikers Island as of the date of this letter, which does not include those who have already been released. See Legal Aid Society, *Covid-19 Infection Tracking in NYC Jails*, <https://legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/>.

and employed at the facilities.

- **Provide reentry services for people released from ICE custody.** Releasing people from ICE detention during a global pandemic is both humane and necessary to protect both individual and public health. However, it is also critical that those who are released can safely return to their families and communities where they are able to practice social distancing and heightened sanitization. Given the more limited services available for people who lack documentation of immigration status, as people are released, the state must play an important role in developing and facilitating standardized release plans and protocols; connecting immigrants detained by ICE to their families and communities; providing transportation services with protective medical supplies (masks, gloves, gowns); arranging for housing and healthcare; directing facilities to publish the health protocols being used upon reentry; and ensuring that staff and people detained have access to proper hygiene and sanitation products.
- **Support releases, testing, public health oversight, and reentry services by other states in the region, and advocate against new admissions and enforcement activity.** In states that do not have long-term ICE detention facilities, governors may not have the ability to secure releases, testing, public health oversight, or reentry services for people in ICE detention. These governors can nonetheless leverage their positions and visibility to support neighboring governors who are working towards release, testing, oversight, and reentry services, and to call on others to take those steps. Residents of all states in the northeast will be directly impacted by the public health actions taken by neighboring states' officials. It is therefore incumbent upon all governors to fully support the measures for release from ICE detention, full testing in ICE detention facilities, improved public health oversight of ICE detention facilities, and robust reentry services for people released from ICE custody. Governors should also advocate against new enforcement activities in their states, so as to prevent any increases in detention across the region.

Taking these steps will help ensure the health and safety of all the residents of your state. As goes the health of our community members in the most vulnerable circumstances, so go our states – and indeed, our region. The health of us all depends on you taking bold action to mitigate the effects of the current crisis. We appreciate your attention to these matters, and look forward to discussing them further with you.

Sincerely,



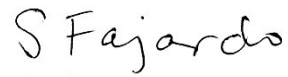
Donna Lieberman
Executive Director
New York Civil Liberties Union



Amol Sinha
Executive Director
ACLU of New Jersey



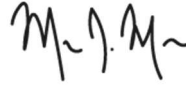
David McGuire
Executive Director
ACLU of Connecticut



Sarah Fajardo
Policy Director
ACLU of New Jersey



Zachary Ahmad
Policy Counsel
New York Civil Liberties Union



Mel Medina
Director of Public Policy and Advocacy
ACLU of Connecticut